



CITY OF EMERYVILLE

MEMORANDUM

DATE: October 20, 2015

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Regulations And Development Bonuses For Multi-Unit Residential Uses And Affordable Housing Impact Fee

RECOMMENDATION

The Planning Commission and staff recommend that the City Council approve the following resolutions to implement proposed regulations and development bonuses for multi-unit residential uses and the affordable housing impact fee:

1. Resolution Of The City Council Of The City Of Emeryville Amending The General Plan To Reduce The Base Levels For Floor Area Ratio, Building Height, And Residential Density.
2. Resolution Of The City Council Of The City Of Emeryville Increasing The Affordable Housing Impact Fee On Rental Residential Projects To \$28,000 Per Dwelling Unit.
3. Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations In Title 9 Of The Emeryville Municipal Code Relating To Multi-Unit Residential Development To Address Unit Mix, Family Friendly Design, Affordable Housing, And Ownership Housing.

BACKGROUND

On September 1, 2015, the City Council held a study session on proposed regulations, incentives, and guidelines for Multi-Unit Residential development. This followed a joint study session with the Planning Commission on May 2, 2015, and a Planning Commission study session on May 28, 2015. At the September 1 meeting, the Council gave final direction on regulations and guidelines for unit mix and family-friendly design, incentives for affordable housing and ownership housing, and modifications to the bonus point system. The Council also directed that the Affordable Housing Impact Fee be increased to \$28,000 per dwelling unit, and that the in-lieu option of providing affordable units instead of paying the fee consist of a combination of low income and very low income units, with the exact proportions to be considered and recommended by the Planning Commission.

On September 24, 2015, the Planning Commission held a public hearing on the proposed General Plan amendment and Planning Regulations amendment and voted to recommend adoption of both by the City Council. (The proposed increase in the Affordable Housing Impact Fee is not in the Commission's purview.) The vote on the General Plan amendment was 5 ayes and 1 no (Commissioner Cardoza). The vote on the Planning Regulations amendment was 6 ayes, 0 noes. (Commissioner Keller had an excused absence.)

In voting to recommend adoption by the City Council, the Planning Commission made the following modifications to the proposed Planning Regulations amendment:

- Limit studio units to no more than 10% of all units, rather than a total prohibition.
- Increase the maximum number of bonus points for the Small Businesses community benefit from 25 to 50.
- Replace the requirement for GreenTRIP certification with a requirement for a Transportation Demand Management program; GreenTRIP certification would be one way to meet this requirement.
- Replace the conditions, covenants and restrictions (CC&Rs) provisions for ownership housing with a reference to the current basic eligibility requirements of the Federal Housing Administration (FHA) for condominium project approval.
- Make the in-lieu option 12% affordable units, consisting of 4% very low income and 8% low income units.

These recommended modifications are discussed in more detail below.

It should be noted that, pursuant to Section 9-3.310 of the Planning Regulations, existing Planned Unit Developments (PUD) will not be subject to these amendments to the General Plan or Planning Regulations. Such PUDs are subject to the regulations that were in effect at the time of their establishment. These PUDs include Pixar, Chiron, Promenade, Watergate Office Towers, Bay Street, and Marketplace.

DISCUSSION

General Plan Amendment

The first attached resolution amends the General Plan by modifying the maps of Maximum Floor Area Ratios (Figure 2-3), Maximum Building Heights (Figure 2-4), and Maximum Residential Densities (Figure 2-6) to lower the base levels, thereby providing incentives for more residential development projects to seek development bonuses which would trigger in-project affordable units, other community benefits, and condominium maps. Generally, base levels are adjusted to be 50% of bonus levels, rounded up to next higher round number. The 100'/100'+ height district becomes 75'/100'+. A bonus FAR of 1.0 is added to the FAR district that is currently 0.5/No Bonus in the eastern residential neighborhoods, corresponding to the residential density

bonus that is currently available in those areas. This amendment to the General Plan is reflected in the Planning Regulations, as discussed below.

