



Councilmember Ben Bartlett
City of Berkeley, District 3

CONSENT CALENDAR
July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Referral to the City Manager and the Planning Commission: Adeline Corridor Community Benefits Ordinance

RECOMMENDATION

Refer to the Planning Commission to:

- Establish a zoning overlay for properties designated as part of the Adeline Corridor Plan in order to promote innovations in housing policy.
- Develop regulations for the Adeline Corridor zoning overlay. This overlay district should be adopted in conjunction with the Adeline Corridor plan or incorporated into it directly.
 - The intent of the regulations are to:
 - i. Ensure fair compensation to the community for the impacts of private development.
 - ii. Promote principles of Equitable Development in land use and promote public benefits specific to South Berkeley's needs and concerns.
 - iii. Increase certainty and transparency in development approval and community negotiations by providing clear expectations.
 - iv. Reduce the cost of negotiations by streamlining processes.
 - v. Deliver much needed affordable housing units more quickly to South Berkeley.
 - The regulations should systematize the community benefits process by mitigating impacts of development as well as incentivizing prospective developers to provide various community benefits.
 - i. **Mitigations.** Determine impacts of development and identify appropriate mitigations, including the following.
 - a. **Displacement.** Benefits should prioritize addressing mitigations for the displacement effects of prospective developments. This can be achieved through fees as well as deeply affordable housing production and/or preservation for

low-income residents, workforce housing, the homeless, people with disabilities, seniors, and others who struggle to find appropriate housing on the open market. The developer may also purchase existing sites within the district that can be maintained as permanently affordable housing by affordable housing developer.

- b. Local Institutions.** Benefits should prioritize addressing mitigations for any impacts prospective developments will have on local institutions including small businesses, cultural and religious institutions, nonprofits, and social services.
 - ii. **Incentives.** Determine the threshold and types of incentives for prospective developers.
 - a. **Threshold of Incentives.** There should be a third party evaluation of pro formas, examining feasibility of benefits and an analysis of broader market conditions. The analysis should look to best practices in communities that have increased affordable housing production and compare with Bay Area regional costs/revenues in all categories.
 - b. **Potential Incentives.** Incentives that have been used elsewhere include:
 - Increased floor area ratio (FAR).
 - A priority permitting process.
 - Waived impact fees.
 - Reduced parking requirements.
 - iii. **Community benefits.** Benefits should be designed within a framework of “Equitable Development.” Developers should be able to select from a menu of predetermined options, including Economic Integration, Place Making, Environmental Investments, Economic Opportunity and Human Development.
 - a. **Economic Integration**
 - Developing inclusionary housing through affordability covenants for low-income residents, workforce housing, as well as housing for the homeless, people with disabilities, seniors, and others who struggle to find appropriate housing on the open market.
 - b. **Place Making**
 - Infrastructure including greenspace, public art, performance spaces, arts programs, recreational facilities, grocery stores in food deserts, as well as

contributions to public improvements that are part of existing or future Adeline Corridor Plan.

- Connectivity to other areas of the city through a variety of transportation options.

c. Environmental Investments

- Investments into zero waste, renewable, and zero net energy facilities.

d. Economic Opportunity

- Living wage policy.
- “First source” hiring plan to employ local residents.
- Labor agreements.
- Job-training programs.
- Financial services and assistance, including loans to underserved communities and entities or homeownership assistance for low-income families.

e. Human Development

- Funding for social services and other programs, including anti-displacement programs, arts programs, homeless services, youth centers, health and wellness programs and more.

- iv. **Conduct community process.** The community benefits that will be incentivized through this program should be determined through meaningful participation of residents within the zoning overlay and the immediately adjacent communities, especially low-income residents, renters, service providers, small businesses and residents at risk of displacement. The process should also include people who've been displaced and/or have roots or ties to the community but don't necessarily live there anymore.
- v. **Select an appropriate policy mechanism to implement.** Work with residents, potential developers, and other stakeholders to create a process that is transparent, predictable, and expedient. The program may be implemented through a variety of ways, including a tiered system, historic property air rights transfer, using points or percentages, establishing a fixed price of additional FAR/height for purchase, or creating a marketplace for FAR/height available for bid. Depending on the structure of the program, certain additional studies, such as a nexus study, may be necessary.
- vi. **Develop a process to revise regulations as needed.** The incentive program should include a transparent and predictable process to allow changes to both the type and level of benefits and bonuses over time,

to allow for changes in market conditions, public needs, and other possible changes with specific review periods.

- vii. **Enforcement timeline.** Develop a process for enforcement as well as a timeline for when mitigations and benefits should be provided. For example, the benefits should be payable upon the first document of construction.

BACKGROUND

What Are Community Benefits Agreements?

Improving the quality of life, increasing housing availability, strengthening the tax base, and other benefits are touted as some of the goals of economic development. But development projects often produce few tangible benefits for local residents.

In recent years, a new movement has emerged to offer a broader vision for economic development. This movement is centered on the concept of community benefits—“the simple proposition that the main purpose of economic development is to bring measurable, permanent improvements to the lives of affected residents, particularly those in low-income neighborhoods. This new movement is pressuring the public sector to play a more strategic role in land use planning and urban growth, in order to leverage its multibillion dollar investment in the private sector toward creation of good jobs, affordable housing, and neighborhood services that improve the quality of life for all residents.”¹

A community benefit agreement (CBA) is an agreement between a prospective developer and organized representatives of communities affected by a prospective development. A CBA specifies the benefits that the developer will provide to the community in exchange for the community’s support of its proposed development.

