

AFFORDABLE HOUSING COMPLIANCE PLAN

planning@berkeleyca.gov • Phone (510) 981-7410, TDD (510) 981-7450

Planning and Development
1947 Center St, 2nd Floor
Berkeley, CA 94704

Affordable Housing Requirements

BERKELEY MUNICIPAL CODE CHAPTER 23.328

Berkeley Municipal Code (BMC) Chapter 23.328, Inclusionary Housing, requires Housing Development Projects¹ with more than 5,000 square feet of residential unit floor area to include at least 20 percent of the Residential Units² as permanently affordable units. All affordable units provided in the project will be established and monitored within the City’s Below Market Rate (BMR) housing program, and are referred to as BMR Units. The housing development project must provide one of the following to comply with the City’s Inclusionary Housing regulations:

- A. Requirement to construct BMR units on-site**
- B. Option to pay an In-Lieu Fee**
- C. Combination of on-site BMR units and In-Lieu Fee**
- D. Other options allowed by the Chapter**

Each option is described in more detail below.

A. REQUIREMENT TO CONSTRUCT AFFORDABLE UNITS

Projects must provide 20 percent of the total residential units as on-site BMR units.

BMR units must have the same proportion of bedroom counts (except no affordable unit can have more than three bedrooms) and average unit size as the market rate units. BMR units must be reasonably dispersed throughout the project, be comparable to market-rate units in quality, and have access to the same amenities and common areas as market-rate units.

B. OPTION TO PAY AN IN-LIEU FEE

Applicants have the option to pay an In-Lieu Fee instead of providing the required BMR units.

The In-Lieu Fee applies to the residential unit floor area within the project (base project only if utilizing State Density Bonus provisions). The fee³ is assessed on a square-foot basis according to the schedule listed in the table. The full fee must be paid prior to obtaining the Certificate of Occupancy, or, if a Certificate of Occupancy is not required, prior to the initial occupancy of the project. The fee is automatically adjusted every two years, beginning July 1, 2025, based on changes to the California Construction Cost Index.

Affordable Housing In-Lieu Fee Schedule

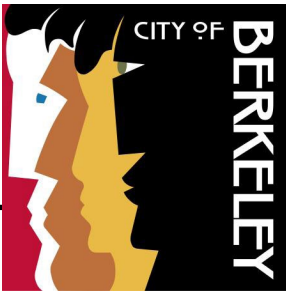
SQUARE FEET OF RESIDENTIAL UNIT FLOOR AREA	FEE PER SQUARE FOOT <i>(April 1, 2023 – June 30, 2025)</i>
12,000 square feet or more	\$56.25
11,000-11,999 square feet	\$53.75
10,000-10,999 square feet	\$51.25
9,000-9,999 square feet	\$48.75
8,000-8,999 square feet	\$46.25
7,000-7,999 square feet	\$43.75
6,000-6,999 square feet	\$41.25
5,000-5,999 square feet	\$38.75

NOTES

¹ **HOUSING DEVELOPMENT PROJECT** means a development project, including a Mixed-Use Residential project (as defined in **23.502.020(M)(13)**), involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects (**BMC 23.328.020(E)**).

² **RESIDENTIAL UNIT** means any Dwelling Unit, any Live/Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, “Residential Unit” shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit (**BMC 23.328.020(I)**).

³ Resolution 70,698-N.S.



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C. COMBINATION OF BMR UNITS AND IN-LIEU FEE

Projects may provide less than the required 20 percent total residential units as on-site BMR units by paying a pro-rated In-Lieu Fee based on the schedule above. The fee amount per square foot is based on the total residential unit floor area of the project.

Formula to calculate the pro-rated in-lieu fee:

The Fee Per Square Foot multiplied by the **Total Residential Unit Floor Area** of a Housing Development Project, multiplied by the **Percentage of the Applicable Requirement Remaining** after accounting for any on-site Affordable Units provided.

For projects that utilize a State Density Bonus, only the base project is used in the pro-rated fee. Formula to determine the Base Project Residential Unit Floor Area:

The Final Residential Unit Floor Area (for the whole project) divided by **One plus the Density Bonus percentage taken**. ($\text{Final Project Residential Unit Floor Area} / (1 + \text{DB}\%)$)

D. OTHER OPTIONS ALLOWED BY BMC CHAPTER 23.328 – APPROVED AT THE CITY’S DISCRETION

Applicants may elect to fulfill the requirement to construct affordable housing via one of the options below. Unlike options A through C above, these options are approved at the City’s discretion.