In addition to the findings for a General Plan Amendment required by Section 9-7.1205 of the Planning Regulations, the attached resolution also includes findings required by California Government Code Section 65863(b) to reduce the base levels for residential density on sites that have been relied upon in the Emeryville Housing Element to meet the City's Regional Housing Needs Allocation (RHNA) obligation. The findings are that: (1) the reduction is consistent with the adopted general plan, including the housing element; and (2) the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The reduction is consistent with general plan policies related to affordable and ownership housing, and a point-based development bonus system, and will be consistent with the simultaneous proposed base level reductions in Floor Area Ratios and Maximum Building Heights. As previously explained in the staff report for the September 1, 2015 study session, the reduction in base levels will result in a surplus of 2,661 units above the City's RHNA, less than projected in the Housing Element but still providing for a development potential that is more than 275% of the City's RHNA. This analysis is included in the attached resolution.

Increase in Affordable Housing Impact Fee and Modification to In-Lieu Option.

The second attached resolution increases the Affordable Housing Impact Fee to \$28,000. The in-lieu option is part of the Planning Regulations, and is thus included in the attached ordinance amending the Planning Regulations and not in the attached resolution increasing the Affordable Housing Impact Fee, but it is discussed in this section because it is closely related to the fee.

Affordable Housing Impact Fee

The current Affordable Housing Impact Fee of \$20,000 per dwelling unit (increased to \$20,491 for fiscal year 2015-16) was adopted by the City Council on July 15, 2014, based on a Residential Nexus Study prepared by Keyser Marston Associates. The Nexus Study, also approved and adopted by the City Council on July 15, 2014, fulfills the requirements of the Mitigation Fee Act (Government Code Sections 66000-66008), the law governing the imposition and administration of impact fees. Section 66001 of the Mitigation Fee Act provides that, in any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

- Identify the purpose of the fee;
- Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified and that identification may be made by reference to a capital improvement plan, an applicable general or specific plan, or other public documents that identify the public facilities;

- Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and
- Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

The Residential Nexus Study identifies a maximum fee, or cap, of \$35,600 per dwelling unit that can justifiably be imposed on new development. The City Council may set the fee at any level up to this cap. The attached resolution increasing the fee to \$28,000 per dwelling unit includes the findings required by the Mitigation Fee Act. The Nexus Study is attached as Exhibit A of the resolution.

Note that Keyser Marston generally recommends updating nexus studies after approximately five years so that the analyses can be brought up to date with current data. Because the City prepared its nexus study last year, the analysis and conclusions, including the maximum fee of \$35,600 for the Residential Nexus Study, are still current.

In-Lieu Option

The current in-lieu option of 6.9% low income units was also adopted by the City Council on July 15, 2014 as part of the modifications to the Affordable Housing Program in Article 4 of Chapter 5 of the Planning Regulations. It was based on a separate analysis from Keyser Marston dated March 6, 2014, which identified an "affordability gap" of \$290,000 per unit for low income units. The low income level was selected for the in-lieu option because this is the affordability category in which the city is most deficient. The in-lieu option was calculated by dividing the \$20,000 per unit fee by the affordability gap of \$290,000, which equals 6.9%. This analysis did not include affordability gaps for very low income or moderate income units.

It is important to note that the Nexus Study, which identifies the maximum justifiable cap for the Affordable Housing Impact Fee, is based on the cost to the City of providing units at various income levels in a 100% affordable project. The analysis for the in-lieu option is based on a different methodology, which calculates what it would cost a developer to provide units at various income levels in a market rate project. This is a real estate analysis, not a nexus study.

At staff's request, Keyser Marston has updated this analysis and determined that the affordability gaps are now \$401,000 per unit for very low income, \$370,000 for low income, and \$217,000 for moderate income, due to an increase in rents in Emeryville projects of about 30% since 2013. This updated analysis is attached for reference. (See Attachment 1). Based on these affordability gaps, the approximate equivalent of in-lieu units at various affordability levels for the original \$20,000 fee and the proposed \$28,000 fee are:

	<u>Very Low Income</u>	<u>Low Income</u>	<u>Moderate Income</u>
\$20,000	5.0%	5.4%	9.2%
\$28,000	7.0%	7.6%	12.9%

However, Keyser Marston notes that the City has a great deal of flexibility in establishing on-site alternatives to payment of the impact fee and is not constrained by the outcome of this particular calculation. The purpose of the calculation is to assist in understanding the cost to the developer of providing units on-site compared to payment of the \$28,000 fee.

