

5-30-2017

This agenda packet was revised to add Attachment 9, Draft Ordinance Revising the Berkeley Municipal Code 22.20.065 Affordable Housing Mitigation Fee related to agenda item #8.

Amy Davidson

Secretary, Housing Advisory Commission



Housing Advisory Commission

## HOUSING ADVISORY COMMISSION

# REVISED AGENDA

Revised May 26, 2017

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### Regular Meeting

Thursday, June 1, 2017

7:00 pm

**NOTE: North Berkeley Senior Center  
1901 Hearst Avenue**

Secretary Amy Davidson, (510) 981-5406

**All agenda items are for discussion and possible action.**

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**Public comment policy:** Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comments to 3 minutes or less.

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1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the May 4, 2017 Meeting Minutes (*Attachment 1*)
5. **Discussion and Possible Recommendation to Council Regarding Housing Trust Fund Reservations for Satellite Affordable Housing Associates' Harper Crossing Project and Northern California Land Trust's Scattered Sites Project – HTF Subcommittee Chair Luis Amezcua and Jenny Wyant, HHCS (*Attachment 2*)**
6. **Appointment of a 4<sup>th</sup> Member to the HTF Subcommittee – All**
7. **Discussion and Possible Recommendation to Council on CHDO Operating Funds for Satellite Affordable Housing Associates and Resources for Community Development for FY 2018 – Amy Davidson (*Attachment 3*)**
8. **Discussion and Possible Recommendation to Council Regarding Changes to the Affordable Housing Mitigation Fee (BMC 22.20.065) as proposed by Councilmember Harrison – Igor Tregub (*Attachment 4*)**
9. **Discussion and Possible Recommendation to Council on HHCS' Proposed Changes to the CDBG Public Facilities Project Review Process – Jennifer Vasquez, HHCS (*Attachment 5*)**
10. **Discussion and Possible Recommendation to Council to Support AB 74, SB 305, and AB 1157 – Igor Tregub (*Attachment 6*)**
11. **Discussion and Possible Recommendation to Council on Referral to the Budget Process: Funding for Anti-Displacement Programs – Igor Tregub (*Attachment 8*)**
12. **Coordination Between the Housing Advisory and Homeless Commissions and Possible Appointment of a Subcommittee – All**

**13. Update on Council Items – All/Staff**

- a. Fees for BMR and Condo Conversion programs (May 16)
- b. Housing referral worksession (May 30)  
[http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2017/05\\_May/City\\_Council\\_05-30-2017\\_-\\_Special\\_Meeting\\_Agenda.aspx](http://www.ci.berkeley.ca.us/Clerk/City_Council/2017/05_May/City_Council_05-30-2017_-_Special_Meeting_Agenda.aspx)
- c. HAC's Housing Priorities (May 30)
- d. Housing Trust Fund RFP and Alameda County A1 Funds (June 13)

**14. Announcements / Information Items**

- a. Thomas Lord in 48hills.org, Why ABAG Housing Quotas Lead to Displacement  
(Attachment 7)

**15. Future Items – all items and dates are tentative**

**16. Adjourn**

**ATTACHMENTS**

1. Draft May 4, 2017 Meeting Minutes
2. Housing Trust Fund Report and Recommendations
3. CHDO Operating Funds for FY 2018
4. Councilmember Harrison, Changes to the Affordable Housing Mitigation Fee
5. CDBG Public Facilities Application Review Process
6. Recommendation to Support AB 74, SB 305, and AB 1157
7. Thomas Lord in 48hills.org, Why ABAG Housing Quotas Lead to Displacement
8. Referral to the Budget Process: Funding for Anti-Displacement Programs



This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Health, Housing & Community Services Department located at 2180 Milvia Street, 2<sup>nd</sup> Floor during regular business hours. Agenda packets and minutes are posted online at: [https://www.cityofberkeley.info/Housing\\_Advisory\\_Commission/](https://www.cityofberkeley.info/Housing_Advisory_Commission/)

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**HOUSING ADVISORY COMMISSION  
Regular Meeting  
Thursday, May 4, 2017**

Housing Advisory Commission

**Time: 7:00 p.m.**

**North Berkeley Senior Center  
1901 Hearst Ave – Berkeley  
Secretary – Amy Davidson, (510) 981-5406**

## **DRAFT MINUTES**

### **1. Roll Call**

Present: Luis Amezcua, Kathleen Harr (substitute for Kathleen Crandall), Xavier Johnson, Thomas Lord, Jill Martinucci, Kieron Slaughter, and Marian Wolfe

Absent: Igor Tregub (excused)

Commissioners in attendance: 7 of 8

Staff Present: Amy Davidson and Be Tran

Members of the public in attendance: 3

Public Speakers: 1

### **2. Agenda Approval**

Action: M/S/C (Martinucci/Johnson) to approve the agenda.

Vote: Ayes: Amezcua, Harr, Johnson, Lord, Martinucci, Slaughter, and Wolfe.

Noes: None. Abstain: None. Absent: Tregub (excused).

### **3. Public Comment**

One member of the public spoke.

### **4. Approval of April 6, 2017 Meeting Minutes**

Action: M/S/C (Amezcua/Martinucci) to approve minutes.

Vote: Ayes: Amezcua, Johnson, Lord, Martinucci, and Wolfe. Noes: None.

Abstain: Harr and Slaughter. Absent: Tregub (excused).

### **5. Discussion and Possible Recommendation to Council on the Purchase of Premier Cru Properties and the Use of City U1 Funds**

Action: M/S/C (Martinucci/Amezcua) to recommend to City Council not to use U1 resources for property acquisition of the properties located at 1001, 1007, and 1011 University Avenue, and 1925 Ninth Street, City of Berkeley.

Vote: Ayes: Amezcua, Harr, Johnson, Lord, Martinucci, Slaughter, and Wolfe.

Noes: None. Abstain: None. Absent: Tregub (excused).

### **6. Discussion and Possible Recommendation to Council Regarding the Use of City U1 Funds and the Role of the HAC**

Action: M/S/C (Martinucci/Slaughter) to recommend temporary suspension of allocation of U1 funds by Council.

Vote: Ayes: Amezcua, Harr, Johnson, Lord, Martinucci, Slaughter, and Wolfe.  
Noes: None. Abstain: None. Absent: Tregub (excused).

**7. Discussion and Possible Recommendation to Council Regarding the Use of City Funds for Anti-Displacement**

**8. Discussion and Possible Recommendation to Council Regarding Changes to the Affordable Housing Mitigation Fee (BMC 22.20.065)**

Action: M/S/F (Harr/Amezcua) to recommend HAC support of eliminating the discount in the affordable housing mitigation fee when it is paid at issuance of the building permit and requiring that the Fee be updated every two years based on increases in the Construction Cost Index.

Vote: Ayes: Amezcua, Harr, and Wolfe. Noes: None. Abstain: Johnson, Lord, Martinucci, and Slaughter. Absent: Tregub (excused).

**9. Update on Grass Roots Efforts to Create Accessory Dwelling Units (ADUs)**

**10. Coordination Between the Housing Advisory and Homeless Commissions**  
Public comment.

**11. Update on Process for Awarding County A1 Housing Bonds**

**12. Update on Council Items**

**13. Announcements / Information Items**

**14. Future Items – all items and dates are tentative**

**15. Adjourn**

Action: M/S/C (Martinucci/Lord) to adjourn the meeting at 9:01 p.m.

Vote: Ayes: Amezcua, Harr, Johnson, Lord, Martinucci, Slaughter, and Wolfe.  
Noes: None. Abstain: None. Absent: Tregub (excused).

Approved on **DATE**

\_\_\_\_\_, Amy Davidson, Secretary



Health Housing and  
Community Services Department  
**Housing & Community Services Division**

## MEMORANDUM

To: Housing Advisory Commission

From: Amy Davidson, Senior Community Development Project Coordinator  
Jenny Wyant, Community Development Project Coordinator

Date: May 25, 2017

Subject: Housing Trust Fund Recommendations

### RECOMMENDATION

Recommend that Council:

- Approve a Housing Trust Fund (HTF) reservation for Satellite Affordable Housing Associates' Harper Crossing in the amount of \$285,464.
- Adopt a finding that a City subsidy in excess of 40% of total development costs is justified by the nature of Northern California Land Trust's Scattered Site Rehab and unavailability of alternative funding, as required by the HTF Guidelines, Section V.B.7.
- Approve a HTF reservation for Northern California Land Trust's Scattered Site Rehab project, in the amount of \$569,692.
- Authorize City Manager to refinance the Scattered Site Rehab properties' outstanding HTF loans, with a combined balance currently estimated at \$675,000, into the new development loan.

