



Jesse Arreguín
City Councilmember, District 4

ACTION CALENDAR
June 3, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Analysis Under Elections Code Section 9212: Green Downtown and Public Commons Initiative

RECOMMENDATION

Refer to the City Manager, Housing Advisory Commission, Landmarks Preservation Commission, Commission on Labor, Commission on Disability and Community Environmental Advisory Commission, the attached initiative for a report to Council as to any of the impacts specified under Elections Code Section 9212. The report shall be presented to City Council by the July 8, 2014 meeting at the latest. This item should be added to the June meeting agendas of the various commissions this item was referred to and those commissions should provide their input at their June meeting so their analysis can be included in staff's report back to the City Council.

FISCAL IMPACTS OF RECOMMENDATIONS

Staff time involved in reviewing the proposed initiative and providing an analysis as to any impacts under Elections Code Section 9212. The purpose of referring the proposed initiative to staff and city commissions is to provide the Council with information on the fiscal impact as well as on other matters if the initiative petition is found to be sufficient and is placed on the ballot and approved by the voters.

CURRENT SITUATION AND ITS EFFECTS

Jesse Arreguín has submitted a Notice of Intent to circulate an initiative petition to amend various sections of the Zoning Ordinance applicable in the Downtown area and to add Chapter 23E.98 to the Berkeley Municipal Code to establish a Civic Center District Overlay. The City Attorney has prepared a title and summary for the initiative. A copy of the title and summary and text of the ordinance is attached. The proponent is in the process of circulating the petition and intends on submitting the petition in time to be placed on the ballot for the November 4, 2014 Election.

BACKGROUND:

Under Article XIII, Section 92 (4) of the City Charter, in order for an initiative ordinance to qualify the petition must contain at least 2,638 valid signatures of registered voters in the City (5% of the entire votes cast for all candidates for mayor at the last general municipal election at which a mayor was elected). While petitioners have 180 days to obtain sufficient signatures for the ordinance to be placed on the ballot at a future

general municipal election, the petition should be submitted no later than early May to ensure the City Clerk and Registrar of Voters has sufficient time to perform the required signature checking and provide the Council with a report for placement on the ballot. The last date for the Council to consider and place a measure on the ballot for the November 4, 2014 General Municipal Election is August 8, 2014. The last scheduled meeting of the Council prior to this date is July 8, 2014.

During the circulation of a petition, or before taking either an action to place the measure on the ballot or adopt the ordinance as presented, under Election Code section 9212, the legislative body may refer the proposed initiative measure to **any city agency or agencies** for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the legislative body requests to be in the report.

The timeline for preparing these reports can be no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition. Depending on the direction of the Council and areas selected for analysis, the preparation of these reports can take considerable time. Therefore, direction on beginning this process is advisable and will inform the Council of any critical issues prior to any action by Council as required by Sections 92(3) and 92(4) of the Berkeley City Charter.

Elections Code Section 9212 allows for the impact report to be requested while an initiative petition is in circulation. Currently the Green Downtown and Public Commons

initiative is in circulation. Therefore the Council can legally request the impact analysis at this time.

Given that the proposed initiative ordinance makes a number of policy changes in the areas of housing, employment and labor practices, disability access, energy efficiency and environmental practices, and historic preservation, it is important that the various commissions identified (Housing Advisory Commission, Landmarks Commission, Commission on Labor, Commission on Disability and Community Environmental Advisory Commission) also provide their input on the proposed initiative. Elections Code Section 9212 allows the report to be referred to any “*city agency or agencies*”. In this case the recommendation requests that the City Manager as well as various policy commissions review the initiative and provide analysis of any impacts in order to provide information to the Council and to the voters.

RATIONALE FOR RECOMMENDATION

State law provides for the legislative body to request a report on the fiscal impact and any other matters the body finds appropriate. This report will inform the Council and the voters regarding the fiscal impact of the proposed initiative measure.

ALTERNATIVE ACTIONS CONSIDERED

The Council should direct staff as to any other matters to be included in the report.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4 981-7140

ATTACHMENTS:

1. Title and Summary of Initiative Ordinance
2. Text of Initiative Ordinance
3. Summary of Green Downtown and Public Commons Initiative

Title and Summary for Initiative Measure

Initiative Ordinance Amending Downtown Zoning Provisions and Creating Civic Center Historic District Overlay Zone

The proposed initiative measure would amend various provisions of the Zoning Ordinance applicable in the Downtown Area.

It would amend the “Green Pathway” provisions of Chapter 23B.34 of the Zoning Ordinance to:

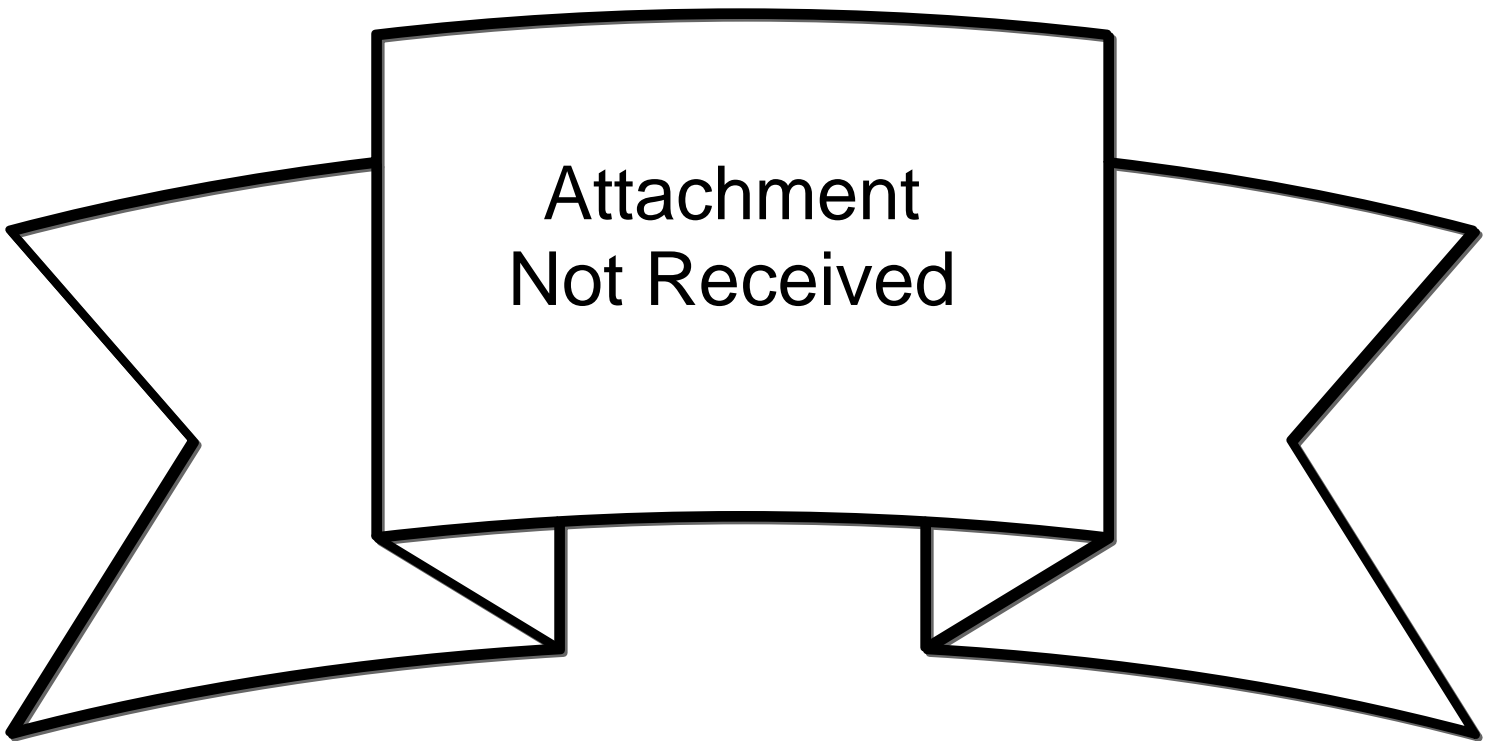
- eliminate mandatory pre-application review of Green Pathway projects by the Landmarks Preservation Commission;
- eliminate any “as of right” approvals for buildings 75 feet or less under the Green Pathway;
- reduce the affordable housing requirement for Green Pathway projects that are 60 feet in height or less (50 feet or less in the C-DMU “buffer” subarea) that contain residential units;
- require all buildings over specified height limits to provide certain benefits;
- increase the percentage of construction workers who must be Berkeley residents from 30% to 50%;
- require all buildings over 60 feet in height (50 feet in the C-DMU “buffer” subarea) to meet various additional requirements, including LEED Platinum rating, public restrooms, an additional streets and open space impact fee and additional affordable units in projects containing residential units.
- These requirements would require modification of applications pending as of November 4, 2014.

