

RESOLUTION NO. 68,074-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 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 \$37,000 per new unit of rental housing, payable at the 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.

9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval 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.


The foregoing Resolution was adopted by the Berkeley City Council on June 27, 2017 by the following vote:

Ayes: Bartlett, Davila, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Abstain: Droste.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk