



Office of the City Manager

PUBLIC HEARING  
December 19, 2017

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services  
Subject: Annual Monitoring Fee for Multi-Family Housing Developments Providing Below Market Rate Units

#### RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution establishing a new monitoring fee of \$432 per Below Market Rate (BMR) unit per year for existing and new multi-family housing developments providing BMR units under BMC Chapters 22.20.065 and 23C.12.

#### FISCAL IMPACTS OF RECOMMENDATION

The City does not currently charge any fees associated with the cost of monitoring and managing the City's Below Market Rate (BMR) programs, the Inclusionary Housing Ordinance (BMC Chapter 23C.12) and the Affordable Housing Mitigation Fee (BMC Chapter 22.20.065). Currently, General Funds pay for 0.33 FTE Community Development Project Coordinator time associated with monitoring the BMR program, as well as portions of a Senior Community Development Project Coordinator and the Manager of Housing and Community Services. This is insufficient capacity to effectively monitor the City's growing portfolio of BMR units.

If the fee is adopted, the revenue will be used to hire an additional Community Development Project Coordinator dedicated to the BMR program, which accounts for the majority of program costs presented in **Figure 1**. The amount of General Funds currently supporting BMR rental monitoring staffing would continue to support the monitoring of approximately 40 BMR ownership units and transition to support Housing Trust Fund monitoring, which requires more time than federal funds can support. Fees will be collected and expensed in the Affordable Housing Mitigation Fee fund.

**Figure 1. Fee Proposal Overview**

FY 2018 proposed programs costs	\$234,392
Revenue generated by existing fees	\$0
Proposed monitoring fees (\$432 x 478* units)	\$206,401
Total proposed FY 2018 fee revenue	\$206,401
* Includes 410 existing units, 25 units in construction, and 43 units with a current building permit application	

The proposed fee is intended to solely cover a new 1.0 FTE Community Development Project Coordinator; the remaining gap represents costs for a Senior Community Development Project Coordinator and Division Manager which are currently covered by existing General Fund dollars. Figure 3 provides a detailed breakdown of program costs.

**CURRENT SITUATION AND ITS EFFECTS**

On May 16, 2016, staff presented Council with options for two new fees: a one-time fee to cover the start-up costs associated with new BMR units and an annual fee to monitoring existing units. Council continued the item to a later date and asked staff to incorporate concerns noted by Council including the regressive nature of the flat fee and associating the fee with the affordable units in a project.

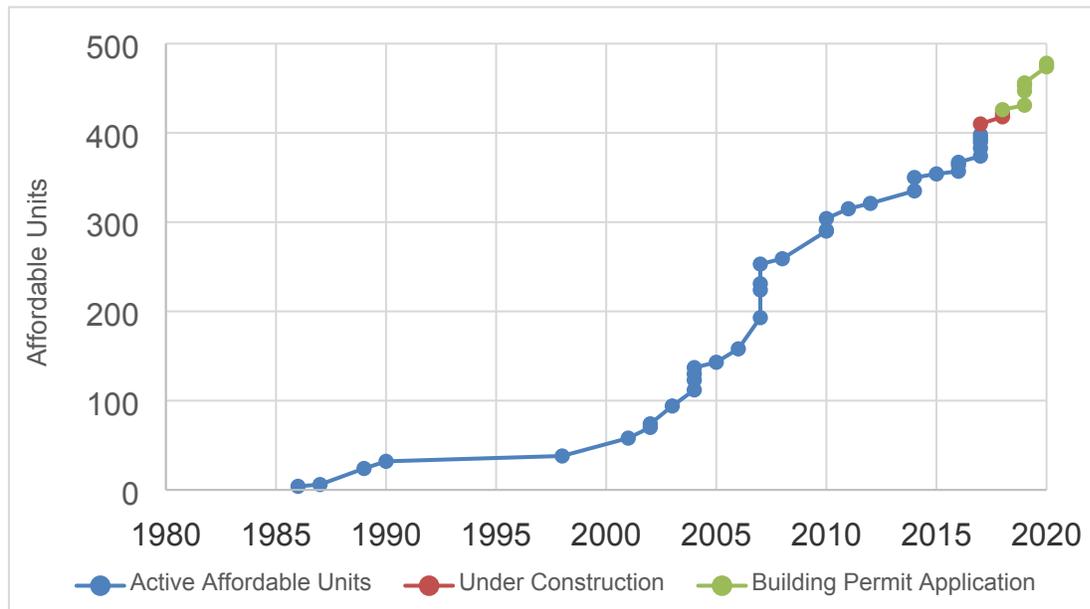
In response to Council's concerns, staff are recommending only one fee for rental unit annual monitoring—\$432 per unit per year—reduced by \$18 from the proposal presented this past spring. There are currently 410 Inclusionary/BMR units, 25 units in construction, and 43 units with a current building application submitted (**Figure 2**).