### SUMMARY

At its May 23, 2017 meeting, the HTF Subcommittee supported the staff recommendation to fund Harper Crossing and the Scattered Site Rehab at the requested amounts. Action: (M/S/C: Crandall/Johnson) Vote: Ayes: Amezcua, Crandall, Johnson. Noes: None. Abstain: None. Absent: Martinucci (unexcused). The HTF Subcommittee also considered a \$50,000 predevelopment loan request from Bay Area Community Land Trust for 1638 Stuart St, but decided to postpone making a recommendation pending more information.

These two recent requests for development funding are eligible for consideration outside of a competitive funding cycle. Harper Crossing, a Satellite Affordable Housing

Associates (SAHA) project, was previously funded by the City (through a competitive process) and is nearing completion. SAHA requested that the City increase its existing development loan by \$285,464 to account for increases in construction costs caused by project delays.

Staff have been working with Northern California Land Trust (NCLT) since the initial funding request in the 2015 Request for Proposals process for a four-property Scattered Site Rehab project. At the staff and HAC's recommendation, NCLT was awarded a \$50,000 predevelopment loan in October 2016 to refine a revised proposal for a Scattered Site Rehab of two existing NCLT properties: 1340-48 Blake Street and 2425 California. After undertaking additional analysis of the properties and the rehabilitation needs, NCLT requested \$450k in a development loan, which would help NCLT address the major systems of both properties, and provided an alternate request for \$569,692 to include other identified rehab needs.

#### FISCAL IMPACTS OF RECOMMENDATION

The HTF balance is currently about \$3.6 million. If the HAC recommends funding both SAHA and NCLT, there will be approximately \$2.75 million available for the anticipated Request for Proposals (pending City Council approval of an RFP) and any predevelopment funding requests that may come in over the counter. At this point, there are two projects with predevelopment funding (BRIDGE / Berkeley Way and SAHA / Oxford Street) that are likely to apply for development funds.

#### CURRENT SITUATION AND ITS EFFECTS

**Harper Crossing (3135 Martin Luther King, Jr. Way):** Harper Crossing is a 42-unit senior housing development that started construction in December 2015 and is expected to be completed by June 2017. The HTF guidelines allow the City to consider development funding outside an RFP round if other funds are at risk, which is the case for Harper Crossing. Heavy winter rains, in addition to initial delays in treating soils, delayed the project completion by about 4 months. SAHA has requested an additional \$285,464 for increased costs resulting from project delays. The additional City funds would help SAHA clear all the liens on the project by February 2018 to meet a state financing deadline.

**Scattered Site Rehab (1340-48 Blake Street, and 2425 California Street):** Staff and the HAC had concerns about NCLT's organizational capacity, and the adequacy of the proposed renovation budget relative to the physical needs of the four properties. At the HAC's recommendation, City Council directed staff to continue to work with NCLT on a revised proposal for renovating up to two of their existing properties. All 11 units in the two buildings proposed are currently occupied. Staff and the HTF Subcommittee recommend funding the full request of \$569,692 for a total HTF commitment of \$619,692 including the current predevelopment loan amount. Funding at this level would support repairs to the building envelope, energy efficiency upgrades, new electrical subpanels, and structural renovations, including repairing the elevated

walkway at California Street to bring it into compliance with the City's Elevated Exterior Elements (E3) program.

### BACKGROUND

**Harper Crossing:** Of the additional \$285,464 requested, the largest single item is a construction contract increase for general conditions (the cost to keep the contractor mobilized every month) for the added four months. The next largest items are added time in the architect (\$19K) and site security (\$14K) contracts. The other costs are also for additional time in service contracts: construction inspections, insurance during construction, third party monitoring, construction project manager, and third party prevailing wage monitoring. These are typical costs for a project like this one, and SAHA has worked through the construction process to contain costs.

The City has invested \$3.8M in the project already—a loan of \$1.8M and a land contribution valued at \$1.9M. The proposed funds would increase the City's contribution to the new construction project from \$92K per unit to \$99K per unit. This is well under the \$250K+ in city funds per unit cited by San Francisco and in Oakland's housing plan. It would increase the City's investment in the project from 21% to 22% of the \$18M total development cost, within the HTF limit of 40%. Due to cost increases, the total development cost would increase from \$428K per unit to \$435K per unit, still within the \$500K+ per unit that is common and rising.

**Scattered Site Rehab:** NCLT is a small organization with four employees, all part-time. Capacity remains a concern and NCLT plans to hire DRB Associates, a professional project management firm, as a third-party construction manager for the duration of the project. NCLT also budgeted for project management, which would either cover the cost of increasing the hours of existing, or hiring a third-party consultant. The additional support would increase NCLT's capacity to successfully complete the renovations and perform under the development loan agreement.

Financially, NCLT has remained in a weak position since its 2011 bankruptcy. Audited and unaudited financials from the past few years indicate that NCLT is making an effort to improve its financial standing, but the organization has a negative net worth and is vulnerable to increases in expenses and decreases in fundraising and cash flow. There is a risk that the organization will not continue to exist for the 55-year regulatory period.

On a per unit basis, the construction hard costs and total development costs are lower than other recent City-funded rehabilitation projects, though NCLT's scope of work is less extensive. The City's loan would be over \$56k per unit for the full request, and the City's total subsidy would be 46.7% of the \$1.325 million total development cost. NCLT's proposal exceeds the HTF Guidelines' maximum City subsidy of 40%, so if recommended for funding, Council would need to make a finding that the higher subsidy is justified by the nature of the project and unavailability of alternative funding.



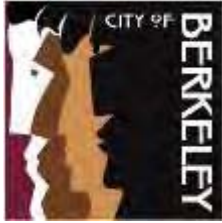
The City has two existing loans on the properties: a \$150,000 loan on Blake (which matured in 2014), and a \$200,000 loan on California (which will mature in 2024). Both loans originally had 20- (Blake) and 30-year (California) terms, compared to today's standard of 55 years. The City did not pursue repayment or other actions on the Blake loan in anticipation of a funding request and potential refinance. Staff recommend that the outstanding principal and interest on the two existing development loans, estimated at \$695,000 in May 2017, plus the predevelopment principal and interest, be rolled into the new development loan.

The existing loan for Blake matured in 2014, but NCLT does not have the resources to repay the loan at this time without major financial impacts to the organization and to the operation of the property. Refinancing Blake's loan will extend the repayment period to the new 55-year term. California's existing loan doesn't mature until 2024, but it carries a 6% interest rate, twice the current HTF standard rate. Refinancing both loans will benefit the long-term operation of the projects as well as accomplish the purpose of the HTF to support housing affordability. New regulatory agreements will extend the affordability periods 22 years to the year 2072. It is also extremely unlikely that NCLT would be able to repay either loan between now and 2024 if the loans were not refinanced. When the refinance of the City's existing loans is included in the total development cost, the City's subsidy will be closer to 65% of the project sources.

#### RATIONALE FOR RECOMMENDATION

**Harper Crossing:** The project's state funds will be at risk if property liens aren't cleared before the February 2018 deadline. The City's additional support could enable SAHA to pay its final construction payment on time, and prevent a property lien. Harper Crossing helps meet several community objectives, by providing affordable senior housing near high-quality transit, including 8 apartments affordable to seniors with extremely low incomes. The City initiated the Harper Crossing project with a Request for Proposals for the site in 2012 after obtaining the site in the foreclosure of a previously funded affordable housing development.

**Scattered Site Rehab:** NCLT's properties have limited cash flow, and significant renovation needs. It is unlikely that NCLT would be able to complete the proposed renovations without City support in the foreseeable future. NCLT's proposed project will also meeting community objectives, by improve the existing housing stock and preserving 11 existing affordable housing units. Both NCLT and the existing low-income tenants should benefit from lower utility costs due to the energy efficiency upgrades. The renovations will include repairs to an elevated walkway at California to bring it up to the standards of the City's E3 program.



Department of Health, Housing  
& Community Services  
Housing & Community Services

HAC 6/1/2017  
Attachment 3

## MEMORANDUM

**To:** Housing Advisory Commission

**From:** Amy Davidson, Senior Community Development Project Coordinator

**Date:** June 1, 2017

**Subject:** CHDO Operating Funds for FY 2018

### Recommendation

Make a recommendation regarding whether to provide CDHO operating funds to Resources for Community Development (RCD) and Satellite Affordable Housing Associates (SAHA) again in FY 2018.

