

Kate Harrison
Councilmember District 4

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COUNCIL MEETING OF:

FEB 19 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: February 19th, 2019

Item Number: 21

Item Description: Refer to Planning Commission an Amendment to BMC 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

Supplemental/Revision Submitted By: Councilmember Harrison

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

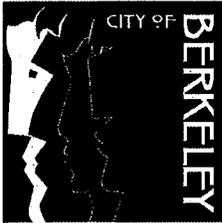
These changes refine those edits made in Supplemental 2 by clarifying that the Planning Commission should suggest modifications to the structure of the in-lieu developer fee, and adds a contingency plan in the case that the structure is modified before the fee level is set. The edits made in Supplemental 2 refer to two different commissions on different time frames, leaving the possibility of confusion and vagueness. The changes made in Supplemental 3 clarify these issues.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
February 19th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kate Harrison, Rigel Robinson, and Sophie Hahn

Subject: Refer on a Short Term Basis to the Planning Commission Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation and to Consider Modifying the In Lieu Fee Structure for Owner Occupied Units; Refer to the Housing Advisory Commission to Assess the Rate of a Fixed Per-Unit Fee for Owner-Occupied Developments.

RECOMMENDATION

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for ~~owner-occupied~~ projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by March 31st, 2019.
2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments; the Commission should return to Council with a report by March 31st, 2019.
3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.

BACKGROUND

A key strategy in Berkeley's effort to develop affordable housing requires that new housing construction include a portion of below market rate units, or be assessed an in-lieu affording housing fee. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirements section covers owner-occupied housing, while the AHMF Ordinance covers rentaled housing. The AHMF Ordinance for rental housing also provides for the Council to enact an enabling resolution to set the level of the fee and "additional limitations" on the application of the fee.

Under the AHMF, rental housing development is assessed a fixed, per-unit fee, currently \$37,000. Meanwhile, owner occupied housing (such as condominiums) are not assessed fees at a fixed rate. If a developer opts to pay the in-lieu fee rather than provide inclusionary affordable housing units, the fee is calculated as 62.5% of the difference between the actual final sales price of a unit and the price the unit would have been sold for had it been provided as inclusionary affordable housing. This complicated formula provides a high degree of uncertainty to developers.

In San Francisco, both rental and owner-occupied developments are assessed a fixed fee, and the in-lieu fee is higher for owner-occupied developments than for rentals in an effort to encourage rental housing.

This referral requests that the Planning Commission propose a fixed per-unit in-lieu fee that is higher than rental units, encouraging the development of needed rental units in Berkeley without unduly burdening the development of owner-occupied units.

The Inclusionary Housing Requirements section mandates inclusionary affordable housing in owner-occupied projects if they either 1) result in the construction of five or more new dwelling units, 2) result in the construction of fewer than five new units if they are added to an existing one- to four-unit property developed after August 14, 1986, and increase the total number of units to more than five, or 3) are built on lots whose size and zoning designation would allow construction of five or more dwelling units. Developers have exploited the ability to modify lot lines on contiguous properties they own so that no lot is big enough to include five or more units, thus avoiding any affordability requirement under condition 3.

The AHMF Enabling Resolution, meanwhile, covers only those projects that result in the construction of 5 or more new units of rental housing, regardless of whether the lot could fit more units or if the project is adding units to an existing building.

This item:

- Amends the Inclusionary Housing Requirements section to cover owner-occupied projects built on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units, regardless of how the property is divided.
- Asks the Planning Commission to amend the Inclusionary Housing Requirements to set a fixed per-unit in lieu fee, rather than the previous calculation of 62.5% of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

- Amends the AHMF Enabling Resolution for rental housing to mirror the provisions of the Inclusionary Housing Requirements section regarding projects that add units to existing projects or are on property that could accommodate more than five units, including the amended language discussed above.

These changes regarding lot line manipulations should be referred to the Planning Commission on a short term basis, with a return deadline of March 31st, 2019. Further, the new fee level should be referred to the Housing Advisory Commission so that they may assess the appropriateness of the fee level. It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.

FISCAL IMPACTS OF RECOMMENDATION

May increase revenues to the Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

CONTACT PERSON

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Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Track Changes from Resolution No. 68,074-N.S