There are various ways to determine an appropriate level for the in-lieu option at the various income categories. In addition to the calculation above based on “affordability gaps”, one could also consider the various income levels as a proportion of the City’s total RHNA of 1,498 units, or the ratio of existing below market rate units at the various income levels to the total Emeryville housing stock. These three methods result in the following percentages:

	<u>Very Low Income</u>	<u>Low Income</u>	<u>Moderate Income</u>
Affordability gap at \$28,000/unit	7.0%	7.6%	12.9%
RHNA ratios	9.2%	14.1%	17.3%
BMR ratio to City housing stock	7.1%	1.9%	3.2%

Staff recommended to the Planning Commission that the RHNA proportions be used, since these numbers are based on a state mandate for affordable housing goals as reflected in the City’s adopted and certified Housing Element. Thus, the in-lieu option could be 9.2% very low income units, 14.1% low income units, or some combination of the two, as reflected in the table below:

Total	Very Low	Low	Total	Very Low	Low	Total	Very Low	Low
9.2%	9.2%	0.0%	10.9%	6.0%	4.9%	12.6%	2.8%	9.9%
9.4%	8.7%	0.7%	11.2%	5.5%	5.6%	12.9%	2.3%	10.6%
9.7%	8.3%	1.4%	11.4%	5.1%	6.3%	13.1%	1.8%	11.3%
9.9%	7.8%	2.1%	11.6%	4.8%	6.8%	13.4%	1.4%	12.0%
10.2%	7.4%	2.8%	11.8%	4.4%	7.4%	13.6%	0.9%	12.7%
10.4%	6.9%	3.5%	12.0%	4.0%	8.0%	13.9%	0.5%	13.4%
10.7%	6.4%	4.2%	12.3%	3.4%	8.9%	14.1%	0.0%	14.1%

Staff further recommended using an in-lieu option of 12% affordable units, consisting of 4.0% very low income units and 8.0% low income units, roughly in the middle of the range (highlighted above), and the Planning Commission agreed. The attached Planning Regulations amendment (discussed below) incorporates this option in Section 9-5.407, as recommended by the Commission.

Planning Regulations Amendment

The attached ordinance amends the Planning Regulations to add regulations for Multi-Unit Residential developments; modify the development bonus system including

affordable housing and other community benefits; make corresponding modifications to the Affordable Housing Program, State Density Bonus system, and Subdivision Regulations; and make other miscellaneous modifications to ensure internal consistency. These are each discussed below, including explanations of revisions recommended by the Planning Commission.

Regulations for Multi-Unit Residential Developments

Article 20, entitled “Multi-Unit Residential Developments”, would be added to Chapter 5 of the Planning Regulations. This Article would include Sections for Unit Mix, Design, Exceptions, Affordable Housing, Ownership Housing, and Transportation Demand Management (TDM).

Unit Mix. This Section would require a unit mix of at least 50% two-or-more bedroom units, including at least 10% three-or-more bedroom units, and would limit studio units to no more than 10%, in residential projects of 10 units or more. While the City Council indicated at the September 1, 2015 study session that studio units should be prohibited, the Planning Commission felt that studio units provide a valuable housing resource for individuals that do not need or cannot afford a larger unit. Rental projects developed in Emeryville during the last 20 years have had an average of about 13% studio units, with some as high as 27%. The proposed limitation on studios would reduce this to a more reasonable proportion not exceeding 10%. It should also be noted that some of these studios may be affordable units; of the current inventory of below market rate (BMR) units in Emeryville, about 10% are studios.

Design. All Multi-Unit Residential developments (i.e. those with 3 or more units) would be required to comply with the Emeryville Design Guidelines for Residential Use Types. In addition, those with 10 or more units would be required to comply with the guidelines for Family-Friendly Residential Site and Building Design, and all required two-or more bedroom units (including three-or more bedrooms units) would be required to comply with the guidelines for Family-Friendly Residential Unit Design.

Exceptions. A conditional use permit would be required for exceptions to the unit mix and design requirements, including a finding that “There is a demonstrated need for a housing type or types that deviate from the unit mix and/or design requirements of this Article. The importance of meeting this need outweighs the importance of compliance with these requirements.” Projects seeking such exceptions would require approval by the City Council upon a recommendation of the Planning Commission. Examples include, but are not limited to, senior housing, special needs housing, and multi-generational housing.

Affordable Housing. This Section would stipulate that residential projects not seeking development bonuses would either pay the Affordable Housing Impact Fee or provide in-lieu units (12% affordable units, including 4% very low income units and 8% low income units, as recommended by the Planning Commission), while those seeking development bonuses most provide in-project affordable units under either the City’s development bonus system or the State Density Bonus System.

Ownership Housing. This Section would require Multi-Unit Residential projects seeking development bonuses under the City's development bonus system to record a condominium map. The project may be operated as a rental project, in which case the rental affordability requirements would apply. When individual units are sold, the affordability requirements for ownership housing would apply, and covenants, conditions and restrictions (CC&Rs) would be required that include the current basic eligibility requirements of the Federal Housing Administration (FHA) for condominium project approval, including, but not limited to, requirements for owner occupancy and limitations on investor ownership and commercial space. In addition, when a former rental project is converted to ownership, the condominium conversion requirements in the Subdivision Regulations would apply, requiring tenant notification and assistance, among other things.

As originally drafted by staff, the CC&R restrictions would have been that no fewer than 50% of the units in the project shall be owner occupied at any one time, no more than 10% of the units in the project may be owned by a single individual or entity, and the initial owner of each unit shall occupy the unit continuously for a minimum of five years. This was intended to mirror FHA requirements for financing condominium units. However, the Planning Commission pointed out that there are more FHA requirements than just these, and they may change over time (as some already have). Therefore, the Commission recommended that the Planning Regulations include a reference to the most current FHA condominium project approval requirements rather than attempting to include the actual requirements.

Transportation Demand Management. All Multi-Unit Residential developments of 10 units or more would be required to submit a Transportation Demand Management (TDM) plan for approval by the Community Development Director prior to a certificate of occupancy. The TDM plan is intended to ensure that Vehicle Miles Traveled (VMT) by project residents is less than the citywide average. The plan shall include annual surveys of residents, and may include, but is not limited to, free transit passes for residents, free car sharing memberships for residents, free bike sharing memberships for residents, transportation information displays, and transportation information packets for residents. Following approval by the Community Development Director, the TDM plan shall be implemented for a minimum of 40 years. Projects that obtain GreenTRIP Certification from TransForm, or other equivalent certification, prior to issuance of a certificate of occupancy will be deemed to have met the requirement for a TDM plan.

As originally drafted by staff, GreenTRIP certification would have been required for all Multi-Unit Residential developments of 10 units or more. Both the City Council and Planning Commission questioned this requirement, and requested further information about GreenTRIP. Upon further investigation, staff has realized that not all projects may be eligible for GreenTRIP certification. The program is limited to projects of 20 units or more, so smaller projects could not apply. Also, projects must be invited to apply, and there are only 10 "certification slots" per year in the Bay Area.

The Planning Commission recommended that the GreenTRIP certification requirement be replaced with a more generic TDM requirement. Staff recommends that GreenTRIP

certification still be included in the regulations as an alternative way to meet the TDM requirement. It should be noted that the TDM provisions drafted by staff include most of the basic traffic reduction strategies of GreenTRIP certification except reduced parking and unbundling of parking, which are already included in the Planning Regulations. As requested by the Council, information about GreenTRIP certification is attached. (See Attachment 2.)

Development Bonuses

Chapter 4, Article 2, entitled “Building Intensity, Height, and Residential Density”, would be modified to reflect the modifications to the City’s development bonus system. Sections 9-4.201, 9-4.202, and 9-4.203, respectively, would be modified to reflect the reduced base levels in the General Plan for Building Intensity (Floor Area Ratio), Height and Bulk, and Residential Density (see above). Section 9-4.204, “Development Bonuses”, would include new and modified provisions related to procedures, affordable housing, and community benefits, as discussed below.

Procedures. It would be stipulated that a developer may seek development bonuses either under the State Density Bonus system in Article 5 of Chapter 5, or under this Section, but not both. All development projects seeking development bonuses under this Section would require a conditional use permit for the bonuses except Planned Unit Developments, which would have bonuses considered as part of the PUD process. The provisions for calculating the required number of bonus points would be clarified, but would basically be unchanged. Currently, development projects in the R-M Medium Density Zone are not required to provide public benefits for development bonuses; the amendment would stipulate that Multi-Unit Residential projects of 10 units or more in the R-M Zone seeking development bonuses must provide affordable units and community benefits; all other projects in the R-M Zone would continue to be exempt from these requirements.

