

AFFORDABLE HOUSING COMPLIANCE PLAN

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Affordable Housing Requirements

BERKELEY MUNICIPAL CODE CHAPTER 23.328

Berkeley Municipal Code (BMC) Chapter 23.328, Inclusionary Housing, requires Housing Development Projects¹ to include at least 20 percent of the Residential Units² as permanently affordable units. All affordable units provided in the project will be established and monitored within the City’s Below Market Rate (BMR) housing program, and are referred to as BMR Units. The housing development project must provide one of the following to comply with the City’s Inclusionary Housing regulations:

- A. Construct BMR units on-site**
- B. Pay an In-Lieu Fee**
- C. Combination of on-site BMR units and In-Lieu Fee**
- D. Other options allowed by the Chapter**

Each option is described in more detail below.

A. CONSTRUCT ON-SITE AFFORDABLE UNITS

Projects must provide 20 percent of the total residential units as on-site BMR units. BMR units must have the same proportion of bedroom counts (except no affordable unit can have more than three bedrooms) and average unit size as the market rate units. BMR units must be reasonably dispersed throughout the project, be comparable to market-rate units in quality, and have access to the same amenities and common areas as market-rate units. BMR Units shall be affordable to lower income households (up to 80% AMI). At least 50 percent of the required Affordable Units in the Housing Development Project shall be affordable to Very Low-Income Households, and the remaining units shall be affordable to households earning no more than 80 percent, consistent with affordable housing costs in the CA Health and Safety Code. Further, 80 percent of Very Low-Income units shall be first offered to tenants receiving assistance under the Section 8 Program, or the Shelter Plus Care Voucher Program (40 percent each), prior to being offered to other potential tenants.³

B. OPTION TO PAY AN IN-LIEU FEE

Applicants have the option to pay an In-Lieu Fee instead of providing the required BMR units. The in-lieu fee is \$62.83 per square feet of the Residential Unit Floor Area (RUFA) for all housing development projects

The In-Lieu Fee applies to all housing development projects. The full fee must be paid prior to obtaining the Certificate of Occupancy, or, if a Certificate of Occupancy is not required, prior to the final building permit inspection. The fee is automatically adjusted every two years, beginning July 1, 2025 based on changes to the California Construction Cost Index.³

Applicants who pay the full in-lieu fee can qualify for a 5,000 square foot exemption. 5,000 square feet will be deducted from the RUFA calculation.

NOTES

¹ HOUSING DEVELOPMENT PROJECT

means a development project, including a Mixed-Use Residential project (as defined in 23.502.020(M)

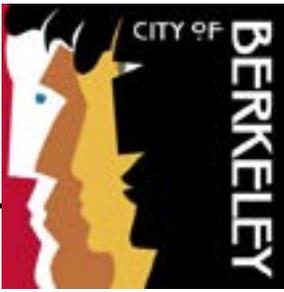
(13), involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects (BMC 23.328.020(E)).

² RESIDENTIAL UNIT

means any Dwelling Unit, any Live/Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, “Residential Unit” shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit (BMC 23.328.020(I)).

³In the case of a State Density Bonus Project, only the base project is used to calculate the in-lieu fee. Formula to determine the Base RUFA can be found on Page 4.

⁴See BMC 23.328.020 Definitions



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C. COMBINATION OF ON-SITE BMR UNITS AND IN-LIEU FEE

Projects may provide less than the required 20 percent total residential units as on-site BMR units by paying a pro-rated In-Lieu Fee.

Formula to calculate the pro-rated in-lieu fee:

The In-Lieu 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.³

D. OTHER OPTIONS ALLOWED BY BMC CHAPTER 23.328 – APPROVED AT THE CITY’S DISCRETION

Applicants may elect to fulfill the requirement to construct affordable housing via one of the options below. Unlike options A through C above, these options are approved at the City’s discretion. See [BMC 23.328.030](#) for more information.



AFFORDABLE HOUSING COMPLIANCE PLAN

Affordable Housing Compliance Plan Form

You are required to submit an Affordable Housing Compliance Plan (AHCP) for Housing Development Projects¹ that are subject to the affordable housing requirements of **BMC Chapter 23.328, Inclusionary Housing**. The AHCP is an enforceable commitment that identifies the number and type of affordable, or Below Market rate (BMR) units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the applicant to comply with those requirements. BMR units may include the required Inclusionary Housing (IH) units, Demolition Ordinance replacement units, Density Bonus units, SB 35 units and any other affordable units the project is applying under local and State law.

The Department of Planning and Development’s Land Use Division and the Department of Health, Housing, and Community Services use the information from this form and the related sheets to confirm which provisions of the City’s affordable housing requirements apply to your project, and if the project complies.

