




Office of the City Manager

ACTION CALENDAR

July 14, 2015

To: Honorable Mayor and Members of the City Council
 From:  Christine Daniel, City Manager
 Submitted by: Eric Angstadt, Director, Planning and Development Department
 Subject: Establish A System For New Downtown Projects Over 75 Feet to Provide Significant Community Benefits

RECOMMENDATION

Adopt a Resolution:

1. Establishing a three step process for proposing, evaluating and approving significant community benefit packages for buildings over 75 feet in the downtown, including a requirement for third party review of the project pro forma and valuation of the benefit package; and
2. Establishing two options for meeting the significant community benefit requirement by providing affordable housing, having a project labor agreement and other defined optional benefits or by paying a per square foot fee established through independent financial analysis; and
3. Defining the categories for the base benefits and optional benefits that qualify for inclusion in a significant community benefits package: and
4. Establishing a per square foot fee of \$100 per rentable residential square foot between 75-120 feet and \$150 per rentable residential square foot between 121-180 feet for projects that have been in the permitting process for more than two years prior to the date of adoption of this resolution.

FISCAL IMPACTS OF RECOMMENDATION

There will be a cost for the fiscal analysis called for by the Council action on June 25, 2015. The cost is estimated to be less than \$5,000 and will come from Fund 833. Results of the fiscal analysis will be provided in a supplemental report.

CURRENT SITUATION AND ITS EFFECTS

At its special meeting on June 25, the City Council directed staff to prepare a resolution establishing a system for deriving community benefits from future downtown buildings exceeding 75 feet in height, as envisioned in the City's approved Downtown Area Plan. The Council adopted an amended version of the proposal from Council members

Droste and Moore (Attachment 2) adding a request to consult with the Alameda Building Trades Council on language for the project labor agreement (PLA) and an analysis of the per square foot fees in the proposal. Staff will provide the fee analysis in a supplemental report. Staff will consult with the Trades Council on PLA language at the appropriate time as projects move forward.

The resolution (attachment 1) responds to the City Council direction. The resolution includes language staff recommends to allow for an applicant to propose equivalent benefits if they feel any part of the resolution may conflict with other laws or constitutional rights.

BACKGROUND

In March 2015 the Zoning Adjustments Board (ZAB) asked the City Council to provide direction on what constituted "Significant Community Benefits" following several discussions at ZAB earlier this year. The City Council discussed the item at meetings on April 7, 2015, May 5, 2015 and June 25, 2015. The requirement for buildings above 75 feet to provide significant community benefits is part of the Berkeley Municipal Code Chapter 23E.68 C-DMU Downtown Mixed Use District Provisions. Specifically, the language on significant community benefits comes from Section 23E.68.090 Findings in paragraph E.

ENVIRONMENTAL SUSTAINABILITY

The menu of optional community benefits from which applicants can choose include several sustainable options including, higher green building standards, multiple water conservation and re-use options, waste diversion and GreenTRIP certification.

RATIONALE FOR RECOMMENDATION

Adoption of the proposed resolution would execute the direction of the City Council at its June 25 Special meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development Department, 981-7401

Attachments:

1. Resolution
2. Droste-Moore proposal

RESOLUTION NO. ##,### - N.S.

ESTABLISHING A PROCESS AND STANDARDS FOR EVALUATING “SIGNIFICANT COMMUNITY BENEFIT” PACKAGES FOR BUILDINGS OVER 75 FEET IN THE DOWNTOWN

WHEREAS, Berkeley Municipal Code Section 23E.68.090.E provides:

E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest;

and

WHEREAS, the Zoning Adjustments Board has requested the Council to provide direction as to how it should evaluate significant community benefit proposals under Section 23E.68.090.E; and

WHEREAS, the Council has considered this request.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley as follows:

A. General 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” shall be 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.

B. Application

The initial permit application for a building over 75' in the Downtown must include a proposed package of significant community benefits, with a total 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.

The application shall include a *pro forma* showing pre-development, soft, and hard cost estimates, as well as the projected rate of return the applicant expects the project to generate, based on revenues (sales price or rental income stream) anticipated once the project is completed. This analysis shall cover two scenarios: (1) a base case building of 75' or less; and (2) a high-rise building over 75'. This analysis shall reflect 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.

In addition the applicant shall 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 adequate in proportion to the value of the additional height (as the Downtown Area 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 Zoning Adjustments Board.

C. Significant Community Benefit Options

1. Except as set forth in paragraph 2, an applicant for a building over 75' shall propose a significant community benefits package that satisfies the criteria of either Option A or Option B, below.
2. Projects Already in the Permitting Process. For projects that have been in the zoning review permit process for more than two years prior to June 25, 2015, significant community benefits shall consist of the following:
 - a. Payment of \$100 per square foot for all rentable residential square footage between 75'–120'; and
 - b. Payment of \$150 per square foot for all rentable residential square footage between 121-180'.

Alternatively, such projects may propose benefits of an equivalent value, subject to evaluation by the Zoning Adjustments Board as set forth below.

3. Option A: Affordable Housing, Labor, and Other Benefits. Significant community benefits under Option A shall include: (a) an additional affordable housing benefit that exceeds the existing requirements for all projects in the City; (b) a Project Labor Agreement (PLA); and (c) at least 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. In order to incentivize the immediate production of community benefits, developers may 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.
4. Option B: Square Footage Flat Fee. Significant community benefits under Option B shall include: (a) a PLA; and (b) a per square foot fee determined by an independent financial consultant that would capture the highest reasonable value while maintaining financial feasibility of the project. Such fees would be paid into a City fund that is restricted to providing the community benefits specified in this Resolution.
5. Under both Options A and B, a PLA shall entitle the applicant to a credit of 5% of the construction cost of the project against the total fee.
6. The community benefit categories are as follows.

Base Benefits

- a. Affordable Housing. Either (1) additional on-site affordable housing that exceeds standard requirements; or (2) affordable housing fees that exceed standard City requirements.
- 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

- a. Arts and Culture. 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.
- b. Street and Open Space Requirements (SOSIP). 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, but are not limited to:

- Improving bicycle networks
 - Permeable street paving
 - Tree plantings
 - Pedestrian amenities
 - Transportation mitigations
- c. Sustainable Development. Environmentally friendly community benefits beyond what is currently required, such as, but not limited to:
- Higher green building standards
 - Water and wastewater infrastructure repair and reinvestment
 - On-site gray water infrastructure
 - Waste diversion
 - Rainwater re-use
 - GreenTRIP certification¹
- d. Restoration of Historic Civic Center Buildings. Contributions to the restoration of Old City Hall and/or the Veterans Memorial Hall. Such contributions could be used for other listed community benefits in the event the City determines that restoration of one or both of these buildings is not likely within the foreseeable future.
- e. Supportive Social Services. Contributions to supportive social services which may include, but are not limited to::
- 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
7. Alternate Community Benefits Proposals. In the event an applicant believes that compliance with the foregoing community benefits standards would violate any state or federal law or constitutional provision, an applicant may make an alternative proposal.

D. Evaluation Process

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

E. Community Benefits Agreement

All significant community benefits agreed to by the applicant and approved by the City shall be included as Conditions of Approval, and shall be reflected in a community

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

benefits agreement and if necessary a notice of limitation, that shall must be fully executed and recorded against the property on which the project is located prior to issuance of a building permit, provided that any payments required by the community benefits agreement would not be due prior to issuance of a building permit, but would be prior to the issuance of a Certificate of Occupancy.

ACTION CALENDAR
June 25, 2015

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 certification¹

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

¹ <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.