### Background

Under the HOME program, HUD defined a type of nonprofit, the Community Housing Development Organization (CHDO). A CHDO is a private nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. In order to qualify for designation as a CHDO, the organization must meet certain requirements pertaining to their legal status, organizational structure, and capacity and experience. At least 15% of HOME funds must be set aside for specific activities to be undertaken by CHDOs. In addition, up to 5% of HOME funds may be used to provide operating support to CHDOs.

Both SAHA and RCD have been certified as CHDOs within the last year. Staff expect that only SAHA will have a HOME-funded project (Grayson Street Apartments) after RCD completes William Byron Rumford and SAHA completes Harper Crossing in June 2017.

For a number of years, the City has provided CHDO operating support to RCD equal to 5% of HOME funds, and has provided an equivalent number of General Funds to SAHA. Last year, the HOME CHDO limit was \$28,115.

There are funds available in the HTF to continue these contracts. An allowance was included in the HTF balance discussed in relation to the HTF RFP. RCD had not yet been recertified as a CHDO at that time.

*A Vibrant and Healthy Berkeley for All*

**Discussion**

The City has provided these funds over the years to help support the operations of RCD and SAHA. Particularly in light of diminished development funding, operating support is a way to encourage their continued work and attention in Berkeley, and encourage them to partner with the City.

Both have expanded significantly from their Berkeley roots and work across the East Bay. In recent years, SAHA's operating budget has been over \$8 million per year and RCD's nearly \$18 million. The support the City provides is not a large portion of their funding.

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**Affordable Housing Mitigation Fee**

The Berkeley City Council will conduct a public hearing on June 13, 2017 at 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way to consider the following proposed changes to the Affordable Housing Mitigation Fee:

1. The Affordable Housing Mitigation Fee authorized and provided for by BMC Section 22.20.065 shall be \$34,000 if paid at first construction document and up to \$37,000 per new unit of market rate rental housing, payable at the Issuance of the Building Permit.
2. The Affordable Housing Mitigation Fee will be automatically adjusted every other year on July 1<sup>st</sup> by the annual percentage increase shown in the California Construction Cost Index published by the California Department of General Services ([https://www.documents.dgs.ca.gov/resd/PMB/CCCI/Old/ccitable\\_2017/CCCIMasterListing\\_5-2017.pdf](https://www.documents.dgs.ca.gov/resd/PMB/CCCI/Old/ccitable_2017/CCCIMasterListing_5-2017.pdf)), so long as the automatic adjustment does not cause the fee to exceed the maximum fee established by the most recent Nexus study.

The City Council will also consider the adoption of an ordinance that would revise Berkeley Municipal Code Section 22.20.065 pertaining to the Affordable Housing Mitigation Fee to increase the percentage of below market rate units needed to reduce or avoid the Affordable Housing Mitigation Fee.

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 **June 1, 2017**.

For further information, please contact Zach Cowan, City Attorney, at (510) 981-6950.

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.

**Published:** June 2 and June 9, 2017 – The Berkeley Voice  
Published pursuant to Government Code 6062a.

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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 June 1, 2017.

\_\_\_\_\_  
Mark Numainville, City Clerk

*Berkley 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 10 days prior to the public hearing.*



Office of the City Manager

PUBLIC HEARING

June 13, 2017

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Zach Cowan, City Attorney  
Subject: Supplemental Report  
Changes to Affordable Housing Mitigation Fee; Amending Berkeley Municipal Code Section 22.20.065

RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance amending BMC Section 22.20.065 as proposed by staff, as shown in Attachment 2; and
2. Adopt a Resolution revising the Affordable Housing Mitigation Fee by eliminating the discount in the fee when it is paid at issuance of the certificate of occupancy pursuant to Berkeley Municipal Code Section 22.20.065 and adjusting the fee each two years for inflation by reference to the California Construction Cost Index (CCI), and rescinding Resolution Nos. 65,920-N.S. and 67,614-N.S., with changes proposed by staff, as shown in Attachment 5.

FISCAL IMPACTS OF RECOMMENDATION

Possible additional funds for Housing Trust Fund.

CURRENT SITUATION AND ITS EFFECTS

The City currently imposes a \$34,000 affordable housing mitigation fee (AHMF) on new market rate rental units developed in Berkeley.

BACKGROUND

On May 16, 2017, the Council set this matter for public hearing on June 13, 2017, and directed staff to make specified changes to the ordinance amendments as proposed by Council member Harrison, as well as amendments to Resolution No. 67,614-N.S. which sets the amount of the AHMF. The Council also requested information of local trends in rental rates. As stated at the May 16<sup>th</sup>, meeting, staff are also proposing a limited number of changes to Council member Harrison's drafts, as described below.

### The Ordinance Amendments

Attachment 1 is Councilmember Harrison's proposal, with the corrected formula, as directed by the Council. Various formatting changes have also been made. As is customary, Councilmember Harrison's proposed changes are shown in track changes.

Attachment 2 is the same ordinance (with all changes accepted) with certain additional modifications suggested by staff (in track changes), described below. They are as follows.

- The findings in subdivision A are corrected to reflect both nexus studies and their results, rather than deleting any reference to the 2010 study. In addition, the name of the consultant is corrected and made consistent.
- Subdivision C.1 is amended to conform to state law (Gov. Code § 66007(a), which generally prohibits the imposition of fees prior to certificate of occupancy or final inspection, subject to certain exceptions that are not applicable here.
- Subdivision C.2 has been amended at Council member Harrison's request to continue to allow projects with less than 10 units to avoid the AHMF by providing in lieu BMR units.
- As noted above, the formula in subdivision D.1 is corrected to conform the subdivision C.2 (20% of total units in project).
- Subdivision E is amended to reflect state law, that a new nexus analysis would be required to adopt different fee levels for different areas of the City if they exceed the amounts justified by the current nexus analysis. This is because the existing study did not undertake an area-by-area analysis, and thus cannot be used to justify specific fees levels for specific areas.

### The Resolution

On October 16, 2012, the City Council adopted Resolution No. 65,920-N.S. setting the AHMF at \$28,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee. On July 12, 2016, the City Council adopted Resolution No. 67,614-N.S. which amended Resolution No. 65,920-N.S. to raise the fee to \$34,000 per new unit of rental housing, payable prior to the issuance of a temporary or final Certificate of Occupancy and amended the criteria for applying the fee.

Staff has drafted a resolution that captures the provisions originally adopted with Resolution No. 65,920-N.S., and incorporates the revisions adopted with Resolution No. 67,614-N.S. to create a single document that reflects the current AHMF amount and criteria for applying the fee. The revisions to the Affordable Housing Mitigation Fee resolution proposed by Councilmember Harrison at the May 16, 2017 meeting have been applied to the resolution prepared by staff and are reflected in track changes in Attachment 3. Key revisions to the resolution as proposed by Councilmember Harrison include payment of the AHMF at the issuance of the Building Permit, and that the AHMF will be adjusted by the Construction Cost Index every other year on July 1. Attachment 4 reflects the clean version of the resolution with track changes accepted.

Beyond formatting and the addition of administrative language for clarity, staff is proposing the following substantive changes to the resolution, which are shown in track changes in Attachment 5:

- Section 1 is amended to conform to state law (Gov. Code § 66007(a), which generally prohibits the imposition of fees prior to certificate of occupancy or final inspection, subject to certain exceptions that are not applicable here. However, and the request of Council member Harrison, the fee amount is increased to \$37,000, with a \$3,000 discount if fees are paid no later than issuance of a building permit. The net effect of these changes is to maintain the fee at \$34,000, but only if it is paid at the no later than the issuance of a building permit, and to increase it to \$37,000 if it is not paid until a Certificate of Occupancy is issued.
- Section 2 is amended to specify the California Construction Cost Index published by the state Department of General Services, to state that the first automatic adjustment would occur in 2018, and to clarify that the automatic adjustment is applicable to projects that do not have final approval as of the effective date of the adjustment.
- A new section 9 is added to clarify the effective date of future fee increases.

Trends in Rental Rates

Between the May 16<sup>th</sup> meeting and the date this item was submitted, there was insufficient time to develop the necessary data to conduct a comprehensive analysis of trends in local rental rates.

