

Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL

Meeting Date: July 25, 2017

Item Number: 47

Item Description: Expedited Review for Affordable Housing Projects

Submitted by: Councilmember Sophie Hahn

Changes recommendation to be first reading of an ordinance, clarifies details in background section, and includes draft ordinance amending BMC 19.62

SOPHIE HAHN

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Item 47
Supplemental 2

CONSENT CALENDAR

July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmembers Sophie Hahn, Cheryl Davila, Ben Bartlett, and
Kate Harrison
Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code Chapter 19.62, to automatically confer priority status and provide expedited review to affordable housing projects that receive City of Berkeley Housing Trust Fund monies.

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley. Alleviating this crisis is one of Berkeley's top priorities, and all possible steps must be taken to support increases in Berkeley's affordable housing stock.

Obtaining approvals, permits and inspections related to development is a complex process involving a number of City departments. Delays can occur at any point in the process, especially when departments are processing multiple projects simultaneously. The proposed amendment automatically confers priority status and expedited processing on key affordable housing projects, ensuring that at each step of approval, permitting, inspection, and other administrative processes, across all City departments, these projects will be placed at the front of the queue.

According to the City of Berkeley's Housing Trust Fund Guidelines, housing projects that receive funds from Berkeley's Housing Trust Fund must have a minimum of 60% of all units at rates affordable to extremely low or very low income households. In practice, projects receiving these funds are likely to be 100% affordable. These projects provide significant affordable housing for the City and are aligned with Berkeley's top priorities. As such, Housing Trust Fund projects should receive priority status and review to move quickly through all permit, inspection, and other City of Berkeley administrative processes.

BMC Chapter 19.62 (Priority Permit Processing for Housing for Low and Moderate Income Persons) grants the City Manager the authority to expedite or prioritize processing of permits for housing projects with at least 25% of units at low and/or moderate incomes (19.62.030). The proposed amendment makes prioritized and expedited processing automatic for projects receiving City of Berkeley Housing Trust Funds, providing certainty for developers of affordable housing projects and reducing the time required for project approval and completion.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley's environmental sustainability goals.

CONTACT PERSON

Councilmember Sophie Hahn

Council District 5 (510) 981-7150

ATTACHMENTS

1. Ordinance amending BMC Chapter 19.62, Priority Permit Processing for Housing for Low and Moderate Income Persons.
2. City of Berkeley's Housing Trust Fund Guidelines

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 19.62 REGARDING HOUSING
FOR LOW AND MODERATE INCOME PERSONS

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

Section 1. That Berkeley Municipal Code Chapter 19.62 is amended to read as follows:

**Chapter 19.62
PRIORITY PERMIT PROCESSING FOR HOUSING FOR LOW AND MODERATE
INCOME PERSONS**

Sections:

- 19.62.010 Legislative findings.
- 19.62.020 Definitions.
- 19.62.030 Authority of the City Manager.
- 19.62.040 Notification of and review by the City Council.
- 19.62.050 Review of Projects receiving Berkeley Affordable Housing Trust Fund monies

Section 19.62.010 Legislative findings.

The City Council finds and determines as follows:

- A. That the creation of low and moderate income housing is a goal of the City of Berkeley, as reflected in the 1985 Housing Element and other documents;
- B. That creation of low and moderate income housing can be facilitated by the waiving of fees for City permits and by processing applications for such permits on a priority basis;
- C. That the City has in the past waived such fees when appropriate. (Ord. 5892-NS § 1, 1988)

Section 19.62.020 Definitions.

- A. "Housing project" means:
 - 1. The creation of housing units, by new construction or other means, in a proposal considered by the Board of Adjustments under a single use permit or a group of use permits considered together; or
 - 2. The rehabilitation of existing housing units, in one or more structures which are on one parcel or contiguous parcels; or
 - 3. The rehabilitation of existing housing units, not necessarily on one or contiguous parcels, subject to a single loan agreement or regulatory agreement with the City of Berkeley, state of California, or United States government.

B. "Low income household" means a household with income not in excess of eighty percent of the median income in the Oakland Primary Metropolitan Statistical Area as determined by HUD or its successor agency.

C. "Low income housing" means any housing wherein:

1. Its cost is affordable to a low income household, under standards promulgated by the United States Department of Housing and Urban Development (HUD) or its successor agency; and

2. The City has set forth requirements that the housing shall be occupied by low income households (as defined above) and affordable to low income households (as defined above). These requirements shall be set forth in any of the following:

a. A regulatory agreement; or

b. A loan agreement; or

c. A use permit which requires that a regulatory agreement be entered into.

D. "Moderate income household" means a household with income not in excess of one hundred twenty percent of the median income in the Oakland Primary Metropolitan Statistical Area as determined by HUD or its successor agency.

E. "Moderate income housing" means any housing wherein:

1. Its cost is affordable to a moderate income household, under standards promulgated by the United States Department of Housing and Urban Development (HUD) or its successor agency; and

2. The City has set forth requirements that the housing shall be occupied by moderate income households (as defined above) and affordable to moderate income households (as defined above). These requirements shall be set forth in any of the following:

a. A regulatory agreement; or

b. A loan agreement; or

c. A use permit which requires that a regulatory agreement be entered into.

F. "Permit" means any permit required by the City of Berkeley in connection with residential construction and any associated demolition, including but not limited to demolition permits, zoning permits, building, plumbing, and electrical permits.

G. "Permit fees" means any fee charged by the City of Berkeley for any permit in connection with residential construction and any associated demolition. (Ord. 5892-NS § 2, 1988)

Section 19.62.030 Authority of the City Manager.

A. Notwithstanding any contrary provision of any other Chapter, the City Manager is hereby granted the authority to waive the payment, or defer the payment until a later date, of any permit

fees, except for new connection sewer fees, for any housing project in which at least twenty-five percent of its units are low and/or moderate income housing as defined above.

B. The City Manager is hereby granted the authority to expedite or prioritize the processing for any permit of any housing project in which at least twenty-five percent of its units are low and/or moderate income housing as defined above. (Ord. 5892-NS § 3, 1988)

Section 19.62.040 Notification of and review by the City Council.

A. The City Manager shall notify the City Council of any request for fee waiver, deferment or priority permit processing, and of the Manager's response to that request.

B. The City Council may review the City Manager's action on any such request, and may, for any project for which the City Manager is authorized in this chapter to grant a fee waiver, deferment or priority permit processing, instruct the City Manager to grant, wholly or in part, or deny such request. (Ord. 5892-NS § 4, 1988)

Section 19.62.050 Review of Projects Receiving Berkeley Affordable Housing Trust Fund monies.

Projects receiving funds from Berkeley's Affordable Housing Trust Fund shall receive automatic expedited and prioritized processing for all permits, inspections and other City of Berkeley administrative processes, and are exempt from the requirements of BMC § 19.62.040.

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To: Honorable Mayor and Members of the City Council
From: Councilmembers Sophie Hahn, Cheryl Davila, Ben Bartlett, and
Kate Harrison
Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

Direct the City Manager to immediately Adopt the first reading of an Ordinance amending Berkeley Municipal Code Chapter 19.62, to automatically confer priority status and offer provide expedited review to affordable housing projects with 80% or more affordable housing that receive City of Berkeley Housing Trust Fund monies.

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley’s top priorities, and all possible steps must be taken to support increases in Berkeley’s affordable housing stock.

Obtaining approvals, permits and inspections related to development is a complex process involving a number of City departments. Delays can occur at any point in the process, especially when departments are processing multiple projects simultaneously. The proposed amendment automatically confers priority status and expedited processing on key affordable housing projects, ensuring that at each step of approval, permitting, inspection, and other administrative processes, across all City departments, these projects will be placed at the front of the queue.

According to the City of Berkeley’s Housing Trust Fund Guidelines, housing projects that receive funds from Berkeley’s Housing Trust Fund must have a minimum of 60% of all units at rates affordable to extremely low or very low income households. In practice, projects receiving these funds are likely to be 100% affordable. These projects provide significant affordable housing for the City and are aligned with Berkeley’s top priorities. As such, Housing Trust Fund projects should receive priority status and review to move

quickly through all permit, inspection, and other City of Berkeley administrative processes.

BMC Chapter 19.62 (Priority Permit Processing for Housing for Low and Moderate Income Persons) grants the City Manager the authority to expedite or prioritize processing of permits for housing projects with at least 25% of units at low and/or moderate incomes (19.62.030). The proposed amendment makes prioritized and expedited processing automatic for projects receiving City of Berkeley Housing Trust Funds, providing certainty for developers of affordable housing projects and reducing the time required for project approval and completion.

~~In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 1: Green Pathway Ordinance, BMC Chapter 23B.34).~~

~~Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the development of affordable housing projects. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful funds.~~

~~To that end, all projects with 80% or more Affordable Housing shall receive top priority status and accelerated processing and review.~~

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON

Councilmember Sophie Hahn

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ATTACHMENTS

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- A. That the creation of low and moderate income housing is a goal of the City of Berkeley, as reflected in the 1985 Housing Element and other documents;
- B. That creation of low and moderate income housing can be facilitated by the waiving of fees for City permits and by processing applications for such permits on a priority basis;
- C. That the City has in the past waived such fees when appropriate. (Ord. 5892-NS § 1, 1988)

Section 19.62.020 Definitions.

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 - 1. The creation of housing units, by new construction or other means, in a proposal considered by the Board of Adjustments under a single use permit or a group of use permits considered together; or
 - 2. The rehabilitation of existing housing units, in one or more structures which are on one parcel or contiguous parcels; or
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A. Notwithstanding any contrary provision of any other Chapter, the City Manager is hereby granted the authority to waive the payment, or defer the payment until a later date, of any permit

fees, except for new connection sewer fees, for any housing project in which at least twenty-five percent of its units are low and/or moderate income housing as defined above.