Alternative Unit Size Mix

In lieu of providing 20 percent of total residential units as on-site BMR units, an Applicant may propose an alternative mix of two-bedroom and/or three-bedroom BMR unit-types that comprise at least 20 percent of the residential unit floor area in the project.

Option to Dedicate Land

Affordable Housing requirements may be satisfied by dedicating land instead of constructing BMR units within the Housing Development Project if all the following criteria are met:

- The site is suitable for development of the Affordable Units
- Infrastructure to serve the dedicated site, including, but not limited to, streets and public utilities, are available at the property line and have adequate capacity to serve the maximum allowable residential density permitted under zoning regulations
- The site has been evaluated for the presence of hazardous materials
- The value of the site upon the date of the dedication is equal to or greater than the In-Lieu Fee that would otherwise be required.



AFFORDABLE HOUSING COMPLIANCE PLAN

Affordable Housing Compliance Plan Form

You are required to submit an Affordable Housing Compliance Plan (AHCP) for Housing Development Projects⁴ that are subject to the affordable housing requirements of **BMC Chapter 23.328, Inclusionary Housing**. The AHCP is an enforceable commitment that identifies the number and type of affordable, or Below Market rate (BMR) units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the applicant to comply with those requirements.

The Department of Planning and Development’s Land Use Division and the Department of Health, Housing, and Community Services use the information from this form and the related sheets to confirm which provisions of the City’s affordable housing requirements apply to your project, and if the project complies.

Please complete the entire form. If a section doesn’t apply, enter “n/a.” If selecting the option to provide an alternative unit size mix or option to dedicate land, please complete the entire AHCP form and staff will contact you to discuss approval for these discretionary options.

You may be asked to revise this form to reflect the approved project during the permit review process and/or required plan sheets.

The Preliminary AHCP is required with a Zoning Permit or Zoning Certificate application. It is intended to provide estimates to the Applicant and City, and inform conditions of approval on discretionary zoning permits. See the **applicable pre-application and/or zoning submittal requirements** to determine if a Preliminary AHCP is needed for your project.

The Final AHCP is required with the first building permit application for construction, and will include the total fee amount due for projects electing to pay an In-Lieu Fee. The In-Lieu Fee can be paid any time prior to the issuance of the project’s Certificate of Occupancy or Temporary Certificate of Occupancy (as applicable).

INDICATE AFFORDABLE HOUSING COMPLIANCE PLAN (AHCP) TYPE (CHECK ONE)

Preliminary Affordable Housing Requirements
(Land Use Entitlement)

Final Affordable Housing Requirements
(Building Permit)

1. PROJECT AND APPLICANT INFORMATION

Project Name:

Zoning Project Number:

Building Permit Number (Final AHCP only):

Project Address:

Applicant Name:

Applicant Email:

NOTES

⁴ **HOUSING DEVELOPMENT PROJECT** means a development project, including a Mixed-Use Residential project (as defined in **23.502.020(M)(13)**), involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects (**BMC 23.328.020(E)**).



AFFORDABLE HOUSING COMPLIANCE PLAN

2. PROJECT SUMMARY INFORMATION –

THIS INFORMATION IS USED TO ESTIMATE THE TOTAL NUMBER OF REQUIRED BMR UNITS

Does the project use Density Bonus?

YES NO

Total Density Bonus Units

Does the Demolition Ordinance (BMC 23.326) apply to the project?

YES NO

Total units to be demolished

Total affordable replacement units required

(separate calculation required, Gov. Code §65589.5)

Total units replaced (affordable and market-rate)

A	Total Residential Unit Floor Area⁵ (square feet) (Entire proposed project)
	<input type="text"/>
B	Total Residential Units (Base Project only for density bonus projects)
	<input type="text"/>
C	Total BMR Units required (20% of B)
	<input type="text"/>
D	Total BMR Units Proposed
	50% AMI (Very-Low Income)
	80% AMI (Lower Income)
	TOTAL BMR Units
	<input type="text"/>
E	Other Compliance Option (alternative unit size mix or option to dedicate land)
	YES NO

Indicate Project Type (Check One) Ownership Rental

3. PLEASE INDICATE HOW THE PROJECT WILL FULFILL THE AFFORDABLE HOUSING REQUIREMENTS

3.A. PROVISION OF ON-SITE

The following provisions apply:

- BMR units cannot exceed three bedrooms
- At least 50 percent of the required Affordable Units in the Housing Development Project must be designated as affordable to Very-Low Income Households (round up for fractional numbers).
 - Up to a maximum requirement of 10 percent of the total units in the Housing Development Project if the project provides more Affordable Units than are required by BMC Chapter 23.328

Please complete the table by noting the number of units in each category.

PROJECT UNIT TYPES AND AFFORDABILITY LEVELS

Unit Type	Market Rate	Very-Low Income Affordable (50% AMI)	Low-Income Affordable (80% AMI)	TOTAL
Studio				
One Bedroom				
Two Bedroom				
Three Bedroom				
Four Bedroom				
Five Bedroom				
TOTAL				

⁵See BMC 23.328.020 Definitions



AFFORDABLE HOUSING COMPLIANCE PLAN

3.B. OPTION TO PAY AN IN-LIEU FEE

Housing Development Projects may provide less than the required number of on-site BMR units and pay a proportionately reduced In-Lieu Fee, calculated as follows:

The Fee Per Square Foot
multiplied by
the Total Residential Unit Floor Area
 of a Housing Development Project,
multiplied by
the Percentage of the Applicable Requirement Remaining
 after accounting for any on-site Affordable Units provided.

Projects that do not provide any Affordable Units on-site will have an applicable requirement multiplier of one.

The in-lieu fee for Density Bonus Projects is calculated using the base project residential unit floor area only:

The Base Project Residential Unit Floor Area (BP RUFA)
is equal to:
the Final Residential Unit Floor Area (FP RUFA)
divided by
One plus the Density Bonus percentage taken (DB %)

$$BP\ RUFA = FP\ RUFA / (1+DB\%)$$

AFFORDABLE HOUSING FEE DUE

Per Square Foot Fee based on Total Residential Unit Floor Area, see Fee Schedule on Page 1) (Base Project only for density bonus projects)	
	X
Total Residential Unit Floor Area (square feet) (Base Project only for density bonus projects)	
	X
In Lieu Fee percentage calculation*: (Affordable Units required – affordable units provided) / Affordable Units required)	
(*projects that provide no on-site Affordable Units have a multiplier of 1)	
TOTAL FEE DUE	

EXAMPLE CALCULATIONS:

50,000 square foot 100-unit project providing 15 Affordable Units

A	Total Residential Unit Floor Area⁵ (square feet) RUFA (Base Project RUFA only for density projects)	
		50,000 square feet
B	Total Residential Units (Base Project only for density bonus projects)	
		100
C	Total BMR Units required (20% of B)	
		20
D	Total BMR Units Proposed	
	50% AMI (Very-Low Income)	8
	80% AMI (Lower Income)	7
	TOTAL BMR Units	15
	Per Square Foot Fee based on Total Residential Unit Floor Area (Base Project only for density bonus projects)	
		\$56.25
		X
	Total Residential Unit Floor Area (square feet) (Base Project only for density bonus projects)	
		50,000 square feet
		X
	In Lieu Fee percentage calculation*: (Affordable Units required – affordable units provided) / Affordable Units required)	
	(*projects that provide no on-site Affordable Units have a multiplier of 1)	25% $((20-15)/20 = 0.25)$
	TOTAL FEE DUE	\$703,125

⁵See BMC 23.328.020 Definitions



AFFORDABLE HOUSING COMPLIANCE PLAN

SECTION 4 REQUIRED PLAN SHEETS (LAND USE ENTITLEMENT PLANS AND BUILDING PERMIT PLANS)

REQUIRED AHCP PLAN SHEETS

In addition to completing this form, the land use entitlement and building permit plans for your housing development project must demonstrate compliance with the applicable affordable housing provisions. If your project includes a discretionary zoning permit, the entitlement plans must include a Preliminary AHCP plan sheet(s), and all building permits for construction must include a Final AHCP plan sheet(s).

What needs to be in the plans to demonstrate compliance with the City's affordable housing regulations?

