

Comparative chart on Berkeley proposed Downtown zoning initiative

June 20, 2014

COMMUNITY RESPONSIVENESS		
Current	Proposed	Consequences
<p>Zoning-that-Learns. Zoning may be amended by Council, as performance is evaluated and needs arise, if consistent with Downtown Area Plan.</p>	<p>Zoning cannot be amended by Council Amendments may only be made by vote of electorate (Referendum/Initiative)</p>	<p><i>Draconian and confusing</i> zoning language would supplant transparent 6-year Downtown Area Plan (DAP) policy-making informed by over 200 public meetings.</p> <p>Council's <i>hands would be tied</i>. Council could not adjust zoning as new information, situations or challenges emerge.</p>

	TRANSIT-ORIENTED HOUSING (buildings over 60 feet generally or over 50 feet in Buffer)	
Current	Proposed	Consequences
<p>Development Feasibility: Existing zoning requirements informed by two independent development feasibility studies that assess the effects of building height, <i>and community benefit fees and exactions</i>, on housing capacity and development feasibility.¹ Both studies recommend restraint regarding fees and exactions (see “Consequences”).²</p>	<p>Additional “Community Benefits” provisions add significant project development costs (see “Community Benefits”) with no development incentives to offset project costs.</p> <p>Initiative contradicts recommendations of City development feasibility studies, and is not supported by comparable studies.³</p> <p>Only one proposed building in excess of 75 feet could have an application submitted and deemed complete in a calendar year.</p>	<p>Construction costs and development feasibility associated with additional “Community Benefits” not assessed.</p> <p>Both development feasibility studies found that <i>if “the goal is to maximize public benefits, [they] can only be realized through development and therefore fees cannot place such a burden that projects will not move forward.”</i>⁴</p> <p>Limiting “applications” to one per year would result in a development <i>lottery</i>, in which – after considerable investment to secure a site and develop a proposal –proposals over 75 feet might not be allowed to proceed.</p>
<p>Buildings over 60 Feet. Height limits (see “Building Heights”) allow up to 3,100 new dwelling units adjacent to major transit hub, and 1,300 more units than allowed with 60-foot buildings. (See also “Affordable Housing” below.)</p>	<p>Same as above</p>	<p>Adding significant financial burdens on development will diminish the amount of housing built in the transit-rich Downtown, resulting in:</p> <ul style="list-style-type: none"> • Greenhouse gas avoided by building an additional 1,300 transit-oriented units (over what 60-foot buildings allow) would exceed 225 million pounds of carbon, if built incrementally across 15 years.⁵ • A household in the Downtown can be

¹ http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/FeasibilityReport_Final.pdf and

² http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/AECOM%20Memorandum%20DAP.pdf . “

³ Ibid.

⁴ Ibid, page 14.

⁵ http://cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/04C-AirQuality.pdf, based on estimate for 3,100 additional units prorated from effects of 1,700 units calculated in EIR.

		expected to drive one third as much as typical Berkeley households (5,000 versus 14,000 miles per year) – a household savings of \$5,000 per year. ⁶
Housing Affordability -- Location: Development within the transit-rich Downtown increases affordability, as “people who live in location-efficient neighborhoods—compact, mixed use, and with convenient access to jobs, services, transit, and amenities—have significantly lower transportation costs.” Existing zoning allows 1,300 more units that allowed with 60-foot buildings (see above), with “Community Benefits” requirements scaled to allow such development to occur (see above). ⁷	Same as above.	Same as above.
Housing Affordability – City Programs: <ul style="list-style-type: none"> Affordable Housing Mitigation Fee (\$20,000 for projects submitted by October 2014 – after that date, fee is \$28,000 per unit.) In lieu of paying the fee, applicant may provide 10% of the units as affordable housing for very low income (50% of AMI). (BMC Section 22.20.065) For Green Pathway projects, an additional 20% built on site to be permanently affordable at 50% of the Area Median Income, or payment of an in-lieu fee. (23B.34.050.A) 	<p>For all projects, Affordable Housing Mitigation Fee or 10% in-lieu affordable housing remains unchanged.</p> <p>For all Green Pathway projects, an additional 10% of the total units must be permanently affordable at 50% AMI and built on site. (23B.34.040.A) None could be waived through in-lieu fees.</p> <p>For the five projects above 75 feet, an additional 20% on-site affordable units required. (23B.34.050.A)</p>	<p>Berkeley’s housing impact fee and in lieu inclusionary requirements are among the most progressive in California.</p> <p>Amount of affordable housing would not increase under Initiative because of reduction in transit-oriented development (see above).</p> <p>Requiring inclusionary housing and prohibiting in-lieu fees would deprive Housing Trust Fund of its primary source of revenue. Housing Trust Fund can fund low- and very-low housing projects with supportive social services (such as job training or substance abuse rehabilitation), whereas inclusionary housing targets mid-income “workforce” housing.</p>

⁶ [http://cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3 - DAP/04C-AirQuality.pdf](http://cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/04C-AirQuality.pdf) based on a difference of 9,000 miles per year and a automobile cost of 55 cents per mile.

⁷ <http://htaindex.cnt.org/> (The Center for Neighborhood Technology’s Housing and Transportation (H+T) Affordability Index).

	COMMUNITY BENEFITS (buildings over 60 feet generally or over 50 feet in Buffer)	
Current	Proposed	Consequences
<p>Development Contributions. Five buildings of exceptional height are allowed with contribution of “significant additional community benefits, either directly or by providing funding for such benefits to the satisfaction of the City” (such as affordable housing, social services, green features, job training and opportunities, etc.)</p> <p>Note also that currently all development must confer significant community benefits in the way of fees, urban design, green design, etc.</p>	Language struck.	<p><i>Initiative reduces community benefits.</i> Development is principal vehicle for such benefits, and development would be stifled (see above).</p> <p>By striking language, City’s obligation to negotiate community benefits on a case-by-case basis is eliminated. <i>City would lose leverage for demanding unique site-specific community benefits</i> such as on-site replacement of cinemas (proposed Berkeley Plaza project) or providing on-site conference facilities (proposed hotel project).</p>
<p>SOSIP Fees. Street & Open Space Improvements Fee established.</p> <ul style="list-style-type: none"> • \$1.68/sf of commercial • \$1.12/sf of institutional • \$2.23/sf of residential use 	Increase Street & Open Space Improvements Fee by \$1 per square foot	<i>Fee increase not legally allowed.</i> Established fees were set at maximum justifiable fee per adopted Nexus Study. ⁸
<p>On-Site Open Space. Open space requirement set at 80 sf per unit and 1 sf for 50 sf of commercial. In-lieu fee may be paid. City sets lieu fee set near value of equivalent on-site construction.</p>	In lieu fee set at \$30 per square foot of required space.	<i>Generates less revenue for public open space, especially when inflation is factored.</i>
<p>Business Development. DAP considers housing growth to be principal vehicle for economic development.</p>	50 cents per square foot required for “revolving loan fund” for loans to businesses and entrepreneurs. This fund has not been established.	<p>Additional cost that would reduce development, especially when in combination with other fees and exactions.</p> <p>May not be legally allowed, as likely meets definition of impact fee, which requires a “rationale nexus” between development impacts and the fee assessed.</p>

⁸ http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/SOSIP%20Nexus%20Study%20and%20Impact%20Fee.pdf

Green Buildings. LEED Gold rating or equivalent for all projects, except	LEED Platinum	Significant additional construction. Reduction in construction of housing and other uses.
Energy. Projects must meet LEED energy prerequisite requirements	Energy efficiency rating of 15% above Title 24	Redundant and unnecessary.
Urban Runoff. <ul style="list-style-type: none"> • C-DMU parcels are impermeable • stringent Alameda County “C.3” and “C.6” water quality requirements⁹ 	No increase in net runoff	Redundant and unnecessary.
On-Site Recycling. Multifamily and commercial requirements already in place per Alameda County “Mandatory Recycling Ordinance” ¹⁰	On-site recycling required	Redundant and unnecessary.
Composting. Composting not addressed	On-site composting required	No precedents in other cities discovered. High on-going operating costs.
On-Site Public Rest Rooms. Not required.	Projects over 75 feet must provide separate restrooms for men, women and disabled.	Restrooms would displace retail and other active uses along streets, given Downtown’s small parcels. Restrooms represent high construction cost, high opportunity cost, and high on-going cost.

⁹ http://www.ci.berkeley.ca.us/Green_Building_Requirements/

¹⁰ Ibid.

BUILDING HEIGHTS & SETBACKS		
Current	Proposed	Consequences
<p>Height limits in Core Area, Outer Core, Corridor:</p> <ul style="list-style-type: none"> 60 feet by right and 75 feet with typical use permits five buildings of exceptional height allowed with contribution of “significant additional community benefits (see “Community Benefits). 	<p>Height limits in Core Area, Outer Core, Corridor:</p> <ul style="list-style-type: none"> 60 feet by right buildings over 60 feet must elect Green Pathway and would be subject to significant additional “Community Benefits” requirements (see “Community Benefits”) no change in maximum number of buildings of exceptional height (i.e. 3 buildings at 180 feet and 2 buildings at 120 feet). 	<p>Development capacity reduced by burdening 60-foot projects with significant additional financial burdens, and projects over 75 feet with even greater burdens. (For discussion on financial feasibility, see “Transit-Oriented Housing”.)</p>
<p>Height limits in Buffer: 50 feet by right and 60 feet with typical use permits</p>	<p>Height limits in Buffer: 50 feet by right only.</p>	<p>Limitation would reduce development capacity in transit-rich Downtown.</p>
<p>Building Setbacks: Buildings required to step back with building height to reduce visual and shadow impacts (23E.68.070). Setback exceptions may be granted with Use Permit by Zoning Adjustments Board.</p>	<p>No set-back exceptions allowed. Use Permit provisions deleted.</p>	<p>Loss of ZAB discretion over setbacks makes high-rise hotel infeasible. Hotel project requires wider floors to reach the number of rooms needed to offset high cost of high-rise construction. Provision eliminates flexibility to adjust building mass in response to site-specific conditions and/or project feasibility</p>
<p>Shadow Impacts: Shadow impacts must be analyzed and design alternatives considered where shadows could add shade to public parks or plazas. DAP EIR held that only UC Berkeley's "Crescent" would have potential additional shadow impacts.</p>	<p>Buildings over 60 feet would have to shade sidewalks by less than 75% of what a building conforming with setback requirements would cast, even on December 21.</p>	<p>This provision <i>makes the hotel project infeasible</i>, because it uses current setback provisions as the "baseline" for building mass reductions, and the hotel project requires setback adjustments to be economically feasible even before shadow restrictions are applied. The provision also dramatically reduces the development capacity of buildings over 60 feet and may render other projects infeasible.</p>

TRANSPORTATION		
Current	Proposed	Consequences
<p>Parking. In all Downtown subareas, minimum parking ratios reflect urban transit-accessible standards:</p> <ul style="list-style-type: none"> • 1 space per 3 dwellings; and • 1 space per 1,000 sf commercial. <p>Allows payment of in lieu fee for up to all parking required. City use of in lieu fees limited to transit-related improvements in the Downtown.</p> <p>Requires on-site car-sharing.</p> <p>Requires electric vehicle spaces.</p> <p>Requires that parking be leased separate from other leases.</p>	<p>Requires that <i>all projects provide parking on site</i>, by limiting in lieu fee option to 70% of requirement.</p> <p>Increases parking requirements in Buffer areas to one space per 1,000 sf – a doubling of parking requirements for projects with average unit sizes.</p>	<p>By insisting that parking always be provided on site and by increasing parking in Buffer areas, the Initiative would:</p> <ul style="list-style-type: none"> • reduce financial feasibility of some projects (as on-site parking contributes greatly to construction costs); • increase curb cuts and reduce pedestrian safety; • reduce funding for transit-related improvements; • increase car ownership and congestion.
<p>Transportation Demand Management.</p> <p>Requires one free transit pass for every employee and every dwelling unit.</p> <p>Requires on-site carsharing.</p>	<p>Adds payment of “Transportation Services Fee.” City has not adopted Transportation Services Fee, and size of fee not determined.</p>	<p>Transportation Services Fee would <i>hurt Berkeley as a retail destination</i>. The TSF was abandoned by prior City Council because the Fee burden on retail development (with a per square foot rate much greater than residential or office development).</p>
<p>Bicycle Parking. Requires on-site bicycle parking:</p> <p>one space per 2,000 sf commercial; and for residential, based on City analysis of projected demand.</p>	<p>Unassigned bicycle parking must be made available to the public.</p> <p>Sets exact bicycle parking requirement for residential uses of one space per bedroom or studio unit. No change for commercial uses.</p>	<p>Bicycle areas that would otherwise be secured (such as in a locked bicycle room) would be made <i>vulnerable to theft</i>.</p> <p>Initiative would increase bicycle parking in excess of projected demand, but construction cost of additional bicycle parking would not be significant.</p>
<p>Penthouses. Penthouses may be up to 15% of average of floor area on all floors.</p>	<p>In exchange for 10 additional parking spaces, changes allowable penthouse space from 15% of average floor area to 33% of the roof space or not more than 4,500 sf, whichever is less, and not within 10 feet of building edge.</p>	<p><i>No effect.</i> The maximum allowable penthouse of 4,500 sf represents a negligible amount of development equivalent to not more than 3 dwelling units when space for stair, elevator and other mechanical equipment are factored. Furthermore, for projects with a large average</p>

		floor size relative to roof size, the allowable penthouse size would be reduced.
	BARS AND EATERIES	
Current	Proposed	Consequences
Commercial use with alcohol service possible with Administrative Use Permit.	Businesses serving alcohol must close by midnight Sunday-Thursday and by 2am Friday-Saturday generally, and are prohibited in Buffer (23E68.060E).	<i>Pre-judges when alcohol should be consumed. Hurts Downtown as an evening destination.</i>
	PREDETERMINATION OF HISTORIC STATUS	
Current	Proposed	Consequences
Allows early determination on historic status of potential development sites within fixed 90-day time period. The 90 day period commences after Landmarks Preservation Commission finds that a historic assessment of the site is deemed complete. To take advantage of this voluntary process, developer must provide additional affordable housing and other public benefits <i>in exchange</i> for such a predetermination.	Removes ability of developers to seek a predetermination of historic status in exchange for developer concessions.	<i>Removes safe harbor option</i> when seeking project approvals. Developer would have no vehicle to discover if a building or site is a historic resource until late in (or even at the end of) the entitlement process – and after expending sizable time and financial resources.