B. The City Manager is hereby granted the authority to expedite or prioritize the processing for any permit of any housing project in which at least twenty-five percent of its units are low and/or moderate income housing as defined above. (Ord. 5892-NS § 3, 1988)

Section 19.62.040 Notification of and review by the City Council.

A. The City Manager shall notify the City Council of any request for fee waiver, deferment or priority permit processing, and of the Manager's response to that request.

B. The City Council may review the City Manager's action on any such request, and may, for any project for which the City Manager is authorized in this chapter to grant a fee waiver, deferment or priority permit processing, instruct the City Manager to grant, wholly or in part, or deny such request. (Ord. 5892-NS § 4, 1988)

Section 19.62.050 Review of Projects Receiving Berkeley Affordable Housing Trust Fund monies.

Projects receiving funds from Berkeley's Affordable Housing Trust Fund shall receive automatic expedited and prioritized processing for all permits, inspections and other City of Berkeley administrative processes, and are exempt from the requirements of BMC § 19.62.040.



Housing Department

CITY OF BERKELEY'S HOUSING TRUST FUND GUIDELINES

Adopted by Berkeley City Council Resolution No. 64,394–N.S., April 21, 2009

**CITY OF BERKELEY
HOUSING TRUST FUND PROGRAM GUIDELINES**

I. HOUSING TRUST FUND PROGRAM OVERVIEW

A. Purpose

The purpose of the Housing Trust Fund (HTF) Program is to pool monies from different sources to help achieve the City's General Plan (including the Housing Element) and Consolidated Plan goals of developing and preserving long-term below market rate housing for low, very low, and extremely-low income households in order to maintain and enhance the ethnic and economic diversity of the City. To achieve this purpose, HTF resources shall be used to provide loans and grants to qualified developers, public entities, groups, and individuals to undertake activities which create, maintain, or expand the City's affordable housing stock.

B. Funding Sources

Revenues for the HTF shall come from the following sources:

1. Federal HOME Partnership for Investment Program (HOME Program) allocations.
2. Allocated Community Development Block Grant (CDBG) funds.
3. Housing fees provided by development projects, demolitions and condominium conversions.
4. Proceeds obtained from the sale of City-owned residential properties.
5. Payments of interest and principal due to the City from borrowers of previous Fund loans.
6. Inclusionary Zoning fees to be paid in-lieu of construction of housing units as allowed by the Inclusionary Ordinance, Berkeley Municipal Code Chapter 23C.12.
7. Funds from other sources authorized by the City Council, the Berkeley Housing Authority, the Berkeley Redevelopment Agency, the Rent Stabilization Board, and the voters.
8. Gifts or awards made by individuals or organizations.

C. Management of the Housing Trust Fund

The HTF Program is implemented by the City's Housing Department. The Program's Project Development staff is part of the Housing Department. The Project Development staff (Department staff) is responsible for working with the HTF applicants from application through pre-development and loan closing, construction and project completion; maintaining all records of the HTF; monitoring the use of distributed HTF funds to assure ongoing compliance with the purposes of the HTF and the conditions under which the HTF funds were granted or loaned; and reporting to the Housing Advisory Commission (HAC), City Manager, and City Council regarding the operation and activity of the HTF.

D. Establishment of the City of Berkeley Housing Trust Fund

In 1990, the City of Berkeley established the HTF as part of strategy to work with the development community in producing much needed long term affordable housing for low-income residents of the City. The HTF pools a variety of funds (federal CDBG and HOME, as well as City General Funds, redevelopment housing set-asides, and housing mitigation funds) for affordable housing production. Nonprofit and for-profit residential developers can leverage these HTF funds with other private and public affordable housing financing sources to facilitate affordable housing production in Berkeley.

E. Housing Advisory Commission

Berkeley's system of boards and commissions provides a way for residents who have special experience or interests to participate in the City's decision-making process by advising the City Council on numerous issues. Appointed by individual City Council members, the HAC includes nine (9) individuals. The HAC advises Council on housing matters; Community Development Block Grant (CDBG) and Emergency Shelter Grant (ESG) programs and funding allocations; hears and determines matters regarding the abatement of substandard and deficient buildings; serves as an appeals board for tenants and property owners regarding relocation and correction of code violations; and advises Council on HTF allocations.

F. Revision of Guidelines

The Housing Advisory Commission (HAC) shall actively solicit discussion and comment from interested commissions and the public in assessing the policy impacts of proposed revisions to the HTF Guidelines and make recommendations to the City Council. The Planning Commission shall review any proposed revisions to the HTF Guidelines for consistency with the General Plan.

II. HOUSING TRUST FUND DEFINITIONS

The following definitions apply to terms used within these Guidelines:

- A. **Affordable Housing:** housing that is provided at an affordable rent or an affordable housing cost to low income and/or very low income and/or extremely low income households.
- B. **Applicant:** any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative who undertakes, proposes or applies to the City for an affordable housing development project.
- C. **Area Median Income or "AMI:"** is established for metropolitan areas or non-metropolitan counties by the U.S. Department of Housing and Urban Development (HUD), pursuant to 42 U. S. C. Chapter 1437 et seq., to establish local income classification levels. These classifications are also

used in California housing law with respect to income eligibility limits (Please go to <http://www.huduser.org/datasets/il.html>).¹

1. **Extremely Low Income Household:** a household having an income not exceeding thirty (30%) percent of AMI adjusted for household size and as defined by the U.S. Department of Housing and Urban Development.
 2. **Very Low Income Household:** A household having an income not exceeding fifty (50%) percent of AMI adjusted for household size and as defined by the U.S. Department of Housing and Urban Development.
 3. **Low Income Household:** a household having an income not exceeding eighty (80%) percent of the AMI adjusted for household size and as defined by the U.S. Department of Housing and Urban Development.
 4. **Moderate-income Household:** a household having an income not exceeding one hundred twenty percent (120%) of the AMI adjusted for household size and as defined by the U.S. Department of Housing and Urban Development. Households with income between 120% and 80% of AMI are considered “moderate income.”
- D. **Bridge Loan:** an interim or short-term loan which can be used to finance all or part of the development project’s costs until a permanent loan or the next stage of longer-term financing can be obtained. Money from the replacement financing is generally used to “take out” (to pay back) the bridge loan.
- E. **City:** the City of Berkeley.
- F. **City Manager:** the City Manager of the City of Berkeley or his or her designees.
- G. **Cohousing:** A living arrangement which is owned and managed by the residents, and combines private living quarters with common dining and activity areas in a community whose residents share in common tasks.
- H. **Cooperative Housing:** a legal agreement or arrangement in which an association or corporation owns a group of housing units and the common areas for the use of all the residents. The individual participants (shareholder) own a share in the cooperative which entitles the shareholder to occupy an apartment or unit as if they were owners, to have equal access to the common areas and to vote for members of the Board of Directors which manages the cooperative.
1. **Limited Equity Housing Cooperative:** offers ownership opportunities to lower income households while limiting the return from resale that the household can receive from the housing. It contrasts with “market rate” cooperatives, where memberships can be transferred at market value. Limited Equity Housing Cooperatives are organized as nonprofit corporations.

¹ . Berkeley falls within the Oakland-Fremont Metropolitan Statistical Area.

- I. **Construction Loan:** a short-term, interim loan for financing the cost of construction. Payments from the loans are called construction draws and are made at periodic intervals as the construction progresses. These loans are typically converted or taken out by a “permanent loan” and or financing.
- J. **Development Project:** means the new construction or the renovation of a residential building or mixed-use building which includes residential units.
- K. **Joint Venture Agreement:** A legally binding contract which is formed by two or more parties for a specific purpose. A Joint Venture is an enforceable agreement formed by a partnership or other acceptable legal entity, and its scope is usually limited to one development project.
- L. **Market Rate:** Apartments and other residential dwellings that are available on an unsubsidized basis to the general public for lease, rent, or for the purchase of homeownership.
- M. **Permanent Loan:** A long-term loan which is usually not less than 7 to10 years and which payments made by the borrower to the lender on the loan can be fully amortized and/or deferred.
- N. **Predevelopment:** Time period which includes project feasibility studies, site acquisition and preliminary design studies for a development project usually (but not always) preceding the acquisition of a property site.
- O. **Residual Receipts:** The income remaining after expenses, in any given time period.
- P. **Silent Second:** A second mortgage or lien that is often obtained at preferential (subsidized) terms. The second (or subordinate) lien might bear no interest and may not be repayable until the first mortgage or deed of trust is repaid or the property is sold (and hence remains “silent”).

III. ELIGIBILITY

A. Eligible Entities (Applicants)

To be funded, the Applicant must have sufficient experience and/or demonstrate sufficient capacity and training in housing development and management to successfully secure financing, construct, complete, and operate the proposed project.

In order to be considered for funding, the Applicant must show prior experience and current capacity to complete the project. All members of the development team must demonstrate the qualifications necessary to complete the project.

All HTF affordable housing projects shall be undertaken and completed by the Developer (HTF Applicant) and not other members of the development team.

1. Developer Experience and Agreements

To be eligible, the Applicant must demonstrate either:

- a. Completion of at least two projects with a total unit count of 25 completed within the last three years, or
- b. Completion of at least three projects within the last 5 years, with at least a total unit count 35 units.

Applicants without the necessary experience must enter into joint venture agreements with experienced developers.

2. Limited Partnerships Requirements

For projects proposed as limited partnerships, the City reserves the right to approve the limited partnership agreement prior to any HTF loan award.

3. Joint Venture Requirements

Joint venture agreement can allow inexperienced applicants to gain development understanding and can permit both the experienced developer and applicant to form a mutually beneficial working relationship.

Applicants who are submitting as a Joint Venture shall comply with the following:

- a. If the developer is a joint venture, the HTF Application or project will be scored based on the experience of the “lead developer.” The “lead developer” is the entity that has the majority interest in the joint venture or partnership. In all joint ventures, a majority control must be held by the development entity meeting the City requirements for experience as described in this Section.
- b. At the time of the HTF Application, the City must review and approve all joint venture agreements and the HAC and staff will make recommendations on the joint venture agreement.
- c. For all joint venture agreements, the City shall decide which criteria are applicable by determining which joint venture partner has the majority control in the management and operation of the joint venture.

4. Property Management Experience

- a. The applicant or the applicant's property management agent must have managed at least one project completed for at least 24 months subject to satisfactory performance review by any city agency from which the Project received funding.
- b. If the proposed project includes a supportive services component designed for very low or extremely low-income families that need services linked to their housing in order to remain stable in the proposed housing project, the property management agent must also provide evidence of managing other housing projects with supportive services from any city or city agency from which the agent received funding for providing comparable services.

B. Eligible Housing Projects

Development projects which create and/or preserve affordable housing units are eligible to receive funding, including group homes, limited equity cooperatives, co-housing, single-room occupancy units and transitional housing. The residential portions of mixed-use and live/work projects that meet the affordability requirements of these Guidelines shall be eligible for assistance. Funding may also be provided to assist in the creation of common areas, meeting space, and other space primarily for use by the residents of the assisted units, such as rooms to provide on site medical or counseling services. The Fund may assist the moving of a housing structure within the City limits, when the structure is a nonconforming use in a commercial or industrial zone or when necessary to preserve a residential structure, provided all other requirements of the fund are met.

Units covered by the City of Berkeley's Inclusionary Ordinance may be assisted, provided the assistance from the Fund is used to create a deeper level of affordability than required under that Ordinance.

C. Eligible and Ineligible Activities

Activities eligible for funding include pre-development costs; new construction; acquisition of property; conversion of non-residential to residential use; conversion of rental units to limited equity cooperative housing, condominiums or co-housing; relocation; and rehabilitation costs, provided that the conditions below are met. HTF revenue sources may have additional restrictions which applicants will also be required to meet.

1. Eligible and Ineligible Predevelopment Activities

- a. The applicant must investigate all other available sources of funds for pre-development activities. Obtaining a loan from the Fund for pre-development activities shall be considered a last resort by the applicant, and applicants will be asked to document which alternative sources have been pursued prior to application.

- b. Only non-profit developers are eligible for predevelopment loans. This includes non-profits who have a joint venture agreement with a for-profit entity. Eligible pre-development activities may include reasonable expenses for architectural fees, market research consultants, expenses related to acquisition of property, preliminary financial applications, reasonable and customary costs of obtaining firm construction loan commitments, architectural plans and construction specifications, zoning approval fees, engineering studies, legal fees, and other costs directly associated with activities prior to development of the property.
 - c. Ineligible activities include but are not limited to property tax penalties, the rental of rooms for community meetings, mailings (including postage and printing of flyers or invitations), refreshments for neighborhood outreach meetings, and transportation to such meetings.
 - d. No HTF funds for administrative and staffing costs shall be committed to a nonprofit developer if CDBG or other available funding sources are available for this purpose.
 - e. No HTF funds for administrative and staffing costs shall be committed to for-profit developers who are expected to raise such funds from private investors.
2. Eligible Acquisition and/or Rehabilitation Activities
All reasonable costs associated with acquisition for housing or mixed-use purposes, building relocation, and rehabilitation are eligible for funding. The purchase price of a property to be acquired shall not exceed its appraised value, unless the City Manager finds that the project has sufficient merit to justify paying a higher price, in which case the price shall not exceed the appraised value by more than ten percent. Rehabilitation shall include activities to make the building seismically safe and to abate lead contamination.
3. Eligible New Construction Activities
All reasonable costs associated with new construction eligible housing projects are eligible for funding.

IV PROGRAM REQUIREMENTS

A. Affordability Requirements

All applications for funding must meet the minimum requirements below. Applicants may propose to produce units with lower income or affordability ranges than prescribed herein, in which case, the lower income ranges shall be used to set rents or sales prices for the affordability term. The income limits apply to the initial occupancy of the unit and all subsequent re-occupancy.

Units whose construction is wholly or in part funded by the HTF shall be specified in the project's development loan agreement executed with the City of Berkeley.

1. Rental Limits on Affordable Housing Developments

Rent ceilings are to be based on the Area Median Income for the Oakland-Fremont Metropolitan Statistical Area issued by the federal Department of Housing and Urban Development and are to be adjusted annually to reflect new area median income and HOME requirements when HOME monies are used. Notwithstanding this provision, all units shall be leased in accordance with the City of Berkeley's Rent Stabilization Ordinance, BMC Chapter 13.76.

Rent ceilings shall include utilities based on the utilities schedule used for the Federal Section 8 Program Tenant-based Rental Assistance Program. Rent ceilings shall be set for the units and are not necessarily based on the tenant's household income. This may result in households paying more than 30% of their incomes for rent, or paying less than 30%.

The rent ceilings of the restricted units shall be finalized prior to the HAC's HTF Subcommittee making its final HTF funding recommendation to the HAC. However, other lender requirements (such as the State of California programs) may change these affordability requirements. However, the affordability limits must still meet the minimum affordability levels outlined in the HTF Guidelines unless an exception is approved by the HAC and City Council as provided for in Section VI.B.4.

a. Rents

At least 60% of all units in an eligible housing project must have rents as follows:

- i. Not less than forty percent (40%) of all the units must be affordable to households whose income does not exceed 60% of Area Median Income (AMI); and
- ii. Not less than twenty percent (20%) of all the units must be affordable to households whose income does not exceed 30% of AMI.
- iii. Rents on the remaining 40% of the units may be set at market rate.
- iv. City of Berkeley will give preference to projects that address chronic homelessness and/or housing for extremely low income households, or households whose income does not exceed 30% AMI as described above.

- b. Affordability Term – Regulatory Period
All newly constructed or rehabilitated housing rental units assisted through the Fund shall be affordable for a period of not less than 55 years from the date of project completion.

2. Homeownership Housing Developments

The following guidelines shall apply to homeownership projects:

- a. There are no minimum requirements for the number of affordable homeownership units in a project or complex, which can receive assistance from the Fund. However, homeownership units otherwise required to provide these affordability levels through the Inclusionary Ordinance are not eligible for an HTF subsidy. Sale prices of affordable units must be set at a price affordable to households with incomes at 65% of AMI. For the purpose of setting a sales price, "affordable" shall be defined as housing costs including mortgage payments, property taxes, insurance, and Homeowner's Association dues (if applicable) that are no greater than 35% of gross income for a household at 65% of AMI.
- b. All affordable homeownership units shall be made available to first-time homebuyers, or previous owners of limited equity cooperatives or similar type of housing that have occupancy restrictions.
- c. The City shall develop procedures for addressing maximum sales prices, methods of selection of buyers, types of units to be assisted, forms of assistance, forms of resale controls and other administrative controls as found necessary by the City Manager to ensure that units continue to be affordable to, and sold to, households in the appropriate income category. Ownership projects shall contain resale affordability controls to achieve compliance with the goal of long-term affordability.
- d. Housing sale prices shall be set based upon prevailing mortgage interest rates and may include the value of second mortgage assistance provided by the Fund.
- e. Properties acquired for the purpose of becoming part of a limited equity form of ownership shall be considered as homeownership housing rather than rental properties. However, in occupied buildings, existing tenants will have the right to remain in their units as tenants or limited equity owners. The developer shall assist existing tenants obtain additional necessary financing if they are interested in becoming limited-equity owners.

3. Occupancy Requirements

All HTF-assisted rental units shall be occupied by households with

incomes at or below the targeted income category, unless compliance with the federal, state, or local laws including the City of Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance requires otherwise.

All HTF-assisted homeownership units shall be sold to households with incomes at or below the targeted income category who agree to occupy the unit as their principal place of residence.

V. TYPES OF ASSISTANCE

Assistance shall be provided in the form of a loan. The HTF funds will be used and disbursed to borrowers following the guidelines and procedures governing the eligible uses and disbursement of funds established by the federal, state, and local requirements and which pertain to the use of HTF funds for a development project. Additionally, the City's Housing Department and the HTF Program have established policies regarding the disbursement of funds for both development and construction costs.

A. Predevelopment Loans (Short-Term or Bridge Loan)

Understanding that predevelopment loans present a certain level of risk but are necessary to move projects forward, the City will provide predevelopment loans upon completion of risk assessment. Preference will be given to projects that address chronic homelessness and housing for extremely low-income households.

1. Predevelopment financing will be provided in the form of a loan if the funded activities take place prior to the acquisition of the project site. It will be necessary to fund these limited predevelopment activities through a predevelopment loan agreement.
2. Generally, predevelopment loans shall not exceed the lesser of \$50,000 or \$5,000 per assisted unit for each project. In each HTF Request for Proposals, the HAC may recommend higher limits for projects that are consistent with projects that meet the priorities identified by the HAC, as described in section VI.B.1, however, the amount of the loan shall not exceed the total predevelopment cost of the project.
3. The interest rate shall be three percent (3%), simple interest, for all loans. At the issuance of the RFP, the City Manager may establish a different interest rate for HTF loans in consultation with the HAC, if there should be a significant change in market rate interest charges.
4. The repayment term of a short-term predevelopment or bridge loan shall not exceed five (5) years, or the date of closing of the permanent financing for the project.
5. A predevelopment loan may be rolled into a longer-term HTF development loan. In this case, the term of the loan will be the same as the development loan.

6. Any requests for forgiveness of these loans will be reviewed by the HAC and decided by the City Council upon a recommendation from the HAC.

B. Development Loans (for Construction and/or Permanent Financing)

1. Construction and permanent financing will generally be provided in the form of a single development loan agreement if the project site has been acquired.
2. The interest rate shall be three percent (3%), simple interest, for all loans. At the issuance of the RFP, the City Manager may establish a different interest rate for HTF loans in consultation with the HAC, if there should be a significant change in market rate interest charges.
3. The maximum repayment term of all long-term loans from the fund shall not exceed 55 years, unless a longer term is required by other financing.
4. Early repayment of the loan is permitted as long as the affordability requirements included in the HTF regulatory agreement are maintained on the property.
5. Development Loan Agreements shall incorporate penalty and/or other types of provisions to ensure compliance with the affordability terms of the subsidy.
6. Development Loan Agreements may allow for loan repayment from a portion of the developments' Residual Receipts. The City shall review the project's accounts annually and determine if positive cash flow has been achieved.
7. When the total of all HTF assistance being recommended for funding of a project by the HAC and/or the City Manager exceeds 40 percent of project cost, the City Council shall make a finding that a higher level of funding is justified by the nature of the assisted project and the unavailability of alternative funding. In order to facilitate a project's moving forward and applying for other funding, the City Council may award an amount less than recommended by the HAC and the City Manager, but authorize the City Manager to award up to the full amount administratively if the additional funding is not received. Funding shall be no more than 100% of a project's total development cost.

VI. PROJECT SELECTION

A. Application Process

Except for loan applications described in part 1., 2., and 3. below, applications for Fund assistance will only be accepted during specified funding cycles. However, except for pre-development proposals, all applications, regardless of whether received through an RFP, or through an open application-taking process, shall be subject to the Evaluation Process contained in VI.B.

There will be a maximum of two (2) such funding cycles annually. The total funding cycle should be completed in approximately 4 months. The purpose

of the funding cycles is to enhance the City's ability to choose projects that will maximize the use of Fund resources and the City's ability to meet its General Plan housing goals. The City shall be under no obligation to fund any projects. Projects rejected during one funding cycle may be resubmitted and reconsidered in a later funding cycle.

1. Pre-development Applications

Applications for pre-development assistance may be accepted at any time. There shall be no more than \$100,000 or ten percent, whichever is less, of available Fund resources committed to pre-development activities in any single fiscal year. The HAC will review all applications for predevelopment loans. For loans up to \$50,000, the HAC will make funding recommendations to the City Manager for review and approval. For loans of more than \$50,000, the HAC will make funding recommendations to the City Council for review and approval, however, the amount of the loan shall not exceed the total predevelopment cost of the project. Receipt of a pre-development loan in no way commits the City to any future funding.

2. Applications with Firm State or Federal Funding Commitments

Applications for funding for projects with documented funding commitments from state and federal funds may also be accepted at any time if the developer can show that those commitments are in jeopardy unless the City commits HTF monies in a timely manner. In those cases, the evaluation process contained in Section VI. B. below will be followed, except for the timing requirements which may be reduced to expedite the process.

Although issuance of an RFP in conjunction with the expedited process is desirable, it is not required if it poses a threat to the receipt of State or Federal funds commitment. The applicant must provide documented validation of the threat it poses to the receipt of the funding commitment.

3. Set-Aside of Funds for an Open Application-taking Process

At the time of a HTF funding round, the Housing Advisory Commission may set aside up to one-quarter (1/4) of the funds in that funding round for allocation to proposals received through an open application process rather than through an RFP. Set-aside monies not allocated will be added to the following year's budget. In order to be considered for funding under this process, applicants must clearly document why their proposals cannot wait until the next funding cycle and what major benefit to the City that would be foregone if the proposal had to wait for the next RFP.

4. Property Inspection and Appraisal

A full and independent appraisal of the property shall be provided as part

of a completed application unless the City determines that one is not needed. The City reserves the right to conduct an appraisal and site assessment of its own, on the property prior to commitment of funding.

B. Applications Evaluation

1. Responsible Reviewers

The City Manager and the Housing Advisory Commission (HAC) shall have primary responsibility for review and recommendation on HTF proposals. The HAC will set specific priorities for particular funding cycles based on analysis of local affordable housing needs and policies specified by the City. The HAC shall designate an HTF Subcommittee to review proposals in detail, and later make recommendations on the successful applications and the funding of these applications. The HAC and the HAC HTF Subcommittee shall review all applications for conformance to basic affordability requirements, experience and capacity of the developer, cost, financial feasibility and other established rating criteria.

2. Complete Applications

Complete applications shall provide all relevant information requested on the application form. The City Manager, or his/her designee, shall determine whether each application is complete.

Applications shall include, but shall not be limited to, all information necessary to determine compliance with funding source affordability and other requirements as necessary, technical and financial feasibility of the project (including all pro forma operating statements, development budgets, sources and uses of funds statements), number of units designed to be accessible for persons with mobility impairments or other disabilities, property appraisals (if staff or the HAC's HTF Subcommittee determines that they are required), the developer's experience, and other financial information. The application shall also quantify the need for the project by utilizing relevant economic and demographic statistics.

Applications which are incomplete at the time of intake will have ten (10) additional working days to provide the required materials from the time of notification. If these materials are not submitted at the end of that time, the application will not be considered during the current review cycle and the applicant will be formally notified in writing of the rejection of the application.

3. Application Review Process

Initial application review is the process which begins from the submission of completed applications. Application review process includes the following steps:

- a. City staff shall determine which applications are complete. City staff shall establish a log of eligible and complete applications.
- b. City staff shall then prepare a brief summary which provides a description of each of the proposed developments and the amount of funds requested. Staff will provide copies of all complete applications for public review at the central Berkeley Public Library and at the Housing Department.
- c. Staff shall forward the summary to the Housing Advisory Commission, Planning Commission, Zoning Adjustments Board, the Commission on Disability, and the Berkeley Redevelopment Agency for their review and provide information about the complete applications available for public review. If requested, staff will forward full applications to the members of the HTF Subcommittee and to the HAC.
- d. The Planning Commission and the Commission on Disability shall submit their comments to the HAC within 30 days of receipt of the summary. Comments can also be presented by the Commission members at the public hearing described in section VI.B.3.e.
- e. The HAC shall conduct a public hearing on the projects under consideration during a particular funding cycle. Prior to the public hearing, except for housing projects for victims of domestic violence, written notice of the hearing shall be given to neighbors within a 300 foot radius of the perimeter of each project proposed for funding at least 10 business days in advance of the hearing. A notice of the hearing shall also be posted adjacent to each site proposed for funding.
- f. City staff shall review each application for conformance to these Guidelines and shall analyze project feasibility, developer capacity, project costs, and all other relevant technical concerns. This analysis will include a scored system, which will be developed by the Staff and HAC HTF Subcommittee. The first HAC HTF Subcommittee meeting to review the applications shall be scheduled within 14 days after the public hearing. HTF Subcommittee Meetings will be conducted in conformance with the Brown Act.
- g. The HTF Subcommittee shall review the staff prepared application summaries, and comments from the Planning Commission and the Commission on Disability. The HAC HTF Subcommittee will complete its review of the applications with Housing staff and make recommendations for review by the HAC.

- h. The HAC shall review the recommendations of the HAC HTF Subcommittee and provide its final recommendations to the City Council. HAC review of HTF applications shall be open to the public, with posted meetings and public hearings held in the evening in a disabled accessible venue in Berkeley.
- i. The City Manager shall make HTF funding recommendations to the City Council using the analysis provided by City staff, recommendations from the HAC, and the review findings from Planning Commission and the Commission on Disability. The City Manager's recommendation to Council shall be presented along with a staff report summarizing the HAC recommendations for HTF funding. Any report submitted by the HAC to City Council concerning recommendations for HTF funding shall follow the guidelines for submitting reports, which are included in the "City of Berkeley's Commissioners' Manual." The staff report to Council will also include a summary of the review findings made by the Planning Commission and the Commission on Disability. In preparing recommendations to the HAC and to the Council, the City Manager may obtain advice and counsel from financial and legal consultants, to assist staff in providing review in the evaluation of each application.

4. Changes to the Project

If a project developer proposes any significant changes to the project or the terms of funding after the HAC has submitted its recommendations on the project application to the Council but before Council action, the proposed change must first be reviewed by the HAC at a regular or special meeting prior to Council action. Following City Council approval of a funding allocation to a project, any significant changes to the project or the terms of funding must be reviewed by the HAC and approved by Council.

For purposes of these Guidelines, a significant change shall include: an increase in the HTF funding reservation; a major change to the project design that results in a change in the number of total project units by 10% or more; a change in the project developer (except for project transfer to affiliates of the original developer); a change in project tenure (change in project status from one of a rental units to one which includes units for ownership); a 10% increase of the total number of units to a less affordable level; an extension of the HTF funding reservation period; or a significant change to the conditions of funding imposed by the Council. This provision shall be included in all development loan agreements. This requirement for HAC review of project or funding changes may be waived only upon a two-thirds vote of Council.

5. Rejection Notification

The City reserves the right to reject any and all applications received. The City Manager shall have authority to reject any project that does not meet program Guidelines and priorities or does not demonstrate feasibility. The City shall give the applicant written notification of the rejection which specifies the basis upon which the proposal was rejected. The City Council shall also be notified of projects that met minimum eligibility thresholds but were rejected for other reasons. Projects not funded may be resubmitted during a subsequent application period for reconsideration.

C. **Project Consideration / Funding Criteria**

Development Projects will be evaluated with respect to criteria that are consistent with priorities established during the HTF Request for Proposals process and City goals and policies.

The projects will be evaluated based on how well they meet the five key factors identified below: (1) Community Objectives; (2) Conformance with Adopted Plans and Policies; (3) Applicant Qualifications and Experience; (4) Cost Effectiveness and Feasibility; and (5) Housing Trust Fund / RFP Priorities.

1. Community Objectives:

- a. Housing affordability
 - i. benefit the highest percentage of low, very low, and extremely low-income persons;
 - ii. provide the lowest rents;
 - iii. include a greater percentage of affordable units;
 - iv. maintain longer periods of affordability.
- b. Housing linked with services for families and people with special needs including:
 - i. homeless people;
 - ii. disabled people;
 - iii. seniors;
 - iv. people with HIV/AIDS.
- c. Maximizing accessibility for persons with disabilities
- d. Providing housing for larger families or households with children
- e. Impact on the Community
 - i. provide neighborhood benefits;
 - ii. develop or rehabilitates blighted property;
 - iii. develop key revitalization site;
 - iv. repair vacant or uninhabitable units;

- v. project design and amenities enhance neighborhood;
- vi. promote or maintains economic diversity;
- vii. provide housing in higher income areas;
- viii. provide mixed income housing in lower income areas;
- ix. provide integrated housing.

2. Conformance With Adopted Plans and Policies, including:

- a. the General Plan (including the Housing and Land Use Elements);
- b. Area Plans;
- c. the Consolidated Plan;
- d. the Everyone Home Plan, adopted in May 2006.

3. Applicant Qualifications and Experience, including:

- a. developer experience;
- b. successful history of property management, as appropriate;
- c. experience and expertise of the project development team ;
- d. experience and capacity of service provider, and appropriateness of proposed services plan, if the project proposes to serve a special needs population;
- e. construction management track record;
- f. quality of financial and asset management;
- g. the lead staff, including the Project Manager and supervisory staff assigned to work on the current proposal, have the necessary experience, and that the Project Manager has the necessary time available;
- h. the Developer is financially sound and will be able to sustain the costs of effectively following through with the current proposal. The past two years financial statements of the Developer / HTF Applicant shall be required and submitted at the time of the HTF Application;
- i. evidence that the Development Team members (Property Manager, Attorney, Architect, Financial Consultant, Construction Company, etc.) have experience on other similar projects.

4. Cost Effectiveness and Feasibility, including:

- a. cost effectiveness of project;
- b. cost per square foot;
- c. cost per affordable unit;
- d. reasonableness of developer fee;
- e. loan to value ratio;
- f. project site control,;
- g. leveraging of other financing;
- h. near-term ability to develop the project;
- i. other financing commitments;
- j. status of permits;
- k. projects that use program funds as a match or leveraging tool to stimulate the use of conventional and below-market resources,

including tax credits, state and federal funding programs, and/or other funding sources;

- l. projects which provide the greatest benefit per dollar of funds spent.
- m. projects that have other funding sources identified and committed.

5. Housing Trust Fund / RFP Priorities:

The HAC, in conjunction with the Housing Department and City Manager, will establish a set of housing priorities to be considered during each HTF application cycle. The staff will request recommendations for housing priorities from interested commissions; they will be considered by the HAC prior to establishing priorities. These HTF priorities will be listed in the HTF RFP.

D. Threshold Criteria and Other Conditions

1. Threshold Criteria

The following threshold criteria apply to all assistance from the Fund:

- a. In order to receive funding, the applicant must agree to provide information required by the City to ensure compliance with Program requirements, certify developer capability, and comply with all applicable federal, state, and local laws.
- b. Site control is required for all proposed projects except for predevelopment proposals.
- c. Applicants must demonstrate that:
 - i. they have the capacity to develop and manage the project;
 - ii. the proposed project is feasible to develop and finance;
 - iii. they have attempted or are attempting to utilize all available private and public financing sources. Applicants must apply for all other potential sources of project funding including private mortgages to the extent supportable by project income.
- d. All development costs must be reasonable.
- e. To ensure reasonableness of financing costs, applicants using tax credit allocations must be able to demonstrate use of a process designed to maximize the return from the tax credits. That process should allow for the best combination of HTF allocation, bridge loan, and fees.
- f. Applicants must submit management plans and budgets that are found to be adequate for the proposed project.
- g. Applicants must submit supportive services plans and budgets which are appropriate for the intended occupants.

2. Compliance with applicable laws and regulations

- a. The project must comply with all applicable local state, and federal laws and regulations, including but not limited to the Uniform Relocation Act and state and local relocation requirements, the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance,

as well as all building code requirements, and state and federal fair housing requirements.

- b. Compliance with any additional condition(s) imposed by the source of funds to finance the Project.
- c. HTF recipients and their subcontractors must be in conformity with the City's anti-discriminatory hiring policy as contained in Resolution No. 46,913-N.S, subject to state and federal law.
- d. Loan/grant recipients must execute and implement a First Source Hiring agreement with the City of Berkeley and ensure that monitoring occurs during the development period.

3. Affirmative Marketing

An affirmative marketing plan acceptable to the City for filling of vacancies for the duration of the affordability period. The plan shall include procedures to maximize available housing to residents with disabilities.

4. Accessibility

The applicant must submit information on compliance with federal and state accessibility regulations related to housing. On all new developments, developers are encouraged to maximize accessibility by going beyond the minimum accessibility standards. In rehabilitated developments, developers are encouraged to include accessibility.

All assisted units in a mixed income project shall be reasonably dispersed throughout the project, generally comparable to the unassisted units and shall have full access to common areas and facilities. Units designed to be accessible to disabled persons shall be dispersed in a manner similar to the assisted units.

5. Water and Energy Efficiency

Applicants are encouraged to incorporate energy and water efficient technologies and construction techniques into the developments. Applicants are encouraged to include the use of sustainable materials and technologies to minimize negative ecological impacts of construction materials used.

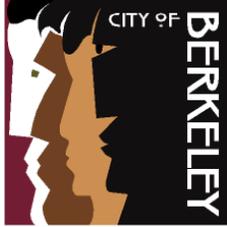
For all new and substantial renovation projects where the per unit cost of renovation is \$25,000 and greater, and up to three stories, every effort should be made to comply with the standard for the EPA Home Performance with Energy Star for remodeled residential buildings and EPA Energy Star for new construction. All procedures used for this standard shall comply with the Energy Star guidelines for performance-based testing and remediation. Commercial spaces within the project should meet local energy codes (Title 24 part 6, or the Residential

Energy Conservation Ordinance and Commercial Energy Conservation Ordinance as appropriate).

The Housing Department and HAC will consider incorporating HUD and local guidelines to achieve greater energy efficiency and standards into the HTF developments. Prior to the RFP being issued, the Energy Commission will submit energy and sustainable standards or priorities for consideration by the Housing Department and HAC, to incorporate into the RFP.

6. Compliance and Monitoring

- a. Development loan agreements shall incorporate full disclosure requirements for all loan recipients to facilitate the City's internal monitoring of project and loan performance.
- b. The City will set standards for maintenance and establishment of maintenance reserves. Loan conditions will establish a right for the City to conduct periodic management audits and on-site visits, and mandate building-quality self-inspections annually by the owners.
- c. Owners of rental properties will be required to provide annual verification as requested by the City to ensure that affordability and occupancy requirements are enforced and maintained.



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ACTION CALENDAR

July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Lori Droste
Subject: Friendly Amendments to “Expedited Review for Affordable Housing Projects”

Note: **original draft language by Councilmembers Hahn, Davila, and Bartlett is italicized*
***revised language by Councilmembers Hahn, Davila, Bartlett and Harrison is in plain text*
****[new proposed friendly amendments by Councilmember Droste is tracked and underlined.](#)*
*****[DROSTE AMENDE AMENDMENTS IN ALL CAPS.](#)*

RECOMMENDATION

1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed onsite units ([qualifying projects described in the background section](#)); and
2. Direct the City Manager to immediately confer priority status and offer [expedited a special “fast track” review and refer to the Planning Commission to recommend to the Council within 90 days zoning ordinance amendments that would allow ministerial approval of zoning-compliant affordable housing](#) projects with 80% or more affordable housing; [and](#)
3. [Request that the City Manager returns to Council with an update and recommendations from the Green Affordable Housing package streamlining provision \(Council’s top priority in 2016\).](#)

FINANCIAL IMPLICATIONS

Staff time [and the potential costs associated with the consultants needed to expedite plan review.](#)

BACKGROUND

[If Council approves these streamlining recommendations, it will be easier, faster, and cheaper to create affordable housing in Berkeley. At least one year of delays will be eliminated from the project review process. According to the nonpartisan Legislative Analyst's Office, "researchers have linked additional review time to higher housing costs. A study of jurisdictions in the Bay Area found that each layer of independent review was associated with a 4% increase in a jurisdiction's home prices \(California's High Housing Costs: Causes and Consequences, 2015\)."](#)

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley's top priorities, and all possible steps must be taken to support increases in Berkeley's affordable housing stock.

[This proposal reflects Berkeley City Council's ongoing desire for streamlining \(expediting\) the affordable housing development review process. In October 2015, Berkeley City Council unanimously passed the Green Affordable Housing package, which contained a streamlining provision. The Planning Commission and staff have been consistently working on this referral for over a year as it was the top priority of 2016. In addition, Councilmember Worthington also introduced and successfully passed a proposal in January 2016 to streamline affordable housing projects. Berkeley City Council and community members have acknowledged that we don't want to delay the construction of affordable housing. We need affordable housing now, not three years from now!](#)

In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project's proposed market rate units at specified levels of affordability, in lieu of paying the City's Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). [In June 2017, Council specified that 20% of the project's total units should be in-lieu affordable units.](#) Expedited review of projects offering more than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city's baseline inclusionary Affordable Housing requirement.

All projects with greater than 20% affordable housing shall be subject to the expedited review process, receiving priority review and meeting explicit accelerated timelines. Among projects qualifying for expedited review, those offering the greatest absolute number of affordable housing units (cumulative units at [extremely low](#), very low (0-50% AMI), low (50-80% AMI), and/or moderate income (80-120% AMI) levels), and/or projects with restricted timelines to seek public or private affordable housing funds, will receive the highest priority.

Area Median Income Limits for Household Sizes (Source: HUD, June 2017)

Household Size	0–50% AMI	50%–80% AMI	80%–120% AMI
<u>1</u>	<u>\$0–\$36,550</u>	<u>\$36,551–\$56,330</u>	<u>\$56,331–\$81,850</u>
<u>2</u>	<u>\$0–\$41,750</u>	<u>\$41,751–\$64,350</u>	<u>\$64,350–\$93,500</u>
<u>3</u>	<u>\$0–\$46,950</u>	<u>\$46,951–\$72,400</u>	<u>\$72,401–\$105,200</u>
<u>4</u>	<u>\$0–\$52,150</u>	<u>\$52,151–\$80,400</u>	<u>\$80,401–\$116,900</u>

Like most cities across California, Berkeley struggles to create enough below market rate units. In particular, the City has not produced its fair share of the goals set by the Association of Bay Area Government’s Regional Housing Needs Allocation for very low, low, and moderate income units. We need to make it easier to create those units.

The types of projects that are eligible for a expedited approval process include:

1. AFFORDABLE HOUSING PROJECTS: Zoning compliant projects with 80% or more onsite below market rate units.
2. HOUSING PROJECTS THAT PROVIDE EXTRA AFFORDABLE UNITS: Zoning compliant projects that **exceed** the city’s established standards for on-site below market rate affordable housing (BMR in-lieu unit) percentages.
3. HOUSING PROJECTS THAT INCLUDE **BOTH** LOW-INCOME AND MIDDLE INCOME UNITS. Zoning compliant projects that **exceed** the city’s established percentages (currently 20%) for on-site affordable housing by including **WORKFORCE HOUSING** units for middle income earners (80% AMI-130% AMI). **IN BERKELEY, TEACHERS, JANITORS, LIBRARIANS, CITY STAFF, FIREFIGHTERS AND POLICE OFFICERS AND THEIR FAMILIES COULD BE ELIGIBLE FOR THESE UNITS.** For these types of projects, at least half of the onsite in lieu units must be designated for middle income earners while the remaining percentage is reserved for low or very low income earners (0-80% AMI).

The recommended streamlined approval process for projects that include extra affordable housing above and beyond current requirements are as follows:

- A special “fast track” approval process which consists of ministerial approval and in-house staff design review for affordable housing projects offering 80% or more affordable housing units (#1)
- A expedited approval process for projects that provide affordable units above and beyond current City requirements (#2 & #3). **AS LONG AS THE PROJECT FULLY CONFORMS WITH ALL PROVISIONS OF THE ZONING CODE–IN THE BASE PROJECT BEFORE THE STATE DENSITY BONUS–THE PROJECT CANNOT BE SUBJECTED TO AREA REDUCTION (MASSING ADJUSTMENTS ARE PERMITTED).**

This expedited approval process recommendations are as follows:

- [Prioritization in the staff review queue.](#)
- [Once complete, staff should submit a report with the CEQA determination to Design Review COMMITTEE and the Zoning Adjustments Board as soon as possible \(ideally within one month\).](#)
- [The Design Review COMMITTEE reviews AND APPROVES project during one hearing WITH and submits comments/CONDITIONS.](#)
- [After Design Review COMMITTEE reviews project, it moves directly to the Zoning Adjustments Board \(ZAB\) for immediate scheduling and one hearing.](#)
- [THE ZONING ADJUSTMENT BOARD REVIEWS AND APPROVES PROJECT DURING ONE HEARING WITH COMMENTS/CONDITIONS.](#)
- [If a project is appealed after the ZAB hearing, within 30 days after the expiration of the appeal period, the matter shall be presented to the City Council as a public hearing action item for possible decision that night. The Council may not remand back to the ZAB but may continue the public hearing as necessary to remedy any outstanding issues.](#)
- [Once the project is submitted to the building department, it will receive priority status. The first round of plan check comments will be submitted as quickly as staff can provide them \(ideally within a month\).](#)
- [Responses to the resubmittal will be provided as soon as possible and additional new comments should be minimized unless they pertain to health and safety.](#)

In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 12: Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the *inclusion of Affordable Housing above and beyond the legally mandated amount*. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful *affordable housing* funds.

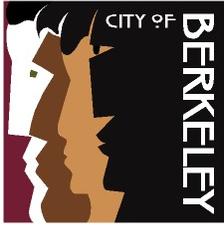
In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on site, all projects with 80% or more Affordable Housing shall receive top priority status and accelerated processing and review [while the Planning Commission will provide zoning ordinance amendment recommendations within 90 days that would allow ministerial approval of zoning-compliant affordable housing projects.](#)

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON

Councilmember Lori Droste
Council District 8 (510) 981-7180



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL

Meeting Date: July 11, 2017

Item Number: 33

Item Description: Expedited Review for Affordable Housing Projects

Submitted by: Councilmember Sophie Hahn

Re-submitting a version with all changes accepted of the revised item, for clarity.
There have been no other changes.

SOPHIE HAHN

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CONSENT CALENDAR

July 11, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmembers Sophie Hahn, Cheryl Davila, Ben Bartlett, and
Kate Harrison
Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

1. Direct the City Manager to immediately confer priority status and offer expedited review to projects with 80% or more affordable housing

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley's top priorities, and all possible steps must be taken to support increases in Berkeley's affordable housing stock.

In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes "Green Pathway" provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 1: Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City's top development priority, and incentivize the development of affordable housing projects. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful funds.

To that end, all projects with 80% or more Affordable Housing shall receive top priority status and accelerated processing and review.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley's environmental sustainability goals.

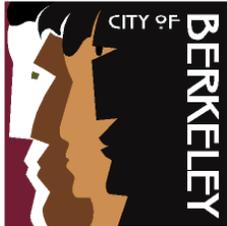
CONTACT PERSON

Councilmember Sophie Hahn

Council District 5 (510) 981-7150

ATTACHMENTS

1. BMC Chapter 23B.34, Green Pathway



Lori Droste
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ACTION CALENDAR

July 11, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Lori Droste
Subject: Friendly Amendments to “Expedited Review for Affordable Housing Projects”

Note: **original draft language by Councilmembers Hahn, Davila, and Bartlett is italicized*
***revised language by Councilmembers Hahn, Davila, Bartlett and Harrison is in plain text*
****[new proposed friendly amendments by Councilmember Droste is tracked and underlined.](#)*

RECOMMENDATION

1. *Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed onsite units ([qualifying projects described in the background section](#)); and*
2. Direct the City Manager to immediately confer priority status and offer [expedited a special “fast track” review and refer to the Planning Commission to recommend to the Council within 90 days zoning ordinance amendments that would allow ministerial approval of zoning-compliant affordable housing](#) projects with 80% or more affordable housing; [and](#)
3. [Request that the City Manager returns to Council with an update and recommendations from the Green Affordable Housing package streamlining provision \(Council’s top priority in 2016\).](#)

FINANCIAL IMPLICATIONS

Staff time [and the potential costs associated with the consultants needed to expedite plan review.](#)

BACKGROUND

[If Council approves these streamlining recommendations, it will be easier, faster, and cheaper to create affordable housing in Berkeley. At least one year of delays will be eliminated from the project review process. According to the nonpartisan Legislative Analyst's Office, "researchers have linked additional review time to higher housing costs. A study of jurisdictions in the Bay Area found that each layer of independent review was associated with a 4% increase in a jurisdiction's home prices \(California's High Housing Costs: Causes and Consequences, 2015\)."](#)

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley's top priorities, and all possible steps must be taken to support increases in Berkeley's affordable housing stock.

[This proposal reflects Berkeley City Council's ongoing desire for streamlining \(expediting\) the affordable housing development review process. In October 2015, Berkeley City Council unanimously passed the Green Affordable Housing package, which contained a streamlining provision. The Planning Commission and staff have been consistently working on this referral for over a year as it was the top priority of 2016. In addition, Councilmember Worthington also introduced and successfully passed a proposal in January 2016 to streamline affordable housing projects. Berkeley City Council and community members have acknowledged that we don't want to delay the construction of affordable housing. We need affordable housing now, not three years from now!](#)

*In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project's proposed market rate units at specified levels of affordability, in lieu of paying the City's Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). In June 2017, Council specified that 20% of the project's **total** units should be [in-lieu affordable units](#). Expedited review of projects offering more than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city's baseline inclusionary Affordable Housing requirement.*

All projects with greater than 20% affordable housing shall be subject to the expedited review process, receiving priority review and meeting explicit accelerated timelines. Among projects qualifying for expedited review, those offering the greatest absolute number of affordable housing units (cumulative units at [extremely low](#), very low (0-50% AMI), low (50-80% AMI), and/or moderate income (80-120% AMI) levels), and/or projects with restricted timelines to seek public or private affordable housing funds, will receive the highest priority.

[Area Median Income Limits for Household Sizes \(Source: HUD, June 2017\)](#)

Household Size	0–50% AMI	50%–80% AMI	80%–120% AMI
1	\$0-\$36,550	\$36,551–\$56,330	\$56,331–\$81,850
2	\$0–\$41,750	\$41,751–\$64,350	\$64,350–\$93,500
3	\$0–\$46,950	\$46,951–\$72,400	\$72,401–\$105,200
4	\$0–\$52,150	\$52,151–\$80,400	\$80,401–\$116,900

Like most cities across California, Berkeley struggles to create enough below market rate units. In particular, the City has not produced its fair share of the goals set by the Association of Bay Area Government’s Regional Housing Needs Allocation for very low, low, and moderate income units. We need to make it easier to create those units.

The types of projects that are eligible for a expedited approval process include:

1. AFFORDABLE HOUSING PROJECTS: Zoning compliant projects with 80% or more onsite below market rate units.
2. HOUSING PROJECTS THAT PROVIDE EXTRA AFFORDABLE UNITS: Zoning compliant projects that **exceed** the city’s established standards for on-site below market rate affordable housing (BMR in-lieu unit) percentages.
3. HOUSING PROJECTS THAT INCLUDE **BOTH** LOW-INCOME AND MIDDLE INCOME UNITS. Zoning compliant projects that **exceed** the city’s established percentages (currently 20%) for on-site affordable housing by including units for middle income earners (80% AMI-130% AMI). For these types of projects, at least half of the onsite in lieu units must be designated for middle income earners while the remaining percentage is reserved for low or very low income earners (0-80% AMI).

The recommended streamlined approval process for projects that include extra affordable housing above and beyond current requirements are as follows:

- A special “fast track” approval process which consists of ministerial approval and in-house staff design review for affordable housing projects offering 80% or more affordable housing units (#1)
- A expedited approval process for projects that provide affordable units above and beyond current City requirements (#2 & #3). This expedited approval process recommendations are as follows:
 - Prioritization in the staff review queue.
 - Once complete, staff should submit a report with the CEQA determination to Design Review Commission and the Zoning Adjustments Board as soon as possible (ideally within one month).
 - The Design Review Commission reviews project during one hearing and submits comments.

- [After Design Review Commission reviews project, it moves directly to the Zoning Adjustments Board \(ZAB\) for immediate scheduling and one hearing.](#)
- [If a project is appealed after the ZAB hearing, within 30 days after the expiration of the appeal period, the matter shall be presented to the City Council as a public hearing action item for possible decision that night. The Council may not remand back to the ZAB but may continue the public hearing as necessary to remedy any outstanding issues.](#)
- [Once the project is submitted to the building department, it will receive priority status. The first round of plan check comments will be submitted as quickly as staff can provide them \(ideally within a month\).](#)
- [Responses to the resubmittal will be provided as soon as possible and additional new comments should be minimized unless they pertain to health and safety.](#)

In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 12: Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the *inclusion of Affordable Housing above and beyond the legally mandated amount*. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful *affordable housing* funds.

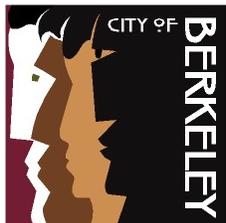
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ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON

Councilmember Lori Droste
Council District 8 (510) 981-7180



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL

Meeting Date: June 27, 2017

Item Number: 38

Item Description: Expedited Review for Affordable Housing Projects

Submitted by: Councilmember Sophie Hahn

Removing recommendation 1, and changing the threshold for immediate priority status and expedited review to projects that contain 80% or more affordable housing units. We also removed Attachment 1, BMC Chapter 22.20.

SOPHIE HAHN

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CONSENT CALENDAR

June 27, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn, Cheryl Davila, ~~and Ben Bartlett,~~ and Kate Harrison
Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

- ~~1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and~~
- 1. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects with 80% or more affordable housing, ~~pending adoption of a more formal and widely applicable expedited review process.~~

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley’s top priorities, and all possible steps must be taken to support increases in Berkeley’s affordable housing stock.

~~In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project’s proposed market rate units at specified levels of affordability, in lieu of paying the City’s Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). Expedited review of projects offering more than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city’s baseline inclusionary Affordable Housing requirement.~~

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In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment [12](#): Green Pathway Ordinance, BMC Chapter 23B.34).

Creating an expedited process for projects with significant affordable housing will help spur additional development of much-needed Affordable Housing, ease the permitting process for developments whose projects are closely aligned with the City’s top development priority, and incentivize the ~~inclusion of Affordable Housing above and beyond the legally mandated amount~~development of affordable housing projects. An expedited review process will also support not-for-profit developers in meeting timelines to obtain scarce and impactful ~~affordable housing funds~~.

~~In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on-site~~To that end, all projects with ~~100%~~80% or more Affordable Housing shall receive top priority status and accelerated processing and review, ~~to the greatest extent possible~~.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON

Councilmember Sophie Hahn Council District 5 (510) 981-7150

ATTACHMENTS

- ~~BMC Chapter 22.20, Mitigation and Fees, Condition for Approval of Development Projects~~
- BMC Chapter 23B.34, Green Pathway

SOPHIE HAHN

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
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CONSENT CALENDAR

June 27, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn, Cheryl Davila, Ben Bartlett, and Kate Harrison
Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

1. Direct the City Manager to immediately confer priority status and offer expedited review to projects with 80% or more affordable housing

FINANCIAL IMPLICATIONS

Staff time

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ENVIRONMENTAL SUSTAINABILITY

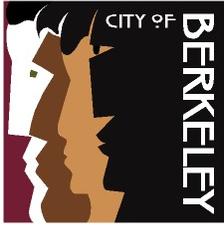
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CONTACT PERSON

Councilmember Sophie Hahn Council District 5 (510) 981-7150

ATTACHMENTS

1. BMC Chapter 23B.34, Green Pathway



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL

Meeting Date: June 27, 2017

Item Number: 38

Item Description: Expedited Review for Affordable Housing Projects

Submitted by: Councilmember Sophie Hahn

Adding Councilmember Harrison as a co-sponsor

SOPHIE HAHN

Berkeley City Council, District 5

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CONSENT CALENDAR

June 27, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Sophie Hahn, Cheryl Davila, ~~and~~ Ben Bartlett, and Kate Harrison
Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and
2. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects, pending adoption of a more formal and widely applicable expedited review process.

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

Cities throughout the Bay Area, including Berkeley, suffer from a lack of affordable housing development. Over the past two decades, rents have skyrocketed, and many low- and middle-income families have been forced out of Berkeley, due to lack of affordability. Alleviating this crisis is one of Berkeley's top priorities, and all possible steps must be taken to support increases in Berkeley's affordable housing stock.

In 2016, the Berkeley City Council determined that development projects could provide a number of units equal to 20% of the project's proposed market rate units at specified levels of affordability, in lieu of paying the City's Affordable Housing Mitigation Fee (see Attachment 1, BMC 22.20). Expedited review of projects offering *more* than 20% affordable housing built on site (from 21-100% of units) will help not-for-profit affordable housing developers move projects forward in an expeditious manner and reward for-profit developers who go above and beyond the city's baseline inclusionary Affordable Housing requirement.

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In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on site, all projects with 100% Affordable Housing shall receive top priority status and accelerated processing and review, to the greatest extent possible.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON

Councilmember Sophie Hahn Council District 5 (510) 981-7150

ATTACHMENTS

1. BMC Chapter 22.20, Mitigation and Fees, Condition for Approval of Development Projects
2. BMC Chapter 23B.34, Green Pathway

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ACTION CALENDAR

September 12, 2017

(Continued from July 25, 2017)

To: Honorable Mayor and Members of the City Council

From: Councilmembers Sophie Hahn, Cheryl Davila, and Ben Bartlett

Subject: Expedited Review for Affordable Housing Projects

RECOMMENDATION

1. Refer to the City Manager the creation of an expedited review process for housing projects in which Affordable Housing units make up more than 20% of the proposed on-site units; and
2. Direct the City Manager to immediately confer priority status and offer expedited review to 100% Affordable projects, pending adoption of a more formal and widely applicable expedited review process.

FINANCIAL IMPLICATIONS

Staff time

BACKGROUND

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In the past, the City of Berkeley has developed expedited entitlement processes for development projects that are in line with key priorities. Specifically, the Downtown Plan includes “Green Pathway” provisions, with a streamlined permit process for buildings that exceed certain requirements in the C-DMU Area (see Attachment 2: Green Pathway Ordinance, BMC Chapter 23B.34).

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In the interim, while the City Manager develops a formal process for expedited review of all projects with more than 20% Affordable units on site, all projects with 100% Affordable Housing shall receive top priority status and accelerated processing and review, to the greatest extent possible.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with Berkeley’s environmental sustainability goals.