Data provided by the Rent Stabilization Board shows that median rents have increased significantly and continue to increase, as shown below.

| Unit Size | 2015 Median Rent | 2016 Median Rent | % Increase |
|-----------|------------------|------------------|------------|
| Studio    | \$1,475          | \$1,600          | 8.47%      |
| 1 BR      | \$1,800          | \$1,995          | 10.83%     |
| 2 BR      | \$2,600          | \$2,750          | 5.77%      |
| 3 BR      | \$3,450          | \$3,595          | 4.20%      |

| Unit Size | 2014 Median Rent | 2016 Median Rent | % Increase |
|-----------|------------------|------------------|------------|
| Studio    | \$1,250          | \$1,600          | 28.00%     |
| 1 BR      | \$1,595          | \$1,995          | 25.08%     |
| 2 BR      | \$2,250          | \$2,750          | 22.22%     |
| 3 BR      | \$3,000          | \$3,595          | 19.83%     |

| Unit Size | 2011 Median Rent | 2016 Median Rent | % Increase |
|-----------|------------------|------------------|------------|
| Studio    | \$970            | \$1,600          | 64.95%     |
| 1 BR      | \$1,250          | \$1,995          | 59.60%     |
| 2 BR      | \$1,700          | \$2,750          | 61.76%     |



|      |         |         |        |
|------|---------|---------|--------|
| 3 BR | \$2,400 | \$3,595 | 49.79% |
|------|---------|---------|--------|

On the other hand, anecdotal information reported by the Berkeley Property Owners Association (BPOA) was that rents peaked the end of 2015 and beginning of 2016, and are now starting to decline. This started in San Francisco a year ago, and in Berkeley in the fall of 2016. The articles linked below provide some explanation – the regional job engine is slowing due to the cost of housing.

- <http://www.eastbaytimes.com/2017/03/24/san-jose-and-oakland-area-job-markets-tumble/>
- <http://www.mercurynews.com/2017/02/10/tech-job-growth-slows-in-bay-area/>
- <http://www.sfgate.com/bayarea/article/Bay-Area-population-growth-slows-some-counties-11021334.php>

According to the BPOA most property owners in Berkeley use a 100% vacancy model, which means they will adjust rents in order to fully lease up a building. Thus while advertised prices may be \$4000+ for a 2-bedroom apartment, landlords are willing to negotiate in order to fill up buildings, or to accept more tenants than they otherwise would (e.g., renting a 2-bedroom apartment to 5 students for \$1,000/bed in order to achieve \$5,000/unit).

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

See preceding discussion.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Zach Cowan, City Attorney (510) 981-6950

#### Attachments:

- 1: Ordinance Amending Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee (with Councilmember Harrison's revisions in track changes)
- 2: Ordinance Amending Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee (clean version with track changes accepted), additional staff proposed changes in track changes
- 3: Resolution - (with Councilmember Harrison's revisions in track changes)
- 4: Resolution - (clean version with track changes accepted)

- 5: Resolution - (clean version with track changes accepted), additional staff proposed changes in track changes
- 6: May 16, 2017 Revised Report from Councilmember Harrison regarding revisions to Berkeley Municipal Code Section 22.20.065 Affordable Housing Mitigation Fee
- 7: May 16, 2017 Revised Report from Councilmember Harrison regarding adopting changes to the Affordable Housing Mitigation Fee resolution.
- 8: Public Hearing Notice

RESOLUTION NO. XX,XXX–N.S.

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NOS. 65,920-N.S. AND 67,614-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent with section 22.20.065; and

WHEREAS, on October 16, 2012, the City adopted Resolution No. 65,920-N.S. setting the fee at \$28,000 per market rate unit at the issuance of a certificate of occupancy and establishing criteria for applying the fee; and

WHEREAS, the City adopted a Resolution No. 66,015-N.S. discounting the fee for certain projects, and Resolution No. 66,809-N.S. extending that discount, and that discount has now expired; and

WHEREAS, the City retained Bay Area Economics to complete an updated nexus study for the Affordable Housing Mitigation Fee, and that study, dated March 25, 2015 and reviewed by the Council at a special meeting on July 14, 2015, found a nexus supporting maximum possible fee of \$84,400 per market rate unit; and

WHEREAS, on July 12, 2016, the City adopted Resolution No. 67,614-N.S. amending Resolution No. 65,920-N.S. to raise the fee to \$34,000 per new unit of rental housing, payable prior to the issuance of a temporary or final Certificate of Occupancy and amending the criteria for applying the fee; and

WHEREAS, the Housing Advisory Commission recommended charging the fee when the building permit is issued as is done in San Francisco to insure funds are available to be leveraged as soon as projects receive their financing, rather than on certificate of occupancy, two to three years later; and

WHEREAS, the Resolution No. 67,614-N.S. adopted on July 12, 2016 further allowed for a discounted fee of \$30,000 if the fee was paid on issuance of building permit; and

WHEREAS, a subsequent study conducted by Strategic Economics found that a fee of \$44,000 was supportable without unduly impacting the financial feasibility of for-profit housing projects; and

WHEREAS, the adequacy of a fee nexus between housing costs and the fee is eroded by housing inflation because of the five year time period between nexus studies being conducted and possible longer time before a new fee is adopted; and

WHEREAS, on June 13, 2017, the City Council conducted a public hearing to consider changing the Affordable Housing Mitigation Fee pursuant to Berkeley Municipal Code Section 22.20.065.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$347,000 per new unit of rental housing, payable at the issuance of the Building Permit issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, “new rental housing” includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020(B), at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, “new rental housing” shall not include developments of four units or fewer units.
5. For the purposes of this resolution, “new rental housing” shall not include cooperative student housing developed by the Berkeley Student Cooperative.
6. The definition of “new rental housing” excludes units which are offered at no cost to support nonprofit public benefit activities.
7. No fee shall be assessed under the following circumstances.
  - a. No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been

“destroyed” and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.

- b. No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
- 8.9. Except as set forth in section 2, future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications are not complete as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution Nos. 65,920-N.S. and 67,614-N.S. are hereby rescinded.



Health Housing and  
Community Services Department  
**Housing & Community Services Division**

HAC 6/1/2017  
Attachment 5

## MEMORANDUM

**To:** Housing Advisory Commission

**From:** Jennifer Vasquez, CSSIII

**Date:** June 1, 2017

**Subject:** **Housing Advisory Commission (HAC) Approval for CDBG  
Community Facility Improvement Applications Exceeding \$200,000**

### **Recommendation**

Housing and Community Services (HCS staff recommend that 1) the HAC supports staff seeking an exemption from Council approval for construction projects under \$200,000 and 2) that approval of funding for applications at or below \$200,000 for Community Development Block Grant (CDBG) Community Facility Improvement Program be delegated to the HAC CDBG Subcommittee, which, after approving funding for a project, will provide a report to the full HAC at its next meeting. The authority to approve applications requesting more than \$200,000 would reside with the full HAC and need approval from City Council.

### **Existing RFP Process**

At the November 1, 2016 Council meeting, based on recommendations from the HAC and HCS staff, Council approved a restructuring of the annual CDBG public facility improvement request for proposal (RFP) process from an annual RFP to a rolling RFP. This process includes both HAC and Council approval for all projects resulting in a nine to thirteen week approval process. While this timeline is an improvement from years past, it is still lengthy and does not allow for a true rolling application process.

Agencies are currently required to obtain three bids as an attachment to their application for an accurate estimate of costs. These bids have a limited shelf-life, and if an agency is awarded funding, it must obtain fresh bids (no older than 90 days) a second time to be compliant with HUD regulations.

### **Proposed changes**

HCS is recommending that both the full HAC and Council review and approve only those CDBG facility applications that exceed \$200,000. Applications at or below \$200,000 would be exempt from full HAC and Council approval. HCS staff are

*A Vibrant and Healthy Berkeley for All*

requesting HAC support to seek this exemption from Council approval. Additionally, staff is recommending that applications at or below \$200,000 be approved by the HAC CDBG subcommittee and HCS staff using the minimum CDBG eligibility criteria presented in the application process. These changes would reduce the application approval timeline for smaller projects from nine to thirteen weeks to two to four weeks in duration, and would more closely resemble a rolling application process.

Applications will be accepted on an over-the-counter basis until all annual funds have been allocated. HCS will use the existing application (with minor modifications and clarifications) and the HAC subcommittee will continue to review applications and conduct site visits, if interested. The program will continue to focus on CDBG priorities for substantial rehabilitation for health and safety, ADA, and/or energy efficiency improvements.

