Part IV: All About Housing – how much, where and for whom:

June 16, 2015 by BNC Archivist (Edit)

Housing, from rent control to development, has always been a hot-button issue in Berkeley. In 1986 the City adopted the requirement that developers of 5 or more market-rate rental units were subject to an Inclusionary Housing Ordinance which required 20% of the units to be set aside for low income households.

Then, in 1990, in an effort to increase the amount of affordable housing, the City created a Housing Trust Fund (HTF). A housing trust fund is a program that pools funds for affordable housing construction from a variety of sources with different requirements, and makes those funds available through one single application process to local developers. The idea was to streamline the application process and provide an opportunity for community review of the Fund's activities. The City's Department of Housing was given responsibility to administer the HTF.

The funds in Berkeley's HTF come from a variety of sources: Federal and State programs, "tax increment funds" from Berkeley's Redevelopment Agency, Housing Mitigation fees, Condominium Conversion fees, and the City's General Fund (locally-generated tax revenue) as allocated by the Council in each budget cycle. Payments on loans to developers from the HTF are made when the project generates a positive cash flow.

When the City approves a loan for a project from its HTF, a "Development Loan Agreement" is entered into by the City and the developer. One part of this agreement requires the borrower to disclose information on tenants' incomes, rents, asset management, reserves and financial record to the City for purposes of review and evaluation. This requirement is the legal basis for the City's monitoring to verify tenant incomes and rents, and financial performance reviews. Staff also obtains self-reported information from all the properties in the HTF concerning month-to-month occupancy, vacancy, evictions, and move-ins and move-outs. The main purpose is to guarantee permanent housing affordability of the units.

State law *requires* each local government to adopt a Housing Element as part of its General Plan.

- The Housing Element must indicate how the community plans to meet the **existing and projected housing needs of its people at all income levels**.
- The State projects the population increase for a particular region.

- In turn, the Association of Bay Area Governments (ABAG) allocates to each City in that region, its “fair share” of the total housing needs, by affordability level. A City is expected to meet this allocation during an 8-year period. That fair share is called a Regional Housing Need Allocation (RHNA).
- There is an implied “threat” that a City that doesn’t meet its RHNA number would lose certain State and federal funding. However, over the years, while few cities have met their RHNA number, there have been no real consequences.

The RHNA allocation to Berkeley for the period 2007-2014 was a total of 2,431 housing units. However, before the end of that period, in 2009, the courts, in what became known as “the Palmer decision” invalidated mandates that a city could require the provision of below market rate units in rental unit projects. (“Later, in 2013, the courts created uncertainty as to such requirements for condominiums, and even later in 2015, the courts upheld setting aside affordable units for homes.) Cities throughout the State, including Berkeley, began to look at replacing their inclusionary requirements with the assessment of a per unit ”Affordable Housing Fee.“ The City hired Bay Area Economics to undertake a nexus study to quantify the impacts of new market-rate rental units on the need for affordable housing.

On June 28, 2011, the City approved Ordinance #7192-N.S. which stated:

- The maximum fee amount supported by the affordable housing fee nexus study is **$34,000 per unit** based on the need for units affordable to lower income household with an annual income not exceeding 65% of the area median income.
- Established that the City Council may by resolution (not ordinance) adopt an affordable housing impact fee which shall be imposed on the development of new rental housing
- Up to 10% of the fee may be used to pay for administration of the fee.
- A developer of a project subject to the fee **may elect to avoid the fee by providing a number of units equal to 10%** of the total market rate units in the project, at rates affordable to very-low income households.
- A developer can provide less than 10% of the market rate units and pay a proportionately reduced fee.
- The 10% of the affordable housing units must be of the same size, dispersed around the project, same number of bedrooms and comparable with the design or use of the market rate units in terms of appearance, materials and finish quality.
- The owner has to report to the City annually on the occupancy and rents of the affordable units.
- Affordable units are exempt from the affordable housing fee.
- In the case of developers using a ”density bonus“ there is a specific formula included within the Ordinance to arrive at the affordable housing fee.
- The ordinance is to be revised every 5 years and the nexus study is to be confirmed as still valid.

The first reading (June 14, 2011) and second readings of this ordinance were approved with the same vote:

Voting Yes: Council Members Anderson, Arreguin, Maio, Moore, Worthington and Mayor Bates

Voting No: Council Member Wengraf

Abstaining: Council Members Capitelli and Wozniak

The process to calculate the RHNA number for this new cycle began on **February 12, 2012** when the State informed ABAG that the total projected regional housing needs for all Bay Area jurisdictions would be 188,000 new housing units between 2014 and 2022. A draft plan for each jurisdiction's share was released on **May 17**, with the opportunity for jurisdictions to make requests to revise their allocation. Berkeley didn't make a request, but 15 did, and after all was said and done, 3 requests were revised, and the Final Housing Need Plan was approved on July 18, 2013.

Berkeley's Regional Allocation of Housing Units, for 2014 — 2022

Affordability Level	Number of Housing Units
Very Low, 0-50% AMI*	532
Low, 51-80% AMI	442
Moderate, 81-120% AMI	584
Above Moderate, 120% + AMI	1,401

TOTAL	2,959

October 16, 2012: Council set a housing mitigation fee of $28,000/ unit on new rental housing of 5 or more dwelling units by Resolution 65,920-N.A., and added:

- ”New rental housing“ shall include group living accommodations, except for those that are exempt, at a rate of one housing rental fee to be assessed on each 2 bedrooms.
- Exceptions are: Berkeley Student Cooperatives and new housing that is built to replace rental units that have been destroyed through no fault of the owner. Staff will make such determination on a case-by-case basis.

Voting Yes: Council Members Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington and Ma

Voting No: Council Member Wozniak

February 19, 2013: Resolution 66,015-N.S. **discounted the Affordable Housing Impact Fee by $8,000** for development applications that are substantially complete and on file with the City as of October 16, 2014 and are approved by the Zoning Adjustments Board on or before October 16, 2016.

Voting Yes: Council Members Arreguin, Capitelli, Maio, Wengraf, Wozniak and Mayor Bates

Voting No: Council Member Worthington

Absent: Council Members Anderson and Moore

October 7, 2014: Resolution 66,809-N.S. extended the $8,000 discounted Affordable Housing Impact Fee and changed the dates to apply to those projects that are substantially complete as of April 16, 2015 and approved by the Zoning Adjustments Board on or before April 16, 2017.

Voting Yes: Council Members Capitelli, Maio, Moore, Wengraf, Wozniak and Mayor Bates

Voting No: Council Members Anderson, Arreguin and Worthington

April 7, 2015: Resolution 66,986-N.S. again extended the $8,000 discounted Affordable Housing Impact Fee, but this time set an end date for the extension to July 1, 2015. The dates for the applications to be substantially complete and approved remained the same as of Resolution 66,809-N.S.

Voting Yes: Council Members Capitelli, Droste, Maio, Wengraf and Mayor Bates

Voting No: Council Members Anderson, Arreguin, and Worthington

Absent: Council Member Moore

And, that's where the Housing Mitigation Fee, aka Affordable Housing Impact Fee, stands to date. But, stay tuned, there's more.

April 28, 2015: Mayor Bates and Council Member Capitelli requested that the City Manager draft an ordinance to implement a **City-based Density Bonus** that would serve as an option to the State Density Based Bonus program.

The City-based program would:

- Apply to projects of 5 or more rental units and condominiums.
- The developer could request of 35% increase in density for the project.
- In exchange for the increased density, the developer would pay the City $10,000 per unit in addition to the affordable housing mitigation fee that currently is $20,000 per unit for rental units. These fees would apply to the base number of units, not the increased number granted by the density bonus.
- The same exchange would apply to condominium projects, $10,000 per unit in addition to whatever affordable housing mitigation fee would be set by the Council in the future.
- The fees would be paid into the Housing Trust Fund which would be used to provide the affordable housing at another location.

- These fees could be changed by Council resolution.
- If a project already has a building permit and are fully entitled for bonus density at the time this new ordinance takes effect, the project would be allowed to opt for the City density bonus by paying the fee when the Certificate of Occupancy is issued.
- After the ordinance is adopted, future projects would pay the fee when the project's building permit is issued.
- Staff is also to review adding language related to Project Labor Agreements.
- Staff is also to consider "local concessions and incentives" for projects.
- The new ordinance is to be reviewed by the Housing Advisory Commission and Planning Commission prior to presentation to the City Council for adoption.

Mayor Bates and Council Member Capitelli state that rental projects that use the State's Density Bonus typically choose providing 10% of the units within the project as affordable housing for very low income households whose income is no more than 50% AMI. They maintain that this choice is made because the developer is then exempt from paying the $20,000 Affordable Housing Mitigation fee. They claimed this City-based system would bring around $11M more into the HTF than would come from using the current system. The item received an unanimous vote from the Council.

BNC received the following analysis of the current ABAG requirement and Berkeley's current compliance done by a member of the Claremont Elmwood Neighborhood Association:

- Looking at Berkeley's recent 2,891 approved and proposed rental units, we find: 6% are for very low (0-50% of AMI) incomes, 0.5% are for low (51-80% AMI) incomes, 0% are for moderate (81%-120% AMI) incomes and 91% are for above moderate (120% and plus AMI) incomes of Berkeley's RHNA goals. The total of these units equals 98% of Berkeley's RHNA.
- When the total RHNA goals are achieved, in all likeleyhood, this means 94% of all new Berkeley units will be at market rates for those with incomes 120% and above AMI.
- Berkeley's total very low and low housing RHNA goal = 974 units
- Berkeley's performance to meet RHNA goal totals to date = 196 units
- **Deficit** = 778 units
- In order to make up the deficit of 778 units at $168,000/unit construction cost, $130,704,000 would have to be paid into the Housing Trust Fund in impact fees. At $20,000/unit developers will need to build 6,535 units that would be subject to the Affordable Housing Impact Fee.

What we now understand from this is what we have suspected all along, Berkeley is building a whole lot more housing than required for above moderate households. The proposed buildings in the Downtown at 2211 Harold Way and in the condominiums in the proposed hotel at Shattuck and Center are not going to help this situation one bit. The City is caught in a cycle of gentrification, driving out lower and moderate income individuals and families and seniors, and we have no real plan to fix this except to build higher and increase density throughout the City. And, then, we aren’t sure that will work either.