



Mayor Jesse Arreguín

INFORMATION CALENDAR

July 20, 2021

To: Honorable Mayor and Members of the City Council

From: Mayor Arreguín and Councilmember Taplin

Subject: Ad Hoc Advisory Group to the Mayor and District 2 Councilmember
Regarding Bayer Development Agreement Community Benefits

INTRODUCTION

On February 25, 1992, the City of Berkeley and Miles Inc., now Bayer HealthCare LLC (“Bayer”), entered into a 30-year Long Range Development Program, or Development Agreement (DA). In anticipation of the upcoming February 2022 expiration of the DA, on March 30, 2020, Bayer submitted an application to: 1) extend the terms of the DA for an additional 30 years; 2) include the “South Properties” in the DA; and 3) modify various terms and development standards of the existing DA to better accommodate Bayer’s plans for long term development and investment in biopharmaceutical manufacturing facilities.

This report provides a summary of the ad hoc advisory group convened to provide feedback on the suite of programs and investments that Bayer proposes, including how those funds would be allocated across benefit categories. The ad hoc advisory group is tasked with providing feedback to ensure that the package of investments aligns with Berkeley’s needs and values.

CURRENT SITUATION AND ITS EFFECTS

Renewal of the Bayer Development Agreement is a Strategic Plan Priority Project, advancing our City’s goals to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; foster a dynamic, sustainable, and locally-based economy; champion and demonstrate social and racial equity; and be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

According to Vice President Drew Johnston in a letter to the City dated June 18, 2021,¹ “Without the DA, alternative locations such as Raleigh, Boston, and San Sebastian obtain a competitive advantage due to greater predictability than can be expected in Berkeley. Bayer needs the development certainty in order to deliver the necessary infrastructure quickly enough to meet the needs of our patients.”

Additionally, in a February 18, 2021,² letter to the City, VP Johnston stated: “It is also worth noting that under the existing and proposed Development Agreement, Bayer has limited the amount of development it could construct, as existing Mixed Manufacturing zoning allows for hundreds of thousands of additional square footage that Bayer has forfeited and is proposing to forfeit. Bayer has proposed sacrificing this development potential for certainty in terms of the timing of the land use entitlement process — it is that critical to investment in the Berkeley campus.”

BACKGROUND

Given that the City and Bayer’s economic development incentives are aligned in a positive-sum relationship, developing an equitable Community Benefits Package (CBP) with the input of local stakeholders is essential to ensure that the subsequent 30-year Development Agreement advances Berkeley’s social justice goals. The Mayor’s ad hoc advisory group convened over 20 representatives citywide from environmental, labor, faith, affordable housing, education, business and community groups to provide feedback on Bayer’s proposed benefits.

In its initial meetings, the ad hoc advisory group interfaced with Bayer representatives and studied the draft CBP. In the following meetings, the group provided feedback. Under the current proposal, the CBP and development impact fees together would amount to an annual total payment to the City of \$720,000.

¹ [July 20, 2021, Council Worksession Materials, Attachment 4](#)

² [February 18, 2021, Letter from Bayer to the City of Berkeley](#)

The current draft CBP allocations³ are listed below:

Categories	Impact Fees	Community Benefits	Annual Total
Biotechnology + STEM CTE		300,000	300,000
Community Resiliency		100,000	100,000
Affordable Housing	50,000	100,000	150,000
Childcare	15,000		15,000
Percent for art	155,000		155,000
	\$220,000	\$500,000	\$720,000

Notes:

1. Current proposal includes an annual escalation of 2%
 In year 2051 impact fees & community benefits would total \$1,300,000, accounting for the escalations
2. Initial offer was \$500,000 and reflected community benefits inclusive of payments to support housing, childcare and the arts with no additional impact fees

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The feedback of the ad hoc working group fall into three basic categories: (1) distributional equity of CBP allocations; (2) reviewing assumptions made in determining financial value of the Development Agreement; and (3) ensuring long-term accountability of Development Agreement responsive to local community needs.

(1) The ad hoc advisory group established a broad consensus in maintaining support for STEM education through grants to Biotech Partners and support for Career Technical Education (CTE). Increasing economic opportunity in high-wage, high-skilled jobs, and apprenticeships for Black and brown youth remains a commonly-held priority for the group. Representatives from the education sector discussed further consideration for supporting arts education through STEM education (i.e. “STEAM” education), as well as Civic Arts and festival funding. Representatives from the building trades urged consideration for skilled and trained workforce standards, including construction apprentices, as a benefit commensurate with other job-training benefits outlined in the Agreement.

³ [July 14, 2021, Planning Commission presentation](#)

Regarding the CBP's proposed contribution to the Affordable Housing Trust Fund (AHTF), some working group members expressed a desire to explore workforce housing options, while others spoke of a broader impact through smaller grants to rental assistance and down payment assistance for first-time homebuyers to prevent displacement and reduce the racial wealth gap. Regarding childcare, some members put forth that these funds be distributed to community agencies or partnerships with BUSD through the General Fund. Regarding infrastructure, some members urged increased investments in traffic safety and environmental remediation, such as funding for the Bicycle Plan and Pedestrian Plan, Vision Zero, Aquatic Park, and traffic calming measures on 6th Street in particular.

Community Resiliency was generally viewed as the allocation with the most opportunity for creative and flexible funding to make transformative investments in the West Berkeley Community. Several members recommended pursuing such strategies by reestablishing the West Berkeley Fund to be overseen by a West Berkeley Community Programs Board. In the 1992 Development Agreement⁴ with Miles (now Bayer), Exhibit G-9 included among the stipulations for Community Programs:

To solidify its standing as a long-term resident and neighbor in West Berkeley, Miles will take steps designed to improve the quality of life in the community. Miles and the City will organize the establishment of a West Berkeley Community Programs Board, that will identify and support programs for the health and welfare of community residents. The Board will be composed of West Berkeley business and community members and City officials. The principal function of the Board will be to identify and contribute to, in time and money: community needs, programs and community service non-profit organizations. Immediate targets will be at-risk youth, the elderly and disadvantaged residents. The Board will also seek to expand the number of businesses and employers which contribute annually to the Program.

Miles provided an initial \$30,000 payment for a consultant and agreed to ten annual payments of \$100,000.

(2) The ad hoc working group raised questions about particular data points used to calculate both the financial value of the Development Agreement as well as benefits and mitigations. There was insufficient data on annual TDM surveys stipulated in the 1992 DA to determine the potential transportation impact of additional employees.

⁴ [Development Agreement by and Between the City of Berkeley and Miles Inc. for the Miles Inc. Long Range Development Program \(February 25, 1992\)](#), p.140

Some members raised questions regarding the discount rate (6.8%) provided in Bayer's assumptions used to calculate the financial value of the Development Agreement, given that interest rates on 20-year US Treasury bonds are significantly lower. However, as a multinational corporation, Bayer's definition of its weighted average cost of capital (WACC) "is based on an after-tax approach and calculated at the start of the year as the weighted average of the equity and debt cost factors. The cost of equity is determined using the capital asset pricing model (CAPM), while the debt-capital cost factor is calculated based on the average returns of ten-year Eurobonds issued by industrial companies."⁵

(3) The ad hoc working group did not achieve a full consensus regarding the issuance of STEM education funds through a competitive RFP process. Given Biotech Partners' regional focus on equity and diversity in STEM education, there was a strong preference among many members to renew the program's funding for a full 30-year timeline. However, exploring other partnerships through BUSD, including funding for CTE, was also favored among the group.

Some members of the working group expressed a desire to review the CBP more frequently than 10-year periods. Suggestions included community review halfway through each 10-year period, and reviving the West Berkeley Community Programs Board for this purpose.

CONTACT PERSON

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⁵ [Bayer Annual Report 2020](#)