Please complete the entire form. If a section doesn’t apply, enter “n/a.” If selecting the option to provide an alternative unit size mix or option to dedicate land, please complete the entire AHCP form and staff will contact you to discuss approval for these discretionary options.

You may be asked to revise this form to reflect the approved project during the permit review process and/or required plan sheets.

The Preliminary AHCP is required with a Zoning Permit or Zoning Certificate application. It is intended to provide estimates to the Applicant and City, and inform conditions of approval on discretionary zoning permits. See the **applicable zoning submittal requirements** to determine if a Preliminary AHCP is needed for your project.

The Final AHCP is required with the first building permit application for construction, and will include the total fee amount due for projects electing to pay an In-Lieu Fee. The In-Lieu Fee can be paid any time prior to the issuance of the project’s Certificate of Occupancy or Temporary Certificate of Occupancy (as applicable).

INDICATE AFFORDABLE HOUSING COMPLIANCE PLAN (AHCP) TYPE (CHECK ONE)

Preliminary Affordable Housing Requirements
(Land Use Entitlement)

Final Affordable Housing Requirements
(Building Permit)

1. PROJECT AND APPLICANT INFORMATION

Project Name:

Project Address:

Applicant Name:

Applicant Email:

Property Owner Name:

Property Owner Address:

Property Owner Email:

Indicate Project Type (Check One) Ownership Rental

Zoning Project Number:

Building Permit Number (Final AHCP only):



AFFORDABLE HOUSING COMPLIANCE PLAN

2. PROJECT SUMMARY INFORMATION –

THIS INFORMATION IS USED TO ESTIMATE THE TOTAL NUMBER OF REQUIRED BMR UNITS

A	Number of Residential Units (Complete total units if not using Density Bonus)
	Base Units:
	Density Bonus Units:
	Total Units:
B	Total Residential Unit Floor Area⁴ (square feet) (Density bonus projects only, see page 5)
	Base Units:
	Density Bonus Units:
	Total Units:
C	Total BMR Units required (20% of Base Units) (Total Inclusionary Housing (IH) units required)
D	Total BMR Units Proposed by Income
	30% AMI (Extremely Low- Income)
	50% AMI (Very-Low Income)
	80% AMI (Lower Income)
	120% AMI (Moderate)
	TOTAL BMR Units

Does the project use Density Bonus?

YES NO

Total Affordable Qualifying Units for Density Bonus

Are there existing units that will be demolished? If yes, the Demolition Ordinance (BMC 23.326) will apply to the project.

YES NO

Total units to be demolished

Total affordable replacement units required

(separate calculation required, Gov. Code §65589.5)

Total units replaced (affordable and market-rate)

PROJECT UNIT TYPES AND AFFORDABILITY LEVELS

3. PLEASE INDICATE HOW THE PROJECT WILL FULFILL ALL OF THE AFFORDABLE HOUSING REQUIREMENTS

3.A. PROVISION OF ON-SITE

The following provisions apply:

- Inclusionary Housing units cannot exceed three bedrooms
- At least 50 percent of the required Inclusionary Housing Units in the Housing Development Project must be designated as affordable to Very-Low Income Households (round up for fractional numbers).

Please complete the table by noting the number of units in each category.

Unit Type	Market Rate	Extremely Low-Income (30% AMI)	Very Low-Income Affordable (50% AMI)	Low-Income Affordable (80% AMI)	Moderate Income (120% AMI)	TOTAL
Studio						
One Bedroom						
Two Bedroom						
Three Bedroom						
Four Bedroom						
Five Bedroom						
TOTAL						



AFFORDABLE HOUSING COMPLIANCE PLAN

3.B. OPTION TO PAY AN IN-LIEU FEE

Housing Development Projects may choose not to include BMR units and pay the full in-lieu fee, calculated as follows:

$$\frac{\text{The Fee Per Square Foot} \times \text{the Total Residential Unit Floor Area of a Housing Development Project, minus 5,000 square feet}}{\dots}$$

Projects opting to pay the full in lieu fee may deduct 5,000 square feet from their RUFA calculation

The Base Project Residential Unit Floor Area (BP RUFA)

is equal to:

The Final Project Residential Unit Floor Area (FP RUFA)

divided by

One plus the Density Bonus percentage taken (DB %)

$$BP\ RUFA = FP\ RUFA / (1+DB\%)$$

AFFORDABLE HOUSING FEE DUE

\$62.83 Per Square Foot Fee (Base Project only for density bonus projects)	
	X
Total Residential Unit Floor Area (square feet) (Base Project [BP RUFA] only for density bonus projects. Projects that pay the full in-lieu fee deduct 5,000 square feet)	
	X
In Lieu Fee percentage calculation*: (Affordable Units required – affordable units provided) / Affordable Units required)	
(*projects that provide no on-site Affordable Units have a multiplier of 1)	
TOTAL FEE DUE	

