Title 22

PLANNING AND DEVELOPMENT PROCEDURES

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MASTER PLAN

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Section 22.04.010 Adopted--Scope.

The master plan of the City shall be adopted by resolution of the City Council. Upon such adoption, said master plan shall be the master plan of the City of Berkeley, and shall be deemed to set forth the policy of the City Council regarding the physical development of the City. (Ord. 3403-NS § 1, 1954)

Section 22.04.020 Amendment--Procedures required--Planning Commission and City Council authority.

A. The master plan of the City may be amended by resolution of the City Council in accordance with the following procedure: Any proposed amendment to the master plan which is not initiated by the Planning Commission shall first be submitted to the Planning Commission for consideration and report. The Planning Commission shall hold a public hearing on the proposed amendment, giving at least ten days' notice to the public of such hearing: such notice shall be by one publication in the official newspaper of the City, or by posting in the manner provided by the Charter and ordinances of the City. The commission shall submit its report to the council within sixty days after the proposed amendment has been presented to said Planning Commission: provided, that said time may be extended by the council. If said report is not submitted to the council within said sixty-day period, or any extension thereof, said amendment shall be deemed approved by said commission.

B. Upon receipt of the report of the Planning Commission, or upon the expiration of said sixty-day period or any extension thereof, the council shall set a public hearing on the proposed amendment. At least ten days' notice of said hearing shall be given to the general public; such notice shall be given in the same manner as herein provided for the giving of notice by the Planning Commission.

C. Any proposed amendment may be initiated by the Planning Commission, in which case public hearings shall be held before the Planning Commission and the City Council in the same manner as hereinabove provided. (Ord. 3403-NS § 2, 1954)
Chapter 22.12

NEIGHBORHOOD COMMERCIAL PRESERVATION

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Section 22.12.010 Purpose.

The purpose of this chapter is to place interim regulations on general, community, retail, and neighborhood commercial districts, designated as of July 14, 1982 as "C-1,", "C-1A," "C-1B," "C-1C" in the Berkeley Zoning Ordinance, until the zoning ordinance is amended to correspond with, and implement, policies stated in the Berkeley Master Plan of 1977. Five years after adoption of the master plan, zoning regulations for the above named districts have still not been updated to reflect the intent of the master plan policies. (Ord. 5506-NS § 1, 1982)

Section 22.12.020 Master plan policies.

Specifically:

A. Policy 1.03 states the intent to "modify procedures to assure the effective participation of local residents and community groups in decisions regarding land use." Adequate procedures to assure public review and community participation in land use decisions regarding new commercial construction, conversion or addition of commercial space, or demolition of commercial structures do not exist in the current zoning ordinance.

B. Policy 1.21 states the intent to "encourage commercial activities serving a regional market to locate in the central (business) district of a commercial service (auto-oriented) district, and discourage them in neighborhood and community commercial districts." Adequate regulations to prevent the proliferation of retail and service uses that serve a predominantly regional market in C-1, C-1A, C-1B, and C-1C districts do not exist in the current zoning ordinance.

C. Policy 1.22 states the intent to "identify the neighborhood, community and commercial service districts where a parking deficiency exists and develop zoning regulations to require the provisions of off-street parking and loading in conjunction with new building construction as necessary." No such commercial districts have been systematically identified as having a parking deficiency nor have adequate zoning regulations to require the provision of parking as a condition of new commercial construction in these districts been amended to the zoning ordinance since adoption of the master plan in 1977.

D. Policy 1.24 states the intent to "control the design and operation of commercial establishments to insure their compatibility with adjacent residential areas." No adequate regulations to control the design and
operation of commercial establishments to insure their compatibility with surrounding residential neighborhood exists in the current zoning ordinance.

E. The master plan of 1977 outlines the intent to formally review the plan every five years. A further purpose of this chapter is to ensure that the timely five year comprehensive review of the master plan shall include, and encourage, major additions such as neighborhood area plans to the master plan, and that the zoning ordinance shall be amended to incorporate the procedures leading to the preparation of such neighborhood area plans, as stated in Policies 7.10, 7.11, 7.12, 7.13 and 7.14 of the master plan of 1977.

F. Recent actions by the Berkeley City Council and citizens of the City of Berkeley, as set forth in Section 22.12.020 herein, also indicate the need for revision of the zoning ordinance. (Ord. 5506-NS § 1, 1982)

Section 22.12.030 Findings.

A. On September 15, 1981, the Berkeley City Council adopted Ordinance No. 5390-N.S., establishing a one hundred twenty day moratorium on construction, conversion, or demolition of commercial uses and buildings within the North Shattuck commercial district. On December 8, 1981, this moratorium was extended by majority vote of the City Council to remain in effect until September 14, 1982.

B. On September 15, 1981, the Berkeley City Council adopted Ordinance No. 5391-N.S., establishing a one hundred twenty day moratorium on construction, conversion or demolition of commercial uses and buildings within the Elmwood commercial district. On December 8, 1981, this moratorium was extended by majority vote of the City Council to remain effective until September 14, 1982.

C. On June 8, 1982, a majority of voters in the City of Berkeley approved Measure I, the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance.

D. On June 15, 1982, the Berkeley City Council rescinded Ordinance 5440-N.S., establishing planned development district procedures in the zoning ordinance, after neighborhood residents filed a referendum petition protesting the ordinance.

(Ord. 5506-NS § 3, 1982)

Section 22.12.040 Definitions.

A. The "central business district" also referred to as the "central district" in the master plan of 1977, is the downtown area of Berkeley that is defined in the zoning ordinance and accompanying maps as of July 14, 1982 as the "C-2" district.

B. "Commercial service districts" are those areas zoned "C-1" in the zoning ordinance that are defined in the 1977 master plan and accompanying map as appropriate for "auto-oriented commercial activities."

C. "C-1A districts" or "community commercial districts" are those areas defined in the zoning ordinance and accompanying maps as of July 14, 1982 as "C-1A."

D. "C-1B districts" or "retail commercial districts" are those areas defined in the zoning ordinance and accompanying maps as of July 14, 1982 as "C-1B."

