



**Berkeley City Council  
Ad-Hoc Subcommittee on Council Item:  
“Strengthening Provisions of Significant Community Benefits in the Downtown”**

**March 5, 2018  
11:00 a.m. – 12:30 p.m.  
Redwood Conference Room, 2180 Milvia St, 6th Floor**

**Committee Members**

- Mayor: Jesse Arreguin, Subcommittee Chair
- District 8: Lori Droste
- District 4: Kate Harrison
- District 7: Kriss Worthington

*This Ad-Hoc Subcommittee was established by the Berkeley City Council on January 23, 2018 for the purpose of examining the Council item, “Strengthening Provisions of Significant Community Benefits in the Downtown” and to make recommendations on any possible revisions to the City Council. Pursuant to the City Council Rules of Procedure and Order, Chapter II, Section H, meetings of the Ad-Hoc Subcommittee must be open to the public and held in accessible locations that are open to the public. Public comment is permitted on agenda items, however the Chair may exercise a one-minute speaking limitation on public comments if necessary.*

**AGENDA**

- 1. Call to Order**
- 2. Public Comment**
- 3. Approval of Minutes (Attachment A)**
- 4. Continued Discussion of Council Item “Strengthening Provisions of Significant Community Benefits in the Downtown” (Attachment B)**
- 5. Discussion/Action on Recommendations to City Council**
- 6. Adjournment**

Attachment A: Ad-Hoc Subcommittee Minutes, February 13, 2018  
Attachment B: Council Item “Strengthening Provisions of Significant Community Benefits in the Downtown”  
Attachment C: Resolution No. 67,172, “Establishing a Process and Standards for Evaluating “Significant Community Benefit” Packages for Buildings over 75 feet in the Downtown”



**Berkeley City Council**  
**Minutes: Ad-Hoc Subcommittee on Council Item:**  
**“Strengthening Provisions of Significant Community Benefits in the Downtown”**

**February 13, 2018**  
**9:30 am – 11:00 am**  
**City Council Chambers, 2134 Martin Luther King Jr. Way**

**Committee Members:**

- Mayor: Jesse Arreguin, Subcommittee Chair
- District 4: Kate Harrison
- District 8: Lori Droste
- District 7: Kriss Worthington

**Others in Attendance:**

- Farimah Brown, City Attorney
- Timothy Burroughs, Planning Director

**1. Call to Order**

Mayor Arreguin disclosed his submission of a revised version of Councilmember Harrison’s proposed Resolution for the Subcommittee’s consideration. He noted that the revised proposal was based on prior Subcommittee discussion, his review of the original proposal, and subsequent discussion with Councilmember Harrison.

**2. Public Comment**

The Subcommittee held public comment.

**3. Approval of the January 30 Meeting Minutes**

Councilmember Harrison moved to approve the minutes and Councilmember Worthington seconded. The motion carried unanimously.

**4. Discussion of Mayor Arreguin’s revised proposal: “Strengthening Provisions of Significant Community Benefits in the Downtown” (Attachment A)**

**Process**

Mayor Arreguin recommended that the focus of the meeting should be on discussing the revised proposal, but that action should be tabled until the next meeting in order to provide the public

and councilmembers with due time for review. He also suggested that in addition to recommending an amended Community Benefits Resolution, the Subcommittee should recommend that Council adopt a referral requesting the City Manager and Planning Commission to amend BMC 22.16 for the purpose of establishing a streamlined development agreement process.

Mayor Arreguin provided an overview of his changes and the Subcommittee proceeded to discuss.

### Confidential Memo

Councilmember Droste asked the City Attorney if she could provide an analysis of the 2015 Community Benefits Resolution and amendments in a confidential memo addressed to the Subcommittee. The City Attorney agreed to do so.

### Section C.

Councilmember Droste suggested that the Subcommittee strike language in Section C. 4. regarding fees because they might require specific city processes and subject the City to legal requirements. In addition, she suggested that that the same section needed to be harmonized with Section C. 2. Mayor Arreguin asked that the Planning Staff and the City Attorney confer before the next meeting to discuss how best to clean up and harmonize this section.

Councilmember Worthington proposed that the 60% amount specified in C. 4. be increased to 2/3. The Subcommittee agreed.

Councilmember Worthington also suggested increasing the project labor agreement credit by 5%. However, Mayor Arreguin and Councilmember Harrison expressed concern that doing so would reduce funds available for other benefit categories.

### Section D.

Councilmember Droste expressed the opinion that the evaluation process under D. 1. should not require an additional public hearing, but instead should be combined with another hearing. Councilmembers Harrison and Mayor Arreguin expressed their opinion that having separate hearings would substantially streamline the process.

Separately, Councilmember Worthington expressed concern about the timing of the hearing and the relevance of the hearing to the final project. The City Attorney agreed to provide clarification on these points in her memo.

### Section D.

Councilmember Droste raised concern that subsection 2. b. of the Resolution implied that occupants of project are not members of the “broader Berkeley community.” As a potential solution, Mayor Arreguin and Councilmember Harrison proposed striking the phrase “or occupants.”

