

To: Honorable Members of City Council  
From: Councilmember Lori Droste and Councilmember Darryl Moore  
Subject: Droste-Moore Compromise on Significant Community Benefits

**RECOMMENDATION**

Request the City Manager to draft a Council resolution establishing a system for new Downtown building projects over 75 feet to provide significant community benefits, based on the following principles:

1. Entitlements for developments of buildings over 75' in the Downtown result in added value to the project developer and such additional value should be shared with the community.
2. Significant community benefits are defined as follows:

A significant community benefit is defined as a contribution to the broader community, either physically constructed or a monetary contribution to the City, made by projects above 75 feet in the C-DMU district in order to satisfy the significant community benefits policy in BMC 23E.68.090E. The value of the community benefit will be determined based on a portion of the increased value. The portion attributable to community benefits must not result in project infeasibility.

3. Project developers should address the detriment created by the project on non-profits which serve the Berkeley community.

**Proposed Community Benefits Process**

**Step 1: Submit Application and Community Benefits Package**

When the applicant for one of the Downtown buildings proposes to exceed the 75' height limit submits the initial permit application to the City, it must include a proposed package of significant community benefits including value based on the policy set forth below. The University of California has voluntarily agreed to comply with the policies of the Downtown Area Plan. Therefore the University should comply with this significant community benefits policy.

**Significant Community Benefit Categories**

**Option A: Affordable Housing, Labor, and Other Benefits**

Applicants must provide an additional affordable housing benefit that exceeds the existing requirements for all projects in the City, a Project Labor Agreement (PLA) credit, and at least one (1) other category of significant community benefits depending

on the total value of the public benefits that the City determines the project can reasonably bear. The applicant can propose an array of benefits as long as they are financially equivalent to what the city has determined the project can bear. In order to incentivize the immediate production of community benefits, developers provide 90% of that predetermined total value (minus the labor credit) if they complete the community benefits prior to/concurrent with a certificate of occupancy.

OR

### **Option B: Square Footage Flat Fee**

Along with entering into a Project Labor Agreement, applicants can pay a "significant community benefits" per square footage fee predetermined by an independent financial consultant that would capture the highest reasonable value while maintaining financial feasibility of the project. The fees would be paid into a City fund that must follow the allocations specified in Option A, and a credit of 5% of the construction cost of the project for the Project Labor Agreement would be set off against the total fee.

### **Projects Already in the Permitting Process**

For projects that have been in the permit process for more than two years prior to June 25, 2015, the following process is appropriate:

- Square footage fees of \$100 per rentable residential square footage for the height between 75'–120' and
- Square footage fees of \$150 per rentable residential square footage for heights between 121-180'.

Projects that have been in the permit process for more than two years prior to June 25, 2015 will either pay the square footage fees outlined above or provide the benefits equivalent to that amount and proceed directly to Step 3: Analysis of Community Benefits Package. This proposal acknowledges the significant investment already undertaken by these projects in the absence of certain policy direction taken by the Council.

### **Option A Benefit Categories**

#### **Base Benefits:**

#### ***Affordable Housing***

Additional on-site affordable housing that exceeds standard requirements (Option A) or affordable housing fees that exceed standard City requirements (Option B).

#### ***Labor Requirements***

In addition to agreeing to enter into a Project Labor Agreement, applicants would be required to sign an agreement stating that no less than 20% of the project's construction workers be Berkeley or Green Corridor/Alameda County residents, with priority in that order.

**Additional Community Benefit (choose at least one):**

***Arts and Culture***

Provide voluntary on-site or off-site benefits for arts and culture, including publically accessible art or performance space or an in-lieu fee to the Public Art Fund.

***Street and Open Space Requirements (SOSIP)***

Provide additional funding for SOSIP beyond what is currently required by law or construction of SOSIP or similar/updated projects approved by the City, which can include:

- Improving bicycle networks
- Permeable street paving
- Tree plantings
- Pedestrian amenities
- Transportation mitigations

***Sustainable Development***

Provide environmentally friendly community benefits beyond what is currently required, examples could be:

- Higher green building standards
- Water and wastewater infrastructure repair and reinvestment
- On-site gray water infrastructure
- Waste diversion
- Rainwater re-use
- GreenTRIP certification<sup>1</sup>

***Restoration of Historic Civic Center Buildings***

Contribute to the restoration of Old City Hall and/or the Veterans Memorial Hall

***Supportive Social Services***

Contribute to supportive social services which may include:

- Funding for the Housing Crisis Resolution Center (HCRC) or the Downtown Drop-In Center
- Public restrooms
- Funding for non-profit organizations serving Berkeley's youth

**Step Two: Submit Community Benefits Package, Pro Forma and Valuation by Third Party Consultant Hired by the City**

In order for staff and the Zoning Adjustments Board (ZAB) to evaluate the community benefits package selected by the applicant in Option A or determine the appropriate square footage fee per Option B, the applicant must provide a pro-forma showing pre-development, soft, and hard costs estimates as well as the projected rate of return the applicant expects the project would generate, based on revenues (sales price or rental income stream) expected once the project is completed. This analysis should cover two

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<sup>1</sup> <http://www.transformca.org/landing-page/greentrip-certification-program>

scenarios: (1) A base case (building 75' feet or less) and (2) The potential under the high-rise scenario (above 75 feet).

In addition the applicant should attempt to provide an estimate of the costs of the proposed benefits or fee package in order for the City to evaluate independently whether the benefits package is "proportional" to the value of the additional height (as the Downtown Plan requires), and whether the project can achieve a reasonable rate of return while providing the significant community benefits proposed.

The financial information will be reviewed by an independent consultant selected by the City and paid for by the applicant. If necessary, the consultant may require additional information from the applicant in order to clarify assumptions included in the original cost/benefit assessment. The findings of the independent economic analysis will be presented to the ZAB.

The valuation model should reflect growth trends in rental income in determining the dollar range of benefits the City could reasonably request. The total value of benefits must bear a reasonable relationship to the value generated by the project.

### **Step Three: Analysis of Community Benefits Package presented to ZAB**

The ZAB will review the community benefits package selected by the applicant to determine whether to accept the benefits package, reject it, or propose modifications. Once the ZAB approves the community benefits package, the Board can make the required finding in BMC Section 23E.68.090.E.

### **ENFORCEMENT**

All significant community benefits agreed to by the applicant and approved by the City will be included as Conditions of Approval. Affordable housing requirements will be enforced through a separate regulatory agreement. Other requirements such as payment of additional fees or financial contributions to the City would be due prior to the issuance of a Certificate of Occupancy. Some requirements such as constructing cultural/arts space on-site would be enforced through the recording of a Notice of Limitation to comply with the conditions on building, maintaining, and using the arts space for visual/performing art/ or movie theater space. These legal documents could be enforced through litigation by the City if the owner fails to comply with the conditions. Any project that fails to meet the Conditions of Approval could be subject to revocation of its permit and substantial monetary penalties.

### **FINANCIAL IMPLICATIONS**

The proposal can generate on-site community benefits or revenues to the City to fund community priorities, depending on the extent that developers choose to pay fees instead of directly providing community benefits on the project site.

**Droste/Moore Compromise**

**Option A: Affordable Housing + Project Labor + 1 or More Additional Categories**

**Mandatory benefits**

**Affordable Housing:**

Provide affordable housing that exceeds standard City requirements.

**Labor Requirements:**

In addition to agreeing to enter into a Project Labor Agreement, applicants would be required to sign an agreement stating that no less than 20% of the project's construction workforce be Berkeley or Green Corridor/Alameda County residents, with priority in that order.

**Optional benefits (choose one or more)**

**Arts and Culture**

Provide voluntary on-site or off-site benefits for arts and culture, including publically accessible art of performance space, or an in-lieu fee to the public Art Fund.

**Street and Open Space Requirements (SOSIP)**

Provide additional funding for SOSIP beyond what is currently required by law or construction of SOSIP or similar/updated projects approved by the City

**Sustainable Development**

Provide environmentally friendly community benefits beyond what is currently required.

**Restoration of Historic Civic Center Buildings**

Contribute to the restoration of Old City Hall and/or the Veterans Memorial Hall

**Supportive Social Services**

Contribute to supportive social services which may include funding for HCRC, public restrooms, etc.

**Option B: Square Footage Flat Fee**

Applicants can pay "significant community benefits" per square footage fee predetermined by an independent financial consultant that would capture the highest reasonable value while maintaining financial feasibility of the project.

The fees would be paid into a City fund that must follow the benefit structure (mandatory benefits + optional benefits) specified in Option A, and a credit of 5% for the Project Labor Agreement would be set against the fee.

**Projects Already in the Permitting Process**

For projects that have been in the permitting process for more than two years prior to June 25, 2015, the following process is appropriate:

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This proposal acknowledges the significant investment already undertaken by these projects in the absence of certain policy direction taken by the Council.