Affordable Housing. The regulations would specify that no fewer than half of a project’s required bonus points, up to 50 points, must be earned from affordable housing. (If half the bonus points is not evenly divisible by five, the number is to be rounded up to the next multiple of five.) For residential projects, this would consist of in-project affordable units, and for nonresidential projects, it would consist of an increased Affordable Housing Impact Fee. Residential projects would be required to provide an increasing percentage of affordable units as the number of required bonus points increases. For rental projects, these would include very low income, low income, and moderate income units in the same ratio as the City’s RHNA percentages in these categories. Ownership projects would be required to provide moderate income units. The required percentages of units corresponding to various amounts of bonus points are indicated in the following table:

Bonus Points	Rental Projects					Ownership Projects	
	TOTAL	Very Low	Low	Moderate	Estimated Cost	Moderate	Estimated Cost
5	12.5%	2.8%	4.3%	5.3%	\$38,979	20.5%	\$44,485
10	13.0%	2.9%	4.5%	5.5%	\$40,538	21.0%	\$45,570
15	13.5%	3.1%	4.7%	5.8%	\$42,097	21.5%	\$46,655
20	14.0%	3.2%	4.9%	6.0%	\$43,656	22.0%	\$47,740
25	14.5%	3.3%	5.0%	6.2%	\$45,215	22.5%	\$48,825
30	15.0%	3.4%	5.2%	6.4%	\$46,775	23.0%	\$49,910
35	15.5%	3.5%	5.4%	6.6%	\$48,334	23.5%	\$50,995
40	16.0%	3.6%	5.6%	6.8%	\$49,893	24.0%	\$52,080
45	16.5%	3.7%	5.7%	7.0%	\$51,452	24.5%	\$53,165
50	17.0%	3.9%	5.9%	7.2%	\$53,011	25.0%	\$54,250

This table is included in the attached regulations, except for the “Estimated Cost” columns, which are shown here for reference only. These columns indicate the approximate cost to a developer to provide these percentages of in-project affordable units. These estimated costs are based on the updated affordability gaps at the various income levels recently provided by Keyser Marston, as discussed above. Because provision of these affordable units results in a development bonus, they are not subject to the cap of \$35,600 identified in the Residential Nexus Study, and, in fact, all of the estimated costs in the table above exceed this cap. For comparison, using the new affordability gaps, the City’s previous rental inclusionary requirement of 9.0% moderate income units and 6.0% very low income units would have had an estimated cost of approximately \$43,590 per unit.

For ownership projects, in-project affordable units are still required even for projects not seeking development bonuses. The basic requirement is 20% moderate income units, which has an estimated cost of about \$43,400 using the new affordability gaps. The above table requires an 0.5% increase in moderate income units for every 5 bonus points, up to a maximum of 25% moderate income units for 50 bonus points.

Nonresidential projects would pay an increased Affordable Housing Impact Fee based on the number of bonus points required according to the following table:

Bonus Points Awarded	Additional Fee
5	10%
10	20%
15	30%
20	40%
25	50%
30	60%
35	70%
40	80%
45	90%
50	100%

For example, if the current fee for nonexempt uses were \$4.00 per square foot, to earn 30 points, an additional fee of \$2.40 per square foot would be required (60% of \$4.00) for a total of \$6.40 per square foot. A use type that is normally exempt from the affordable housing impact fee would not pay the base fee of \$4.00 per square foot, but would pay the fee increase of \$2.40 per square foot.

Community Benefits. The regulations would specify that no more than half of a project's required bonus points may be earned through the provision of community benefits. (If half of a project's bonus points were rounded up to the next multiple of five for provision of affordable housing, per the above, the remaining points would come from other community benefits. For example, if a project needed 34 points, half of which is 17, it would be rounded up to 20 points for affordable housing and the remaining 14 points would come from other community benefits.)

There are currently 19 categories of public benefits, including the "Flexible Public Benefit", in the regulations. This would be reduced to seven categories of community benefits, including the "Flexible Community Benefit". Categories eliminated include:

- Sustainable Design (LEED certification or equivalent)
- Water Efficiency
- Energy Efficiency
- Transportation Demand Management (TDM)
- Neighborhood Centers
- Public Art
- Public Parking
- Bike Station
- Significant Structures
- Electric Vehicle (EV) Charging Stations
- Mechanical Equipment Concealed in Penthouse or Inside Building

- Universal Design

These attributes of projects are often required, to a greater or lesser extent, without the provision of bonus points, and/or are not deemed to be of great enough significance to merit development bonuses. As noted above, a TDM plan would now be a basic requirement for Multi-Unit Residential developments of 10 units or more.