Since the 1990s, communities in metropolitan regions all over the country have organized to successfully achieve economic, social, and environmental benefits through CBA negotiations.

Recently, South Berkeley community members achieved their own success in negotiating a meaningful CBA for the development of three parcels at 2902 and 2908 Adeline St and 1946 Russell St. The final CBA for the development involved commitments to provide:

- i. 9 onsite below market rate housing units – four at 50% of Area Median Income (AMI), five at 80% of AMI, one at 120% of AMI (two of which were Section 8 for the life of the project, and two for Shelter+Care)
- ii. \$100,000 to seed the creation of an Anti-Displacement Public Advocate tasked with providing free legal services and financial literacy training to Berkeley residents at risk of displacement, as well as to conduct impact litigation
- iii. \$68,000 to the City of Berkeley’s Housing Trust Fund

¹ http://juliangross.net/docs/CBA_Handbook.pdf

- iv. Monthly meetings with residents of Harriet Tubman regarding construction impacts

Although the negotiation of the Adeline St CBA was ultimately successful, it was a long and drawn out process with many difficulties.

Why Should We Develop A Community Benefits Ordinance?

The goal of a Community Benefits Ordinance is to streamline the process of incorporating community benefits into a prospective development.

While CBAs are part of the inspiration for a community benefits overlay, they are distinct concepts. A community benefits overlay is a regulatory tool that creates special provisions for a physical area with distinct mapped boundaries. A CBA, defined in detail above, is an agreement between prospective developers and community members affected by a proposed development, exchanging community support for benefits.

CBA negotiations are prone to challenges, many of which are summarized below:

- i. Inefficiency. Although CBAs have the potential to encourage early negotiation between developers and the community, in practice, as was the case with the Adeline St CBA, developers can avoid engaging with community members until late in the process after being pressured to do so by government. This creates expensive and unnecessary delays in the approval process.
- ii. Resource intensive organizing. Effectively organizing a diverse coalition around CBA negotiations involves extremely high levels of commitment, time, and perseverance. If neighborhood organizations are poorly organized and therefore have little leverage over developers and governmental agencies in a particular situation, seeking a CBA will not help—and could result in a poor precedent being set for future projects.
- iii. Legal expenses. Legal assistance is needed during the CBA negotiation process, as well as to establish enforceable legal documents. Retaining an experienced attorney can be expensive and community groups may lack the money to do so. The community group behind the Adeline St CBA negotiations were luckily able to obtain pro bono assistance from the East Bay Community Law Center (EBCLC). However, this may not always be the case.

Developing a Community Benefits Ordinance removes many of these challenges by reducing or eliminating the need for lengthy resource-intensive project level negotiations, and instead places the benefits in a plan level agreement. Developers benefit from transparency, predictability, and expediency. Communities benefit from the benefits package, as well as less time and energy spent on contesting new projects. Furthermore, bypassing expensive delays frees up additional funding which could be spent on community benefits and delivering much needed affordable housing more quickly.

This proposal will provide a framework for guiding community oriented and equitable development. It will mitigate displacement and negative impacts on small businesses, as well as leverage private capital to achieve place making, environmental investments, economic opportunity, and human development.

Precedence for Requiring Community Benefits.

There is precedence for requiring community benefits in new developments. In 2012, the City of Berkeley adopted the Downtown Area Plan, which called for additional community benefits on all new buildings exceeding 75 feet (Downtown Area Plan, Policy LU-2-2). The plan stated that these benefits would be required as a condition of approval of a project and may include: affordable housing, supportive social services, green features, open space, transportation demand features, job training, and/or employment opportunities. In July 2015, the City Council passed a resolution to provide additional guidance to the Zoning Adjustments Board on how to determine community benefits for a project for which community benefits are required.

However, this community benefits requirement does not extend beyond the Downtown Area Plan, even though other parts of the city could benefit from a community benefits framework. South Berkeley in particular is facing both high rates of displacement and increasing development pressures. At the same time, the city is currently undertaking the development of a plan in South Berkeley—the Adeline Corridor Plan—that will likely lead to new public infrastructure investments as well as new land use standards, which creates an opportunity for community benefits in this neighborhood.

Cities including Santa Monica, San Diego, and Palo Alto have all developed processes for including community benefits during the development process.

City of Berkeley 2015-2023 Housing Element.

This recommendation supports many of the objectives identified in our Housing Element, adopted on April 28, 2015:

- Objective 1: Housing Affordability. Berkeley residents should have access to quality housing at a range of prices and rents. Housing is least affordable for people at the lowest income levels, and City resources should focus on this area of need.
- Objective 4: Special Needs Housing and Homelessness. Prevention Berkeley should expand the supply of housing for special needs groups, including housing affordable to households and individuals with extremely low incomes.
- Objective 7: Public Participation. Berkeley should continue to improve the role of neighborhood residents and community organizations in housing and community development decision-making.

FINANCIAL IMPLICATIONS

Staff time and consultant time.

CONTACT PERSON

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