



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL

Meeting Date: July 25, 2017

Item Number: 41

Item Description: Referral to the Housing Advisory Commission Consideration of an Ordinance to Establish a Waiver of Administrative and Permit Fees for Certain Affordable Housing Projects

Submitted by: Councilmember Sophie Hahn

Adding Mayor Arreguín as a co-sponsor. Changes recommendation from referral to HAC to direction to City Manager, adds direction to the City Manager to send a letter to BUSD, further clarifies background section, and removes original attachments.

SOPHIE HAHN

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Item 41
Supplemental 2

CONSENT CALENDAR

July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmembers Sophie Hahn, Kate Harrison and Mayor Jesse Arreguín
Subject: Direct the City Manager to draft an ordinance to waive certain fees for Berkeley Housing Trust Fund projects and send a letter to BUSD Board of Education requesting consideration of a waiver of School Facility Fees for Berkeley Housing Trust Fund Projects.

RECOMMENDATION

1. Direct the City Manager to draft an ordinance establishing automatic waiver of certain administrative, permit, impact and other fees for projects receiving City of Berkeley Housing Trust Fund (HTF) monies and submit a draft within 90 days for Council approval.

Fee waivers shall apply to all HTF projects that have not yet been issued a building permit, and should include, but not be limited to:

- a. Waiver of internal, staff-time-related permit, inspection, and other fees;
 - b. Waiver of mitigation, impact, and in-lieu fees.
 - c. Notwithstanding the above, fees to cover City “out of pocket” costs, fees passed-through to other agencies, and fees necessitated by CEQA should not be waived.
2. Direct the City Manager to send a letter to the BUSD Board of Education requesting consideration of an automatic waiver of BUSD School Facility Fees for projects receiving City of Berkeley Housing Trust Funds.

FINANCIAL IMPLICATIONS

Staff time to draft ordinance and policies. In the future, possible optimization of the impact of Berkeley Affordable Housing Trust funds, ensuring they are used to support housing rather than administrative costs, and reduction in development-related administrative fees received by the City. (Note: It is expected that no more than 1-2 projects qualifying for automatic waivers will seek permits in any given 5 year period.)

BACKGROUND

The City of Berkeley has established a Housing Trust Fund (HTF) to support the creation of affordable housing in Berkeley. This fund is a critical tool to increase Berkeley's affordable housing stock. When HTF funds are granted to qualifying projects, the City should ensure that the applicant is able to maximize the impact of these monies for the project itself.

A variety of fees are levied on development projects. Some cover the City's own internal processing costs, while others are collected to cover costs for outside consultants or passed on to other agencies. Impact, mitigation, and in-lieu fees are also assessed to compensate for impacts or for deviations from building standards. Fees also can operate as mitigations for environmental impacts and can be implicated in CEQA.

Permit and administrative fee waivers or deferrals are already allowed on a case by case basis for a variety of fees. For example, BMC Chapter 19.62 allows the City Manager to waive permit fees for housing projects in which at least 25% of its units are low and/or moderate income housing. Permit Fees are defined as "any fee charged by the City of Berkeley for any permit in connection with residential construction and any associated demolition" BMC § 19.62.020.G. Fees for permit applications or inspection for seismic retrofit work for eligible structures and buildings are also waived BMC § 19.66.030.

The process for obtaining these waivers is complex. BMC 23B.24.040 requires applicants to "file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer". The waiver request is then reviewed by the City Manager, and granted at the City Manager's discretion. As a final step, the waiver is submitted to Council for review. Yet another section of the code waives affordable housing and childcare fees if a development meets certain qualifying criteria (BMC § 22.20), but does not waive SOSIP, in-lieu or other fees.

