



Kate Harrison  
Councilmember, District 4

## REVISED AGENDA MATERIAL for Supplemental #1

**Meeting Date:** February 14, 2023

**Item Number:** 13b

**Item Description:** Citywide Affordable Housing Requirements

**Submitted by:** Councilmember Harrison

### RECOMMENDATION:

1. Revise the Ordinance in Item 13a to replace the proposed exemption for fewer than five units with an exemption for projects with less than 3,000 square feet of Residential Unit Floor Area.
2. Revise the Resolution in Item 13a to:
  - a. strike the staff-recommended in-lieu fee discount applied to projects of 12,000 or fewer residential square feet and include an analysis in the upcoming feasibility study of whether and at what size (based on residential square footage) projects should receive a discount in the level of affordable housing mitigation fees;
  - b. apply the standard \$56.25 per square foot fee on projects of between 3,000 and 12,000 residential square feet; and
  - c. utilize square footage instead of unit numbers in studying likely impacts on smaller projects of 3,000 square feet or less (equivalent to four to five units), in the upcoming feasibility study of the feasibility of applying in-lieu fees to smaller projects.

### CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

Several referrals to alter or clarify the structure and amount of affordable housing fees were addressed in the ordinance and resolution heard by Council on January 17, 2023. The goals of many of these referrals were met with the passage of the first reading of the legislation. Among them were primarily applying affordable housing fees on a square foot rather than per unit basis; providing consistency in the application of affordable housing fees for ownership, rental and live-work units; incentivizing family-sized units; providing new options by which requirements can

be met (such as land dedications); and various administrative changes. The Planning and Housing Advisory Commissions also added measures to incentivize extremely low-income units and cap annual rent increases.

The referral to change the basis on which fees are applied from units to square footage was intended to remove an incentive to build large, multi-bedroom units with shared facilities and label them a single unit for purpose of avoiding the affordable housing in-lieu fee (an exception to which applied to projects with four or fewer units, regardless of square footage). It was also intended to address concerns about the potential for developers to segment their projects into smaller projects of four units or fewer and avoid paying affordable housing fees altogether.

The former per unit fee in place in 2020 was converted to a square foot basis (\$45 per residential square foot) and applied to larger projects. The 2020 fee structure already represents a discount from what would have been the figure of \$56.25 per square foot had the conversion been made from the current per unit fee. Staff explained that the lower 2020 fee was used as that was the fee in place at the time that Street Level Advisors began its work and was found to be entirely feasible, although the \$56.25 per square foot figure would, according to Mr. Jacobus have also been within the range of feasibility, albeit at the outer limit.

To encourage the provision of common space, the square footage fee would continue to apply to residential space only.

Resolution No. 70,668–N.S. also applied a threshold of 12,000 square feet (roughly equivalent to 17 units at an average unit size of 700 square feet) to start a phased reduction in fees. At the hearing, staff and consultants confirmed that this figure was selected without a specific analysis and without evidence that these projects are not being proposed under the current fee levels. The further discount in Resolution No. 70,668–N.S. represents an unacceptable reduction in fees with real consequences for Berkeley’s affordable housing policy and objectives. Because of these factors, this item incorporates an amended resolution reversing the further fee reduction for projects under 12,000 square feet until a feasibility study is completed.

At the same time, Council approved a supplemental amending Ordinance No. 7,853–N.S. such that projects of fewer than five units are exempt from any fees ahead of a planned feasibility study until at April 2025. To be consistent with the approach to fees for larger buildings, the feasibility study should be conducted using the same per square foot methodology. As this study is already planned, the revised Ordinance strikes the exemption expiration and the attached Resolution asks that the study also consider the range of appropriate fees for projects of up to 12,000 square residential feet.

In addition, in their first reading, both the ordinance and resolution continue to state the standard in terms of number of units for which the fee was null until completion of the study; this left intact the earlier issue of incentivizing large, multi-bedroom units with shared facilities and label them a single unit for purpose of avoiding the affordable housing in-lieu fee.

