

Citywide Affordable Housing Requirements Update



City Council

January 17, 2023

Relevant Council Referrals

- Conduct an Analysis of Increasing Inclusionary Housing vs. Affordable Housing Mitigation Fee (9/10/19)
- Consider Reforming the Affordable Housing Mitigation Fee (4/23/19)
- Affordable Housing Mitigation Fee Resolution to Close a Loophole through Property Line Manipulation (2/19/19)
- Rectify Discrepancy Regarding Inclusionary Units in Live/Work Housing (9/13/2018)
- Encourage Long Term Tenant Stability (11/27/18)
- Pilot Density Bonus Program for Telegraph District (5/30/17)

Goals of the Update

Achieve policy outcomes referred by City Council

Respond to changes in State law

Standardize and simplify regulations

Increase transparency, ease of compliance, administration and oversight



Hope Center & Berkeley Way Apartments; image courtesy BRIDGE Housing

Relevant Sections of the Berkeley Municipal Code (BMC)

- BMC 23.328: Inclusionary Housing
- BMC 22.20: Mitigations and Fees—Conditions of Approval for Development Projects
- BMC 23.312: Live/Work
- BMC 23.326: Demolition and Dwelling Unit Controls
- BMC 21.28: Condominiums and Other Common Interest Subdivisions
- BMC 13.76: Rent Stabilization and Eviction for Good Cause

Process to Date

Date	Actions
Fall 2020	<ul style="list-style-type: none">• Research, focus groups and stakeholder interviews on a range of policy issues
2021	<ul style="list-style-type: none">• Memo analyzing potential changes based on City Council referrals and public feedback• Informational presentations and discussion at Planning Commission and City Council• Analysis of operational opportunities and challenges
2022	<ul style="list-style-type: none">• Drafting and iteration of ordinance and resolutions• Review and recommendations by the Planning Commission and Housing Advisory Commission

Proposed Changes

1. Consolidate Affordable Housing Requirements
2. Establish a Per-Square-Foot In-Lieu Fee
3. Incentivize Units Serving Extremely Low-Income (30% of AMI) Households
4. Standardize Ownership and Rental Fees
5. Standardize Live-Work Requirements
6. Provide Land Dedication Option
7. Provide Family-Sized Units Option
8. Remove Exemption for Most Group Living Accommodation (GLA) Projects
9. Eliminate Exemption for Small Projects/Provide Tiered Fees
10. Cap Annual Rate of Rent Increases
11. Make Administrative Changes

1. Consolidate Affordable Housing Requirements

CURRENT

- Rules related to affordable housing requirements in multiple places in the BMC

PROPOSED

- Consolidate requirements into the BMC Chapter 23.328
- Re-establishes inclusionary requirement and allows in-lieu fee and other options
- Applicable to rental, ownership and Live/Work Projects
- No change to existing inclusionary requirement: at least 20% of units are Affordable Units

2. Establish a Per-Square-Foot In-lieu Fee

CURRENT

- For rental projects, Applicants are required to pay a mitigation fee that is assessed on a “per unit” basis.

PROPOSED

- Applicants are required to provide on-site Affordable Units or they can pay In-Lieu Fee of \$45 per square-foot of residential Gross Floor Area.
- All In-Lieu Fees are collected prior to Certificate of Occupancy.
- Staff will be initiating a new feasibility study this year to establish whether adjustments should be made to fee level or cost structure.

3. Incentivize Extremely Low-Income Units (30% of Area Median Income)

CURRENT

- 80% of the required VLI (Very Low Income) units must be offered first to voucher holders (40% to Housing Choice voucher holder and 40% to Shelter+Care voucher holders).

PROPOSED

- Require ALL of the required VLI units be offered to voucher holders before being marketed to other income eligible households (50% to Housing Choice voucher holders and 50% to Shelter+Care voucher holders).

4. Standardize Ownership and Rental Fees

CURRENT

- For ownership projects, the in-lieu fee is 62.5% of the difference between the market price and the affordable price for each inclusionary unit.

PROPOSED

- Apply the same \$45 per square foot fee to rental and ownership projects.
- Continue existing rules to require different income targeting for ownership units (80% of Area Median Income).

5. Standardize Live/Work Requirements

CURRENT

- Live/Work projects are exempt from current inclusionary and AHMF requirements (BMC 23.328 and 22.20).
- Instead, 20% of Live/Work units are required to be affordable to Low-Income residents (80% AMI) with no alternative compliance options (Live/Work Ordinance, BMC 23.312).

PROPOSED

- Apply same inclusionary requirements as other residential units.
- Preserve existing rule requiring proactive marketing to income-eligible trade workers.

6. Provide Land Dedication Option

CURRENT

- To comply with the affordable housing requirements, developers must pay a mitigation fee or provide on-site units. There are no other alternative options.

PROPOSED

- The proposed ordinance includes a land dedication option which authorizes the City Manager to approve the donation of land to the City or a non-profit housing developer.
- The land must meet specified criteria to ensure it is suitable for affordable housing and not a burden to the City.

7. Provide Family-Sized Units Option

CURRENT

- Recent trends for market-rate projects have yielded increasingly smaller unit sizes, resulting in fewer BMR units of 2 or 3 bedrooms (“family-sized units”).

PROPOSED

- Applicants may propose an alternative mix of Affordable Unit types whose total size is at least 20% of the applicable Gross Floor Area, in order to achieve a mix of Affordable Units that includes 2-BR or 3-BR units.
- Review and approval of proposals would be at the discretion of City Manager or designee.

8. Remove Exemption for Most Group Living Accommodation (GLA) Projects

CURRENT

- GLA projects are currently exempt from inclusionary and fee requirements.

PROPOSED

- Most GLAs would be subject to inclusionary and fee requirements (except for fraternities, sororities and other specially designated units recognized by the University of California).
- Units that have more than 3 bedrooms do not qualify as Affordable Units.

9. Eliminate Exemption for Small Projects/ Tiered Fee

CURRENT

- Projects fewer than 5 units are exempt from fees and inclusionary requirements.

PROPOSED

- Eliminate exemption for small projects.
- Introduce tiered fee for projects less than 12,000 SF that reduces fee by \$2 per SF for each 1,000 SF.

Applicable Floor Area (Square Feet)	Fee per Square Foot, Gross Floor Area (Residential)
12,000+	\$45
11,000-11,999	\$43
10,000-10,999	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

10. Cap Annual Rate of Rent Increases

CURRENT

- Current rules tie rents to changes in the Area Median Income (AMI).

PROPOSED

- Limit annual rent increases for occupied Affordable Units to no greater than 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the 12-month period ending the previous December 31 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.

11. Make Administrative Changes

PROPOSED

- Refine definition of Affordable Housing Compliance Plan (submitted to Zoning Officer at time of application)
- Authorize administrative penalties
- Require deduction of mandatory fees and utility allowances from gross rent to determine maximum allowable rent for Affordable Units
- Increase set-aside amount of In-Lieu Fees from 10% to 15% that may be used to administer In-Lieu Fee or Housing Trust Fund Program.

Effective Date / Applicability of Changes

Effective April 1, 2023

- Projects with a building permit or complete land use application submitted prior to the effective date are subject to current rules.

Staff Recommendation

Conduct a public hearing and upon conclusion:

1. Adopt first reading of an Ordinance to amend the Berkeley Municipal Code Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance and repealing existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6) to become effective on April 1, 2023.
2. Adopt a Resolution establishing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2) upon the effective date of contemporaneously adopted amendments to BMC Section 23.328, and rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs upon the effective date of contemporaneously adopted amendments to BMC Section 23.328.

Q&A and Discussion