### **Rationale for Proposal**

The primary benefit to this change is a quicker turnaround for smaller community partner applicants, and hopefully reducing duplicative work, such as obtaining bids multiple times.

This recommendation is aligned with existing City policy (Ordinance No. 6,875 – N.S) regarding Public Works improvements that states “Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of \$200,000 shall requires Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.”

### **Alternatives:**

The alternative is to leave the application process as-is requiring full HAC approval for each applicant, and delaying approval process for smaller projects.

HOUSING ADVISORY COMMISSION  
6/1/17

To: Housing Advisory Commission  
From: Igor Tregub, Chair  
Subject: Recommendation to Support AB 74, SB 305, and AB 1157.

**Recommendation**

The Housing Advisory Commission (HAC) recommends to the Berkeley City Council to endorse the following pending housing legislation: Assembly Bill (AB) 74, Senate Bill (SB) 305, and AB 1157.

**Background**

AB 74 (Housing for a Healthy California) – sponsored by Assembly Members Chiu, Bonta, Santiago, Mullin – would fund local programs to pay for rental assistance matched with services funding, such as the Medi-Cal Whole Person Care pilot or Health Home Program. According to EBHO, this program would provide supportive housing for individuals facing chronic homelessness, reduce MediCal costs, and improve health outcomes. More information about this bill is available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB74](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB74).

SB 305 – sponsored by Senator Skinner – would appropriate \$20 Million from the General Fund to the Department of Housing and Community Development for the purpose of providing financing to local agencies to fund low-interest loans to building owners wishing to seismically upgrade and/or rehabilitate certain eligible buildings, bringing them up to current building standards for occupancy. This bill was introduced in the wake of the Ghost Ship Fire and has the potential to particularly benefit the Bay Area’s artist community, a significant portion of which lives in housing that is deemed substandard and/or dangerous to life safety. More information about this bill is available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB305](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB305).

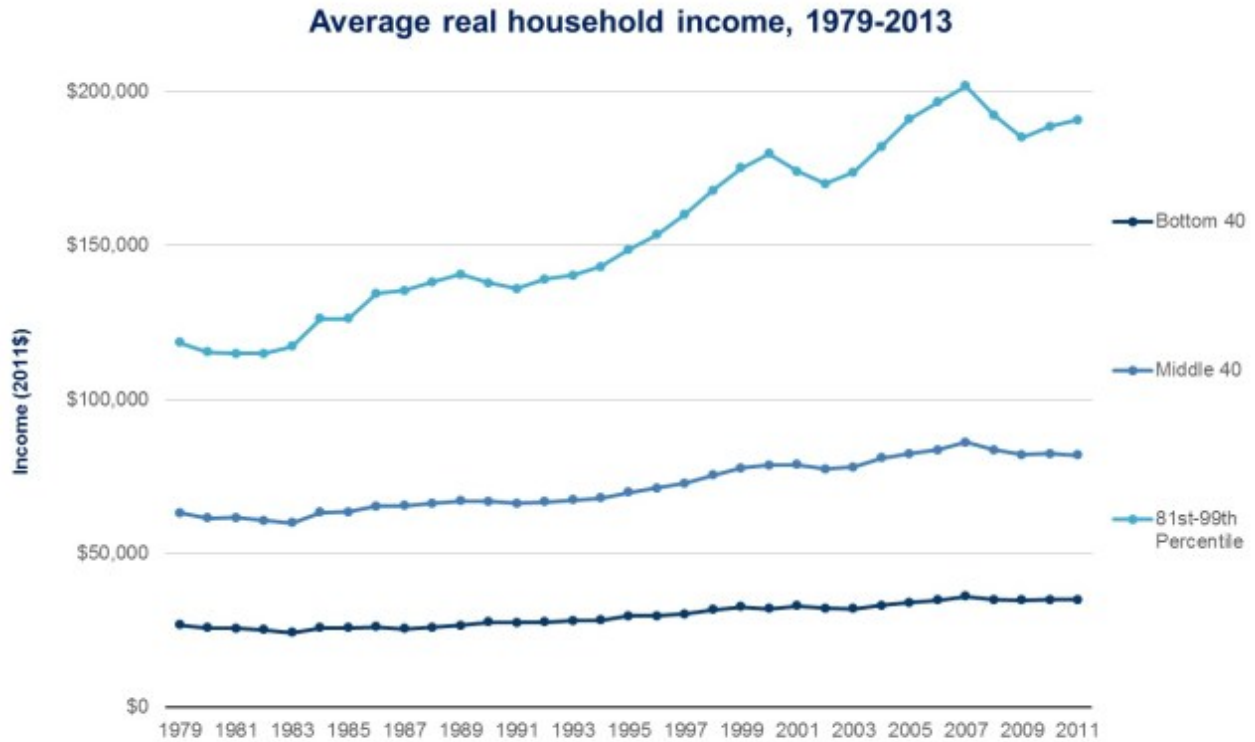
AB 1157 – sponsored by Assembly Member Mullin – would give priority use of surplus school, college, or university property to be made available for school employee housing. It exempts school districts from convening an advisory committee related to surplus property and provides for certain other exemptions related to the sale or lease of real property if the purpose of the sale is for the construction, reconstruction, or renovation of rental housing facilities for school employees. More information about this bill is available at [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180AB1157](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1157).



## Why ABAG housing quotas lead to displacement - 48 hills

Thomas Lord

The Regional Housing Needs Assessment (RHNA), a product of the Association of Bay Area Governments (ABAG), assigns to each Bay Area Jurisdiction quotas of new housing. Each city is urged to incentives and permit construction of its assigned number of new housing units, with some reserved for “very low,” some for “low,” and some for “moderate” income households. The majority of units to be built are supposed to be market rate units. Most of this new development is planned to take place in designated “priority development areas.”



Source: CBO  
Note: Income is pre-tax.

BROOKINGS

*This chart shows how the income of rich people increases faster than the income of everyone else, meaning that AMI in places like the Bay Area keeps going up while people at lower-income levels see little benefit and can less afford even affordable housing*

These quotas, sometimes erroneously called a city’s “fair share” of new housing, are taking on steadily greater legal significance. There are pushes these days in Sacramento, such as Scott Wiener’s “streamlined approval

process” bill (SB-35), which are meant to make RHNA quotas mandatory by reducing local control over development decisions. Wiener’s bill would make certain project approvals automatic in cities that have not met their assigned RHNA quotas.

Perhaps this anti-democratic push at the state level might be justified if, in fact, the RHNA quotas were designed to protect and enhance the public welfare. Alas, they are not.

I think if more policy-makers discussed what the RHNA math and maps imply, our local housing policies might be very different.

RHNA, looked at carefully, is a pro-displacement, pro-gentrification policy which — by design — will permanently destabilize low-income community in the Bay Area. I’ll explain how, with particular attention to the example of Berkeley.

In the short term, the RHNA demands that the most affordable parts of the region become less affordable. Let’s consider the case of Berkeley:

Using Census Bureau data (from the American Community Survey), ABAG determined that, around 2009, about 32% of Berkeley’s households were “very low income” (or below), compared to the Area Median Income.

ABAG also found that in the region as a whole, only about 24% of households were “very low income.”

Because Berkeley currently has a larger share of very low income households than the region as a whole, ABAG demands that Berkeley build:

1. A disproportionately large number (47%) of housing units for “Above Moderate” (i.e. high income) households.
2. A disproportionately small number (18%) of units affordable to very low income households.

What does this imply? First, if not a single household were displaced while Berkeley achieved its RHNA allocations, Berkeley would nevertheless become less affordable. Second, in reality, displacement is occurring at a fast rate, and ABAG demands that Berkeley try to provide greater options for high income households, and fewer options for very low income households.

In the short term, Berkeley's loss of very low income households is ABAG's plan functioning as explicitly intended.

From the Regional Housing Need Plan, San Francisco Bay Area, 2014-2022:

Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census. The income allocation method compares each jurisdiction's household income distribution to the regionwide household distribution, based on data from the US Census 2005-2009 American Community Survey. A jurisdiction that has a relatively higher proportion of households in a certain income category receives a smaller allocation of housing units in that same category. For example, jurisdictions that already supply a large amount of affordable housing receive lower affordable housing allocations. This promotes the state objective for reducing concentrations of poverty and increasing the mix of housing types among cities and counties equitably.

Berkeley is steadily losing existing affordable housing units through a mix of rapid turnover in rent-stabilized units, loss of rent-stabilized units, and loss or turnover of other units with historically low rents or low owner-occupant expenses. Following ABAG and Sacramento, Berkeley has wholeheartedly embraced the strategy of income-restricted housing.