This recommendation amends the Ordinance and Resolution to:

- retain the exception to fees for the smallest projects until a study can be done and changes the basis to square footage of under 3,000 square feet from the recommended fewer than five units, in order to remove unintended incentives which the original referrals were intended to address;
- eliminate the further discounting of fees for projects between 3,000 and 12,000 residential square feet pending consideration of the necessity for this discount in the upcoming feasibility study.

As discussed in the staff analysis that accompanied the January 17 item:

“The Bay Area suffers from a shortage of affordable housing. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise, which leads to displacement of low-income residents and exacerbates the shelter ...”

The fees paid in lieu of building onsite units are used to construct affordable housing, the cost of which is rising along with that of market-rate housing. Discounting the fees at a given size level without having studied the need to do so denies the City and its non-profit partners funds needed to construct increasingly needed and increasingly expensive affordable housing. This shortfall is further exacerbated by the delay between when in-lieu fees are paid and when affordable housing is actually constructed, during which time construction costs continue to rise.

The Council should insist on an evidence-based analysis from which to make policy determinations that will have a significant impact on the future of Berkeley’s housing landscape.

#### ATTACHMENTS

1. Revised Ordinance
2. Revised Resolution

ORDINANCE NO. -N.S.

AFFORDABLE HOUSING REQUIREMENTS; AMENDING BERKELEY MUNICIPAL  
CODE TITLES 22 AND 23

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

Section 1. That Berkeley Municipal Code Section 22.20.065, and Section 23.312.040(A)(6) are hereby repealed.

Section 2. That Berkeley Municipal Code Chapter 23.328 is repealed and re-enacted to read as follows:

**23.328.010 Findings and Purpose.**

A. 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 “fair share” allocated to Berkeley increased significantly based on the regional housing needs determination finalized in late 2021. The sixth cycle of the RHNA for the San Francisco Bay Area allocates to Berkeley a “fair share” that calls for adequate sites for 8,934 housing units for the period from 2023 to 2031, including sites for 2,446 Very Low Income units, 1,408 Low Income units, and 1,416 Moderate Income units.

B. The Bay Area suffers from a shortage of affordable housing. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise, which leads to displacement of low income residents and exacerbates the shelter crisis that has led to unacceptably high rates of homelessness in the City of Berkeley and the Bay Area region.

C. In 1990, the City established the Housing Trust Fund program to pool available funding for affordable housing development. The Housing Trust Fund program is funded

by federal, state, and local revenues, including by in-lieu and mitigation fees paid by developers of market-rate housing projects under the City's existing affordable housing ordinances.

D. The City Council hereby finds that there is a legitimate public interest in the provision of affordable housing to address the crises of displacement, homelessness, and lack of housing affordability in the City, and that there is a significant and increasing need for affordable housing in the City to meet the City's regional share of housing needs under the California Housing Element Law.

E. The City Council further finds that the public interest would best be served if new affordable housing were integrated into new market-rate residential developments to facilitate economically diverse housing, while also providing alternative options to the on-site construction of affordable housing such as the payment of fees to replenish the City's Housing Trust Fund program and allowing for the construction of affordable housing on land dedicated by market-rate housing developers.

F. The City Council intends that this Ordinance be construed as an amendment to the City's existing affordability requirements, and that the repeal and re-enactment of any requirement shall not be construed to relieve a party of any outstanding obligation to comply with the requirements applicable to any previously approved Housing Development Project.

### **23.328.020 Definitions.**

A. "Affordable Unit" means a Residential Unit that is in perpetuity affordable to Very Low Income Households or Lower-Income Households, as defined in California Health and Safety Code sections 50052.5 and 50053.

B. "Affordable Housing Compliance Plan" means an enforceable commitment by an Applicant to comply with the requirements of this Chapter that identifies the number and type of Affordable Units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the Applicant to comply with those requirements.

C. "AMI" means the area median income applicable to the City of Berkeley, as defined by the U.S. Department of Housing and Urban Development, or its successor provision, or as established by the City of Berkeley in the event that such median income figures are no longer published by the U.S. Department of Housing and Urban Development.

D. "Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who applies to the City for any Housing Development Project.

E. "Housing Development Project" means a development project, including a Mixed-Use Residential project (as defined in 23.502.020(M)(13), involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects.

F. "Housing Trust Fund" means the program to finance low and moderate-income housing established by Resolution No. 55,504-N.S., or any successor fund established for the same purpose.

G. "Lower-Income Household" means a household whose income does not exceed the low-income limits applicable to Alameda County, as defined in California Health and Safety Code section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

H. "Residential Unit Floor Area" means, for the purpose of this Chapter, the floor area of the Residential Unit(s) of a Housing Development Project.

1. Residential Unit Floor Area shall be measured from the interior of the walls of each unit. The Residential Unit Floor Area shall exclude areas that are not habitable residential square footage such as:
  - a. Balconies, whether private or open to all residents
  - b. Storage lockers not located within residential units

- c. Vehicular (e.g., automobile or motorcycle) and bicycle parking areas that are separate areas from the residential unit
  - d. Other qualifying areas that are not associated with residential units, upon approval of the Zoning Officer.
2. For Residential Units consisting of Group Living Accommodations, Residential Unit Floor Area shall also include common rooms/lounges and supporting facilities such as kitchens and restrooms.

I. "Regulatory Agreement and Declaration of Restrictive Covenants" means, for the purposes of this Chapter, a legally binding agreement recorded against the property to codify the requirements and conditions of a Housing Development Project providing Affordable Units.

J. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live/Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, "Residential Unit" shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

K. "Very Low Income Household" means a household whose income is no more than 50% of AMI, as defined in California Health and Safety Code section 50105.

### **23.328.030 Affordable Housing Requirements.**

#### **A. Requirement to Construct Affordable Units**

1. Except as otherwise provided in this Chapter, no permit for the construction of any Housing Development Project shall be issued unless at least 20% of the Residential Units are Affordable Units. When the calculation results in a fractional unit, an Applicant will round up to the nearest whole unit. The Affordable Units shall have the same proportion of unit types (i.e., number of bedrooms) and average size as the market rate units (provided, however, that no Affordable Unit may have more than three bedrooms).

2. In lieu of providing Affordable Units pursuant to Paragraph 1, an Applicant

may propose an alternative mix of unit-types to comply with this Chapter by providing Affordable Units that comprise at least 20% of the Residential Unit Floor Area of the Housing Development Project in order to achieve a mix of Affordable Units including two-bedroom or three-bedroom units. The City Manager or their designee may approve the proposed alternative mix of unit-types that meet the requirements of this section.

3. Affordable Units shall be (a) reasonably dispersed throughout the Housing Development Project; and (b) comparable to other Residential Units in the Housing Development Project in terms of appearance, materials, and finish quality. Residents of Affordable Units shall have access to the same common areas and amenities that are available to residents of other Residential Units in the Housing Development Project.

4. The City Manager or their designee shall adopt rules and regulations (a) establishing the affordable sales price or affordable rent for each Affordable Unit, consistent with the requirements of Health and Safety Code sections 50052.5 and 50053; and (b) ensuring that Affordable Units are sold or rented to Very Low Income and Lower Income Households, consistent with the requirements of this Chapter.

5. Rental Units.

a. At least 50% of the required Affordable Units in the Housing Development Project shall be offered at a rent that is affordable to Very Low Income Households, up to a maximum requirement of 10% of the total units in the Housing Development Project if the project provides more Affordable Units than are otherwise required by this Chapter.

b. In determining whether a unit is affordable to Very Low Income or Low Income Households, maximum allowable rent for any affordable unit shall be reduced by an amount equal to the value of the City-published utility allowance provided for Tenant-paid utilities and any other mandatory fee imposed by the property owner as a condition of tenancy.



- c. Any percentage increase in rent of an occupied Affordable Unit shall not exceed the lesser of 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 31, or 65% of the percentage increase in AMI for the same calendar year. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%).
  - d. Affordable Units designated for Very Low Income Households shall be offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or any similar state or federally funded rent subsidy program prior to being offered to other potential tenants. The Council may establish related program requirements by resolution.
  - e. The owner of any Affordable Unit offered for rent must report to the City annually the occupancy and rents charged for each Affordable Unit, and any other information required pursuant to rules and regulations adopted by the City Manager or their designee.
6. Ownership Units. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the AMI.
7. All Affordable Units shall be subject to a recorded affordability restriction requiring in perpetuity that each Affordable Unit be sold at an affordable sales price or offered for rent at an affordable rent, as defined in this Chapter.
8. Affordable Live/Work Units shall be proactively marketed by the Applicant and/or owner to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.
9. An Affordable Unit that is constructed to qualify for a density bonus under

Government Code section 65915 that otherwise meets the requirements of this Chapter shall qualify as an Affordable Unit under this Chapter.

B. Option to Pay In-Lieu Fee

1. In lieu of providing some or all of the Affordable Units required under this Chapter (including any fractional units), an Applicant may elect to pay a fee, the amount of which the City Council may establish by resolution (“In-Lieu Fee”). The City Council may by resolution differentiate among types, classes, and locations of Housing Development Projects to the extent permitted by law; may establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and may establish the method for calculation of the In-Lieu Fee.

2. In-Lieu Fees shall be applied to the Residential Unit Floor Area of a Housing Development Project. For Live/Work units, the In-Lieu Fee shall be applied to the Residential Unit Floor Area that is designated as non-workspace in the zoning permit approvals consistent with BMC section 23.312.040.

3. In-Lieu Fees shall be estimated as part of the preliminary Affordable Housing Compliance Plan and finalized at the time of building permit issuance, consistent with the final Affordable Housing Compliance Plan.

4. In-Lieu Fees shall be paid prior to the issuance of the first Certificate of Occupancy, or if no Certificate of Occupancy is required, prior to the initial occupancy of the Housing Development Project.

5. Up to 15% of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program. At least 85% of In-Lieu Fees collected shall be deposited into the City’s Housing Trust Fund program.

C. Option to Dedicate Land

1. At the discretion of the City Manager or their designee, the requirements of this Chapter may be satisfied by the dedication of land in lieu

of constructing Affordable Units within the Housing Development Project if the City Manager or their designee determines that all of the following criteria have been met:

- a. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to issuance of building permit of the Housing Development Project pursuant to an agreement between the Applicant and the City.
- b. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of Affordable Units that would otherwise be required under Paragraph A.
- c. The site is suitable for development of the Affordable Units, taking into consideration its configuration, physical characteristics, location, access, adjacent uses, and applicable development standards and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
- d. Infrastructure to serve the dedicated site, including, but not limited to, streets and public utilities, are available at the property line and have adequate capacity to serve the maximum allowable residential density permitted under zoning regulations.
- e. The site has been evaluated for the presence of hazardous materials and for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
- f. The value of the site upon the date of dedication is equal to or greater than the in-lieu fee that would otherwise be required under Paragraph A. The value of the site shall be determined pursuant to the program guidelines approved by the City Manager or their

designee.

2. The City shall solicit proposals from affordable housing developers to construct restricted income units on the site dedicated to the City, but if the City is unable to obtain a qualified affordable housing developer to construct a viable affordable housing development on the property within two years of its solicitation or to commence construction within five years, the City may sell, transfer, lease, or otherwise dispose of the dedicated site for any purpose. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

#### **23.328.040 Waiver or Modification of Affordable Housing Requirements.**

A. The City Manager or their designee may waive or modify up to fifty percent of the requirements of this Chapter at their sole discretion where any of the following conditions are established:

1. A project providing low- or moderate-income housing is funded in whole or in part by the City's Housing Trust Fund program;
2. The implementation of the requirements of this Chapter would violate the rights of any person under the California or United States Constitutions, any federal law, or any state law governing a matter of statewide concern and applicable to a charter city; or
3. The benefits of the project to the City outweigh the detriment of foregoing the provision of Affordable Housing or the contribution of In-Lieu fees to the Housing Trust Fund program. In weighing the benefits and detriment to the City, the following factors may be considered:
  - a. The impact of the requirements of this Chapter on the feasibility of a Housing Development Project;
  - b. Other economically beneficial uses of the Applicant's property;

- c. The burdens the Housing Development Project places on the City in terms of increased demand for affordable housing, childcare, public facilities or amenities, or other impacts which reasonably may be anticipated to be generated by or attributable to the Housing Development Project; and
- d. The impact on the Housing Trust Fund program of foregoing the payment of any In-Lieu fee that would otherwise be made.

B. Waivers or modifications greater than fifty percent of the amount which otherwise would be required by this Chapter shall be subject to the approval of City Council.

C. The Applicant shall bear the burden of proof to establish eligibility for a waiver or modification of the requirements of this Chapter.

**23.328.050 Implementation.**

A. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit a preliminary Affordable Housing Compliance Plan to the Zoning Officer at the time of application. The preliminary Affordable Housing Compliance Plan shall be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. No building permit may be issued for the project until the final Affordable Housing Compliance Plan is approved.

B. The Applicant must execute a Regulatory Agreement and Declaration of Restrictive Covenants to regulate all Affordable Units provided in a Housing Development Project. No building permit may be issued for the project until the Regulatory Agreement and Declaration of Restrictive Covenants are executed.

C. The Affordable Housing Compliance Plan and/or Regulatory Agreement and Declaration of Restrictive Covenants may be amended administratively, provided that the Zoning Officer finds them to be in full compliance with the provisions of this ordinance and State law, prior to issuance of Certificate of Occupancy.

- D. The City Manager or their designee may promulgate additional rules and regulations consistent with the requirements of this Chapter.
- E. The City Council may by resolution establish fees for the implementation and administration of this Chapter and may establish administrative penalties for violations of this Chapter.
- F. Exemptions. The following types of Housing Development Projects and Residential Units are exempt from this Chapter:
1. A Housing Development Project for which either a building permit was issued on or before April 1, 2023 or a preliminary application including all of the information required by subdivision (a) of California Government Code section 65941.1 was submitted on or before April 1, 2023 shall be subject to this Chapter's requirements that were in place as of the preliminary application's submittal date but shall otherwise be exempt from this Chapter. This exemption shall expire upon the occurrence of any of the circumstances defined in paragraphs (2), (6), or (7) of subdivision (o) of California Government Code section 65589.5 or in subdivision (d) of California Government Code section 65941.
  2. A Housing Development Project with ~~fewer than five~~ 3,000 square feet or less of Residential Unit Floor Area ~~Residential Units~~, unless it is part of a larger Housing Development Project. ~~This exemption shall expire on April 1, 2025.~~
  3. A Residential Unit that replaces a unit existing as of April 1, 2023 that has been destroyed by fire, earthquake or other disaster, or that was previously subject to a mitigation fee or inclusionary housing requirement.
  4. A Residential Unit existing as of April 1, 2023 that is expanded, renovated, or rehabilitated.

Section 3. The Berkeley Municipal Code Section 23.330.070 is hereby amended to read as follows:

**23.330.070 Qualifying Units.**

Qualifying units must meet the standards set forth in Chapter 23.328 (Affordable Housing Requirements).

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. \_\_\_\_\_

ADOPTING REGULATIONS FOR VOUCHER PROGRAM AND ESTABLISHING AN IN-LIEU FEE TO SUPPORT THE PROVISION OF AFFORDABLE HOUSING PURSUANT TO BERKELEY MUNICIPAL CODE CHAPTER 23.328 AND RESCINDING RESOLUTION 70,668-N.S N.S.

WHEREAS, Berkeley Municipal Code (“BMC”) Chapter 23.328 establishes a requirement that 20% of Residential Units (as defined) in market-rate developments be offered for rent or sale at affordable rents or prices, as defined (“Affordable Units”); and

WHEREAS, BMC Chapter 23.328 authorizes the City Council to establish by resolution preferences for renting Affordable Units offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or similar state or federally funded rent subsidy programs; and

WHEREAS, BMC Chapter 23.328 authorizes developers of market-rate housing to pay a fee in lieu of complying with the requirement to provide on-site affordable housing (“In-Lieu Fee”); and

