



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: January 17, 2023

Item Number: 21

Item Description: Citywide Affordable Housing Requirements

Submitted by: Jordan Klein, Director, Planning & Development Department

This supplemental report covers the following issues related to the Citywide Affordable Housing Requirements item for City Council's consideration:

1. Exemption for projects of fewer than five units.
2. Anti-piecemealing provisions.
3. Calculation of the in-lieu fee based on net residential square footage rather than gross residential square footage.

1. Exemption for projects of fewer than five units.

The proposed revisions to the Citywide Affordable Housing Requirements would eliminate the current exemption for projects of fewer than five units, instead requiring that every housing development project must provide affordable housing units or pay an in-lieu fee. The proposed revisions would also establish a tiered fee structure that would assess lower fees for smaller projects, defined as less than 12,000 gross square feet. As noted in the "Alternatives Considered" section of the staff report, City Council could consider maintaining the existing exemption for projects of fewer than five units, or establishing an effective date for phasing in the requirement for smaller projects.

The following modification to section **23.328.050.F Exemptions** of the proposed ordinance would extend the existing exemption for projects of fewer than five units through March 31, 2025:

F. Exemptions. The following types of Housing Development Projects and Residential Units are exempt from this Chapter.

1. A Housing Development Project for which either a building permit was issued on or before April 1, 2023 or a preliminary application including all of the information required by subdivision (a) of California Government Code section 65941.1 was submitted on or before April 1, 2023 shall be subject to this Chapter's requirements that were in place as of the preliminary application's submittal date but shall otherwise be exempt from this Chapter. This exemption shall expire upon the occurrence of any of the circumstances defined in paragraphs (2), (6), or (7) of subdivision (o) of California Government Code section 65589.5 or in subdivision (d) of California Government Code section 65941.

2. A Housing Development Project with fewer than five Residential Units, unless it is part of a larger Housing Development Project. This exemption shall expire on April 1, 2025.

~~23.~~ A Residential Unit that replaces a unit existing as of April 1, 2023 that has been destroyed by fire, earthquake or other disaster, or that was previously subject to a mitigation fee or inclusionary housing requirement.

~~34.~~ A Residential Unit existing as of April 1, 2023 that is expanded, renovated, or rehabilitated.

2. Anti-piecemealing provisions.

City Council can consider strengthening anti-piecemealing provisions—to prevent projects from avoiding compliance with affordable housing requirements by dividing projects into multiple phases or across multiple parcels—particularly if the City Council chooses to maintain the exemption for smaller projects. This could be achieved through a modification to the definition of “Housing Development Project” (23.328.020.E):

E. "Housing Development Project" means a development project, including a Mixed-Use Residential project (as defined in 23.502.020(M)(13)), involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership shall be considered as a sole Housing Development Project and not as individual ~~buildings~~projects.

Anti-piecemealing provisions, including specific parameters for phased projects and common ownership, will be more fully defined and established through program guidelines (as enabled by ordinance section 23.328.050.D).

3. Calculation of the in-lieu fee based on net residential square footage rather than gross residential square footage.

The proposed ordinance and resolution set the affordable housing in-lieu fee at \$45 per square foot applied to the gross floor area (as defined in BMC Section 23.106.030) of a housing development project. The in-lieu fee would not be applied to non-residential area of a mixed-use project (as defined in BMC Section 23.106.040) or work space in a live/work unit (consistent with BMC Section 23.312.040).

City Council can consider basing the in-lieu fee on net residential floor area instead of gross floor area. Staff heard the concern that using gross floor area—which includes common areas and shared amenity spaces in residential projects—would potentially create a disincentive to providing such spaces. A fee that is based on net residential floor area—i.e., only the total square footage of the housing units themselves—could address this potential impact.

Staff developed an in-lieu fee that is based on gross floor area, because gross floor area is more easily tracked and verifiable throughout the approval process. The delineation of what is and is not included in net floor area is complex and depends on representation of these elements on an applicant's plans, which can change during the development process. Developers already have strong incentives to build as little common space as possible, given high construction costs. Nevertheless, such spaces are included because prospective occupants value these spaces and are generally willing to pay higher rents to live in buildings with amenities. Staff suppose that among the factors that drive decisions about the amount and type of common space, it is unlikely that the fee calculation basis will make a meaningful difference. Therefore, staff continue to recommend an in-lieu fee that is based on gross floor area. Nevertheless, City Council can choose to base the fee on net residential floor area, and staff has prepared the following information to facilitate that consideration.

The Street Level Advisors analysis assumed roughly 20% common space in a typical building, though the actual share of common area in housing development projects varies widely. Thus, a fee of \$56 per square foot of net residential floor area would be roughly equivalent to the proposed fee of \$45 per square foot of gross floor area. A fee of \$65 per square foot of net residential floor area would be roughly equivalent to the \$52 per square foot of gross floor area fee, if City Council chose to base the fee on the 2022 affordable housing mitigation fee (\$46,185 per unit) rather than the 2020 fee that the \$45 per square foot fee is based on and that was considered in the most recent feasibility analysis.

The following tables illustrate the proposed in-lieu fee and the tiered fee structure for projects less than 12,000 square feet based on gross floor area and the equivalent net residential floor area. Table 1 presents fee levels that are roughly equivalent to the 2020 Affordable Housing Mitigation Fee, and Table 2 presents fee levels that are roughly equivalent to the 2022 Affordable Housing Mitigation Fee.

Table 1. In-Lieu Fees Equivalent to 2020 Affordable Housing Mitigation Fee Level

Applicable Floor Area, in Square Footage	Fee Per Square Foot, Gross Floor Area (Residential) Methodology	Fee Per Square Foot, Net Floor Area (Residential) Methodology
≥12,000	\$45	\$56.25
11,000-11,999	\$43	\$53.75
10,000-10,999	\$41	\$51.25
9,000-9,999	\$39	\$48.75
8,000-8,999	\$37	\$46.25
7,000-7,999	\$35	\$43.75
6,000-6,999	\$33	\$41.25
5,000-5,999	\$31	\$38.75
4,000-4,999	\$29	\$36.25
3,000-3,999	\$27	\$33.75
2,000-2,999	\$25	\$31.25
1,000-1,999	\$23	\$28.75
<1,000	\$21	\$26.25

Table 2. In-Lieu Fees Equivalent to 2022 Affordable Housing Mitigation Fee Level

Applicable Floor Area, in Square Footage	Fee Per Square Foot, Gross Floor Area (Residential) Methodology	Fee Per Square Foot, Net Floor Area (Residential) Methodology
≥12,000	\$52.00	\$65.00
11,000-11,999	\$49.50	\$62.00
10,000-10,999	\$47.00	\$59.00
9,000-9,999	\$44.50	\$56.00
8,000-8,999	\$42.00	\$53.00
7,000-7,999	\$39.50	\$50.00
6,000-6,999	\$37.00	\$47.00
5,000-5,999	\$34.50	\$44.00
4,000-4,999	\$32.00	\$41.00
3,000-3,999	\$29.50	\$38.00
2,000-2,999	\$27.00	\$35.00
1,000-1,999	\$24.50	\$32.00
<1,000	\$22.00	\$29.00

If City Council chooses to establish the fee based on net residential floor area rather than gross floor area, staff will prepare additional necessary modifications to the ordinance prior to subsequent reading(s) of the ordinance.