E. "C-1C districts" or "neighborhood commercial districts" are those areas defined in the zoning ordinance and accompanying maps as of July 14, 1982 as "C-1C."

F. "C-1 districts" or "general commercial districts" are those areas defined in the zoning ordinance and accompanying maps as of July 14, 1982 as "C-1."

G. "Demolition" is the act of total destruction or tearing down of a structure, as well as to the act of partial destruction or tearing down of a structure so that it becomes subsumed into a larger structure, thus losing its original distinguishing physical characteristics.

H. "Conversion" is the physical change of the floor area of a structure so as to increase or decrease the number of separate, individual commercial shops or service areas by one or more, or so as to include a new type of commercial or other land use.

I. "Addition" is the creation of floor area through new construction or conversion by addition to the amount of floor area physically present in a commercial structure prior to construction or conversion activities.

J. "Change of retail or commercial use" is any change in the type of retail or commercial goods or services offered on a site. "Change of retail or commercial use" shall be presumed wherever there is transfer
or change of any lease of commercial space, except in the circumstance that the new owner or leaseholder
does not change the name of the establishment and does not change the exact line or type of commercial
goods or services offered in the space.

K. Any other terms not defined herein shall follow the definitions included in applicable City of Berkeley
codes.
(Ord. 5506-NS § 4, 1982)

Section 22.12.050 Procedures for the implementation of the master plan policies enumerated in
Section 22.12.020.
A. The Planning Commission of the City of Berkeley shall recommend to the Berkeley City Council
amendments to, and revisions of, the Berkeley Zoning Ordinance in order that its provisions correspond with
the intent of the master plan of 1977 regarding regulation for C-1, C-1A, C-1B, and C-1C commercial districts.
B. The Planning Commission recommendations shall incorporate the principles set forth in Section
22.12.070 herein and the provisions of any neighborhood area plans prepared and adopted according to
master plan guidelines.
C. The Planning Commission shall submit the recommendations, required by this section, to the City
Council no later than November 30, 1983. However, the City Council may extend the date for the submission
of such recommendations if it finds good cause that an extension is necessary.
D. In order to ensure protection of commercial districts until the Berkeley City Council enacts after
submission of the recommendations of the Planning Commission, amendments to the zoning ordinance
implementing the master plan policies set forth in Section 22.12.020 of this chapter, the following land use
changes in the C-1, C-1A, C-1B, and C-1C districts shall be regulated by this chapter:
1. Demolition of commercial structures;
2. Construction of new commercial structures;
3. Conversions or additions of commercial space;
4. Removal of more than three off-street parking spaces.
E. Until the Berkeley City Council enacts an ordinance with such ordinance being subject to referendum,
containing revised use permit criteria that apply to new or changes of retail or commercial use in C-1, C-1A,
C-1B, and C-1C districts, or two years after the effective date of this chapter, whichever comes first, the
following new or changes of retail or commercial use shall be regulated by this chapter:
1. Any new or change of retail or commercial use involving more than two thousand gross square feet of
floor area in C-1A, C-1B, and C-1C districts; and
2. Any new or change of retail or commercial use involving more than seven thousand five hundred
gross square feet of floor area in C-1 districts. Any revised use permit criteria enacted by the City Council
under this subsection E shall incorporate the applicable principles set forth in Section 22.12.070 of this
chapter, and shall be prepared in cooperation with the Planning Commission and concerned merchants,
residents and property owners. (Ord. 5506-NS § 5, 1982)

Section 22.12.060 Demolition of commercial structures.
A. Demolition permits shall be required for the demolition of commercial structures. These permits may
be granted by the Board of Adjustments of the City of Berkeley only after a public hearing. Decisions by the
Board of Adjustments may be appealed to the City Council.
B. A demolition permit shall not be granted unless the Board of Adjustments, or the City Council upon
appeal, makes all of the following findings:
1. That the demolition would not be materially detrimental to the commercial needs and public interest of
any affected neighborhood or the City of Berkeley.
2. That upon receipt of an application to change the facade of, or to demolish a building more than forty
years old, the building official has forwarded said application to the Landmarks Preservation Commission for
review, except where the application involves an unsafe building, and that said commission has not
recommended against granting the permit.
3. That the demolition will remove an unusable or unrepairable structure, or that the demolition is
necessary to permit construction approved pursuant to Sections 22.12.070 and 22.12.080 herein and applicable regulations in the zoning ordinance.

4. That neighborhood organizations and concerned residents in the affected area have been effectively notified pursuant to Section 22.12.090 herein. (Ord. 5506-NS § 6, 1982)

Section 22.12.070 New commercial construction--Conversions or additions of commercial space--Major change of commercial use--Removal of off-street parking in the C-1, C-1A, C-1B and C-1C districts.

A. Use permits shall be required for:
1. Construction of new commercial structures;
2. Conversion or addition of commercial space;
3. Removal of more than three off-street parking spaces;
4. Any new or change of retail or commercial use involving more than two thousand gross square feet of floor area in C-1A, C-1B, and C-1C districts; and
5. Any new or change of retail or commercial use involving more than seven thousand five hundred gross square feet of floor area in C-1 districts.

B. A use permit may not be granted until, after a duly called and noticed public hearing, the Board of Adjustments of the City of Berkeley, or the City Council on appeal, after considering the impact on the surrounding neighborhoods and in the circumstances of the particular case, finds all of the following:
1. That the establishment, maintenance or operation of the structure, space, or use for which the use permit is being applied for will not be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of the proposed building structure, space, or general use(s) or to the general welfare of the City.
2. That the removal of more than three off-street parking spaces or the establishment, maintenance, or operation of the structure, space, or use for which the use permit is being applied for will not result in any of the following:
   a. Significantly increase the amount of auto traffic, congestion, or auto-related pollution; or
   b. Exceed the amount and intensity of use that can be reasonably and safely served by available traffic and parking capacity; or
   c. Represent a building scale, intensity of use, or design that will not appropriately harmonize with other structures in the area; or
   d. Represent the type of commercial use that, because it generates a high amount of traffic and parking demand, should be more appropriately located in the central business district; or
   e. Represent a general use or design that conflicts with the establishment of a pedestrian-oriented retail frontage shopping environment.
3. That the establishment, maintenance, or operation of the major retail or commercial use applied for will not contribute to the displacement of essential local-service businesses or services that have as their primary customers nearby Berkeley residents.
4. That the developer, owner and any existing or prospective tenants of the commercial property involved have read and understood the zoning regulations that apply to the specific commercial district in which the property is located. (Ord. 5506-NS § 7, 1982)

Section 22.12.080 Environmental impact report.

