



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
DISTRICT 7

CONSENT CALENDAR  
April 23, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Rigel Robinson, Sophie Hahn, Mayor Jesse Arreguin,  
and Councilmember Lori Droste  
Subject: Refer to the City Manager and the Housing Advisory Commission to Consider  
Reforming the Affordable Housing Mitigation Fee

RECOMMENDATION

Refer to the City Manager, the Planning Commission, and the Housing Advisory Commission to consider possible reforms to the Affordable Housing Mitigation Fee, including adopting a per-square-foot fee structure, potentially on a geographic basis.

POLICY COMMITTEE RECOMMENDATION

On March 21, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Hahn/Droste) to send the item to the full Council with a Positive Recommendation. Vote: Ayes – Hahn, Droste; Noes – None; Abstain – None; Absent – Arreguin.

BACKGROUND

Currently, all new residential development of five units or more must either pay an Affordable Housing Mitigation Fee to the City’s Affordable Housing Trust Fund, set aside 20% of a project’s units as below market rate housing, or some combination of the two. For rental developments, the fee is currently calculated based on the number of residential units in the project according to the following formula (BMC Section 22.20.065):

$$[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$$

Where:

- A = Total number of units in the project
- B = Number of Very-Low Income Units provided in the project.
- C = Number of Low-Income Units provided in the project.

By calculating Affordable Housing Mitigation Fees on a per-unit basis, current law incentivizes developers to build fewer units. In the past, developers have replaced standard layouts (studio, one-bedroom, and two-bedroom units) with dorm-style layouts (up to eight beds per unit). This increases the *density* of each unit but reduces the overall *number* of units, allowing applicants to pay significantly smaller fees without providing any additional housing.

Another way for developers to reduce their contribution to the Affordable Housing Trust Fund is to build larger, more expensive units, rather than smaller, more affordable units. This perverse incentive is clearly in opposition to the City's affordable housing goals.

This problem was highlighted in a recent report by the Turner Center. In interviews with architects and builders, they were told that a conscious decision was sometimes made to increase unit size but decrease unit count to reduce fees.<sup>1</sup> Calculating the fee on a per-square-foot basis eliminates that incentive. Developers would no longer be able to reduce their contribution to the Affordable Housing Trust Fund by manipulating floor layouts. In addition, by eliminating the financial penalty for building more units, developers would be incentivized to propose denser projects, which is directly in line with the City's housing goals.

Such a change was recently enacted in San Francisco, taking effect January 1<sup>st</sup> of this year. The language from San Francisco's website (<https://sf-planning.org/inclusionary-affordable-housing-program>) describing the process they undertook to arrive at their new model is attached. Staff and the Commissions should consider their research, methodology, and conclusions when drafting their response.

A per-square-foot fee may not be desirable across all neighborhoods in Berkeley. The same Turner Center study found that "in some cities there is a need for larger family-sized units, and in those places a per-square-foot fee that incentivizes smaller units might be less desirable."<sup>2</sup> In considering this referral, staff and the Commissions should consider the need for different housing types in different parts of the City. A per-bed fee may be more appropriate for some neighborhoods where micro-units would be out of place while still disincentivizing dorm-style layouts.

This referral asks staff and the Commissions to analyze the current fee structure and possible alternatives, with particular regard to the per-unit form. Staff and the Commissions should consider the need for different styles of housing in different parts of the city. The final recommendation presented to council should include one or more possible amendments to the code to address these changes.

#### FINANCIAL IMPLICATIONS

Potential revenues increases to the Affordable Housing Trust Fund from larger structures facing higher fees; potential revenue decreases from smaller units facing lower fees. Analysis must be conducted to determine the overall effect of these countervailing forces. Multiple fee levels should be assessed, including those that results in net zero changes in Affordable Housing Trust Fund revenues and those that increase revenues.

#### ENVIRONMENTAL SUSTAINABILITY

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<sup>1</sup> [http://turnercenter.berkeley.edu/uploads/Development\\_Fees\\_Report\\_Final\\_2.pdf](http://turnercenter.berkeley.edu/uploads/Development_Fees_Report_Final_2.pdf)

<sup>2</sup> Ibid

Increasing the affordability and density of housing near public transit has the potential to substantially reduce greenhouse gas emissions in line with the City's environmental goals. Potential revenue increases to the Affordable Housing Trust Fund could permit greater expenditures on housing affordability near transit.

CONTACT PERSON

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Attachments:

1: San Francisco's Amendments (<https://sf-planning.org/inclusionary-affordable-housing-program>)

Attachment 1: San Francisco's Amendments

## 2019 Affordable Housing Fee Update

Effective January 1, 2019, residential development projects that comply by paying the Affordable Housing Fee will be subject to the following fee based on the Gross Floor Area of residential use, rather than the number of dwelling units. The fee will be applied to the applicable percentage of the project, as set forth in Section 415.5 of the Planning Code:

**Affordable Housing Fee:** \$199.50 per square foot of Gross Floor Area of residential use, applied to the applicable percentage of the project:

- **Small Projects** (fewer than 25 dwelling units): 20% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Rental:** 30% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Ownership:** 33% of the project's Gross Floor Area of residential use

**Note:** The impact fee register in place at the time of payment shall be applied. However, a project for which a Site Permit has been issued prior to January 1, 2019 shall remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. Additionally, projects with an Environmental Evaluation Application that was accepted prior to January 1, 2013 pursuant to Planning Code Section 415.3(b) shall also remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. [The impact fee register may be found here.](#)

This change is pursuant to amendments to Section 415.5 that were adopted by the Board of Supervisors in July, 2017 (Board File No. 161351). Specifically, the Code requires that the Fee reflect MOHCD's actual cost to subsidize the construction of affordable housing units over the past three years, and directed the Controller to develop a new methodology for calculating, indexing, and applying the Fee, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC). In May, 2018 the Controller and TAC determined that the Fee should be applied on a per gross square foot basis to ensure that MOHCD's cost to construct the required amount of off-site affordable housing is appropriately and equitably captured from all projects, regardless of the size and number of units distributed within the project. The Controller directed MOHCD, in consultation with the Planning Department, to convert MOHCD's per unit cost to a per-square-foot fee, based on the average residential Gross Floor Area of projects that have paid the Fee in the past three years. The Fee amount indicated above has been calculated accordingly.

Pursuant to Section 415.5 and the specific direction of the Controller and TAC, MOHCD shall update the amount of the Affordable Housing Fee each year on January 1, using the MOHCD average cost to construct an affordable unit in projects that were financed in the previous three years and the Planning Department's average residential Gross Floor Area of projects that have elected to pay the Fee and have been entitled in the same time period. Each year this analysis will be updated to include new projects from the most recent year, and drop older projects that no longer fall into the three year period of analysis. The updated Fee amount will be included in the Citywide Impact Fee Register that is posted December 1 and effective on January 1.