It would amend the “C-DMU (Downtown Mixed Use District)” provisions of Chapter 23E.68 of the Zoning Ordinance to:

- modify certain permitted uses;
- allow commercial uses to operate from 6:00 a.m. to 2:00 a.m. seven days per week, but require uses with alcohol sales or service to close by midnight Sunday through Thursday, and allow them to operate past 2:00 a.m. Fridays and Saturdays;
- reduce the maximum height limit from 75 feet to 60 feet (50 feet in the C-DMU “buffer” subarea), except for specified taller buildings;
- eliminate flexibility with respect to setbacks;
- establish an open space in-lieu fee in addition to the existing streets and open space impact fee;
- increase (up to triple) parking requirements in the C-DMU “buffer” subarea, require one bike parking space per unit, limit parking waivers to 70% of parking if an in-lieu fee is paid, require additional handicap, electric vehicle and car sharing spaces;
- require new buildings to attain a LEED Gold rating and increased energy efficiency;
- prohibit any new project from creating runoff;
- require on-site composting and recycling facilities;
- require new projects to contribute 50 cents per square foot to a loan fund for businesses who seek to retain or create jobs in Berkeley.

It would create an overlay district in the Civic Center Historic District designated by the Landmarks Preservation Commission, that would limit heights to 50 feet, limit permissible uses in the commercial parts of the new overlay to libraries, other governmental uses, museums,

parks and playgrounds, public schools, public markets, live performance theaters, and non-profit cultural, arts, community service and historical organizations; and would permit those new uses in the residential part of the new district (along Martin Luther King, Jr. Way), subject to underlying parking, setback and other lot development standards.



Attachment 2 to this report has not been received from the submitting office.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info/citycouncil/>

Green Downtown & Public Commons Initiative **SUMMARY**

In addition to existing portions of the Zoning Code which support Measure R's Green Downtown Vision, this initiative provides:

Green Building and Enhanced Environmental Measures:

- Buildings over 75 feet at LEED Platinum or equivalent (23B.34.050.D)
- All other buildings at LEED Gold rating of 65 points or equivalent (23.68.085.A.1)
- Bike Parking at the rate of one space per bedroom, with unassigned spaces made available to the public if ten or more are available (23E.68.080.D)
- Electric Vehicle Charging stations in every building with a parking requirement of 11 or more spaces (23E.68.080.L)
- Car Share spaces in every building with a parking requirement of 11 or more spaces (23E.68.080.L)
- Energy Efficiency rating 15% above the requirements of Title 24, or equivalent (23.68.085.A.2)
- No new net water runoff (23.68.085.A.3)
- Environmental practices such as depaving of spaces, permeable surfaces, rain catchment systems and bio-filtration systems (23.68.085.A.3)
- On-site composting (23.68.085.B.1)
- Payment of a Transportation Services Fee to support alternative transportation and Transportation Demand Management programs (23.68.085.B.2)
- Funding for the City's Streets and Open Space Improvement Plan (SOSIP), to enhance green and public spaces (23E.34.050.B)

Affordable and Family-Sized Housing:

- All buildings over 60 feet, 10% Affordable must be built (23B.34.040.A), in addition to existing 10% requirement (which can be reduced via payment into Affordable Housing fund) for a total of 20% affordable, half of which can be reduced by fee. *Previously only projects electing the Green Pathway were required to provide additional affordable housing - 20% more with reduction by fee available for all 30%.*
- All buildings over 75 feet:
 - Another 10% affordable must be built (10% + 10% for a total of 20% built) (23B.34.050.A), in addition to existing 10% requirement (which can be reduced via payment into affordable housing fund). *Previously only projects electing the Green Pathway were required to provide additional affordable housing - 20% more with reduction by fee available for all 30%.* This brings buildings over 75 feet to the same standards as the existing Green Pathway affordable housing requirement, but does not allow for reduction by fee of the entire 30%.
 - 20% must be family housing. At least 10% of units must be 2 bedrooms or more, and at least 10% must be 3 bedrooms or more, with adequate kitchen, living and closet space (23B.34.050.E).

Jobs and Fair Wages for Berkeley Residents:

- All buildings over 60 feet:
 - 50% Berkeley Hire requirement (*previously 30%*). If not enough Berkeley workers available, East Bay Green Corridor and then Alameda County workers (23B.34.040.C)
 - All construction workers paid prevailing wage (*previously only required of Green Pathway projects*). (23B.34.040.D)
 - 16% apprentice labor, if available (*previously only required of Green Pathway projects*). (23B.34.040.E)
 - Building maintenance and security workers, as well as hotel employees, to be paid prevailing wage. (23B.34.040.F)

Protection for Public, Historic and Cultural Resources & Civic Center Overlay to Preserve the Heart of Downtown as a Public Commons

- Restores normal Landmarks Preservation Review (23B.34.030 eliminated)
- Creates Civic Center zoning overlay to enhance public, historic and cultural resources at the heart of the Downtown (23E.98)
- Overlay includes old City Hall, Veterans Memorial Building, Civic Center Park, Downtown Y, Berkeley Community Theatre and Central Post Office (23E.98.010)
- Uses are Libraries, Courts, Museums, Public Safety, Government, Public Education, Non-Profit Arts/Environmental/Community Service/Historical Organizations, Live Performance Theatre, Public Market (defined to be local, independent, handcrafted food sales with no more than 25% other retail or carry out/quick serve restaurant) (23E.98.010 & Definitions 23F.04.010).

Designated Parking for the Disabled, Electric Vehicles, Car Sharing and Bicycles:

- Disabled parking built at a rate based on full parking requirement, not on parking actually built. *Previously, if parking was reduced substantially, or to zero (no longer allowed – must provide 30% minimum), no handicapped parking was built at all, rendering new buildings inaccessible for many people with disabilities.* (23E.68.080F)
- Car Sharing built at rate based on full parking requirement, not on parking actually built. *Previously based on parking built.* (23E.68.080L)
- Electric Vehicle Charging Stations at the same rate as Car Sharing spaces, based on full parking requirement, not on parking actually built. *Previously no EV requirement.* (23E.68.080L)
- All parking is cumulative – no space can serve more than one function. (23E.68.080L) (*was implied, now explicit*).
- Bike Parking at the rate of one space per bedroom, with unassigned spaces made available to the public if ten or more are available (23E.68.080.D)

Parking for Residents and Commerce, and enhanced opportunities for Public Parking:

- Parking, which is only required at a rate of 1 space for every three residential units, no longer can be waived (with payment of an in lieu fee) down to Zero spaces. Must build

at least 30% of the requirement plus all Handicapped, Car Share and EV spaces, calculated based on full parking requirement. (23E.68.080.E)

- Major incentive for buildings over 75 feet to build full parking requirement plus additional spaces, and to make spaces available to the public: If all spaces are built without waivers, plus at least ten more spaces, and spaces are made available to the public, project can include a single story penthouse structure of 1/3 of the roof area or 4,500 square feet, whichever is less, with 10 foot minimum setbacks (from roof edges) on all sides. (23.68.070.A, 23E.68.080.G and 23E.68.090.I)
- Surface Parking lots allowed by Use Permit (*previously prohibited*). (23E.68.030)
- Dynamic Signage to direct drivers to available parking spaces (23E.68.080.H)

