



Kate Harrison
Councilmember District 4

CONSENT CALENDAR
September 13, 2018

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kate Harrison and Ben Bartlett
 Subject: Rectify Discrepancy Regarding Inclusionary Units in Live/Work Housing

RECOMMENDATION

Refer amendments to the Berkeley Municipal code (Sections 23C.12 and 23E.20.080) to rectify discrepancies over how Live/Work Unit inclusionary requirements are governed, both for rental and owner occupied units, to the Planning Commission.

BACKGROUND

A key part of Berkeley's effort to develop affordable housing is the requirement that new housing construction include a portion of below market rate units. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirement section covers owner occupied housing, while the AHMF Ordinance covers rented housing. The AHMF Ordinance also provides for the Council to enact an enabling resolution to set level of the fee and "additional limitations" on the application of the fee, currently Resolution No. 68,074-N.S.

Both the Inclusionary Housing Requirement section and the AHMF Ordinance's enabling resolution specifically exempt Live/Work Units. Instead, Live/Work Units are governed under their own section, Low Income Inclusionary Live/Work Units (BMC Section 23E.20.080). The Live/Work Units section is significantly lacking as compared to other inclusionary requirements in the code. Unlike all other developments subject to inclusionary affordable housing requirements, Live/Work developments governed by this section:

- Only need to provide 16.6% (1/6th) of their units as inclusionary low income rather than the otherwise standard 20% (1/5th)
- Only need to provide inclusionary units at 80% AMI (low income), rather than at both the low income and very low income level (50% AMI level)
- Are able to make the designated inclusionary units of a lesser quality than full price units

This significant lower standard for Live/Work developments has the potential to cause inequitable distribution of affordable housing. Live/Work units are disproportionately built in West Berkeley, a part of the City that badly needs affordable housing.

This proposal amends the Inclusionary Housing Requirement Section such that it will govern ownership Live/Work units. It also amends the Live/Work Units section to indicate that all Live/Work Units are governed under either the AHMF Ordinance or the Inclusionary Housing Requirement section, respectively.

FISCAL IMPACTS OF RECOMMENDATION

Bringing Live/Work rental units under the same inclusionary affordable housing requirements as other rental units may increase revenues to the City's Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

CONTACT PERSON

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Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

REVISIONS TO RECTIFY DISCREPANCY REGARDING INCLUSIONARY UNITS IN
LIVE/WORK DEVELOPMENTS

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

Section 1. That Berkeley Municipal Code Section 23E.20.080 is amended to read as follows:

23E.20.080 Low Income Inclusionary Live/Work Units

~~A.~~ The developer of any project which creates ~~five or more~~ Live/Work Units shall ~~provide low income inclusionary units which conform with the~~ comply with the following provisions:

~~A.~~ One inclusionary Live/Work Unit shall be provided for each five (5) Live/Work Units in the project, however there shall be no inclusionary requirement for a fraction of a unit; Projects which create Live/Work Units for rent shall comply with BMC Section 22.20.065, the Affordable Housing Mitigation Fee Ordinance.

~~A.—~~

~~B.~~ Inclusionary Live/Work Units shall be sold or rented at a price or rent affordable to a household with an income of eighty percent (80%) of the median income for the Oakland Primary Metropolitan Statistical Area; Projects which create owner occupied Live/Work Units shall comply with BMC Chapter 23C.12.

~~1.~~ Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units;

~~2.~~ Inclusionary Live/Work Units shall maintain affordable rents or resale prices under the provisions for increase set forth in the City-wide regulations concerning inclusionary units (Chapter 23C.12).

~~B.~~ Inclusionary Live/Work Units may, at the applicant's sole discretion, differ from the other Live/Work Units in the project in that the inclusionary units may be smaller than other Live/Work Units in the project as long as they meet the minimum size requirement for Live/Work Units in the District; may have a lower grade of finishes than other Units in the project; and may be located anywhere within the project.

Section 2. That Berkeley Municipal Code Section 23C.12.020 is amended to read as follows:

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, or Residential Hotels ~~or Live/Work Units~~, which are not considered Dwelling Units. ~~Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.~~

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.

Section 3. 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.