WHEREAS, BMC Chapter 23.328 authorizes the City Council to establish the In-Lieu Fee by resolution, and further authorizes the Council to differentiate among types, classes, and locations of Housing Development Projects to the extent permitted by law; to establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and to establish the method for calculating the In-Lieu Fee; and

WHEREAS, the City retained Street Level Advisors to provide analysis and recommendations for updating the City’s affordable housing requirements, the scope of which included a financial feasibility study of the City’s affordable housing mitigation fees; and

WHEREAS, Street Level Advisors prepared a Financial Feasibility Analysis dated April 27, 2021, which determined that an In-Lieu Fee of \$45 per square foot of the residential Gross Floor Area (as defined in BMC Section 23.106.030) would be financially feasible; and

WHEREAS, Street Level Advisors recommended certain modifications to the fee that would not adversely impact the financial feasibility of housing development projects, such as charging a lower / tiered fee for smaller projects; and

WHEREAS Street Level advisors identified an equivalent rate if the In-Lieu fee were to be calculated based on an assumed 80/20 ratio of gross and net square feet of



residential area in typical housing development projects of \$56.25 per square foot of Residential Unit Floor Area.

WHEREAS, this Resolution supersedes Resolution No. 70,668-N.S.

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

1. All Affordable Units shall be offered to tenants in accordance with Council-adopted eligibility preference criteria. All Very Low-Income Units, comprising a portion of the Affordable Units authorized and provided for by BMC Chapter 23.328, must be offered to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*) before being marketed to other income-eligible households. The allocations shall be divided equally between the Section 8 Program (50%) and the Shelter Plus Care Program (50%). The majority of the Very Low-Income units shall be designated for the Shelter Plus Care Program when there is an uneven number of units.
2. The initial In-Lieu Fee authorized and provided for by BMC Chapter 23.328 shall be \$56.25 per square foot of the Residential Unit Floor Area) of a Housing Development Project (as defined in BMC Chapter 23.328) and shall be automatically increased biennially based on changes to the California Construction Cost Index unless otherwise provided for by BMC Chapter 23.328 or by this Resolution.
3. Housing Development Projects subject to BMC Chapter 23.328 may provide less than the required number of Affordable Units in the Housing Development Project and pay a proportionately reduced In-Lieu Fee, calculated as follows: the fee per square foot multiplied by the total Residential Unit Floor Area of a Housing Development Project, multiplied by the percentage of the applicable requirement remaining after accounting for any on-site Affordable Units provided. Projects that provide no on-site Affordable Units will have an applicable requirement multiplier of one.
4. Continue to delay the applicability to smaller projects but utilize square footage instead of unit numbers in studying likely impacts. 3,000 square feet of Residential Unit Floor Area is roughly equivalent to four residential units. ~~For Housing Development Projects of less than 12,000 square feet of Residential Unit Floor Area, the In-Lieu Fee shall be calculated as follows:~~

Residential Unit Floor Area	Fee per Square Foot
$\geq 12,000$	\$56.25
11,000-11,999	\$53.75
10,000-10,999	\$51.25
9,000-9,999	\$48.75
8,000-8,999	\$46.25

<del>7,000-7,999</del>	<del>\$43.75</del>
<del>6,000-6,999</del>	<del>\$41.25</del>
<del>5,000-5,999</del>	<del>\$38.75</del>
<del>4,000-4,999</del>	<del>\$36.25</del>
<del>3,000-3,999</del>	<del>\$33.75</del>
<del>2,000-2,999</del>	<del>\$31.25</del>
<del>1,000-1,999</del>	<del>\$28.75</del>
<del>&lt;1,000</del>	<del>\$26.25</del>

BE IT FURTHER RESOLVED, Resolution No. 68,074-N.S. is hereby rescinded and is of no force or effect on any Housing Development Project that obtains a building permit after the effective date of this resolution, but shall continue to apply to those projects that were approved and subject to its provisions or the provisions of predecessor resolutions and ordinances addressing the same subject matter.

BE IT FURTHER RESOLVED, the rescission of Resolution No. 70,668-N.S and this Resolution shall be effective upon the effective date of contemporaneously adopted amendments to BMC Chapter 23.328.