No use permit required by Section 22.12.070 herein for construction, conversion or addition of commercial space involving more than ten thousand gross square feet of floor area, or the removal of more than ten off-street parking spaces, in the C-1, C-1A, C-1B, and C-1C districts may be granted by the Board of Adjustments of the City of Berkeley, or the City Council upon appeal, until the Board of Adjustments has decided, following procedures based on the current guidelines and criteria described specifically in the California Environmental Quality Act, that the project or removal will not have a significant adverse environmental impact on the surrounding neighborhoods. (Ord. 5506-NS § 8, 1982)
Section 22.12.090 Required public notice.
A. Notice of public hearing provided for in this chapter shall be sent at least fourteen days before the public hearing date, to all addresses and owners of property within a radius of three hundred feet from the boundaries of the site of the proposed construction, demolition, conversion or addition, removal, or new or change of use. The following information shall be included in the notice of public hearing, except in the case of demolition:
   1. The number of commercial shops or services proposed and square footage of the floor area involved.
   2. The number of parking spaces provided on or off the site.
   3. A small reproduction of the site plan, a line drawing or prospective rendering of the site, as well as a list and description of building materials and colors to be used on the exterior.
   4. Time and place of public hearing.
   5. City departments to contact for further information.
B. The City comprehensive Planning Department shall maintain a registry of all persons and groups requesting notices of public hearings required by the provisions of this chapter. Such notices shall be mailed to individuals and groups listed on this registry in accordance with the provisions of subsection A herein.
C. A notice of public hearing shall be posted on the site, and in at least three public meeting locations in the immediate neighborhood at least fourteen days before the public hearing date. This posted notice shall have lettering sufficiently large to be seen clearly and read easily by a passerby, and the posted notice shall contain information as specified in subsection A.
D. All costs of giving notice shall be borne by the use, zoning or demolition permit applicant. Charges may be waived by the board of adjustments if it finds it is a financial hardship to the applicant, as determined according to guidelines adopted by the board. (Ord. 5506-NS § 9, 1982)

Section 22.12.100 Public hearings upon receipt of a petition.
A. A petition requesting a public hearing before the Board of Adjustments on any zoning, administrative use, or use permit application for new or change of retail or commercial use of any floor area amount in the C-1, C-1A, C-1B, and C-1C districts may be presented to the City Clerk. If the petition is found by the City Clerk to contain the valid signatures of no less than fifty registered Berkeley voters, a public hearing regarding the specific permit application shall be scheduled with proper notification to the neighborhood as provided for Section 22.12.090 herein. The petition for a public hearing on any zoning, administrative use, or use permit application must be filed within twenty days of the formal filing of the zoning, administrative use, or use permit application with the zoning division.
B. Upon the scheduling of a public hearing set forth in this section, the application that triggered the successful petition shall be evaluated according to the procedures and principles as set forth in this chapter and in the zoning ordinance, even if the original application did not require approval of the Board of Adjustments.
C. The applicant shall not be required to pay costs of a public hearing brought by petition. The zoning division, comprehensive Planning Department, or other City agency shall at all times have an up-to-date list of all building, zoning, administrative use, demolition, and land use permits applied for, and shall make such a list of pending applications available to the public upon request.
E. The provisions of this section shall expire two years after the effective date of this chapter. (Ord. 5506-NS § 10, 1982)

Section 22.12.110 Exemptions.
The Berkeley City Council may by ordinance, such ordinance being subject to referendum, exempt any specific district(s) from the provisions of this chapter provided that:
A. The ordinance enacting the exemption shall also contain a neighborhood area plan for the district(s) being exempt, including amendments to the zoning ordinance with revised use permit criteria; and
B. The neighborhood area plan incorporates the principles set forth in the master plan of 1977 and Section 22.12.070 herein, and has been prepared with the participation of neighborhood residents and merchants and other concerned citizens. (Ord. 5506-NS § 11, 1982)
Section 22.12.120 Relationship to other ordinances.

It is the purpose of this chapter to implement the specific policies of the master plan listed in Section 22.12.020 and not to repeal the existing zoning ordinance, except insofar as its provisions are in conflict with this chapter. Where there is no conflict, the zoning ordinance shall continue to apply. Wherever the existing zoning ordinance or other ordinances are in conflict with this chapter, this chapter shall apply. (Ord. 5506-NS § 12, 1982)
Chapter 22.16

DEVELOPMENT AGREEMENT PROCEDURES

Sections:

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22.16.020   Definitions.
22.16.030   Applications.
22.16.040   Contents of development agreements.
22.16.050   Consideration of proposed development agreements.
22.16.060   Recordation.
22.16.070   Annual review.
22.16.080   Amendment or cancellation.
22.16.090   Miscellaneous provisions.

Section 22.16.010 Intent and purpose.

A. Findings and declaration of intent.
   1. The City Council finds that development agreements can strengthen the public planning process,
      encourage private participation in comprehensive planning by providing a greater degree of certainty in that
      process, reduce the economic costs of development, allow for the orderly planning of public improvements
      and services, allocate costs to achieve maximum utilization of public and private resources in the
      development process, and assure that appropriate measures to enhance and protect the environment are
      achieved
   2. The City Council further finds and determines that the public health, safety and general welfare will be
      furthered by the adoption of an ordinance establishing procedures for entering into and administering
      development agreements to accomplish the foregoing purposes and corresponding benefits. (Ord. 6033-NS §
      1, 1991)

Section 22.16.020 Definitions.

A. Definitions. The following terms when used in this chapter shall have the following respective
   meanings:
   1. "City" means the City of Berkeley, a municipal corporation.
   2. "City Clerk" means the Berkeley City Clerk.
   3. "City Council" means the Berkeley City Council.
   4. "Applicant" means a person who has a legal or equitable interest in real property, and who applies for
      a development agreement for a project on that property pursuant to the procedures specified in this chapter,
      and who executes and is bound by the terms of the development agreement. "Applicant" includes a
      successor in interest to the rights and duties of the original applicant for a development agreement.
   5. "City Manager" means the Berkeley City Manager or the person (s)he designates to carry out all or
      part of the responsibilities for implementing this chapter.
   6. "Project" means the development project that is the subject of a development agreement. (Ord. 6033-NS §
      2, 1991)

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Section 22.16.030 Applications.

A. Authority for adoption. An applicant for a development project may request that the City review the application as a development agreement application in accordance with the following procedures. The City incorporates by reference the provisions of California Government Code Sections 65864-65869.5. In the event of any conflict between these statutory provisions and this chapter, this chapter shall control.

B. Forms and information. The applicant shall submit an application for a development agreement on a form prescribed by the City Manager. The City Manager shall identify submittal requirements for applications for development agreements. (S)he may require an applicant to submit such additional information and supporting data as (s)he considers necessary to process the application.

C. Fees. The applicant shall pay such fees and charges for the filing and processing of applications for development agreements and the administration of approved development agreements, including annual reviews, in amounts as may be established by resolution of the City Council.

D. Qualified applicant. A qualified applicant shall have a legal or equitable interest in the real property which is the subject of the proposed development agreement. The City Manager shall require an applicant to submit proof of his interest in the real property and of the authority of any agent to act for the applicant.

E. Initial review of application.

1. The City Manager shall review each application to determine whether it is complete. If the application is found to be incomplete, the City Manager shall reject the application and, within forty-five days after submittal of the application, shall inform the applicant of the items necessary to properly complete the application. Applicant may appeal the City Manager's determination that the application is incomplete to the City Council. Any such appeal must be filed within fifteen days following the mailing of written notice that the application is incomplete.

2. Within forty-five days after determining a development agreement application to be complete, the City Manager shall make a written recommendation to the Planning Commission whether a development agreement is the appropriate form of entitlement for the proposed project, and shall place it on the Planning Commission agenda at the earliest practicable date. The Planning Commission shall make a recommendation to the City Council concerning appropriateness within thirty days after the date of the meeting at which the item first appears on the commission agenda. If the Planning Commission fails to make a recommendation within this time period, then the City Manager's recommendation shall be placed on the City Council agenda as specified in Section 22.16.030 of this chapter. The following criteria shall be followed in making these recommendations:

   a. The project is preliminarily determined to be consistent with the general plan and any applicable specific plan, or applicant has submitted an application for any necessary amendments to the general plan or specific plan; and

   b. EITHER: These three criteria are met:

      (1) The project site is three acres or more in area.

      (2) The project proposes to construct or rehabilitate multiple structures on the site, and the total floor area to be constructed and rehabilitated is at least one hundred thousand square feet.

      (3) The project envisions a long-term or phased build-out such that, at the time of application, designs of all buildings and improvements cannot be reasonably specified in the manner required of use permit applications.

   OR: There are other unique or compelling reasons why the project or the potential benefits to the community would warrant consideration in the form of a development agreement.

3. The City Manager's recommendation under subsection 22.16.030E, 2 of this chapter shall include an analysis of how the proposed project comports with regulations of the zoning district in which the property lies, including identification of any aspects of the project which would require a variance were the application subject to review and action under the zoning ordinance.

4. The Planning Commission's recommendation, or, if the Planning Commission does not make a timely recommendation, then the City Manager's recommendation, under subsection 22.16.030E, 2 of this chapter shall be placed on the City Council agenda at the earliest practicable date as an action item, and the City Council may accept or reject the recommendation after consideration of the criteria enumerated in subsection
22.16.030E, 2 of this chapter.

5. The City Council shall make a determination whether a development agreement is the appropriate form of entitlement for the proposed project within thirty days after the date of the meeting at which the item first appears on the City Council agenda. If the City Council fails to make a determination within this time period, then the Planning Commission's recommendation, or, if the Planning Commission failed to make a timely recommendation, then the City Manager's recommendation, under subsection 22.16.030E, 2 of this chapter, shall become the City's final determination as to whether a development agreement is the appropriate form of entitlement for the proposed project. (Ord. 6033-NS § 3, 1991)

Section 22.16.040 Contents of development agreements.
A. A development agreement shall specify its duration; the permitted uses of the subject property; the general location and density or intensity of uses; the general location, maximum height and size of proposed buildings; and provisions for reservation or dedication of land for public purposes. It shall contain provisions concerning its transferability.
B. A development agreement may include requirements for construction and maintenance of onsite and off-site improvements or payment of fees in lieu of such dedications or improvements.
C. A development agreement may also include conditions, terms, restrictions, and requirements for subsequent discretionary actions but does not eliminate the applicant's responsibility to obtain all required land use approvals.
D. A development agreement may include, without limitation, conditions and restrictions imposed by the City with respect to the project including those conditions and restrictions proposed in any environmental impact report applicable to the project prepared and certified under the California Environmental Quality Act, and the City's regulations with respect thereto, in order to eliminate or mitigate adverse environmental impacts of the project.
E. A development agreement may provide that the project be constructed in specified phases, that construction shall commence within a specified time, and that the project or any phase thereof be completed within a specified time.
F. If the development agreement requires applicant financing of necessary public facilities, it may include terms relating to subsequent reimbursement over time for such financing.
G. A development agreement may contain an indemnity clause requiring the applicant to indemnify and hold the City harmless against claims arising out of or in any way related to the actions of applicant in connection with the application or the development process, including all legal fees and costs.
H. A development agreement may include provisions to guarantee performance of obligations stated in the agreement.
I. A development agreement shall be a contract that is negotiated and voluntarily entered into by City and applicant and may contain any additional or modified conditions, terms or provisions agreed upon by the parties. (Ord. 6033-NS § 4, 1991)