The categories remaining include:

- Public Open Space – Points for provision of publicly accessible open space on the project site, or a contribution to the Citywide Parks Fund equal to 1% of the project construction valuation for every 10 points.
- Zero Net Energy – 100% of project energy load from solar panels, wind turbines, and/or other renewable resources. Note that this category, worth 50 points, is “all or nothing.”
- Public Improvements – 10 points for every 1% of project construction valuation towards public improvements that are not otherwise required by the City.
- Utility Undergrounding – Contribution to Citywide Underground Utility Fund equal to 1% of the project construction valuation for every 10 points.
- Additional Family Friendly Units – 5 points for each additional 5% of total units that have two or more bedrooms, of which at least 1% of total units must have three or more bedrooms. All such units must comply with Family-Friendly Design Guidelines, and are in addition to the 50% two-or-more bedroom units (including 10% three-or-more bedroom units) already required.
- Small Businesses – Contribution to Citywide Fund to Support Small Local-Serving Businesses equal to 1% of the project construction valuation for every 10 points.
- Flexible Community Benefit – Currently undefined community benefit proposed by the applicant that is significant and substantially beyond normal requirements.

All community benefit categories would be worth a maximum of 50 points and projects seeking the Flexible Community Benefit would require City Council approval.

At the September 1, 2015 study session, the City Council indicated that the Small Business community benefit category should be reduced to less than 50 points, and the draft that was presented to the Planning Commission indicated that it would be worth a maximum of 25 points. However, the Planning Commission unanimously supported increasing the Small Business community benefit category back to 50 points. The Commission felt that having fewer bonus points available for the Small Business community benefit than for other categories would disincentivize developers from choosing this category. The intent of this community benefit category is to support a City fund to provide assistance to small businesses, such as low-interest loans and façade improvement grants. Such businesses are typically local-serving and locally owned, including small retail establishments and cafes serving local residents.

Additional findings, beyond those currently in the regulations, would be required to approve development bonuses. These include explicit findings “That the proposed community benefits for the project are significant and clearly beyond what would otherwise be required for the project under applicable code provisions, conditions of approval, and/or environmental review mitigation measures”, and “That the proposed community benefits for the project are acceptable and appropriate in this case, and will provide tangible benefits to the community.” These findings would confirm the ability of the Planning Commission or City Council, as the case may be, to approve or not approve community benefits proposed by the developer.

Modifications to the Affordable Housing Program, State Density Bonus System, and Subdivision Regulations

Affordable Housing Program. The Affordable Housing Program in Article 4 of Chapter 5 would be modified to stipulate that a developer may seek development bonuses either under the City development bonus system in Section 9-4.204 or the State Density Bonus system in Article 5 of Chapter 5, but not both. It would also be stipulated that the Affordable Housing Impact Fee is subject to applicable provisions for all development impact fees in Article 19 of Chapter 5. (This is a “clean-up” provision to correct an oversight in the original adoption of the impact fees in 2014.) Section 9-5.407 would stipulate the percentages of affordable units that may be provided in lieu of paying the Affordable Housing Impact Fee. As discussed above, this Section would specify an in-lieu option of 12% affordable units, including 4% very low income units and 8% low income units. Section 9-5.408 would be modified to stipulate that rental projects may include moderate income units as well as very low and low income units.

State Density Bonus System. The State Density Bonus system in Article 5 of Chapter 5 would be modified to stipulate that a developer may seek development bonuses either under the City development bonus system in Section 9-4.204 or the State Density Bonus system this Article, but not both. Outdated references to the “Affordable Housing Set-Aside Program”, now called the “Affordable Housing Program”, would be corrected.

Subdivision Regulations. The Subdivision Regulations in Chapter 6 would be modified to specify that all residential condominium projects, not just those resulting from development bonuses, shall be conditioned to require recordation of covenants, conditions and restrictions that include the basic eligibility requirements of the Federal Housing Administration (FHA) for condominium project approval, including, but not limited to, requirements for owner occupancy and limitations on investor ownership and commercial space. The Condominium Conversion provisions in Article 7 would be modified to stipulate that they apply to the sale of dwelling units in a residential development that has an approved condominium map but that has previously been operated as a rental project, in addition to newly mapped condominiums. Outdated references to condominium conversion projects of “30 or more units” (now 10 or more units) and the “Affordable Housing Set-Aside Program” (now the “Affordable Housing Program”) would be corrected.