Given this incomplete patchwork of fee waiver provisions, each with its own process, obtaining waivers is a complicated and time-consuming process. Some waivers are granted statutorily, while others can only be granted upon request, and entail multi-tiered review. This item is intended to clarify fee waivers for projects receiving Berkeley HTF monies by granting automatic waivers of administrative, permit, impact and other fees across all City of Berkeley departments, and to collect in a single ordinance the fees that will be automatically waived. Fees to cover "out-of-pocket" costs such as costs

for outside consultants, other agency-mandated fees and fees necessitated by CEQA would not be waived.

Berkeley Unified School District (BUSD) also recently implemented the assessment of a School Facility Fee on new residential, commercial and industrial development, which took effect June 8, 2017. This item directs the City Manager to write a letter to the BUSD Board of Education requesting consideration of a waiver of the School Facility Fee for developments receiving Berkeley HTF monies, to match the City's action and to further reduce costs for the production of affordable housing in Berkeley.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

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Subject: Direct the City Manager to draft an ordinance to waive certain fees for Berkeley Housing Trust Fund projects and send a letter to BUSD Board of Education requesting consideration of a waiver of School Facility Fees for Berkeley Housing Trust Fund Projects.
~~Referral to the Housing Advisory Commission consideration of an ordinance to establish a waiver of administrative and permit fees for certain affordable housing projects~~

RECOMMENDATION

1. Direct the City Manager to draft an ordinance establishing automatic waiver of certain administrative, permit, impact and other fees for projects receiving City of Berkeley Housing Trust Fund (HTF) monies and submit a draft within 90 days for Council approval.

Fee waivers shall apply to all HTF projects that have not yet been issued a building permit, and should include, but not be limited to:

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2. Direct the City Manager to send a letter to the BUSD Board of Education requesting consideration of an automatic waiver of BUSD School Facility Fees for projects receiving City of Berkeley Housing Trust Funds.

~~Refer to the Housing Advisory Commission and City Manager the creation of an ordinance to establish an automatic waiver of administrative and permit fees for certain affordable housing projects, in particular those projects qualifying for Housing Trust Fund or other Berkeley affordable housing monies. A proposed ordinance is attached for consideration as one possible model.~~

FINANCIAL IMPLICATIONS

Staff time to ~~review-draft~~ ordinance and policies. In the future, possible optimization of the impact of Berkeley ~~a~~Affordable ~~h~~Housing ~~Trust~~ funds, ensuring they are used to support housing rather than administrative costs, and reduction in development-related administrative fees received by the City ~~for permitting and development of housing~~. (Note: It is expected that no more than 1-2 projects qualifying for automatic waivers will seek permits in any given 5 year period.)

BACKGROUND

The City of Berkeley has established a Housing Trust Fund (HTF) to support the creation of affordable housing in Berkeley. This fund is a critical tool to increase Berkeley's affordable housing stock. ~~In addition, other Berkeley affordable housing funds may be available to support affordable housing projects.~~ When City of Berkeley HTF funds are granted to qualifying projects, the City should ensure that the applicant is able to maximize the impact of these public funds monies for the project itself ~~rather than for payment of the City's development-related administrative fees~~.

A variety of fees are levied on development projects. Some cover the City's own internal processing costs, while others are collected to cover costs for outside consultants or passed on to other agencies. Impact, mitigation, and in-lieu fees are also assessed to compensate for impacts or for deviations from building standards. Fees also can operate as mitigations for environmental impacts and can be implicated in CEQA.

Permit and administrative fee waivers or deferrals are already allowed on a case by case basis for a variety of fees. For example, BMC Chapter 19.62 allows the City Manager to waive permit fees for housing projects in which at least 25% of its units are low and/or moderate income housing. Permit Fees are defined as "any fee charged by the City of Berkeley for any permit in connection with residential construction and any associated demolition" BMC § 19.62.020.G. Fees for permit applications or inspection for seismic retrofit work for eligible structures and buildings are also waived BMC § 19.66.030.

The process for obtaining these waivers is complex. BMC 23B.24.040 requires applicants to "file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer". The waiver request is then reviewed by the City Manager, and granted at the City Manager's discretion. As a final step, the waiver is submitted to Council for review. Yet another section of the code waives affordable housing and childcare fees if a development

meets certain qualifying criteria (BMC § 22.20), but does not waive SOSIP, in-lieu or other fees.