Due to the increasing size of the BMR portfolio and volume of development currently taking place, General Fund-supported staff time for appropriately monitoring BMR units is no longer adequate. Retaining BMR units as affordable housing for eligible households requires consistent City oversight, including regular on-site monitoring visits and support for property managers. Health, Housing and Community Services (HHCS) has taken steps to reduce the staffing burden, including ceasing to approve the property management's income and rent calculations for every unit annually, moving compliance activities online through City Data Services, and making more information available online. However, the growing volume requires additional staff time.

Figure 2 demonstrates the continued growth of the BMR program. While staffing dedicated to monitoring has not increased since 2007, the number of BMR units since then has doubled. The program increased in complexity during the same time frame as well, with the adoption of the Affordable Housing Mitigation Fee in 2010, adding a second set of requirements to explain and enforce. Figure 2 shows BMR units currently operating, as well as those that are in construction or have applied for a building permit. Whether a project will provide units or fees or even be completed is not certain until the

end of construction, so the units that are not yet completed should be considered staff's best estimate and not a certainty.

**Figure 2. BMR Portfolio Over Time**



Note: Dates based on date of regulatory agreement execution, typically done just prior to the Certificate of Occupancy issuance. Dates for units under construction and units with a current building permit application were included in the fee calculations since they are likely to come online in the relatively near future; however, these are an estimate and not certain.

Currently, the City has a 0.33 FTE Community Development Project Coordinator assigned to monitoring 410 rental units and 40 ownership units and 0.06 FTE Associate Planner is assigned to drafting and negotiating regulatory agreements for new development projects providing BMR units. These positions are supported by portions of a Senior Community Development Project Coordinator, the Manager of Housing and Community Services and the HHCS Department Director.

**Figure 3** outlines the proposed staff costs associated with BMR monitoring. Fee proceeds would support a new 1.0 FTE Community Development Project Coordinator assigned to monitoring BMR rental units for compliance with the ordinance and each project's regulatory agreement. Regular monitoring tasks are detailed under Background. The proposed fee would not generate enough revenue to support substantial changes in program's operations, such as a single waiting list and tenant screening for all units.

**Figure 3. Full Staffing for BMR Compliance Program**

Position	FTE	1.0 FTE at Step C	with benefits	Cost to program
<i>PROPOSED NEW:</i> Community Development Project Coordinator	1.000	\$102,960	\$175,660	\$175,660
Senior Community Development Project Coordinator	0.100	\$119,508	\$203,893	\$20,389
Manager of Housing and Community Services	0.015	\$134,160	\$228,890	\$3,433
HHCS BMR program salaries	1.115			\$199,483
Indirect costs				\$34,909
<b>Total Cost of BMR program</b>				<b>\$234,392</b>

Santa Cruz, Santa Barbara, San Francisco and San Jose do not charge fees for BMR monitoring, although staff in San Jose indicated they are exploring this option. Dublin, Irvine, Santa Monica, and Emeryville charge fees for monitoring BMR units. Emeryville has a \$5,000 per project annual monitoring fee, but only charges it to projects where compliance is not readily forthcoming. Irvine charges \$25/unit/year, Santa Monica has a table of rates up to \$181/unit/year and Dublin charges \$826/project/year.

Although San Francisco does not charge any monitoring fees, that BMR program is staffed at a much higher level than Berkeley's current or proposed program. San Francisco staff reported that the program has 20 staff members and about 4,000 units, or a 1:200 ratio. That unit has additional responsibilities, such as maintaining a unified waiting list and managing the tenant selection process for City-funded projects, as well as certain efficiencies of scale that Berkeley does not. For example, it takes as much time to update policies and procedures for 400 units as 4,000.

#### BACKGROUND

The annual monitoring fee of \$432 per unit will support HHCS' monitoring of BMR units for compliance under existing and future BMR regulatory agreements. Under the Inclusionary Housing Ordinance, developers of new multi-family rental housing projects were required to provide BMR units, apartments renting for restricted prices to income-qualified tenants. Under the Affordable Housing Mitigation Fee ordinance, developers of new multi-family rental housing projects are required to pay a mitigation fee, and have the option to provide BMR units in lieu of the fee. New development projects must comply with the Affordable Housing Mitigation Fee ordinance. City staff monitor the BMR units to ensure that they are made available to qualified households and operated within program requirements.

City monitoring duties include:

- Providing information and training to property managers regarding requirements;
- Answering questions from owners, property managers, tenants and the general public about compliance;
- Calculating and publishing annual rent and income limits;
- Reviewing and approving initial BMR tenant applications to confirm income eligibility and proposed rents;
- Developing and maintaining an online records system;
- Soliciting, tracking submission, and reviewing an annual report on compliance from owners;
- Conducting on-site monitoring visits to review records and the condition of common areas; and
- Tracking changes in property ownership and management.

The proposed fee would support 1.0 new FTE to staff monitoring duties. It would not support any additional policy objectives, including developing and operating a centralized housing directory and waiting list.

#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental effects directly associated with the adoption of this fee.

#### RATIONALE FOR RECOMMENDATION

The proposed fee is the lowest possible rate that can support a new staff position. Staff calculated this fee to cover only the costs of the Community Development Project Coordinator dedicated to monitoring, and forgo the maximum potential fee to cover staff time of all supporting staff. The proposed annual fee is equivalent to \$36 per month, which is about 3.5% of the allowable rent for a one-bedroom very low-income (50% of area median income) unit or 2% of the allowable rent for a two-bedroom low income (80% of area median income) apartment. As relatively new construction, BMR units are typically exempt from the Rent Stabilization Board annual registration fee of \$234 per unit. BMR units are also exempt from the 1.8% annual business license tax increase adopted as Measure U1.

Work on the BMR program can only be paid for by General Funds and fee revenue; this program is not eligible for federal funds. Fees would allow HHCS to hire a Community Development Project Coordinator assigned exclusively to the BMR program. The City's portfolio of multi-family housing developments providing below-market rate units continues to grow. The portfolio grew by approximately 10% in the first nine months of FY 2017 alone. The City is anticipating additional 17% growth as new units come through the pipeline if development proceeds as expected. As new projects come online, they compete directly with other projects for ongoing monitoring duties as well as other duties required by Housing Services. It is not possible to appropriately monitor the BMR portfolio with existing staffing of .33 FTE. An increase in staff to monitor and

manage the BMR program is necessary given the size of the portfolio, and is consistent with actions taken by other cities.

Unlike the Housing Trust Fund program, where most borrowers are mission-oriented nonprofits and projects are typically monitored by several other public funders in addition to the City, developments with BMR units are managed by property managers who may have no background in affordable housing programs and requirements, typically change positions frequently and may receive little to no orientation from their employer on BMR requirements. A flat fee provides a straightforward option that will facilitate efficient training, compliance and administration for both property managers and staff. A flat fee is also simpler to explain and administer than a tiered fee.

Figure 4. Proposed Fee for BMR Monitoring

<b>Total BMR Units</b>	X	<b>Proposed Fee</b>	=	<b>Cost of Community Development Project Coordinator</b>
478		\$432		\$206,401

ALTERNATIVE ACTIONS CONSIDERED

Council expressed concern with the potential regressive effects of a flat fee, and staff responded by removing the proposal for the one-time flat fee for new construction. Staff also explored tiered fee structures for monitoring based on the number of units and percentage of BMR units, in order to offer a discounted fee for smaller projects, but identified several concerns with this approach.

Generally, larger buildings tend to provide more BMR units, but there is not a guaranteed correlation between project size and number of BMR units. The Affordable Housing Mitigation Fee was recently updated to require BMR units proportional to 20% of total units, but developers have the option to pay a partial fee and provide fewer units. This can create an inconsistency between project size and number of BMR units. A majority of smaller projects have fewer than 10 BMR units, but this does not always exclude larger properties (example: there is a 111 unit building with only five BMR units, 17 fewer units than what would otherwise be required).

