

**SOPHIE HAHN**

Berkeley City Council, District 5

2180 Milvia Street, 5th Floor

Berkeley, CA 94704

Phone: (510) 981-7150

Email: [shahn@cityofberkeley.info](mailto:shahn@cityofberkeley.info)

CONSENT CALENDAR

July 25, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmembers Sophie Hahn and Kate Harrison

Subject: Referral to the Housing Advisory Commission Consideration of an Ordinance to Establish a Waiver of Administrative and Permit Fees for Certain Affordable Housing Projects

RECOMMENDATION

Refer to the Housing Advisory Commission and City Manager the creation of an ordinance to establish an automatic waiver of administrative and permit fees for certain affordable housing projects, in particular those projects qualifying for Housing Trust Fund or other Berkeley affordable housing monies. A proposed ordinance is attached for consideration as one possible model.

FINANCIAL IMPLICATIONS

Staff time to review ordinance and policies. In the future, possible optimization of the impact of Berkeley affordable housing funds, to support housing rather than administrative costs, and reduction in development-related administrative fees received by the City for permitting and development of housing.

BACKGROUND

The City of Berkeley has established a Housing Trust Fund to support the creation of affordable housing in Berkeley. This fund is a critical tool to increase Berkeley's affordable housing stock. In addition, other Berkeley affordable housing funds may be available to support affordable housing projects. When City of Berkeley funds are granted to qualifying projects, the City should ensure that the applicant is able to maximize the impact of these public funds for the project itself rather than for payment of the City's development-related administrative fees.

Permit fee waivers or deferrals are already permitted under BMC Chapter 23B.24.040 on a case by case basis, and require a time consuming process. Affordable housing developers putting together financing for their projects do not know from the outset whether or not waivers will be granted, and are unable to reflect the potentially reduced costs in their plans.

Chapter 23B.24.040 states:

*“The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver.”*

The process to obtain permit fee waivers requires applicants to submit a written request to the Director of Planning and Development, which is then sent to the City Manager for consideration. The City Manager must make two determinations about the project:

- (1) whether it provides a significant public service or benefit, and
- (2) whether the waiver is economically necessary to complete the project.

The City Manager next is required to notify the City Council of any project receiving a waiver of fees, and the Council has the authority to review, grant, modify, or deny the waiver. Finally, the City Manager must send a letter authorizing the waiver to the Planning Department. *All* of these steps must occur *before* a development application can be deemed complete. This complex process has the potential to significantly delay a project's application and creates uncertainty at the project planning stage.

A number of cities offer fee waivers and deferments to affordable housing projects. Austin, TX waives all fees, including impact fees and administrative fees, if the development is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's Green Building Standards.<sup>1</sup>

Puyallup, WA offers a waiver of building and construction permit fees if the residential structure is intended for low-income families, the construction of the structure involves some volunteer labor, or the structure is being constructed by an organization classified as a nonprofit organization by the Internal Revenue Service.<sup>23</sup>

It would be optimal to automatically waive permit fees for projects receiving Berkeley affordable housing funds, to expedite the completion of affordable projects and reduce the amount of affordable housing monies spent on the City's own administrative fees.

Affordable housing built in Berkeley provides a significant public benefit to the community. A permit fee waiver is likely to help with the economic feasibility. Finally, applicants receiving affordable housing funds from the City of Berkeley will be able to make full use of these monies for the intended housing.

## ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley's environmental sustainability goals.

---

<sup>1</sup> <http://www.austintexas.gov/edims/document.cfm?id=111622>

<sup>2</sup> <http://mrsc.org/Home/Explore-Topics/Planning/Specific-Planning-Subjects,-Plan-Elements/Affordable-Housing-Ordinances-Flexible-Provisions.aspx>

<sup>3</sup> <http://www.codepublishing.com/WA/Puyallup/html/Puyallup17/Puyallup1704.html#17.04.080>

CONTACT PERSON

Councilmember Sophie Hahn, Council District 5, (510) 981-7150

ATTACHMENTS

1. DRAFT Ordinance amending BMC 23B.24.040

ORDINANCE NO. #,###-N.S.

ESTABLISHING A WAIVER OF PERMIT FEES FOR CERTAIN AFFORDABLE HOUSING PROJECTS, IN PARTICULAR PROJECTS QUALIFYING FOR HOUSING TRUST FUND OR OTHER CITY OF BERKELEY AFFORDABLE HOUSING FUNDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23B.24.040 is amended to read as follows:

**BMC Section 23B.24.040 Payment, Waiver and Refund of Application Fees**

A. Applications for Permits shall be accompanied by the fees as set by resolution of the Council. Payment of the fee is required in order for an application to be complete under the Permit Streamlining Act (PSA), and absent payment of the fee, the application will not be processed unless a fee waiver or deferral is approved as set forth below.

B. No fee shall be required when the applicant is the City, or if it is waived under any other provision of the BMC.

C. In addition to seeking fee waivers under other provisions of the BMC, any applicant may file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer. The Director of Planning and Development shall forward the request to the City Manager. The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver. A letter from the City Manager authorizing the fee waiver or deferral shall be submitted in lieu of a fee before an application will be accepted. Each fee waiver or deferral request shall include a breakdown of all applicable Current Planning Fees, as set forth in the current Fee Resolution.

D. Fees shall be automatically waived for projects receiving City of Berkeley Affordable Housing Funds from the Housing Trust Fund or any other City of Berkeley Affordable Housing funding source.

~~E.~~ If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees shall not be made for applications that have been denied.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

