

Jesse Arreguin
City Councilmember, District 4

ACTION CALENDAR
June 25, 2015

Amendment to Item 1, "Significant Community Benefits from Five Tall Downtown Buildings" by Councilmember Arreguin

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 requirements:-

Projects must mitigate impacts first; No double-counting of mitigations as Significant Community Benefits

Project developers are required to mitigate the loss of community resources on-site, if any, (including but not limited to not-for-profits, locally owned businesses and arts and cultural amenities) and such mitigations shall not be counted towards the Significant Community Benefits requirement.

Determining Amount of Significant Community Benefits

The total amount of Significant Community Benefits will be based on an independent valuation analysis considering the project pro-forma and conducted by an independent consultant selected by the City, and paid for by the applicant. The pro-forma must include pre-development, soft, and hard costs as well as the projected rate of return generated over the expected life of the project, based on revenues (sales price or rental income stream) once the project is completed.

This analysis should cover two scenarios: (1) A base case (building 75 feet or less) and (2) The potential for the high rise project as proposed, taking into account all factors including increased rental rates for higher floors as well as costs associated with building over 75 feet.

The valuation analysis will determine what portion of the increased value can be contributed in the form of community benefits, after factoring in a reasonable rate of return. The valuation model should reflect growth trends in rental income in determining the dollar range of benefits the City could reasonably request. The amount of benefits must be equal to the highest reasonable amount the City determines that the project can support.

Required Significant Community Benefits

After determining the total amount of Community Benefits the project can contribute, the applicant must submit a Significant Community Benefits package based on one of the following options. The community benefits package should include City mandated benefits, project impact mitigations and Significant Community Benefits, as well as the projected costs of each Significant Community Benefit to the applicant. The Significant Community Benefit

requirements apply to all projects which exceed 75-feet in height.

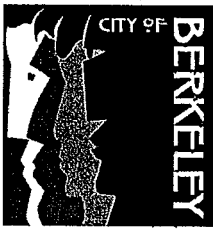
OPTION A: Applicants would meet these four benefit categories in the following order of priority, depending on the maximum highest amount the project can reasonably afford to provide in community benefits, after accounting for a reasonable rate of return:

- Voluntarily agree to enter into a Project Labor Agreement with a local hire requirement. Hotel project applicants would agree to enter into a card check neutrality agreement. The staff shall conduct a third-party review to determine the actual cost of the PLA to the project.
- Provide at least 10% additional Affordable Housing on-site affordable to households earning no greater than 80% of the Area Median Income, which can be exceeded if the applicant elects to do so. As an alternative, the applicant can provide an equivalent monetary contribution to Housing Trust Fund;
- 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;
- Additional funding for Streets and Open Space Improvement Plan (SOSIP) projects or construction of SOSIP or similar projects on-site or in the Downtown Plan area to be approved by the City

Projects under Option A would be entitled to expedited review of their community benefits package

OPTION B: Applicants propose their own Significant Community Benefits package which must include:

- At least 10% additional Affordable Housing on-site affordable to households earning no greater than 80% of the Area Median Income, which can be exceeded if the applicant elects to do so. As an alternative, the applicant can provide an equivalent monetary contribution to Housing Trust Fund.
- In addition, the applicant must choose from four or more categories from the list below. The community benefits package would be vetted by the ZAB who has the discretion to propose alternative benefits. Under this option the benefit package would be negotiated through a discretionary process with the City.
 - 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
 - Additional funding for Streets and Open Space Improvement Plan (SOSIP) projects or construction of SOSIP or similar projects on-site or in the Downtown Plan area to be approved by the City
 - Public Restrooms
 - Higher Green Building Standards
 - Restoring Historic Civic Center Buildings
 - Specific and/or On-Site Benefits
 - Homeless Services/Supportive Social Services



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ZAB Review and Action on Significant Community Benefits

The ZAB will be presented with the independent valuation analysis along with the applicant's proposed Significant Community Benefits package. Staff should analyze whether the benefits package complies with the city's requirements and reflects the maximum amount the independent analysis determines the project can afford. The ZAB will hold at least one public hearing to solicit public input on the benefits plan.

The ZAB will review the independent valuation analysis and the community benefits package to determine whether to accept the benefits package, reject it, or propose modifications.

In its decision to approve the benefits package, the ZAB should make specific findings that the Significant Community Benefits are:

1. Beyond what would otherwise be required by the City;
2. Do not principally benefit the project or occupants of the project, but rather the Berkeley community;
3. Are not required to mitigate the loss of community resources on-site, if any, (including but not limited to not-for-profits, locally owned businesses and arts and cultural amenities)
4. Are equal to the highest amount the City determines the project can reasonably afford
5. Comply with the required benefits categories

The ZAB must approve the benefits package before it can certify any environmental review or approve entitlements.

UC Berkeley Should Comply with Significant Community Benefits Requirement

Because the University of California, Berkeley has voluntarily agreed to comply with the policies of the Downtown Area Plan, it should also comply with this policy when constructing buildings which exceed the 75-foot height limit.

Enforcement

All Significant Community Benefits shall be included as Conditions of Approval, and shall be memorialized by legally enforceable means, including but not limited to contracts and regulatory agreements, recording of deed restrictions, notices of limitation, and or any other enforceable mechanism available.

Any project that fails to provide required Significant Community Benefits shall be subject to potential revocation of its permit, substantial monetary penalties, or other enforcement action including litigation. The City must also provide a mechanism for citizens to file enforcement actions to be adjudicated in a timely manner, with the goal of compelling delinquent owners to

provide required benefits.

~~The projects would be assessed a fee of \$100 per square foot for the residential portion of the building between 76 and 120 feet, and \$150 per square foot for the residential portion above 120 feet. A Project Labor Agreement (PLA) would be required. It would include local hiring and training components. The PLA would provide a credit, equal to 5 percent of the project construction costs, which would be deducted from the fee. In addition, the fee could be further reduced by voluntary on-site benefits for arts and culture, which must be approved by the City Council. The remainder would be paid into a City fund to be used for affordable housing and arts and culture benefits.~~