



Office of the Mayor

ACTION CALENDAR  
February 23, 2010

To: Honorable Members of the City Council

From: Mayor Tom Bates and Councilmembers Capitelli and Woznaik

Subject: Discussion of Proposed Revisions to the Downtown Area Plan, including Building Heights, Provision of Public Benefits by Developers, and Developmental Feasibility

RECOMMENDATION:

In the event that the City Council rescinds the Downtown Area Plan (Resolution 64,581 N.S.), Discuss the Proposed Revisions to the Downtown Area Plan (DAP) Building Heights, Provision of Public Benefits by Developers, and Developmental Feasibility, and Refer Recommendations to the City Manager for Staff Analysis; and, Request the City Manager return to the City Council with Language and Schedule for Action that Allows for Placement of New Downtown Area Plan Policies, Goals and Development Standards on the November 2010 Ballot.

BACKGROUND:

On July 14, 2009, Berkeley's City Council adopted a Downtown Area Plan (with a vote of 7 ayes and 2 nays). One month later, sufficient signatures were submitted for a local Referendum on the Plan.

The Referendum Against Resolution No. 64-581-N.S., (the Downtown Area Plan) cited concerns over building heights, transit options, protections for workers, greenhouse gas emissions and the "quality of life in and around downtown".

For the past few months I have been consulting with members of the community to develop revisions for to the DAP that address the concerns identified in the Referendum.

Below is a summary of the proposed revisions for consideration. For greater detail and comparison with the original DAP see Attachment A.

**1. Building Heights in the Core, Outer Core and Buffer (LU-1)**

- a) Reduce the Maximum allowed height with a use permit from 85 feet to 75 feet.
- b) Reduce the number of Taller Exceptions from 10 to 8 in the Core and Outer-Core: three (3) buildings not to exceed 160 feet, three (3) buildings not to exceed 140' (these 6 buildings will be reserved for mixed use only), and 2 buildings at 120', which could be mixed use or office buildings.

- c) On Shattuck Avenue extend the Generally Allowed Maximum Height of 65', and 75' with use permit to Haste Street.
- d) Along Martin Luther King Jr. Way, new buildings will not exceed 55' and where adjacent to or confronting existing residential buildings, new buildings will not exceed 45' at the sidewalk and 55' with a 10' set back.

## **2. Provision of Public Benefits by Developers of Tall Buildings (Policy LU-8.2)**

While the original Downtown Area Plan had a range of Public Benefits for Tall buildings, the Plan remained vague in how the City would ensure the desired level of Public Benefits. This new proposal clearly defines required public benefits, and it creates a new entitlement process to ensure a green and vibrant downtown (a desired element referred to in the Referendum).

Under this proposal, the Public Benefits provisions will be secured through two new policy categories of entitlements: a) the Voluntary Green Pathway Development; and, b) the Standard Development Process.

**a) Voluntary Green Pathway Development:** This voluntary process requires the developer to provide all of the following public benefits, regardless of the building heights:

- Meet LEED Gold or equivalent.
- Provide Car sharing opportunities and on-site bike parking.
- Provide AC Transit passes (TBD\*).
- Exceed Title 24 energy requirements (TBD).
- Provide onsite open space or by a fee to an open space fund (TBD).
- Parking requirement may be reduced or eliminated by a fee to Transportation Demand Management (TDM) fund (TBD).
- Parking spaces must be rented separate from dwelling units.
- Not eligible for Residential Parking Permits.
- Ensure no new net water runoff.
- Must provide on-site recycling opportunities.
- For Rental Housing, provide 20% affordable housing onsite or in a building located in the Downtown Area or by paying a fee to the Housing Trust Fund (Fee TBD, in range of \$80,000 per unit).
- Waive right to the State Density bonus.
- Project must employ approximately 30% (TBD) of construction workers from Berkeley, and if qualified persons are not available in Berkeley, from cities in the East Bay Green Corridor. A contractor will gain credit for a locally hired worker who may be employed on another project.

- For buildings with more than 100 units of housing or office buildings above 75', prevailing wages must be paid for construction workers and project must have approximately 16% (TBD) apprentices from State Certified Apprenticeships with a record of graduating apprentices.

Developers who chose the **Green Pathway** will have the following new entitlement process:

For Buildings At or Below 75':

- Submit Landmarks application to planning staff including funds for City-conducted analysis of historical value.
- Submit completed analysis to Landmarks Preservations Commission (LPC) for determination. LPC shall complete its determination within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council.
- Design Review Commission (DRC) has up to 90 days to assess whether the project conforms to Downtown design guidelines, subject to appeal directly to City Council.
- Zoning Certificate is issued upon completion of this process. No Zoning Adjustment Board (ZAB) review required.
- The labor conditions included in the Green Pathway shall be referred to the Mayor to develop procedure for monitoring, verification and penalties and return to Council for approval.
- Verification, monitoring and penalties for Public Benefit compliance will be referred to staff and to return to Council for approval.

For Buildings Above 75':

- Green Pathway Projects receive priority status to meet the approval deadlines.
- Submit Landmarks application to planning staff including funds for City-conducted analysis of historical value.
- Submit completed analysis to LPC for determination. LPC shall be complete its determination within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council.
- Design Review Commission (DRC) and Zoning Adjustment Board (ZAB) process not to exceed a combined total of 210 days.
- ZAB action is appealable to City Council.
- The labor conditions included in the Green Pathway shall be referred to the Mayor to develop procedure for monitoring, verification and penalties and to return to Council for approval.
- Verification, monitoring and penalties for Public Benefit compliance will be referred to staff and return to Council for approval.

**b) Standard Development Process**

Developers will still have the option of following the City's standard development process. However, in this new proposal, the following Public Benefits will be required of all development regardless of height:

- Meet LEED Gold or equivalent.
- Provide Car sharing opportunities and on site bike parking.
- Provide AC Transit passes (TBD).
- Meet Title 24 energy requirements and any local standards adopted by Council.
- Require payment to Public Open Space Fund\*
- Parking spaces must be rented separate from dwelling units.
- Tenants are not eligible for City's Residential Parking Permits.
- Ensure no new net water runoff.
- Must provide on-site recycling opportunities.
- Require payment to Transportation Management Demand (TDM) Fund\*
- Pay existing child care and housing mitigation fees (fees to be reviewed and reassessed).

*\*TBD – To Be Determined: Shall be referred to staff for review and refinement and to return to Council for approval.*

The Standard Entitlement Process remains intact.

- Submit application to planning staff.
- When application is deemed complete it is sent to the ZAB.
- If building is over 40 years old it is referred to the LPC for review for potential designation. This review is not a formal application to designate a property. There is no timeline required for decision.
- A formal application for landmark status on a property can be submitted at any time by an individual, group of citizens, or organization, even if the entitlement process is complete and a use permit has been approved on appeal by the Council.
- If the project is in a commercial district it is automatically referred to the DRC. The DRC is advisory to ZAB.
- After LPC and DRC recommendations come back to ZAB, ZAB makes a decision subject to appeal to the City Council.
- Verification, monitoring and penalties for Public Benefit compliance will be referred to staff and to return to Council for approval.

3. Developmental Feasibility (LU-8.3)

This section has been perceived as an escape clause for developers to avoid providing public benefit. I am recommending the section LU-8.3 be removed.

FINANCIAL IMPLICATIONS:

Staff time necessary for analysis.

CONTACT:

Mayor Tom Bates

981-7100

Attachments

1. Proposed revisions

Attachment 1

LAND USE:	Original DAP (Adopted July 14, 2009)	Proposed Revisions for New Plan
Allowable Building Heights in Core, Outer Core, and Buffer Areas (Table LU-1)	<ul style="list-style-type: none"> <li>• Maximum Height with Use Permit - 85'</li> <li>• Taller Exceptions:               <ul style="list-style-type: none"> <li>○ In Downtown Core –                   <ul style="list-style-type: none"> <li>○ 2 buildings at 180' with one up to 225' if hotel.</li> </ul> </li> <li>○ In Core and Outer Core -                   <ul style="list-style-type: none"> <li>○ 4 buildings at 120'</li> <li>○ 4 buildings at 100'</li> </ul> </li> <li>○ Only 2 can be office buildings</li> <li>○ 2 UC building at 120'</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Reduce the Maximum Height with Use Permit - 75'.</li> <li>• Reduce total number of buildings eligible to receive Taller Exceptions from 10 to 8 &amp; reduce tallest height from 225 feet to 160 feet:               <ul style="list-style-type: none"> <li>➤ In Downtown Core                   <ul style="list-style-type: none"> <li>• 3 buildings at 160'</li> <li>• 3 building at 140'</li> </ul>                   These 6 building are reserved for mixed use only.                 </li> <li>➤ In Core and Outer Core–                   <ul style="list-style-type: none"> <li>• 2 buildings at 120', which can be mixed use or office buildings.</li> </ul> </li> </ul> </li> <li>No change in the following:               <ul style="list-style-type: none"> <li>• 2 UC buildings at 120'</li> </ul> </li> </ul>
Allowable Building Heights in Corridor-Buffer (Table LU-1)	Buildings with use permit for increased height not to exceed 65'.	<ul style="list-style-type: none"> <li>• Along MLK new buildings not to exceed 55'.</li> <li>• On Shattuck Avenue extend the Generally Allowed Maximum Height of 65', and 75' with use permit to Haste Street.</li> <li>• Where adjacent to or confronting existing residential, new buildings will not exceed 45' at sidewalk, with a 55' height allowable with a 10ft setback.</li> </ul>
Provision of Public Benefits by Developers of Tall Buildings (Policy LU-8.2)	Buildings in excess of 85' must provide significant benefits beyond what would otherwise be required, accompanied by a list of benefits includes green building principles, open space, transportation demand management, and affordable housing.	Public Benefits provisions through two avenues for entitlements: <ol style="list-style-type: none"> <li>1. Voluntary Green Pathway Development</li> <li>2. Standard Development Process</li> </ol> <p><b>See Details Attached</b></p>
Developmental Feasibility (LU-8.3)	When establishing provisions for new fees and financing strategies, consider how fees and exactions may discourage development, so as to make these provisions consistent with the intent of this Plan.	<ul style="list-style-type: none"> <li>• Remove all of LU Policy 8.3</li> </ul>

**VOLUNTARY GREEN PATHWAY**  
**Buildings At or Below 75'**

<b>Public Benefits for Buildings At or Below 75'</b>	<b>Entitlement Process for Buildings Below 75'</b>
<ul style="list-style-type: none"> <li>• Meet LEED Gold or equivalent.</li> <li>• Provide Car sharing opportunities and on-site bike parking.</li> <li>• Provide AC Transit passes (TBD*).</li> <li>• Exceed Title 24 energy requirements (TBD).</li> <li>• Provide onsite open space or by a fee to an open space fund (TBD).</li> <li>• Parking requirement may be reduced or eliminated by a fee to Transportation Demand Management (TDM) fund (TBD).</li> <li>• Parking spaces must be rented separate from dwelling units.</li> <li>• Not eligible for Residential Parking Permits.</li> <li>• Ensure no new net water runoff.</li> <li>• Must provide on-site recycling opportunities.</li> <li>• For Rental Housing, provide 20% affordable housing onsite or in a building located in the Downtown Area or by paying a fee to the Housing Trust Fund (Fee TBD, in range of \$80,000 per unit).</li> <li>• Waive right to the State Density bonus.</li> <li>• Project must employ approximately 30% (TBD) of construction workers from Berkeley, and if qualified persons are not available in Berkeley, from cities in the East Bay Green Corridor. A contractor will gain credit for a locally hired worker who may be employed on another project.</li> <li>• For buildings with more than 100 units of housing or office buildings above 75', prevailing wages must be paid for construction workers and project must have approximately 16% (TBD) apprentices from State Certified Apprenticeships with a record of graduating apprentices.</li> </ul> <p><i>*TBD – To Be Determined and shall be referred to staff for refinement and return to Council for approval.</i></p>	<ul style="list-style-type: none"> <li>• Submit Landmarks application to planning staff including funds for City-conducted analysis of historical value.</li> <li>• Submit completed analysis to Landmarks Preservations Commission (LPC) for determination. LPC shall complete its determination within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council.</li> <li>• Design Review Commission (DRC) has up to 90 days to assess whether the project conforms to Downtown design guidelines, subject to appeal directly to City Council.</li> <li>• Zoning Certificate is issued upon completion of this process. No Zoning Adjustment Board (ZAB) review required.</li> <li>• The labor conditions included in the Green Pathway shall be referred to the Mayor to develop procedure for monitoring, verification and penalties and return to Council for approval.</li> <li>• Verification, monitoring and penalties for Public Benefit compliance will be referred to staff and return to Council for approval.</li> </ul>

**VOLUNTARY GREEN PATHWAY**  
**Buildings Over 75'**

<b>Public Benefits for Buildings Over 75'</b>	<b>Entitlement Process for Buildings Over 75'</b>
<ul style="list-style-type: none"> <li>• Meet LEED Gold or equivalent.</li> <li>• Provide Car sharing opportunities and on-site bike parking.</li> <li>• Provide AC Transit passes (TBD*).</li> <li>• Exceed Title 24 energy requirements (TBD).</li> <li>• Provide onsite open space or by a fee to an open space fund (TBD).</li> <li>• Parking requirement may be reduced or eliminated by a fee to Transportation Demand Management (TDM) fund (TBD).</li> <li>• Parking spaces must be rented separate from dwelling units.</li> <li>• Not eligible for Residential Parking Permits.</li> <li>• Ensure no new net water runoff.</li> <li>• Must provide on-site recycling opportunities.</li> <li>• For Rental Housing, provide 20% affordable housing onsite or in a building located in the Downtown Area or by paying a fee to the Housing Trust Fund (Fee TBD, in range of \$80,000 per unit).</li> <li>• Waive right to the State Density bonus.</li> <li>• Project must employ approximately 30% (TBD) of construction workers from Berkeley, and if qualified persons are not available in Berkeley, from cities in the East Bay Green Corridor. A contractor will gain credit for a locally hired worker who may be employed on another project.</li> <li>• For buildings with more than 100 units of housing or office buildings above 75', prevailing wages must be paid for construction workers and project must have approximately 16% (TBD) apprentices from State Certified Apprenticeships with a record of graduating apprentices.</li> </ul>	<ul style="list-style-type: none"> <li>• Green Pathway Projects receive priority status to meet the approval deadlines.</li> <li>• Submit Landmarks application to planning staff including funds for City-conducted analysis of historical value.</li> <li>• Submit completed analysis to LPC for determination. LPC shall be complete its determination within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council.</li> <li>• Design Review Commission (DRC) and Zoning Adjustment Board (ZAB) process not to exceed a combined total of 210 days.</li> <li>• ZAB action is appealable to City Council.</li> <li>• The labor conditions included in the Green Pathway shall be referred to the Mayor to develop procedure for monitoring, verification and penalties and return to Council for approval.</li> <li>• Verification, monitoring and penalties for Public Benefit compliance will be referred to staff and return to Council for approval.</li> </ul>
<p><i>*TBD – To Be Determined and shall be referred to staff for refinement and return to Council for approval.</i></p>	

**Standard Entitlement Process  
Proposed Public Benefits for All Building Applying  
(Not Using the Green Pathway)**

In addition to the standard building requirements, the following are required benefits:

<b>Public Benefits</b>	<b>Standard Entitlement Process</b>
<ul style="list-style-type: none"> <li>• Meet LEED Gold or equivalent.</li> <li>• Provide Car sharing opportunities and on site bike parking.</li> <li>• Provide AC Transit passes (TBD).</li> <li>• Meet Title 24 energy requirements and any local standards adopted by Council.</li> <li>• Require payment to Public Open Space Fund*</li> <li>• Parking spaces must be rented separate from dwelling units.</li> <li>• Tenants are not eligible for City's Residential Parking Permits.</li> <li>• Ensure no new net water runoff.</li> <li>• Must provide on-site recycling opportunities.</li> <li>• Require payment to Transportation Management Demand (TDM) Fund*</li> <li>• Pay existing child care and housing mitigation fees (fees to be reviewed and reassessed).</li> </ul> <p><i>*Fee amounts to be determined and approved by City Council.</i></p>	<ul style="list-style-type: none"> <li>• Submit application to planning staff.</li> <li>• When application is deemed complete it is sent to the ZAB.</li> <li>• If building is over 40 years old it is referred to the LPC for review for potential designation. This review is not a formal application to designate a property. There is no timeline required for decision.</li> <li>• A formal application for landmark status on a property can be submitted at any time by an individual, group of citizens, or organization, even if the entitlement process is complete and a use permit has been approved on appeal by the Council.</li> <li>• If the project is in a commercial district it is automatically referred to the DRC. The DRC is advisory to ZAB.</li> <li>• After LPC and DRC recommendations come back to ZAB, ZAB makes a decision subject to appeal to the City Council.</li> <li>• Verification, monitoring and penalties for Public Benefit compliance will be referred to staff and return to Council for approval.</li> </ul>