Section 22.16.050 Consideration of proposed development agreements.
A. Community workshop; public notice. The Planning Commission shall conduct at least one community workshop prior to commencement of the negotiations referenced in subsection 22.16.050B of this chapter. The purpose of the community workshop(s) is to provide members of the Planning Commission, other advisory bodies to the City Council, and members of the public the opportunity to recommend environmental mitigations, community benefits and other provisions of a development agreement to the City Manager for negotiation. Notice of the community workshop(s) shall be mailed fourteen calendar days in advance to members of the City Council, Planning Commission, and other designated advisory bodies. In addition, notice shall be mailed to owners and occupants of all property within five hundred feet of the project site and shall be published in display ads in newspapers of general circulation in the City of Berkeley.
B. Negotiations. The City Manager shall negotiate the specific components and provisions of the development agreement on behalf of the City for recommendation to the City Council. The City Council may, but need not, appoint a subcommittee of the City Council to participate in the negotiations. The City Council
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shall appoint a community advisory committee to consult with the City Manager and any subcommittee appointed by the City Council during negotiations. In appointing the members of this committee, the City Council shall give due consideration to obtaining representative views of residents and businesses in affected communities. The City Manager shall not commence negotiations with the applicant as to any specific component or provision of the development agreement until after the Planning Commission has conducted a community workshop pursuant to subsection 22.16.050B of the chapter.

C. Advisory bodies. The Planning Commission shall advise the City Council on development agreements, including the matters specified in subsection 22.16.050F of this chapter. In addition, the City Manager shall designate the following City boards and commissions as advisory bodies to the Planning Commission and the City Council on the following aspects of a proposed development agreement where the project otherwise would be subject to such board or commission's jurisdiction or review were the applicant required to proceed under the City's zoning, design review, or landmarks preservation rules:

1. Zoning Adjustments Board - permitted uses and development standards, community benefits and mitigation programs, and future discretionary review for use permits.

2. Design Review Committee - development standards as they relate to existing and planned urban design of the surrounding area, architectural guidelines, site plan and site plan standards.

3. Landmarks Preservation Commission - development standards as they relate to designated landmarks or structures of merit on the subject site or adjacent sites, mitigation programs for loss of designated landmarks, and demolition of non-residential buildings forty years old or older.

D. Availability of draft development agreement. The City Manager shall make a draft of the proposed development agreement available for public review at least thirty days prior to the Planning Commission public hearing on the proposed development agreement.

The Zoning Adjustments Board, the Design Review Committee and the Landmarks Preservation Commission, may conduct one or more public hearings or community workshops during the review period for the draft development agreement, consistent with the scope of their roles outlined in subsection 22.16.050C of this chapter and their enabling ordinances.

E. Planning Commission public hearing. Prior to making a recommendation for City Council action on a proposed development agreement, the Planning Commission shall hold a noticed public hearing to consider comments on the development agreement from other advisory bodies and from members of the public. Notice of the public hearing to make a recommendation concerning adoption of a development agreement shall be given as provided in subsection 22.16.050A of this chapter, in addition to any other notice required by law for land use approvals to be considered concurrently with the development agreement. The Planning Commission public hearing may, but need not, be held concurrently with the public hearing(s) on other land use approvals for the project.

F. Recommendation by Planning Commission. Within thirty days after closing its public hearing, the Planning Commission shall make its recommendation in writing to the City Council. The recommendation shall include the Planning Commission's determination and supporting reasoning whether or not the proposed development agreement:

1. Is consistent with the goals, objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan.

2. Is compatible with the uses authorized in, and the zoning district in which the real property is located.

3. Has duly considered City mitigation programs in effect at the time of execution of the agreement.

4. Will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

5. Complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto.

G. City Council public hearing. The City Council shall hold a noticed public hearing prior to adoption of any development agreement. Notice of the public hearing to consider adoption of a development agreement shall be given as provided in subsection 22.16.050A of this chapter, in addition to any other notice required by law for land use approvals to be considered concurrently with the development agreement. The City Council public hearing may, but need not, be held concurrently with the public hearing(s) on other land use approvals for the project.
H. Decision by City Council.

1. After the City Council completes the public hearing, it may accept, reject or conditionally accept the recommendation of the Planning Commission; or in the event the Planning Commission has failed to make a recommendation pursuant to subsection 22.16.050F of this chapter, the City Council shall approve, disapprove or conditionally approve the development agreement. The City Council may, but need not, refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the City Council.

2. The City Council shall not approve a proposed development agreement unless it finds that its provisions are consistent with the general plan and any applicable specific plan. This requirement may be satisfied by a finding that the provisions of a proposed development agreement are consistent with proposed general plan or specific plan provisions which are to be adopted concurrently with the approval of the proposed development agreement. A finding of consistency may be made if, considering the general plan and/or specific plan as a whole and balancing competing provisions as appropriate, the City determines that the proposed development agreement does not conflict with the provisions of the general plan and/or specific plan. This finding need not be supported by detailed explanation or factual findings. Notwithstanding any other provision of law, including Government Code Section 65867.5, this subsection shall not be interpreted to impose upon the City any of the legal requirements applicable to general law cities with respect to general plan or specific plan consistency, including without limitation any prohibition on a finding of general plan consistency in the absence of a complete, legally adequate general plan.

3. A proposed development agreement shall be executed by the applicant before it is placed before the City Council for consideration at a public hearing.

I. Approval of development agreement. The City Council shall have the exclusive authority to approve the development agreement. Approval of a development agreement shall be by ordinance. (Ord. 6106-NS § 4, 1991: Ord. 6033-NS § 5, 1991)

Section 22.16.060 Recordation.

A. Execution and recordation of development agreement.

1. Within ten days after the ordinance approving the development agreement takes effect, the City Manager shall execute the development agreement on behalf of the City, and the City Clerk shall record the development agreement with the county recorder.

2. If the parties to the agreement or their successors in interest amend or cancel the development agreement, or if the City terminates or modifies the development agreement for failure of the applicant to fully comply with the provisions of the development agreement, the City Clerk shall record notice of such action with the Alameda County Recorder. (Ord. 6033-NS § 6, 1991)

Section 22.16.070 Annual review.

A. Time for and initiation of review.

1. The City Manager shall review each approved development agreement at least once a year at which time the applicant shall be required to demonstrate compliance with the provisions of the development agreement.

2. The applicant shall initiate the required annual review by submitting a written request at least sixty days prior to the review date specified in the development agreement. The applicant shall also provide evidence as determined necessary by the City Manager to demonstrate compliance with the provisions of the development agreement. The burden of proof by substantial evidence of compliance is upon the applicant.

B. Finding of compliance. If the City Manager, on the basis of substantial evidence, finds compliance by the applicant with the provisions of the development agreement, the City Manager shall issue a finding of compliance, which shall be in recordable form and may be recorded with the county recorder after conclusion of the review.

C. Finding of noncompliance.

1. If the City Manager finds the applicant has not complied with the provisions of the development agreement, the City Manager shall give the applicant at least sixty days in which to cure the noncompliance or to show cause why it should not be found to be noncompliant. The applicant shall provide evidence as determined necessary by the City Manager to demonstrate compliance with the provisions of the development agreement. The burden of proof by substantial evidence of compliance is upon the applicant.

D. Report of noncompliance. If the City Manager finds that the applicant has not cured the noncompliance or to show cause why it should not be found to be noncompliant within the sixty-day period, the City Manager shall prepare a report of noncompliance which shall be submitted to the City Council for action. The report of noncompliance shall include a recommendation as to how the property may be brought into compliance. The City Council shall have the authority to decline the report of noncompliance and the City Manager shall file the report with the county recorder without recording, or renew the report of noncompliance and the City Manager shall file the report with the county recorder after conclusion of the hearing. (Ord. 6033-NS § 7, 1991)
agreement, the City Manager may issue a finding of noncompliance which may be recorded by the City with the county recorder after it becomes final. The City Manager shall specify in writing to the applicant the respects in which applicant has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance.

2. If applicant does not comply with any terms of compliance within the prescribed time limits, the development agreement shall be subject to termination or modification pursuant to subsection 22.16.080B of this chapter.

D. Appeal of determination. Within ten days after issuance of a finding of compliance or a finding of noncompliance, any interested person may file a written appeal of the finding with the City Council. The appellant shall pay fees and charges for the filing and processing of the appeal in amounts established by resolution of the City Council. The appellant shall specify the reasons for the appeal. The issuance of a finding of compliance or finding of noncompliance by the City Manager and the expiration of the appeal period without appeal, or the confirmation by the City Council of the issuance of the finding on such appeal, shall conclude the review for the applicable period and such determination shall be final. (Ord. 6033-NS § 7, 1991)

Section 22.16.080 Amendment or cancellation.
A. Cancellation or modification by mutual consent. Any development agreement may be canceled or modified by mutual consent of the parties following compliance with the procedures specified in subsections 22.16.050E and G of this chapter. A development agreement may also specify procedures for administrative approval of minor amendments by mutual consent of the applicant and the City Manager.

B. Termination or modification after finding of noncompliance. If a finding of noncompliance does not include terms of compliance, or if applicant does not comply with the terms of compliance within the prescribed time limits, the City Manager may refer the development agreement to the City Council for termination or modification. The City Council shall conduct a public hearing. After the public hearing, the City Council may terminate the development agreement modify the finding of noncompliance, or rescind the finding of noncompliance, and issue a finding of compliance.

C. Rights of the parties after cancellation or termination. In the event that a development agreement is canceled or terminated, all rights of the applicant, property owner or successors in interest under the development agreement shall terminate. If a development agreement is terminated following a finding of noncompliance, the City may, in its sole discretion, determine to return any and all benefits, including reservations or dedications of land, and payments of fees, received by the City. (Ord. 6033-NS § 8, 1991)

Section 22.16.090 Miscellaneous provisions.
A. Effect of development agreement.
   1. Unless otherwise specified in the development agreement, the City's rules, regulations and official policies governing permitted uses of the property, density and design, and improvement standards and specifications applicable to development of the property shall be those City rules, regulations and official policies in force on the effective date of the development agreement. The applicant shall not be exempt from otherwise applicable City ordinances or regulations pertaining to persons contracting with the City.
   2. A development agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the property as set forth in the development agreement. A development agreement shall not prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the project on the basis of such existing or new rules, regulations, and policies.
   3. Unless otherwise specified in the development agreement, a development agreement shall not exempt the applicant from obtaining future discretionary land use approvals.

B. Rules affecting development agreement. In the event that any regulation or law of the State of California or the United States, enacted or interpreted after a development agreement has been entered into prevents or precludes compliance with one or more provisions of the development agreement, then the development agreement may be modified or suspended in the manner and pursuant to the procedures specified in the development agreement, as may be necessary to comply with such regulation or law.
C. Interpretation. This chapter governs the interpretation of any development agreement approved under this chapter.

D. Enforcement of a development agreement. The procedures for enforcement, amendment, modification, cancellation or termination of a development agreement specified in this section and in California Government Code Section 65865.4 are non-exclusive. A development agreement may be enforced, amended, modified, canceled or terminated by any manner otherwise provided by law or by the provisions of the development agreement.

E. Severability clause. Should any provision of this chapter or a subsequent development agreement be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this chapter and the development agreement shall remain in full force and effect unimpaired by the holding, except as may otherwise be provided in the development agreement.

F. Judicial review; time limitation.

1. Any judicial review of an ordinance approving a development agreement shall be by writ of mandate pursuant to Section 1085 of the California Code of Civil Procedure; and judicial review of any City action taken by the City pursuant to this chapter, other than initial approval of a development agreement, shall be by writ of mandate pursuant to Section 1094.5 of the California Code of Civil Procedure.

2. Any action or proceeding to attack, review, set aside, void or annul any decision of the City taken pursuant to this chapter shall not be maintained by any person unless the action or proceeding is commenced within ninety days after the effective date of the decision.

G. Notice requirements. The notice requirements contained in subsections 22.16.050A, E and G of this chapter are directory and not mandatory. The failure of any person to receive notice required by law or this chapter does not affect the authority of the City to enter into a development agreement.

H. Irregularity in proceedings. No action, inaction, or recommendation regarding a proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission (“error”) as to any matter pertaining to the petition, application, notice, finding, record, hearing, report, recommendation, or any matter of procedure whatever, unless the error complained was prejudicial and that by reason of the error, the complaining party sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. There is not a presumption that an error is prejudicial or that injury was done if an error is shown. (Ord. 6033-NS § 9, 1991)
Chapter 22.20

MITIGATION AND FEES--CONDITIONS FOR APPROVAL OF DEVELOPMENT PROJECTS

Sections:

22.20.010 Applicability of chapter.
22.20.020 Findings.
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22.20.080 Exception--Hardship.
22.20.090 Procedure.
22.20.100 Appeal.
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Section 22.20.010 Applicability of chapter.
The regulations, requirements and provisions of this chapter and council resolutions adopted pursuant hereto shall apply to any development project. (Ord. 6179-NS § 1, 1993)

Section 22.20.020 Findings.
A. There is a shortage of affordable housing, licensable space for child care services and affordable child care and public facilities, adequate employment training and placement services and amenities within the City of Berkeley;
B. Persons who live and/or work in the City have serious difficulty locating housing, child care and public facilities, adequate employment training and placement services and amenities at prices they can afford;
C. Local revenues, as supplemented by federal and state sources, do not provide an adequate source of funding to meet local needs for housing, child care and public facilities, adequate employment training and placement services and amenities;
D. Certain development projects create an influx of new employees and their families to the City, and thus generate additional need for affordable housing, child care and public facilities, adequate employment training and placement services and amenities;
E. Many potential employees are unable to accept moderately-paying jobs because of a lack of childcare facilities or the cost of obtaining adequate child care. This, in turn, results in increased social and economic costs to the City;
F. In addition, such development projects create individual and cumulative impacts, including changes in, and in many cases deterioration of, the visual environment; an increase in noise, air and water pollution levels; new and increased traffic and parking impacts; power, sewer and other utility demand and consumption; loss of valuable open space; and increased demands on parks, schools, libraries, police, fire and public facilities, services and amenities;
G. The increased demand for affordable housing, child care and public services, adequate employment training and placement facilities and amenities, and the other impacts generated by development projects, unless mitigated, are detrimental to the City’s public health, safety and general welfare;
H. The public policy of the City of Berkeley, as reflected by the City’s master plan and housing element, is (1) to make an adequate supply of housing available to all economic segments of the community, (2) to provide adequate municipal services and facilities, and (3) to control the design and operation of development projects to insure their compatibility within adjacent residential areas. (Ord. 6179-NS § 2, 1993)

Section 22.20.030 Purpose.
The purpose of this chapter is to assure that development projects mitigate and/or compensate for the increased demand for affordable housing, child care and public services, adequate employment training and
Section 22.20.040 Definitions.
A. "Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who undertakes, proposes and/or applies to the City for, any development.
B. "Benefits" shall include, but not be limited to, any of the following: increased tax revenues; new local employment opportunities; development of desirable public amenities and/or services; potential attraction of additional commercial development; potential stimulation of commercial activity.
C. "Development project" means any activity involving or requiring the issuance by the City of Berkeley to a person or entity of a use permit, variance, building permit, subdivision approval (including tentative, final and parcel maps), license, certificate or other entitlement of any kind.
D. "Infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.
E. "Mitigate" and "mitigation" means any of the following:
1. Minimizing impacts by limiting the degree or magnitude of a proposed development project;
2. Rectifying the impact by repairing, rehabilitating or restoring the impacted area or environment;
3. Reducing or eliminating the impact over time by ongoing programs, preservation, maintenance and/or other operations;
4. Compensating for the impact by paying a fee and/or providing replacement and/or substitute resources, facilities, services and/or environments. (Ord. 6179-NS § 4, 1993)

Section 22.20.050 Designated implementing authority.
A. The City Manager shall be the designated authority to develop and implement rules and regulations pertaining to this chapter, and shall have the authority to take any actions he or she may deem necessary and/or appropriate to work and/or negotiate with applicants to advance the purposes of this chapter.
B. The Planning Commission, Zoning Adjustments Board and City Council shall have the authority to impose those mitigation and/or fees authorized by this chapter as conditions of discretionary subdivision approvals, use permits and/or variances.
C. The City shall have the authority to impose administratively those mitigations and/or fees required by this chapter as conditions of permits and entitlements which are not subject to discretionary review by the Planning Commission, Zoning Adjustments Board and/or City Council, including administrative use permits, zoning permits and building permits. (Ord. 6179-NS § 5, 1993)

Section 22.20.060 Requirements.
A. The applicant of any development project, for which any permit, variance, approval or entitlement of any kind is required by the City, as a condition of such permit, variance and/or other entitlement, shall provide and/or pay to the City those mitigation and/or fees necessary to eliminate, mitigate and/or reduce to an acceptable level those impacts and/or increased demand for affordable housing, child care and/or public services, adequate employment training and placement facilities and amenities which are anticipated to be generated by and/or attributable to such development project as established by resolution of the City Council or as otherwise imposed administratively by the City, or by the Planning Commission, Zoning Adjustments Board, or City Council.
B. Nothing in this chapter shall be construed as requiring the City to grant any individual permit, variance, approval and/or other entitlement of any kind for which the applicant proposes or agrees to provide mitigation and/or fees under this chapter.
C. The mitigation and/or fees authorized by this chapter are in addition to any otherwise authorized by law. (Ord. 6179-NS § 6, 1993)

Section 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. The "Affordable Housing Fee Nexus Study," dated June 2010 (the "Nexus Study"),
presented to Council supported a maximum fee at $84,400.

10. The 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 the
job-holders would make up, and their household incomes. The City relied on this study to set a fee of $28,000 in
2012.

11. A new Nexus Study, dated March 25, 2015, prepared by Bay Area Economics, 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 Very 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 prior to 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 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 market rate units in the project at rental rates affordable to Low-Income and Very Low-Income Households.

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 market 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:

\[
\frac{[(A-B-C) x Fee] - [(B+C)/(((A-B-C) x 20%)) x ((A-B-C) x Fee)]}{A = Total \ number \ of \ units \ in \ the \ project} \\
B = Number \ of \ Very-Low \ Income \ Units \ provided \ in \ the \ project} \\
C = Number \ of \ Low-Income \ Units \ provided \ in \ the \ project. \\
\]

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

F. 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.

G. 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.
H. 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. (Ord. 7499-NS § 1, 2016: Ord. 7192-NS § 1, 2011)

Section 22.20.070 Exception/limit where applicant establishes inapplicability or unconstitutionality of general requirements.

A. Notwithstanding any other provision of this chapter, the requirements of this chapter shall not apply or shall be limited as follows:

1. No mitigation and/or fees shall be imposed on any applicant or development project where the applicant establishes to the City’s satisfaction that the proposed development project will not generate any additional need for affordable housing, child care and/or public facilities, adequate employment training and placement services or amenities or any other impact for which a mitigation and/or fee is otherwise required;

2. The amount and/or level of any mitigation and/or fee under this chapter shall not exceed the reasonable cost of either satisfying the additional demand for affordable housing, child care and/or public facilities, adequate employment training and placement services or amenities or of eliminating and/or reducing to an acceptable level any other impact which reasonably may be anticipated to be generated by or attributed to any individual development project;
3. The City shall not condition any permit in any manner which results in a deprivation of the applicant's constitutional rights.
   A. The burden of establishing by satisfactory factual proof the applicability and elements of subsections (A)(1), (A)(2) and (A)(3) of this section shall be on the applicant
   C. No exemption or limit shall be granted pursuant to this section unless a finding is made, based on satisfactory factual proof provided by the applicant, that at least one of the requirements set forth in subsection (A)(1), (A)(2) or (A)(3) of this section has been satisfied. (Ord. 6179-NS § 7, 1993)

Section 22.20.080 Exception--Hardship.
A. Notwithstanding any other provision of this chapter, the requirements of this chapter in the discretion of the City may be waived or limited for a particular development project where both of the following findings are made:
1. The imposition of the mitigation and/or fees otherwise required by the City make the development of the particular project infeasible; and
2. The benefits to the City from the particular development project outweigh its burdens in terms of increased demand for affordable housing, child care and/or public facilities, adequate employment training and placement services and/or amenities and/or other impacts which reasonably may be anticipated to be generated by and/or attributable to the development project.
B. The burden of establishing by satisfactory factual proof the applicability and elements contained in subsections (A)(1) and (A)(2) of this section shall be on the applicant. (Ord. 6179-NS § 8, 1993)

Section 22.20.090 Procedure.
A. Upon receipt of any application for a permit, approval and/or other entitlement subject to the provisions of this chapter, the City shall review the application, obtain information and take any other steps it deems necessary to determine whether and to what extent the proposed development project will generate and/or result in impacts which require mitigation pursuant to this chapter. The City shall calculate, according to formulae and rationales to be maintained and provided upon request to the applicant, the amount of mitigation and/or fees required to be provided by the applicant to offset and/or mitigate the impacts of the proposed development project.
B. For those proposed development projects subject to this chapter which do not require original discretionary review by the Planning Commission, Zoning Adjustments Board and/or City Council, the mitigation and/or fees required by this chapter shall be imposed administratively by the City as a condition of the issuance and/or granting of the permit, approval and/or entitlement otherwise required for any such development project. The amount of such mitigation and/or fees to be imposed shall be determined by the City.
C. Where the mitigation and/or fees required pursuant to this chapter are to be imposed administratively by the City, and where the applicant seeks to establish an exception pursuant to Section 22.20.070 or 22.20.080, the City shall have the authority to limit and/or reduce the amount of mitigation and/or fees up to fifty percent of the amount otherwise would be required by the chapter. The amount of mitigation and/or fees to be imposed by the City shall not be limited or reduced below fifty percent of the amount which otherwise would be required by this chapter without the approval of the Zoning Adjustments Board or City Council.
D. Where the mitigation and/or fees required pursuant to this chapter are to be imposed by the Planning Commission, Zoning Adjustments Board and/or City Council, and where the applicant seeks to establish an exception pursuant to Section 22.20.070 or 22.20.080, the Planning Commission, Zoning Adjustments Board and/or City Council shall have the authority either to waive, or, alternatively, to limit and/or reduce, the amount of mitigation and/or fees which otherwise would be required by this chapter.
E. The City shall adopt written findings which explain both the rationale for the imposition of any fee and/or mitigation, including the amount thereof, and any reduction or exception granted including the findings required by Section 22.20.070 or Section 22.20.080. Such findings shall be provided to the applicant at the time the permit or entitlement is issued. (Ord. 6179-NS § 9, 1993)

Section 22.20.100 Appeal.
A. The applicant or any development project aggrieved by any administrative decision of the City in imposing any mitigation and/or fee pursuant to this chapter may appeal such decision to the Zoning Adjustments Board in the same manner as provided in Section 20.4 of the City's zoning ordinance (No. 3018-N.S.).
B. The applicant of any development project aggrieved by any decision made by the Planning Commission or Zoning Adjustments Board pursuant to this chapter may appeal such decision to the City Council pursuant to the appeal procedure, if any, governing appeal of decisions made concerning the underlying entitlement such as the use permit or subdivision map. (Ord. 6179-NS § 10, 1993)

Section 22.20.110 Mitigation rationale.
The City Manager shall establish, maintain on file and use standard formulae, rationales and calculations by which the amount of mitigation and/or fees required to offset or reduce certain impacts may be determined. Such formulae and calculations shall be provided to any person upon request. (Ord. 6179-NS § 11, 1993)