I see a problem with that.

For decades, wage growth has followed this pattern: The income of high income households increases much faster than the income of middle income households. The income of middle income households increases somewhat faster than the income of low income households.

As a consequence, over time the rise in the median income moves many moderate income households to the lower income category, and many lower income households to the very low income category.

The number of income-restricted housing units available for each category is not changed by that change in incomes, but the range of incomes in each category change. For example, the upper limit on incomes that qualify for very low income housing rises, and it rises faster than the incomes of households currently in those units.

Even though income-restricted units are allocated randomly among qualified applications (i.e. by lottery), the

tendency over time will be for competition for very low and low income units to grow, faster than new units can be created.

The odds that a displaced income-restricted person can relocate within the region, never mind her local community, will continually fall.

Every step of the way, politicians who are unconcerned about that human reality will be able to point to the large pool of income-restricted units. They can say — following the dubious method of measurement used by the UC Berkeley Anti-Displacement Project — that displacement has not taken place because the percentage of poor people remains the same, even though poor households are constantly being expelled from the region and replaced with newly poor but higher-income households.

Here is a straw-man policy proposal. It is not meant as a fully worked policy. It is not meant to convince you such a policy is definitely possible. It is a just a way to point out that there MAY be better options.

Instead of income-restricted units, Berkeley could emphasize the need to grow a large pool of social housing whose rents could be flexibly determined, such as through means-testing.

Social housing does not have to mean “housing projects” meant solely for poor people. Social housing can be available, in various degrees, even to high income households – households whose rents then subsidize very low income households as necessary.

Such a system could help to stabilize communities. It could help foster economic growth that rises from the community rather than growth which is alien to and imposed upon the community.

Whether social housing is the future or not, though, the ABAG plan is a recipe for permanent displacement, always putting capital ahead of community.

*Thomas Lord abides in Berkeley, for some reason.*

HOUSING ADVISORY COMMISSION  
6/1/17

To: Housing Advisory Commission  
From: Chairperson Igor Tregub  
Subject: Conceptual Support for Full City Council Funding of Anti-Displacement Programs

**Recommendation**

The Housing Advisory Commission (HAC) expresses its conceptual support to the City Council for the full funding of anti-displacement programs as stated in Item 10 on the City Council's May 2, 2017 agenda. At this stage, the HAC takes no position as to which source of funding is to be used (e.g., General Fund, U1 moneys, etc.).

**Background**

A recommendation the text of which follows below was passed by the City Council on May 2, 2017:

“Refer to the Fiscal Year 2018/2019 budget process an allocation of \$\$1.07 million for the following programs:

- \$500,000 to ensure universal legal eviction defense for all Berkeley tenants at risk of eviction.
- \$470,000 increase to the current \$30,000 (for a total of \$500,000) to the Housing Retention Program, with a cap of \$5,000 per household (currently \$2,000 per household).
- \$100,000 to provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

FINANCIAL IMPLICATIONS: \$1.07 million. Potential funding sources include Measure U1 tax receipts as well as the General Fund.”

The City Council is set to vote on the Fiscal Year 2018/2019 budget at its June 27, 2017 meeting.

Additional information will be provided at the HAC meeting.

Appendix A: City Council Item 10: Referral to the Budget Process: Funding for Anti-Displacement Programs, dated May 2, 2017



Office of the Mayor

HAC 6/1/2017  
Attachment 8CONSENT CALENDAR  
May 2, 2017

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín  
Councilmember Sophie Hahn  
Councilmember Ben Bartlett  
Councilmember Kate Harrison

Subject: Referral to the Budget Process: Funding for Anti-Displacement Programs

RECOMMENDATIONS

Refer to the Fiscal Year 2018/2019 budget process an allocation of \$\$1.07 million for the following programs:

- \$500,000 to ensure universal legal eviction defense for all Berkeley tenants at risk of eviction.
- \$470,000 increase to the current \$30,000 (for a total of \$500,000) to the Housing Retention Program, with a cap of \$5,000 per household (currently \$2,000 per household).
- \$100,000 to provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

FINANCIAL IMPLICATIONS

\$1.07 million. Potential funding sources include Measure U1 tax receipts as well as the General Fund.

BACKGROUND

Like much of the San Francisco Bay Area, Berkeley is facing an unprecedented housing affordability crisis. Skyrocketing rents and housing prices have forced many working families, students and even middle-income residents out of their communities, while others are simply struggling to stay housed at all. The City of Berkeley recently made significant strides towards addressing homelessness through the creation of the Homeless Coordinated Entry System. Also known as The Hub, homeless services including emergency shelter, transitional housing and other homeless housing resources can now be accessed through one central coordinated system. However, The Hub focuses solely on assisting the chronically homeless. Currently there are no programs to aid those who are at risk of homelessness due to a temporary loss of income or other hardship.

While there now is a clear gap in services for residents on the verge of homelessness, this was not always the case. In 1993, the City of Berkeley began the Homeless Prevention Grants Program, which in 2008 became the Housing Retention Program (HRP). Through this program, anyone in Berkeley could apply to receive a one-time annual grant of up to \$1,500. Documentation was required to prove loss of income, medical or work related expenses, and need. With an initial budget of \$159,754 and an estimated reach of 100 households per year, the program funding was reduced in 2013 to \$63,573 with an estimated reach of 32 households per year. Funding was discontinued at the end of FY2015.

According to the East Bay Community Law Center, this was an essential tool to prevent homelessness, which is supported by data from the 2010-2015 Consolidated Plan for Housing and Community Development. In FY 2008-2009, the average grant size was \$1,388. Of the 79 households served 82% were people of color, 80% were women, and 70% were in poverty or extremely low income (30% of AMI). Thanks to this innovative program, 85% of these tenants who were at-risk of homelessness stayed housed. A low estimate of Berkeley Unlawful Detainers (UDs) annually is 375-400. However, current City funds provide for legal representation of only approximately 10-20% of Berkeley UD's. Research shows that the chances for tenant success defending against evictions increases by about 60% with legal representation. Current funding for these services is currently at \$290,000. An additional \$500,000 would provide 4 additional attorneys and support staff to the current 2 FTEs for the East Bay Community Law Center and Eviction Defense Center.

Census data from the Alameda County Public Health Department shows that Berkeley may have about 2,500 elderly homeowners at risk of displacement, many of whom are African American. Berkeley currently has few programs to assist these homeowners, outside of housing repairs. Providing \$100,000 for counseling and legal services for Berkeley's low-income, elderly, or disabled homeowners would provide assistance to about 300 households.

In this crisis, we need to pursue every possible solution. Reinstating the Housing Retention Program is a demonstrated way the City of Berkeley can fill a greatly needed gap in services and help our most vulnerable residents and families avoid homelessness. Administration of this program can now run through the infrastructure of The Hub. Funding will go towards staffing and small grants allocation up to \$5,000 annually per household, as originally intended.

CONTACT PERSON

Jesse Arreguin, Mayor      510-981-7100

**Attachments:**

1: Housing Retention Eligibility Requirements 2013

2: 2010-2015 Consolidated Plan for Housing and Community Development (pages 93-97)





## Housing Retention Program

The City of Berkeley's Housing Retention Program provides grant assistance to help pay back rent to prevent Berkeley residents from being evicted. Grants are available to households that meet the eligibility criteria below. Submitting an application does not guarantee financial assistance. The application will be reviewed closely and will only be approved if every requirement is met and supporting verifiable documentation is provided.

### Eligibility Requirements

- Berkeley residents who are at imminent risk of losing their permanent housing.
- Income must be verified by documentation from a third party.
- Rent cannot exceed 80% of applicant's (household's) income.
- Household requesting assistance must have a signed rental agreement. If not, lease holder must submit documentation verifying applicant's tenancy and monthly rent.
- Monthly income must support monthly expenses.
- Grant must prevent an eviction.
- Households that have received a Housing Retention Grant in the past are required to participate in case management with the participating referral agency, to include a budget management session.
- Meet one or more of the following requirements and provide supporting documentation verifying below criteria.
  - ❖ Decrease in income
  - ❖ Unexpected medical and/or disability expenses paid without credit.
  - ❖ Fleeing domestic violence
  - ❖ Work-related vehicle expense (vehicle is required for the job supporting documentation from employer may be required)

### Maximum Amount of Grant

- Approved households can receive up to \$1,500 as a one-time grant.
- No more than 6 months of arrears
- Amount requested must be supported by related decrease in income or unexpected verifiable expense.