Miscellaneous Provisions

Use Classification. The description of the Multi-Unit Residential use type in Section 9-2.207 would have a cross-reference added to the new regulations for Multi-Unit Residential Developments in Article 20 of Chapter 5 (described above).

Planning Decision Authority. The list of powers and duties of the City Council in Section 9-7.102 would be modified to add the requirement for City Council approval of projects seeking exceptions to the unit mix and design requirements for Multi-Unit Residential developments in Article 20 of Chapter 5, and for projects seeking the Flexible Community Benefit in Section 9-4.204.

General Processing Requirements. The table of “General Processing Requirements” in the Common Procedures in Article 2 of Chapter 7 would be modified to add processing and notification requirements for conditional use permits involving Flexible Community Benefits and exceptions to unit mix and design requirements for Multi-Unit Residential uses, both of which require City Council approval.

Conditional Use Permits. The list of situations requiring a conditional use permit in Section 9-7.502 would be modified to add exceptions to unit mix and design requirements for Multi-Unit Residential uses. (Bonus floor area ratio, height, and/or residential density is already included in the list.)

ENVIRONMENTAL REVIEW

The resolution amending the General Plan and the ordinance amending the Planning Regulations are exempt from environmental review under the “general rule” at Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that these proposals may have a significant effect on the environment. The resolution increasing the Affordable Housing Impact Fee is exempt from environmental review because it is not a “project” as defined in Section 15378(b)(4) of the State CEQA Guidelines.

FISCAL IMPACT

Adoption of the amendments to the General Plan and Planning Regulations will have no direct fiscal impact on the City. Adoption of the increased Affordable Housing Impact Fee will result in increased revenues to fund affordable housing projects.

CONCLUSION

Staff recommends that the City Council take the following actions:

1. Resolution amending the General Plan:
 - a. Take public testimony regarding the Resolution.
 - c. Adopt the Resolution.

2. Resolution increasing the Affordable Housing Impact Fee to \$28,000 per dwelling unit.
 - a. Take public testimony regarding the Resolution.
 - c. Adopt the Resolution.
3. Ordinance amending the Planning Regulations in Title 9 of the Emeryville Municipal Code:
 - a. Introduce the Ordinance after a motion to read by title only.
 - b. Take public testimony regarding the Ordinance.
 - c. Adopt the first reading of the Ordinance.

**APPROVED AND FORWARDED TO THE
CITY OF EMERYVILLE CITY COUNCIL:**



Carolyn Lehr, City Manager

Attachments:

1. Updated Keyser Marston Affordability Gap Analysis, dated 9/15/15
2. GreenTRIP "How to Guide", dated April 1, 2015
3. Resolution amending General Plan
 - Exhibit A. Revised Figure 2-3 of the General Plan, "Maximum Floor Area Ratios"
 - Exhibit B. Revised Figure 2-4 of the General Plan, "Maximum Building Heights"
 - Exhibit C. Revised Figure 2-6 of the General Plan, "Maximum Residential Densities"
4. Resolution increasing Affordable Housing Impact Fee to \$28,000 per dwelling unit
 - Exhibit A. Keyser Marston Residential Nexus Study, June 2014
5. Ordinance amending Planning Regulations

RESOLUTION NO. 15-130

Resolution Of The City Council Of The City Of Emeryville Increasing The Affordable Housing Impact Fee On Rental Residential Projects To \$28,000 Per Dwelling Unit

WHEREAS, on July 15, 2014 the City Council passed Ordinance No. 14-009 amending the Affordable Housing Program (Article 4, Chapter 5, of the Emeryville Planning Regulations), which authorizes the imposition of Affordable Housing Impact Fees on rental residential projects to mitigate the impact of such developments on the need for affordable housing in the City; and

WHEREAS, on July 15, 2014 the City Council passed Resolution No. 14-103 establishing an Affordable Housing Impact Fee of \$20,000 per dwelling unit on rental residential projects, as that term is defined in Section 9-5.419(q) of the Planning Regulations; and