Given this incomplete patchwork of fee waiver provisions, each with its own process, obtaining waivers is a complicated and time-consuming process. Some waivers are granted statutorily, while others can only be granted upon request, and entail multi-tiered review. This item is intended to clarify fee waivers for projects receiving Berkeley HTF monies by granting automatic waivers of administrative, permit, impact and other fees across all City of Berkeley departments, and to collect in a single ordinance the fees that will be automatically waived. Fees to cover “out-of-pocket” costs such as costs for outside consultants, other agency-mandated fees and fees necessitated by CEQA would not be waived.

Berkeley Unified School District (BUSD) also recently implemented the assessment of a School Facility Fee on new residential, commercial and industrial development, which took effect June 8, 2017. This item directs the City Manager to write a letter to the BUSD Board of Education requesting consideration of a waiver of the School Facility Fee for developments receiving Berkeley HTF monies, to match the City’s action and to further reduce costs for the production of affordable housing in Berkeley.

~~Permit fee waivers or deferrals are already permitted under BMC Chapter 23B.24.040 on a case by case basis, and require a time-consuming process. Affordable housing developers putting together financing for their projects do not know from the outset whether or not waivers will be granted, and are unable to reflect the potentially reduced costs in their plans.~~

Chapter 23B.24.040 states:

~~*“The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver.”*~~

~~The process to obtain permit fee waivers requires applicants to submit a written request to the Director of Planning and Development, which is then sent to the City Manager for consideration. The City Manager must make two determinations about the project:~~

~~(1) whether it provides a significant public service or benefit, and~~

~~(2) whether the waiver is economically necessary to complete the project.~~

~~The City Manager next is required to notify the City Council of any project receiving a waiver of fees, and the Council has the authority to review, grant, modify, or deny the waiver. Finally, the City Manager must send a letter authorizing the waiver to the Planning Department. All of these steps must occur before a development application can be deemed complete. This complex process has the potential to significantly delay a project's application and creates uncertainty at the project planning stage.~~

~~A number of cities offer fee waivers and deferments to affordable housing projects. Austin, TX waives all fees, including impact fees and administrative fees, if the development is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's Green Building Standards.¹~~

~~Puyallup, WA offers a waiver of building and construction permit fees if the residential structure is intended for low-income families, the construction of the structure involves some volunteer labor, or the structure is being constructed by an organization classified as a nonprofit organization by the Internal Revenue Service.²³~~

~~It would be optimal to automatically waive permit fees for projects receiving Berkeley affordable housing funds, to expedite the completion of affordable projects and reduce the amount of affordable housing monies spent on the City's own administrative fees.~~

~~Affordable housing built in Berkeley provides a significant public benefit to the community. A permit fee waiver is likely to help with the economic feasibility. Finally, applicants receiving affordable housing funds from the City of Berkeley will be able to make full use of these monies for the intended housing.~~

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

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

ATTACHMENTS

DRAFT Ordinance amending BMC 23B.24.040

¹ <http://www.austintexas.gov/edims/document.cfm?id=111622>

² <http://mrsc.org/Home/Explore-Topics/Planning/Specific-Planning-Subjects,-Plan-Elements/Affordable-Housing-Ordinances-Flexible-Provisions.aspx>

³ <http://www.codepublishing.com/WA/Puyallup/html/Puyallup17/Puyallup1704.html#17.04.080>

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

~~ESTABLISHING A WAIVER OF PERMIT FEES FOR CERTAIN AFFORDABLE HOUSING PROJECTS, IN PARTICULAR PROJECTS QUALIFYING FOR HOUSING TRUST FUND OR OTHER CITY OF BERKELEY AFFORDABLE HOUSING FUNDS~~

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

~~Section 1.~~ That Berkeley Municipal Code Section 23B.24.040 is amended to read as follows:

~~**BMC Section 23B.24.040 Payment, Waiver and Refund of Application Fees**~~

~~A.—Applications for Permits shall be accompanied by the fees as set by resolution of the Council. Payment of the fee is required in order for an application to be complete under the Permit Streamlining Act (PSA), and absent payment of the fee, the application will not be processed unless a fee waiver or deferral is approved as set forth below.~~

~~B.—No fee shall be required when the applicant is the City, or if it is waived under any other provision of the BMC.~~

~~C.—In addition to seeking fee waivers under other provisions of the BMC, any applicant may file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer. The Director of Planning and Development shall forward the request to the City Manager. The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver. A letter from the City Manager authorizing the fee waiver or deferral shall be submitted in lieu of a fee before an application will be accepted. Each fee waiver or deferral request shall include a breakdown of all applicable Current Planning Fees, as set forth in the current Fee Resolution.~~

~~D.—If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees shall not be made for applications that have been denied.~~

~~Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.~~

SOPHIE HAHN

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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 and Kate Harrison

Subject: Referral to the Housing Advisory Commission Consideration of an Ordinance to Establish a Waiver of Administrative and Permit Fees for Certain Affordable Housing Projects

RECOMMENDATION

Refer to the Housing Advisory Commission and City Manager the creation of an ordinance to establish an automatic waiver of administrative and permit fees for certain affordable housing projects, in particular those projects qualifying for Housing Trust Fund or other Berkeley affordable housing monies. A proposed ordinance is attached for consideration as one possible model.

FINANCIAL IMPLICATIONS

Staff time to review ordinance and policies. In the future, possible optimization of the impact of Berkeley affordable housing funds, to support housing rather than administrative costs, and reduction in development-related administrative fees received by the City for permitting and development of housing.

BACKGROUND

The City of Berkeley has established a Housing Trust Fund to support the creation of affordable housing in Berkeley. This fund is a critical tool to increase Berkeley's affordable housing stock. In addition, other Berkeley affordable housing funds may be available to support affordable housing projects. When City of Berkeley funds are granted to qualifying projects, the City should ensure that the applicant is able to maximize the impact of these public funds for the project itself rather than for payment of the City's development-related administrative fees.

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- (1) whether it provides a significant public service or benefit, and
- (2) whether the waiver is economically necessary to complete the project.

The City Manager next is required to notify the City Council of any project receiving a waiver of fees, and the Council has the authority to review, grant, modify, or deny the waiver. Finally, the City Manager must send a letter authorizing the waiver to the Planning Department. *All* of these steps must occur *before* a development application can be deemed complete. This complex process has the potential to significantly delay a project's application and creates uncertainty at the project planning stage.

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ENVIRONMENTAL SUSTAINABILITY

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B. No fee shall be required when the applicant is the City, or if it is waived under any other provision of the BMC.

C. In addition to seeking fee waivers under other provisions of the BMC, any applicant may file with the Director of Planning and Development a written request for a fee waiver or deferral which sets forth the reasons why such a waiver or deferral is necessary, prior to the acceptance of an application by the Zoning Officer. The Director of Planning and Development shall forward the request to the City Manager. The City Manager may waive or defer the payment of Permit fees, if he or she finds that the project will provide a significant public service or benefit, and that the waiver or deferral is necessary to make the project economically feasible to construct or establish. The City Manager shall also notify the Council of any request for fee waiver. The Council may review and may grant, wholly or in part, or deny such request for a fee waiver. A letter from the City Manager authorizing the fee waiver or deferral shall be submitted in lieu of a fee before an application will be accepted. Each fee waiver or deferral request shall include a breakdown of all applicable Current Planning Fees, as set forth in the current Fee Resolution.

D. Fees shall be automatically waived for projects receiving City of Berkeley Affordable Housing Funds from the Housing Trust Fund or any other City of Berkeley Affordable Housing funding source.

DE. If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees shall not be made for applications that have been denied.

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