### Documentation needed for Application

- Completed Application
- Picture ID or Social Security Card for all household members older than 18.
- Verification of Current Income for all income included in the budget sheet.
- A dated Notice of Eviction from landlord stating amount owed for back rent. A 3-day notice of eviction is recommended. The Notice of Eviction must be dated in the current month.
- Rental Agreement or Lease. If applicant is not on the lease, the lease holder must submit a signed dated letter indicating applicant's portion of the rent and rent due. If Section 8 Housing or Shelter Plus Care, copy of Housing Assistance Payments (HAP) Agreement.

- W-9 Form (Tax I.D.) signed by landlord
- Proof of Building Ownership is needed if not a BHA property
- Documentation showing decrease in income, unexpected medical/disability expense, fleeing domestic violence, or work-related vehicle expense.
- You may be asked to provide additional documentation to support your application for financial assistance.

### **Agency Referral Process**

If you are a client of one of the following agencies, please contact your case manager/advocate to receive additional information regarding the agency's rental assistance application process. See back side for additional referral sources and City of Berkeley contact information.

- ***City of Berkeley Public Health Nurses***
- ***LifeLong Medical Care - (Client for at least 3 months at Over 60 Health Center, Berkeley Primary Care Access Clinic, West Berkeley Family Practice, and Supportive Housing Sites)***
- ***Rubicon Employment Programs Inc.***
- ***Toolworks, Inc. (Tenants of Satellite Affordable Housing Associates Properties)***

If you've answered Yes to the eligibility questions, but are NOT a client at one of the above agencies, you may be eligible to apply at one of the below agencies if you meet the agency's additional eligibility criteria (see below). If you are eligible to get help at one of the below agencies, please contact them to get additional information about the application process.

***Women's Daytime Drop In Center - Contact: 548-2884***

- Female head of household.

***City of Berkeley – Family Youth and Children Services - Contact: 981-5280***

- Household with a child, age 0-24, who is experiencing significant emotional distress or has experienced mental health issues in the past.

***City of Berkeley – Aging Services Division/Senior Centers - Contact: 981-5200***

- Adults 55 years of age and older.

If you meet the eligibility criteria above but don't meet any of the Agency criteria listed above, please contact:

***East Bay Community Law Center at 548-4040.***

### Homelessness Prevention: Housing Retention Program

EveryOne Home identified homelessness prevention as one of five critical strategies. After adopting the EveryOne Home Plan, the City moved to revamp the Homelessness Prevention Program that the City has funded in various forms since 1993. Specifically, changes were made to the program to link it more closely to supportive services, so that the homeless prevention intervention had a more robust result and wasn't just delaying homelessness for participants. Launched in February 2008, the program is operated in partnership with the City's Division on Aging, Berkeley Mental Health's Family Youth and Children Services Division, Public Health Nurses, and five community-based organizations, which both refer applicants and provide other services to promote housing retention. The Housing Retention Program provides up to \$2,000 in assistance with back rent for Berkeley residents experiencing a temporary financial setback in order to prevent homelessness.

Berkeley initiated its first Homelessness Prevention Program in 1993, funding the Berkeley Community Law Center at \$80,000 to provide tenant advocacy and emergency funds. After the contract ended in 1994, the Berkeley Community Law Center declined further funding, having found that dual roles of tenant advocate and emergency funder were too difficult to reconcile. After the adoption of the Berkeley Homeless Continuum of Care Plan, the Berkeley City Council approved a new Homeless Prevention Program in the FY 1998 budget. It was initially funded at \$110,000 (including \$99,000 for cash assistance and \$11,000 for administration).

The Eden Council for Hope and Opportunities, Inc. (ECHO) was awarded the contract in October 1998. The program included cash assistance for either payment of past rent for households in imminent danger of eviction, or for move-in costs (first and last month's rent and security deposit) for homeless households. ECHO operated the program through 2008. After the adoption of the EveryOne Home Plan, including its key strategy of homelessness prevention, City staff reviewed national research findings on effective prevention programs and met with community agency service providers regarding to re-evaluate the program model, which resulted in ending the contract with ECHO and launching the Housing Retention Program in February 2008.

The Housing Retention Program, Berkeley's revamped homelessness prevention program, provided 90 grants between its launch in February 2008 and February 2009. The Housing Retention Program is expected to serve 100 people per year in PY2010 and PY2011. **Tables 42, 43, and 44** present information on the clients served and the outcomes.

**Table 42:  
Housing Retention Program: Clients Served  
February 2008 – February 2009**

|                          |                  |
|--------------------------|------------------|
| # of Households Served   | 79               |
| # of Grants              | 90               |
| Amount of Grants         | \$109,635        |
| Average Household Grant  | \$1,388          |
| Average Month            | \$9,136          |
| Grant Range:             | \$107 to \$2,000 |
| # of \$2,000 grants      | 16 (20%)         |
| # of Households 1+ grant | 7 (9%)           |

Source: City of Berkeley Housing and Community Services Department

**Table 43: Housing Retention Program:  
Housing Retention Outcomes**

|                                                                 |    |     |
|-----------------------------------------------------------------|----|-----|
| <b>Goal:</b> 85% retained housing/ stayed housed after 6 months |    |     |
| # of Tenants 6 months longer<br>(as of 2/1/09)                  | 37 |     |
| # Still Housed                                                  | 31 | 84% |
| # Relocated/Housed                                              | 1  | 3%  |
| # Evicted                                                       | 1  | 3%  |
| # No longer living at house                                     | 2  | 5%  |
| Agency to follow up                                             | 2  | 5%  |

Source: City of Berkeley Housing and Community Services Department

**Table 44:  
Housing Retention Program: Clients Served**

| <b>Demographics:</b>                      |               |                   |
|-------------------------------------------|---------------|-------------------|
| <b>Age of Applicant</b>                   | <b>Number</b> | <b>Percentage</b> |
| 18-24                                     | 6             | 8%                |
| 25-44                                     | 37            | 47%               |
| 45-54                                     | 16            | 20%               |
| 55-61                                     | 9             | 11%               |
| 62+                                       | 9             | 11%               |
| Unknown                                   | 9             | 11%               |
| <b>Race</b>                               |               |                   |
| African American                          | 62            | 78%               |
| Caucasian                                 | 8             | 10%               |
| Latino                                    | 2             | 3%                |
| Asian                                     | 1             | 1%                |
| Other                                     | 1             | 1%                |
| Unknown                                   | 5             | 6%                |
| <b>Gender &amp; other characteristics</b> |               |                   |
| Female                                    | 63            | 80%               |
| Male                                      | 16            | 20%               |
| Disabled                                  | 20            | 25%               |
| Female Head of Household                  | 42            | 53%               |
| Single                                    | 28            | 35%               |
| <b>Income Level:</b>                      |               |                   |
| Poverty                                   | 29            | 37%               |
| Extremely Low (30% of AMI)                | 26            | 33%               |
| Low (31-50% of AMI)                       | 22            | 28%               |
| Moderate (51-80% of AMI)                  | 2             | 3%                |
| Above Moderate (81%+ of AMI)              | —             | —                 |

Source: City of Berkeley Housing and Community Services Department

Agency partners include:

- City of Berkeley Aging Services- Senior Centers
- City of Berkeley Family, Youth and Children
- City of Berkeley Public Health
- East Bay Community Law Center
- LifeLong Medical Services
- Rubicon
- Toolworks (Supportive Services at AHA sites)
- Woman's Daytime Drop-in Center

The former Homeless Prevention Program, operated by ECHO, was funded continuously from FY 1998 to FY 2008 to provide homelessness prevention and housing move-in assistance. The initial contract was for \$110,000 per year, was increased to \$166,000 by 2004, and stayed at that level until the program ended.

The program will be evaluated to assess performance after its first 18 months of operation. The Everyone Home Plan, the City's adopted homeless policy framework, establishes the need for homeless prevention services as one of 5 key strategies. The City's implementation of the American Recovery and Reinvestment Act's (ARRA) Homelessness Prevention and Rapid Rehousing Program (HPRP), which began operation in fall 2009, builds on the Housing Retention Program model to create a larger prevention system.

### **Resources for people who are chronically homeless**

All homeless housing and service programs in Berkeley may be serving people who are chronically homeless. The 2004 homeless count found that nearly two-thirds of people homeless in Berkeley met the chronically homeless definition. Although the 2009 count found that chronically homeless people were a much smaller proportion of the homeless population, most agencies have at least some experience serving people who are chronically homeless.