CONTACT PERSON

Councilmember Sophie Hahn, Council District 5, (510) 981-7150

ATTACHMENTS

1. BMC Chapter 22.20, Mitigation and Fees, Condition for Approval of Development Projects
2. BMC Chapter 23B.34, Green Pathway

Chapter 22.20
MITIGATION AND FEES--CONDITIONS FOR APPROVAL OF DEVELOPMENT
PROJECTS

Sections:

- [22.20.010](#) Applicability of chapter.
- [22.20.020](#) Findings.
- [22.20.030](#) Purpose.
- [22.20.040](#) Definitions.
- [22.20.050](#) Designated implementing authority.
- [22.20.060](#) Requirements.
- [22.20.065](#) Affordable housing mitigation fee.
- [22.20.070](#) Exception/limit where applicant establishes inapplicability or unconstitutionality of general requirements.
- [22.20.080](#) Exception--Hardship.
- [22.20.090](#) Procedure.
- [22.20.100](#) Appeal.
- [22.20.110](#) Mitigation rationale.

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)

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)

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 placement facilities and amenities and other impacts attributable to and generated by such development projects within the City of Berkeley. (Ord. 6179-NS § 3, 1993)

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)

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)

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)

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"), prepared by Bay Area Economics, quantifies the impacts of new market-rate rental units on the need for affordable housing in the City.

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. Subject to administrative regulations promulgated pursuant to subdivision H, 40% of the Very Low-Income units in Development projects that have not obtained final approval under Title 23 as of September 20, 2016, shall be reserved for holders of Berkeley Housing Authority Section 8 vouchers and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates.

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:

$$[(A-B-C) \times \text{Fee}] - [(B+C)/((A-B-C) \times 20\%)] \times ((A-B-C) \times \text{Fee})$$

Where:

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. 7534-NS § 1, 2017; Ord. 7506-NS § 1, 2016; Ord. 7499-NS § 1, 2016; Ord. 7192-NS § 1, 2011)

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.

B. 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)

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)

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 which 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)

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)

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)

Chapter 23B.34 Green Pathway

Sections:

- [23B.34.010](#) Applicability
- [23B.34.020](#) Purpose
- [23B.34.030](#) Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources
- [23B.34.040](#) Voluntary Green Pathway Election--Application
- [23B.34.050](#) Requirements Applicable to All Green Pathway Projects
- [23B.34.060](#) Additional Green Pathway Requirements Applicable to Large Buildings and Hotels
- [23B.34.070](#) Development Standards for All Green Pathway Projects
- [23B.34.080](#) Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height
- [23B.34.090](#) Streamlined Entitlement Process for Projects Involving Buildings Over 75 Feet in Height
- [23B.34.100](#) Tolling
- [23B.34.110](#) Compliance
- [23B.34.120](#) City Manager Authority to Issue Regulations

23B.34.010 Applicability

This Chapter applies only to development projects in the C-DMU district that:

- A. Do not propose alteration or demolition of any property that is an historical resource as defined by 14 California Code of Regulations 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by 14 California Code of Regulations 15064.5. (Ord. 7230-NS § 1 (part), 2012)

23B.34.020 Purpose

The purpose of this Chapter is to implement the "Green Pathway" provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that exceed the Green Building requirements applicable in the C-DMU district and confer extraordinary public benefits that could not otherwise be obtained, as specified in this Chapter. More specifically, this Chapter establishes standards and requirements to provide greater clarity

regarding the City's expectations for projects eligible for approval under these provisions and to ensure they will be designed and developed consistent with the Downtown Area Plan. (Ord. 7230-NS § 1 (part), 2012)

23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources

In order to determine whether a project is eligible for processing under this Chapter, each applicant shall submit to the City a Request for Determination ("RFD"). The RFD process set forth in this Section shall apply to development projects that may be eligible for Green Pathway processing pursuant to this Chapter notwithstanding anything to the contrary in Chapter [3.24](#).

A. A property owner or authorized agent thereof shall request the Landmarks Preservation Commission ("LPC") to determine whether the subject property, as well as each adjacent property, is an historical resource under 14 California Code of Regulations 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990);
2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent); or
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

B. Processing of RFDs.

1. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City's consultant at the applicant's expense. If a property that is the subject of the RFD is not

identified on any of the lists in Subdivision (A), the applicant's assessment may consist of a statement of why the applicant believes the property does not include an historical resource.

3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review.

4. The LPC shall commence its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Section [3.24.140](#).

5. Any of the timelines specified in this Section may be extended at the request of the applicant. Failure to act within any of the timelines set forth in this Section, as they may be extended, shall constitute a decision to take no action to designate.

C. If a property that is the subject of a RFD is not designated within the time limitations set forth in this Section, Chapter [3.24](#) shall not apply to that property unless and until the earliest of any of the following occurs:

1. The expiration of two (2) years from the date of any final action not to designate the property; or

2. If an application under this Chapter is submitted within that period, (1) the application is withdrawn or denied; or (2) any entitlement expires, is cancelled or revoked, or for any other reason ceases to have effect.

D. Decisions by the Landmarks Preservation Commission under this Section shall be subject to appeal as set forth in Section [3.24.300](#), and certification as set forth in Section [3.24.190](#).

E. If a subject property is determined to be an historical resource as defined by 14 California Code of Regulations 15064.5, it shall not be processed as a Green Pathway Project under this Chapter. (Ord. 7230-NS § 1 (part), 2012)

23B.34.040 Voluntary Green Pathway Election--Application

A. The Green Pathway authorized by this Chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain processing benefits.

B. An application for processing pursuant to the Green Pathway shall include the information otherwise required by this Title for the entitlement sought, as well as:

1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements set forth in this Chapter if the application is approved; and
2. Proof that the Landmarks Preservation Commission has not taken any action under Section [23B.34.030](#) to designate the subject property as a structure of merit or landmark under Chapter [3.24](#).

C. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of this Title.

D. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of Chapter [3.24](#), Landmarks Preservation Commission. (Ord. 7230-NS § 1 (part), 2012)

23B.34.050 Requirements Applicable to All Green Pathway Projects

All projects subject to the Green Pathway shall be subject to the following requirements:

A. In addition to any other applicable affordable housing mitigation fee or requirement, at least twenty percent (20%) of the total units in any proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income households, as defined by Section [50053](#), of the California Health and Safety Code for the life of the project. As an alternative, an applicant may pay an in lieu fee to the Housing Trust Fund as established by Council.

B. The applicant shall waive, in writing, any rights under State Density Bonus Law, Section [65915](#) of California Government Code.

C. The applicant shall sign an agreement that no less than thirty percent (30%) of a project's construction workers shall be Berkeley residents.

1. If insufficient Berkeley residents are available to fulfill the 30% local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities

of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).

2. If insufficient residents are available from the Green Corridor to fulfill the 30% local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements.

3. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30% local hire requirement by providing the same documentation the City requires to demonstrate compliance with paragraphs 1 and 2 of this subdivision.

D. Uses shall comply with the requirements and limitations of Sections [23E.68.030](#) and [23E.68.060](#). (Ord. 7230-NS § 1 (part), 2012)

23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels

In addition to the requirements of Section [23B.34.050](#), any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:

A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.

B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.

D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest. (Ord. 7230-NS § 1 (part), 2012)

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

A. **Building Setbacks Within View Corridors:** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.

B. **Street Wall Facade:** Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less:

1. Smaller modulations may be incorporated within larger volumes;
2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one (1) or more of the following features:
 - a. Window openings, oriel windows, or balconies;
 - b. Awnings, canopies, or entrances;
 - c. Arcades, columns, or pilasters;
 - d. Materials and color; or
 - e. Other architectural features.

C. **Shadow Analysis Required for Buildings With Heights Between 60 and 75 Feet:** Applications shall include diagrams showing:

1. The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;

2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

D. Height Restrictions on Green Pathway Buildings: Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:

1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height;
2. Two buildings, up to 120 feet in height in the Core or Outer Core.

E. To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR. (Ord. 7230-NS § 1 (part), 2012)

23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height

A. Notwithstanding anything to the contrary in this Title, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the applicable zoning requirements, standards and requirements in this Chapter and the Downtown Design Guidelines. Such projects shall be subject to design review under subdivision B and Chapters [23E.08](#) and [23E.12](#).

B. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section [23B.34.030](#), the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.

1. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subdivisions A and B of Section [23B.34.030](#) to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee.

2. The Design Review Committee shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the Design Review Committee determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway Project.

C. Notwithstanding Sections [23E.12.040](#) and [23E.12.050](#), the Design Review Committee shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for design review, is complete. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the Design Review Committee shall treat applicable guidelines as standards. The decision of the Design Review Committee regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within fourteen (14) days of the date of the Committee's action. Design Review appeals shall be limited to design issues. (Ord. 7230-NS § 1 (part), 2012)

23B.34.090 Streamlined Entitlement Process For Projects Involving Buildings Over 75 Feet In Height

Notwithstanding anything to the contrary in this Title, the Zoning Adjustments Board shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under [23B.34.080](#) no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act. Such projects shall receive priority status in order to meet the review milestones set forth in this Section. (Ord. 7230-NS § 1 (part), 2012)

23B.34.100 Tolling

Timelines under this Chapter shall be tolled during any proceedings pursuant to Chapter [3.24](#), relating to a Green Pathway project. (Ord. 7230-NS § 1 (part), 2012)

23B.34.110 Compliance

The applicable public benefit requirements of this Chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects. (Ord. 7230-NS § 1 (part), 2012)

23B.34.120 City Manager Authority to Issue Regulations

The City Manager or his/her designee may promulgate rules and regulations pertaining to this Chapter, including, but not limited to, setting and administering gross rents and sale prices for below-market-rate units. These rules and regulations may also specify and require guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this Chapter are secured. (Ord. 7230-NS § 1 (part), 2012)