

Jesse Arreguín  
City Councilmember, District 4

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COUNCIL MEETING OF:

MAY 26 2015

# 35

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

ACTION CALENDAR

May 26, 2015

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Amendment to Item # 35: Significant Community Benefits from Seven Tall Downtown Buildings

RECOMMENDATION

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

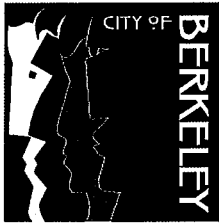
Define "significant community benefits" as follows:

A significant community benefit is defined as a tangible contribution to the broader community, either physically constructed in the project 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, which does not directly benefit the project or occupants of the project, but rather the entire community. The value of the community benefit will be determined based on a portion of the increased value. Project developers should mitigate the loss of community benefits/resources on-site (including non-profits which serve the Berkeley community, locally owned businesses, or arts and cultural amenities) before applying the significant community benefits amount. The amount provided in benefits should represent both the mitigation of project impacts on existing community resources and significant community benefits beyond those mitigations.

Proposed Community Benefits Process:

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

Before an applicant submits their community benefits package, the applicant will consult with the city on the proposed benefits and with the City should hold at least one (1) community meeting to get input on the benefits package. When the applicant for one of the five tall Downtown buildings submits their initial permit application to the City, it must include both a proposed package of significant community benefits based on the policy set forth below, and the projected costs of each benefit category to the construction cost of the project. Since the University of California has voluntarily



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agreed to comply with the policies of the Downtown Area Plan, they should also voluntarily agree to comply with this significant community benefits policy.

## **Step 2: Significant Community Benefit Categories.**

Option A: Applicants choose to meet four (4) categories 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 other benefits as long as its equivalent to what the city is asking for.

OR

Option B: Applicants shall present a plan that would be equivalent to the City recommendation. This equivalency would be both in the monetary value of the package and include a benefit in each of the four categories (Labor standards, Housing, Arts and Culture, and Other Benefits). The only discretion that the City (ZAB and Council) would have would be to determine if indeed the proposed applicant plan would be "equivalent".

### Option A Benefit Categories:

#### Housing:

Affordable Housing in-lieu fees or additional on-site Affordable Housing (Up to an additional 10%).

#### Labor Requirements: Project Labor Agreement and Local Hire Requirements

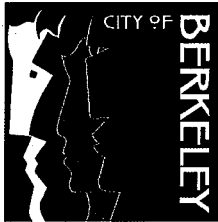
In addition to voluntarily agreeing to enter into a Project Labor Agreement, applicants would be required to sign an agreement stating that no less than 50% of the project's construction workers be Berkeley or Green Corridor/Alameda County residents, with priority in that order.

#### Arts and Culture:

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

Choose an additional benefit category from the following list and provide benefits on-site or funding to the City to support these benefit categories:

- Additional funding for SOSIP or construction of SOSIP or similar/updated projects approved by the City
- Public restrooms



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- Higher Green Building Standards
- Restoring Historic Civic Center Buildings
- Specific and/or On-Site Benefits
- Homeless Services/Supportive Social Services

### **Step 3: Submit Pro Forma and Valuation by Third Party Consultant Hired by City**

In order for staff and the ZAB to evaluate the community benefits package selected by the applicant (Affordable Housing, Labor Requirements, Arts and Culture in addition to one or more benefit categories), the applicant must provide a pro-forma showing pre-development, soft, and hard costs 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 scenarios: (1) A base case (building 75 feet or less) and (2) The potential under the high rise scenario (above 75 feet).

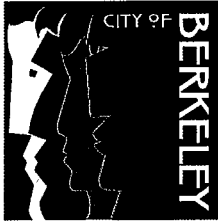
In addition the applicant should attempt to provide an estimate of the costs of the proposed benefits package in order for the City to evaluate independently whether the benefits package is "proportional" to the value of the additional height (as the Downtown Plan requires), and whether the project can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

This 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 be equivalent to the highest reasonable amount the project can support.**

### **Step 4: Analysis of Community Benefits Package presented to ZAB**

The ZAB will review the third party economic analysis of the community benefits package to determine whether to accept the benefits package, reject it, or propose modifications.



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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. Citizens may also file a complaint with the Planning Department over alleged violations of the community benefits policy/benefits not provided, which should be acted upon within 120 days.

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.

### **CONTACT PERSON**

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