

RESOLUTION NO. 65,920–N.S.

ESTABLISHING AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO  
BERKELEY MUNICIPAL CODE SECTION 22.20.065

WHEREAS, in 2011, the City Council adopted Berkeley Municipal Code section 22.20.065, authorizing an affordable housing mitigation fee on the construction of new rental units in Berkeley; and

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

WHEREAS, the City Council has considered the appropriate fee on a number of occasions since adoption of Section 22.20.065, including July 12, 2011, July 17, 2012, July 31, 2012 and has concluded that the appropriate fee amount is \$28,000; and

WHEREAS, this amount is appropriate because Bay Area Economics' "Affordable Housing Nexus Study" found a nexus between the housing needs created by new market rate units and a fee of up to \$34,000; and

WHEREAS, Section 22.20.065 also authorizes the City Council, by resolution, to specify additional limitations not inconsistent with 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 \$28,000 per unit of new rental housing.
2. 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.
3. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units.
4. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
5. 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.
6. 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.

The foregoing Resolution was adopted by the Berkeley City Council on October 16, 2012 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, and Bates.

Noes: Wozniak.

Absent: None.

  
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Tom Bates, Mayor

Attest:   
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Mark Numairville, CMC, Acting City Clerk