WHEREAS, to ensure that the adopted affordable housing impact fees do not exceed the actual affordable housing impacts attributable to the rental residential development projects on which the fee is imposed, the City Council received and considered a report from Keyser-Marston Associates dated June 2014 entitled Residential Nexus Study, which was approved and adopted by the City Council by Resolution No. 14-103, and which demonstrates that, to fully mitigate the burdens created by rental residential projects on the need for very low, low, and moderate-income housing, an affordable housing impact fee of \$35,600 per unit of new market rate development would be needed; and

WHEREAS, Resolution No. 14-103 stipulates that the Affordable Housing Impact Fee shall be increased on July 1 of each year based on the percentage increase in the Engineering News-Record Construction Cost Index for San Francisco, California; and pursuant to this provision, the City Council on June 2, 2015 passed Resolution No. 15-49 increasing the Affordable Housing Impact Fee to \$20,419 per dwelling unit for rental residential projects for Fiscal Year 2015-2016; and

WHEREAS, Resolution No. 14-103 stipulates that the City Council may review and amend the affordable housing impact fee from time to time; and

WHEREAS, the City Council now desires to increase the affordable housing impact fee for rental residential projects as authorized by the Affordable Housing Program and Resolution No. 14-103, which fee does not exceed the justified fee needed to mitigate the actual affordable housing impacts attributable to the developments on which the fee is imposed; and

WHEREAS, to ensure that development projects remain economically feasible, the affordable housing impact fee adopted by this resolution is lower than the amount found by the Residential Nexus Study to be needed to fully mitigate the burdens created by new rental residential projects; and

WHEREAS, at least ten days prior to the date this resolution is being heard, data was made available to the public indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including general fund revenues, in accordance with Government Code Section 66019; and

WHEREAS, at least fourteen days prior to the date this resolution is being heard, notice was provided to any persons or organizations who had requested notice, in accordance with Government Code Section 66019; and

WHEREAS, notice of the hearing on the proposed fee was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Section 66018; and

WHEREAS, a duly and properly noticed public hearing was conducted by the City Council on October 20, 2015; now, therefore, be it

RESOLVED, that the City Council hereby finds that this proposal is exempt from environmental review because it is not a "project" as defined in Section 15378(b)(4) of the State CEQA Guidelines; and be it further

RESOLVED, that the City Council hereby finds as follows:

- A. The foregoing recitals are true and correct.
- B. The purpose of the affordable housing impact fee is to mitigate the burdens created by new rental residential and nonresidential development projects on the need for very low, low, median, and moderate-income housing.
- C. In compliance with the Affordable Housing Program, all affordable housing impact fees collected shall be deposited into the City's affordable housing fund to be used solely to increase and preserve the supply of housing affordable to households of very low, low, median, and moderate incomes (including necessary administrative costs).
- D. After considering the Residential Nexus Study, the testimony received at the public hearing, and the evidence in the record, the Council reconfirms its previous approval and adoption of the Residential Nexus Study, and incorporates the Residential Nexus Study, attached hereto as Exhibit A, into this resolution by this reference, and further finds that new rental residential development will create a need for affordable housing by:
 - 1. Aggravating the existing shortage of affordable housing by reducing the supply of land for affordable housing and increasing the price of remaining land.

2. Increasing local employment at very low, low, median, and moderate-income wage levels, which increases the demand for and exacerbates the shortage of housing available to persons at those income levels.
- E. There is a need in the City of Emeryville for housing affordable to households of very low, low, median, and moderate incomes.
- F. The facts and substantial evidence in the record establish that there is a reasonable relationship between the need for affordable housing and the impacts of the development described in the Residential Nexus Study for which the corresponding fee is charged, and there is also a reasonable relationship between the fee's use and the type of development for which the fee is charged, as is described in more detail in the Residential Nexus Study attached to this resolution.
- G. The cost estimates set forth in the Residential Nexus Study are reasonable cost estimates for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

and be it further

RESOLVED, that the City Council hereby increases the Affordable Housing Impact Fee on rental residential projects to \$28,000 per dwelling unit as that term is defined in Section 9-5.419(q) of the Planning Regulations; and be it further

RESOLVED, that this Resolution shall go into full force and effect on December 19, 2015; and be it further

RESOLVED, that any judicial action or proceeding to attack, review, set aside, void or annul this resolution shall be brought within the 120-day time period as established by Government Code Section 54995.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, October 20, 2015.



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY