

RESOLUTION NO. 70,698-N.S.

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

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

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

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

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

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

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

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

WHEREAS Street Level advisors identified an equivalent rate if the In-Lieu fee were to be calculated based on an assumed 80/20 ratio of gross and net square feet of residential area in typical housing development projects of \$56.25 per square foot of Residential Unit Floor Area.

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

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

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

Residential Unit Floor Area	Fee per Square Foot
>12,000	\$56.25
11,000-11,999	\$53.75
10,000-10,999	\$51.25
9,000-9,999	\$48.75
8,000-8,999	\$46.25
7,000-7,999	\$43.75
6,000-6,999	\$41.25
5,000-5,999	\$38.75
4,000-4,999	\$36.25
3,000-3,999	\$33.75
2,000-2,999	\$31.25
1,000-1,999	\$28.75
<1,000	\$26.25

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

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

The foregoing Resolution was adopted by the Berkeley City Council on February 14, 2023 by the following vote:

Ayes: Hahn, Humbert, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: Harrison.

Abstain: Bartlett.

Absent: None.

Attest:



Rose Thomsen, Deputy City Clerk



Jesse Arreguin, Mayor