Berkeley has three City-operated programs serving primarily people who are chronically homeless:

- **The Shelter Plus Care COACH grant**, with 21 Shelter Plus Care certificates, targets people who are chronically homeless. The program combines the federal housing subsidy with services provided by Berkeley Mental Health and Lifelong Medical Care.
- **The Shelter Plus Care tenant-based rental assistance grant** in partnership with Alameda County prioritizes people who are chronically homeless, although it is not limited to serving the chronically homeless.

- **The Public Commons for Everyone Initiative Square One program**, which combines a locally funded housing subsidy with services provided by Berkeley Mental Health, Lifelong Medical Care, and the Homeless Action Center.

In addition, the City funds several programs operated by community based nonprofit organizations that, while not exclusive to the chronically homeless, serve substantial numbers and collect and report data on chronic homelessness under their City contracts. These programs include:

- Alameda County Network of Mental Health Clients (Berkeley Drop In Center);
- Berkeley Food and Housing Project (BFHP), Men's Overnight Shelter;
- BFHP, Women's Overnight Shelter;
- Building Opportunities for Self-Sufficiency (BOSS), Multi Agency Services Center;
- BOSS, Ursula Sherman Village Single Adult Shelter;
- Fred Finch Youth Center;
- Rubicon programs, Inc.;
- Toolworks/Lifelong Supportive Housing Services;
- Women's Daytime Drop In Center.

## **HOMELESS STRATEGIC PLAN (91.215 (c))**

The City of Berkeley adopted the EveryOne Home Plan in May 2006 with Resolution 63,301-NS, which directed the City Manager to use the Plan as a guide for allocating resources within programs assisting those who are homeless or living with a serious mental illness or HIV/AIDS. Specifically, Resolution 63,301 established the following goals:

1. To increase the amount and range of affordable housing opportunities in Berkeley for extremely low-income and disabled residents;
2. Strengthen the continuum of services the City provides to ensure that residents can be successful in their housing;
3. Inform relevant advisory commissions of Council's intent that the Plan be used to guide City policy; and
4. Broaden the City's approach to services and housing to allow for better outcomes among people with long-term homeless histories and severe disabling conditions.

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

AMENDING BERKELEY MUNICIPAL CODE SECTION 22.20.065  
AFFORDABLE HOUSING MITIGATION FEE

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

Section 1. That Berkeley Municipal Code Section 22.20.065 is amended to read as follows:

**22.20.065 Affordable housing mitigation fee.**

A. Findings and purpose.

1. The State of California has established a Regional Housing Needs Allocation (RHNA) process under which it allocates a "fair share" of the regional housing need, updated periodically, to each local jurisdiction. The RHNA for the San Francisco Bay Area allocates to Berkeley a "fair share" that calls for adequate sites for 2,431 housing units for the period from 2007 to 2014, including sites for 164 extremely low income units, 164 very low income units, 424 lower income units, and 549 moderate income units. The City's Housing Element, adopted on October 19, 2010, complies with this RHNA.
2. In 1990, the City established the Housing Trust Fund to pool available funding for affordable housing development. The majority of resources in the Housing Trust Fund have been from federal sources, although state and local sources have been significant as well. Since 1990, the City has provided Housing Trust Funds to affordable housing developments throughout the City, and has revised the Housing Trust Fund Guidelines a number of times, most recently in 2009, to reflect changing market conditions and City priorities.
3. While Housing Trust Funds are a significant source of support for affordable housing developments within the City, Housing Trust Funds alone are not sufficient to cover the costs of providing affordable housing today. Each development must leverage multiple federal and state sources of funding to be financially feasible. Even then, the housing produced is not sufficient to meet local needs for housing for lower income households, as documented in the Housing Element, the Everyone Home Plan adopted in 2006, and the 2010 Consolidated Plan.
4. In 1986 the City adopted an Inclusionary Housing Ordinance, which required, among other things, that a percentage of all new residential rental units in projects of 5 or more units be provided at below market rates for the life of the project. The City of Berkeley's Inclusionary Housing Ordinance has been an important tool in creating affordable housing in the City since its adoption.



5. In 1993, the City established an affordable housing linkage fee on commercial development, designed to mitigate the need for affordable housing it creates. Income from this linkage fee has been administered through the Housing Trust Fund, mitigating some impact of commercial development.
6. Even in combination with other funding sources, the City's linkage fee and its Inclusionary Housing Ordinance have not been sufficient to fully address local housing needs.
7. A 2009 decision of the California Court of Appeal (*Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396) has further impaired the City's ability to provide for needed - and state-allocated - affordable housing. Palmer holds that the City may not require rents to be limited in rental projects unless it provides assistance to the rental project, thus invalidating the City's Inclusionary Housing Ordinance requirements as to rental projects.
8. Accordingly, the only remaining feasible and practicable option to meet the City's RHNA for below market rate units is to impose an affordable housing mitigation fee on new market-rate rental units, to mitigate the impacts of those new units on the need for affordable housing.
9. New market-rate rental housing, including Density Bonus Units, contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City.
10. ~~An The~~ "Affordable Housing Fee Nexus Study," dated ~~March, 2015-June 2010~~ (the "Nexus Study"), prepared by ~~BAE ay Area~~ Urban Economics, quantifies the impacts of new market-rate rental units on the need for affordable housing in the City.
11. ~~Thate~~ study estimated the additional spending attributable to each new housing unit in the City, then translated this spending into jobs at a range of income levels. The study estimated the number of households (53) the job-holders (93) would make up, and their household incomes. The City relied on this study to set a fee of \$34,000 in 2015.
12. A new Nexus Study, dated March 25, 2015, prepared by ~~BAE ay Area Urban~~ Economics, using the same methodology, and presented to Council supported a maximum fee at \$84,400.

## B. Definitions.

1. "Density Bonus Project" means a Development project that receives a density bonus pursuant to Government Code Section 65915.

2. "Density Bonus Units" means additional units to which an applicant for a Density Bonus Project is entitled and constructs pursuant to Government Code Section 65915.
3. "Income" means combined annual gross income from all sources.
4. "Low-income Household" shall mean a household whose income is no more than 80% of AMI.
5. "Low-income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 80% of AMI.
6. "Qualifying Units" means those below market-rate units in a Density Bonus Project that entitle the applicant to a density bonus pursuant to Government Code Section 65915.
7. "Very Low-Income Household" shall mean a household whose income shall be no more than 50% of AMI.
8. "Very Low-Income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Very Low Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 50% of AMI.
9. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.
10. Tenant-paid utility costs will be deducted from gross rent to determine the rent paid by the tenant. Utility costs will be based on the Berkeley Housing Authority Section 8 utility allowance, or future equivalent standard.
11. Minimum bedroom size will be 70 square feet, consistent with Berkeley's Housing Code (19.40.010.A, Uniform Housing Code Chapter 5, Section 503.2).

C. The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.

1. All Fees shall be paid ~~at the issuance of a building permit,~~ at the issuance of a Certificate of Occupancy, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.
2. An applicant for a Development project ~~with more than 10 dwelling units~~ that is subject to the Fee may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065.D.
3. An applicant for a Development project subject to this Section may provide less than 20% of market rate units as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.
4. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.
5. Units that meet the criteria established for affordable housing rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee.

D. Projects that include Low-income and Very Low-Income Units, including Qualifying Units, will qualify to pay a discounted fee if providing fewer than the number of units equal to 20% of the total rate units in the project.

~~1.~~ The following equation calculates the proportional discount to the fee based on the portion of units in the project that are provided at Low-Income and Very Low Income rents. The total fee payable for such projects shall be:

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

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.

E. The City Council may by resolution opt to vary the AHMF fees and in lieu unit options inclusionary requirements by areas of the city and/or zoning districts, subject to preparing an appropriate nexus analysis to support any increase in the AHMF.

F. The City Council may by resolution establish fees for the administration of the program established by this Section.

G. Compliance with this Section shall be a condition of approval of all Development projects subject to this Section, whether or not such a condition is expressly included in the Use Permit.

H. Consistent with Government Code 66000, this Section will be revisited every 5 years to confirm whether the purpose, the nexus, and the amount of the fee are still valid.

I. Administrative Regulations. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents, requiring guarantees, entering into and recording agreements with applicants and taking other appropriate steps necessary to assure that the required Low Income and Very Low Income Units are provided and occupied by Very Low Income and Low Income Households.

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.