Improvements for Parks and Public Spaces:

- Streets and Open Spaces Improvement Plan Fee is to implement a vision for the “public realm” in Berkeley – existing, well articulated plan for improvements to streetscape, public life, access, sustainability, etc.
- Provides funding three ways
 - If project seeks to reduce required Open Space, must pay fee into SOSIP fund (*pre-existing provision*). Fee is set at \$30 per square foot reduced. (23E.68.070.D.3)
 - If project builds Open Space improvements rather than pay the fee (*previously allowed*), improvements must have a value the same or greater than the SOSIP fee (23E.68.090.E.2.c)
 - Buildings over 75 feet pay additional \$1 per square foot on new Gross Floor Area (23B.34.050.B)
- Civic Center Overlay ensures that entire Civic Core will be preserved for Civic, Public and Not-for-Profit uses (23E.98)
- Public Restrooms required in buildings over 75 feet, easily accessed separate facilities for Men, Women and the Disabled (23B.34.050.C)

Support for Alternative Transportation:

- Transportation Services Fee to support alternative modes of travel and/or Transportation Demand Management (TDM) programs, to be set by Council. (23E.68.085.B.2)
- Transit Passes or equivalent for buildings over 20,000 square feet (*existing*) (23E.68.080.K)
- Bike Parking at the rate of one space per bedroom, with unassigned spaces made available to the public if ten or more are available (23E.68.080.D)

Protections for Downtown Residential Neighbors:

- R4 Parking required in Buffer Subarea (23E.68.080.C)
- 60 foot height limit retained in Corridor Subarea and 50 foot height limit retained in Buffer subarea, but removed provisions allowing, with a Use Permit, up to 75 feet in Corridor or 60 feet in Buffer. If Density Bonus applies, more height is possible in either subarea, but unlikely more than a single extra story. (Table 23E.68.070)
- Adult oriented businesses prohibited (23E.68.030)
- Weekday business hours reduced for businesses serving Alcohol, but can be increased subject to Use Permit (23E.68.060)

Funding for Loans to Berkeley Businesses and Entrepreneurs:

- Projects contribute \$0.50 per square foot of Gross Floor Area into the City of Berkeley Revolving Loan Fund, providing capital for loans to businesses and entrepreneurs. (23E.68.085.C)

Clarity, Incentives and Expedited Review for Developments:

- Previously, most Community Benefits attached to Green Pathway projects, but developers chose not to elect the Green Pathway. Now clear that to get additional height, which is a given as a Green Pathway “bonus,” you must elect the Green Pathway.
- Removed vague provision requiring “significant” community benefits “beyond what is otherwise required”, but not enumerating the value or nature of those benefits. (Existing Section 23E.68.090.E removed). All community benefits now clarified and included as specific provisions, providing clarity and ease of planning for Developers.
- Added incentive of additional height in exchange for electing Green Pathway, and added incentive of penthouse if all parking, plus at least ten spaces, is built and spaces are made available to the public.
- Expedited review included in exchange for electing Green Pathway (*previously existing under Green Pathway*)

Tall Buildings and Density in the Center of Downtown, with Stepped-Down Building Heights for Residential Neighborhoods:

- Maximum height limits in all Subareas remain the same – except that
 - In Corridor (60 feet) and Buffer (50 feet) subareas, previously allowed additional height - up to 75 and 60 feet, respectively, with a Use Permit - is no longer allowed. Density Bonus could add some height, per State Law, but unlikely more than one extra story on any given project.
 - In Core and Outer Core, height over 60 feet available only as a benefit of electing the Green Pathway, except that a 60 foot project not following the Green Pathway could receive some additional height via a Density Bonus, per State Law, but unlikely more than one extra story on any given project.
 - Additional Height possible via Penthouse and Parking provisions throughout Downtown. Penthouse would add up to ten feet above otherwise allowable height.
- Set Backs, same as previously provided for in the code, are no longer subject to modification.
- Five tallest buildings retained in Core and Outer Core, but community benefits are now fully articulated and will be required of such buildings, adding significant value to the community.