The applicable AHCP plan sheets with the applicable information (listed below) must be in sequential pages near the beginning of your plan set and labeled as "Preliminary or Final Affordable Housing Compliance Plan Sheet." Having this information together in the plans will make locating the information easier during project and plan review, and provide transparency to the public. A sample plan set page is attached for reference (see Exhibit A). You will receive corrections from your zoning reviewer if information is not displayed properly in the plan set.

ALL PROJECTS: APPLICABILITY AND REQUIREMENTS OF BMC CHAPTER 23.328 INCLUSIONARY HOUSING

- Residential unit floor area diagrams* showing the floor area that is included and excluded from calculation. Diagrams must be consistent with and separate from the architectural floor plans and include:
 - Schematic diagrams of each floor or level, including mezzanines
 - Indicate floor area by use with shading, color, and/or callouts
 - Dimension all areas of the project that qualify as residential unit floor area, and provide the square footage of each area
 - Tabulation of the total residential unit floor area according to the diagrams
- Calculation of the number of required and proposed BMR units (Base Project only for density bonus)
- Calculation of 100% In-Lieu fee (provide even if on-site units are proposed)

* Diagrams should reflect the whole project (base and bonus), and provide a calculation of the Base Project Residential Unit Floor Area (RUFA) for projects that utilize state density bonus. (See page 5)

ON-SITE BELOW MARKET RATE (BMR) UNITS (ALL OR COMBINATION)

Any on-site BMR units (BMC 23.328.030(A) Requirement to Construct Affordable Units

- Unit summary table by floor of BMR and market-rate units, with bedroom counts
- Alternate mix of unit types, if applicable
 - Calculations for 20 percent of residential unit floor area (must be a mix of affordable units that are either two- or three-bedrooms)

IN-LIEU FEE (ALL OR COMBINATION)

Payment in-lieu of providing some or all required affordable units on-site (BMC Section 23.328.030(B) Option to Pay In-Lieu)

In-Lieu Fee per Resolution [No. 70,698-N.S.](#) calculated as follows: the fee per square foot multiplied by the total Residential Unit Floor Area of a Housing Development Project, multiplied by the percentage of the applicable requirement remaining after accounting for any on-site Affordable Units provided. Projects that do not provide any Affordable Units on-site will have an applicable requirement multiplier of one. (See page 5)

The In-Lieu Fee per square foot is based on the residential unit floor area of the project (base project only if utilizing State Density Bonus provisions). (See page 5)

STAFF ADMINISTRATION USE ONLY

This Affordable Housing Compliance Plan (AHCP) is certified in compliance with BMC Chapter 23.328, Inclusionary Housing.

LAND USE

Preliminary/Final AHCP

Name, Title:

Signature:

Date:

HHCS

Preliminary/Final AHCP

Regulatory Agreement executed (due prior to issuance of first building permit for construction:

Yes No Not Applicable

In Lieu Fee payment complete (due prior to first occupancy):

Yes No Not Applicable

Name, Title:

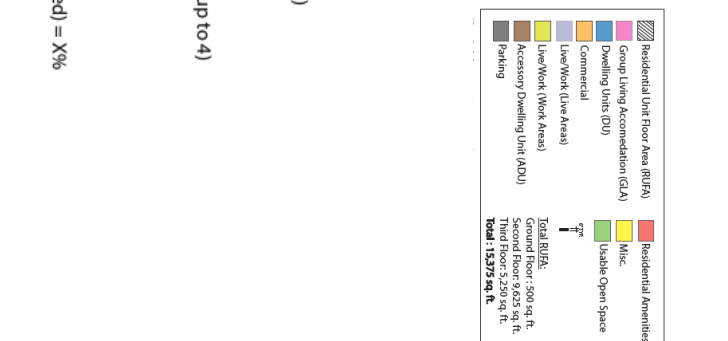
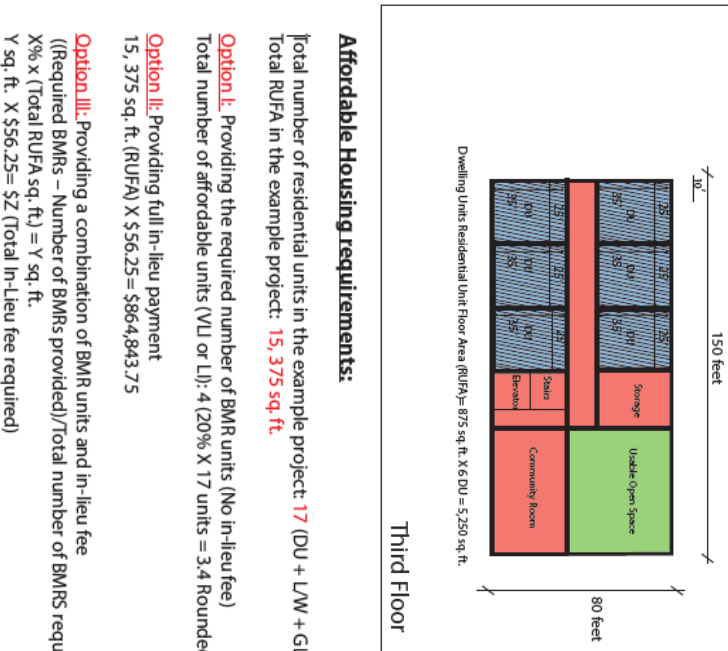
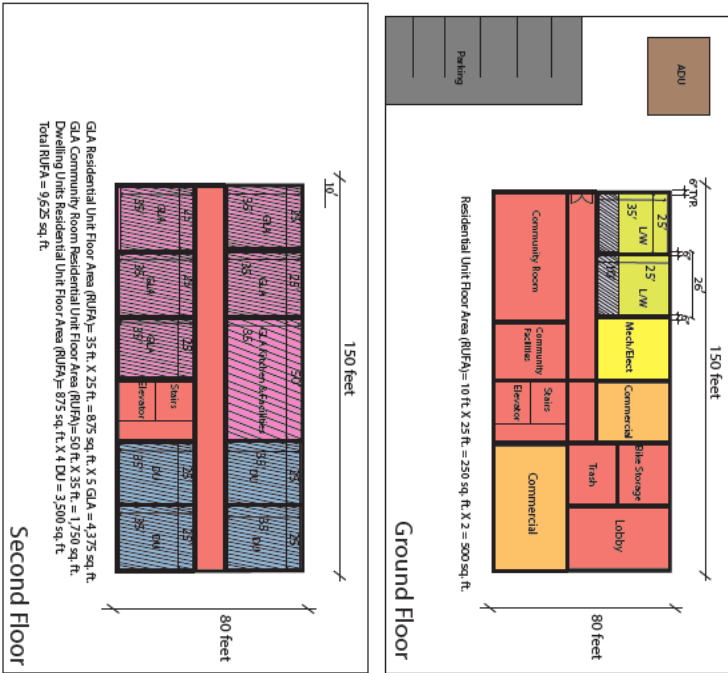
Signature:

Date:

AFFORDABLE HOUSING COMPLIANCE PLAN

EXAMPLE OF AN AFFORDABLE HOUSING COMPLIANCE PLAN SHEET

Example Affordable Housing Compliance Plan Sheet / Residential Unit Floor Area Diagrams / Calculations *



	Residential Unit Floor Area (RUFA)		Residential Amenities
	Group Living Accommodation (GLA)		Misc.
	Dwelling Units (DU)		Usable Open Space
	Commercial		Live/Work (Live Areas)
	Live/Work (Work Areas)		Live/Work (Work Areas)
	Accessory Dwelling Unit (ADU)		Accessory Dwelling Unit (ADU)
	Parking		Parking

Total (RUFA):
 Ground Floor: 500 sq. ft.
 Second Floor: 9,625 sq. ft.
 Third Floor: 5,250 sq. ft.
Total: 15,375 sq. ft.

Affordable Housing requirements:

Total number of residential units in the example project: **17** (DU + LW + GLA)
 Total RUFA in the example project: **15,375 sq. ft.**

Option I: Providing the required number of BMR units (No in-lieu fee)
 Total number of affordable units (VU or LI): 4 (20% X 17 units = 3.4 Rounded up to 4)

Option II: Providing full in-lieu payment
 15,375 sq. ft. (RUFA) X \$56.25 = \$864,843.75

Option III: Providing a combination of BMR units and in-lieu fee
 (Required BMRs - Number of BMRs provided) / Total number of BMRs required = X%
 X% X (Total RUFA sq. ft.) = Y sq. ft.
 Y sq. ft. X \$56.25 = \$Z (Total in-lieu fee required)

*For reference and illustrative purposes only