EXAMPLE CALCULATIONS:

50,000 square foot 100-unit project providing 15 Affordable Units

A Total Residential Unit Floor Area⁴ (square feet) RUFA (Base Project RUFA only for density projects)	
	50,000 square feet
B Total Residential Units (Base Project only for density bonus projects)	
	100
C Total BMR Units required (20% of B)	
	20
D Total BMR Units Proposed	
50% AMI (Very-Low Income)	8
80% AMI (Lower Income)	7
TOTAL BMR Units	15
Per Square Foot Fee (Base Project only for density bonus projects)	
	\$62.83
	X
Total Residential Unit Floor Area (square feet) (Base Project only for density bonus projects. Projects that pay the full in-lieu fee deduct 5,000 square feet)	
	50,000 square feet
	X
In Lieu Fee percentage calculation*: (Affordable Units required – affordable units provided) / Affordable Units required)	
(*projects that provide no on-site Affordable Units have a multiplier of 1)	25% ((20-15)/20 = 0.25)
TOTAL FEE DUE	
	\$785,375



AFFORDABLE HOUSING COMPLIANCE PLAN

SECTION 4 REQUIRED PLAN SHEETS (LAND USE ENTITLEMENT PLANS AND BUILDING PERMIT PLANS)

REQUIRED AHCP PLAN SHEETS

In addition to completing this form, the land use entitlement and building permit plans for your housing development project must demonstrate compliance with the applicable affordable housing provisions. If your project includes a discretionary zoning permit, the entitlement plans must include a Preliminary AHCP plan sheet(s), and all building permits for construction must include a Final AHCP plan sheet(s).

What needs to be in the plans to demonstrate compliance with the City's affordable housing regulations?

The applicable AHCP plan sheets with the applicable information (listed below) must be in sequential pages near the beginning of your plan set and labeled as "Preliminary or Final Affordable Housing Compliance Plan Sheet." Having this information together in the plans will make locating the information easier during project and plan review, and provide transparency to the public. A sample plan set page is attached for reference (see Exhibit A). You will receive corrections from your zoning reviewer if information is not displayed properly in the plan set.

ALL PROJECTS: APPLICABILITY AND REQUIREMENTS OF BMC CHAPTER 23.328 INCLUSIONARY HOUSING

- Residential unit floor area diagrams showing the floor area that is included and excluded from calculation. Diagrams for density bonus projects must reflect the full project (base and bonus)*. Diagrams must be consistent with and separate from the architectural floor plans and include:
 - Schematic diagrams of each floor or level, including mezzanines
 - Indicate floor area by use with shading, color, and/or callouts
 - Dimension all areas of the project that qualify as residential unit floor area, and provide the square footage of each area
 - Tabulation of the total residential unit floor area according to the diagrams
- Calculation of the number of required and proposed BMR units (Base Project only for density bonus)
- Calculation of 100% In-Lieu fee (provide even if on-site units are proposed)

* The Base Project RUFA is used to determine the in-lieu fee for density bonus projects, and is calculated based on the RUFA total from the diagrams. (See page 5)

ON-SITE BELOW MARKET RATE (BMR) UNITS (ALL OR COMBINATION)

Any on-site BMR units (BMC 23.328.030(A) Requirement to Construct Affordable Units

- Unit summary table by floor of BMR and market-rate units, with bedroom counts
- Alternate mix of unit types, if applicable
 - Calculations for 20 percent of residential unit floor area (must be a mix of affordable units that are either two- or three-bedrooms)

IN-LIEU FEE (ALL OR COMBINATION)

Payment in-lieu of providing some or all required affordable units on-site (BMC Section 23.328.030(B) Option to Pay In-Lieu)

In-Lieu Fee per Resolution No. 7,954-N.S. 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 do not provide any Affordable Units on-site will have an applicable requirement multiplier of one. (See page 5)

The In-Lieu Fee per square foot is based on the residential unit floor area of the project (base project only if utilizing State Density Bonus provisions). (See page 5)

STAFF ADMINISTRATION USE ONLY

This Affordable Housing Compliance Plan (AHCP) is certified in compliance with BMC Chapter 23.328, Inclusionary Housing.

Name, Title:

Signature:

Date:

HHCS

Regulatory Agreement executed (due prior to issuance of first building permit for construction:

Yes No Not Applicable

In Lieu Fee payment complete (due prior to first occupancy):

Yes No Not Applicable

Name, Title:

Signature:

Date:



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