In addition, while there is a great deal of variation in the BMR portfolio, larger developments tend to have more compliance staff and institutional capacity for tracking regulatory requirements, while smaller developments may have less specialized property management who need more support for compliance. Finally, a tiered fee is more complicated to explain to property owners and managers, and more complicated to collect and track, reducing efficiency of the fee.

The best alternative fee structure staff identified is a three-tiered structure based on the number of BMR units per project. To calculate the potential fees, staff included all costs of the compliance program to calculate the fee per unit (\$490 per unit per year) then provided discounts of 10% and 20% from the maximum fee, respectively, to projects

with fewer total units. However, staff decided not to recommend the tiered option for the reasons outlined above.

Figure 5. Alternative Tiered Fee for BMR Monitoring

<b>Total BMR Units</b>	X	<b>Proposed Maximum Fee</b>	=	<b>Total Cost of BMR Program Staff</b>
478		\$490		\$234,392

<b>BMR Units Per Project</b>	<b>Total Projects</b>	<b>Total BMR Units</b>	<b>Proposed Fee</b>	<b>Total</b>
<b>&lt;10</b>	28	146	\$392	\$57,274
<b>11-19</b>	12	173	\$441	\$76,349
<b>20+</b>	6	159	\$490	\$77,967
<b>Total</b>	46	478		\$211,590

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, Health, Housing and  
Community Services, (510) 981-5114

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing  
and Community Services, (510) 981-5406

Attachments:

1. Resolution  
    Exhibit A: Below Market Rate Program Fees
2. Public Hearing notice

RESOLUTION NO. ##,###-N.S.

ADOPTING NEW ANNUAL MONITORING FEE FOR BELOW MARKET RATE RENTAL HOUSING UNITS PROVIDED UNDER BMC CHAPTER 23C.12 AND BMC CHAPTER 22.20.065

WHEREAS, the City's Inclusionary Housing Ordinance (BMC Chapter 23C.12) required and the Affordable Housing Mitigation Fee (BMC Chapter 22.20.065) allows developers of market rate multi-family housing to provide Below Market Rate (BMR) apartments; and

WHEREAS, the Inclusionary Housing Ordinance in BMC Chapter 23C.12.100 allows the City Council to adopt by resolution fees to administer its requirements; and

WHEREAS, the Affordable Housing Mitigation Fee in BMC Chapter 22.20.065 Section E allows the City Council to adopt by resolution fees to administer its requirements; and

WHEREAS, Berkeley's portfolio of affordable rental units under the BMR program continues to grow; and

WHEREAS, staff recommends the adoption of fees to support monitoring BMR units.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City adopts the fee schedule attached as Exhibit A.

Exhibits

A: Below Market Rate Program Fees

**Exhibit A: New Below Market Rate Program Fee Schedule**

<b>Annual Monitoring Fees for Below Market Rate Units Created Under BMC 23C.12 and BMC 22.20.065</b>	<b>Amount</b>
Annual monitoring fee	\$432 per BMR unit
10% surcharge for 30 day late fees	10%
20% surcharge for 60 day late fees	20%
Administrative lien fee	\$125 per lien

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL**

**ADOPTING AN ANNUAL MONITORING FEE OF \$432 FOR BELOW MARKET RATE (BMR) UNITS CREATED THROUGH THE INCLUSIONARY HOUSING AND AFFORDABLE HOUSING MITIGATION FEE ORDINANCES**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Health, Housing & Community Services is proposing the adoption of an annual monitoring fee for Below Market Rate units created through the Inclusionary Housing (BMC 23C.12) and Affordable Housing Mitigation Fee (BMC 22.20.065) ordinances. The new fee would not apply to the Housing Trust Fund program.

**Current Fees**

**\$0**

**Proposed Fees**

**See schedule below**

<b>Annual Monitoring Fees for Below Market Rate Units Created Under BMC 23C.12 and BMC 22.20.065</b>	<b>Fee Amount</b>
Annual monitoring fee	\$432 per BMR unit
10% surcharge for 30 day late fees	10%
20% surcharge for 60 day late fees	20%
Administrative lien fee	\$125 per lien

The hearing will be held on December 19, 2017 at 6:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way. For further information, please contact Mike Uberti at (510) 981-5114.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **December 7, 2017**.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

**Published:** December 8 and December 15, 2017 – The Berkeley Voice

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on December 7, 2017.



Mark Numainville, City Clerk