Councilmember Harrison suggested that in subsection 2. the Subcommittee should add a provision f. stating that the rate of profit should not be less than what would have been realized under the base project.

#### Section F.

Councilmember Droste expressed an opinion that the section is duplicative of existing City law.

Councilmember Harrison suggested that Section F. provided added transparency to the public, and that it will ultimately help to streamline the approval process.

Mayor Arreguin expressed concerns about including Section F., and that at the next meeting he would move to sever Section F. for purposes of a vote.

#### Development Agreement

Mayor Arreguin clarified that the revised Development Agreement would be available for future projects. However, Councilmember Harrison proposed that existing projects should be allowed to opt-in voluntarily to the development agreement process.

### **5. Discussion/Action on Recommendations to City Council**

No formal action was taken.

### **7. Scheduling**

Mayor Arreguin stated that he planned to request continuation of Councilmember Harrison's item to the March 13, 2018.

The Subcommittee agreed to meet next on March 5, 2018.

### **6. Adjournment**

#### **Next Meeting:**

Monday, March 5 11am-12pm, Room TBD

FOR SUBCOMMITTEE ACTION  
February 13, 2018

To: City Council Ad-Hoc Subcommittee on Downtown Community Benefits  
From: Mayor Jesse Arreguin and Councilmember Kate Harrison  
Subject: Resolution Amending Process and Standards for Evaluating Significant Community Benefits in the Downtown

RECOMMENDATION

1. That the City Council adopt the proposed resolution amending standards for evaluating “Significant Community Benefit” packages for buildings exceeding 75 feet in the Downtown area, and rescinding Resolution No. 67,172-N.S.
2. That the City Council refer to the City Manager and Planning Commission the development of legislation amending Berkeley Municipal Code Chapter 22.16 to create a streamlined Development Agreement process.

BACKGROUND

**Amendments to Significant Community Benefits Standards**

In 2010, the voters of Berkeley approved Measure R, guiding development of the Downtown. Among the provisions approved was permitting, but not requiring, five buildings to be built in the Downtown exceeding height limits in exchange for significant community benefits from project applicants. Allowing developments to exceed height limits confers added value to the project which should be shared with the community. In response to Measure R, the City Council adopted the 2012 Downtown Area Plan and amendments to the Zoning Ordinance to implement the Plan’s policies. The new C-DMU (Commercial Downtown Mixed Use) zoning permitted five buildings exceeding the 75-foot height limit in exchange for the provision of “significant community benefits”. The definition of “significant community benefits” and process for securing those benefits was not prescribed in the Zoning Ordinance.

In response to a request from the Zoning Adjustments Board (ZAB) for direction as to how it should evaluate significant community benefit proposals, on July 14, 2015, the Berkeley City Council adopted Resolution No. 67,712-N.S. “Establishing a Process and Standards for Evaluating “Significant Community Benefit” Packages for Buildings over 75 feet in the Downtown”. The resolution laid out the categories in which benefits should be provided by developers.

Resolution No. 67,712-N.S.:

- Stated a preference rather than setting policy for community benefits

- Was not specific about the findings and process that the ZAB must make and use to certify a Community Benefits Package
- Delayed payment for detriments to existing on-site non-profits, locally-owned small businesses or cultural and arts amenities until far after those entities would be displaced.

This item revises the process and standards for evaluating Significant Community Benefit packages for buildings over 75 feet in the Downtown area. Specifically, this resolution:

- Clarifies that project developers should address the financial impact of displacement on community resources (non-profits, arts and cultural amenities). Mitigation payments should be made upon issuance of a project's building permit;
- Requires the submission of a Significant Community Benefits package later in the process as opposed to initial permit application. This allows developers more time to engage the ZAB and community in developing a benefits proposal;
- Requiring that applicants indicate at entitlement whether their proposed package of Significant Community Benefits will be included on site or made as payments to the City;
- Amends Section C.4. to state that at least 60% of the remaining benefits amount should be allocated to affordable housing;
- Improves the categories of Additional Community Benefits;
- Requires the ZAB to hold a public hearing specifically on the Significant Community Benefits package prior to approval of the use permit;
- Specifies the types of findings that ZAB needs to make in approving the Significant Community Benefits package;
- In evaluating Significant Community Benefits proposals, the resolution requires that the City consider the highest level that the project can financially support based on an independent economic analysis;

## **Development Agreement Procedures**

Berkeley Municipal Code (BMC) Chapter 22.16 governs the approval of Development Agreements. Since adoption of this ordinance in 1991, no one has applied for a Development Agreement because of the extensive requirements. State law governing development agreements offers a more streamlined process.

Development Agreements are a better tool for approving large and complex land use projects, and in executing community benefits. Revisions to the Development Agreement process could provide a useful planning tool for future applications for tall buildings Downtown.

The Subcommittee should recommend that Council initiate amendments to BMC Chapter 22.16 to create more streamlined Development Agreement procedures.

### FISCAL IMPACTS OF RECOMMENDATION

Staff time to implement new policies. In addition, adopting clearer significant community benefit requirements will result in earlier mitigation for non-profits and small businesses required to relocate due to development and more certainty that benefit fees are set at a reasonable level.

### CONTACT PERSON

Mayor Jesse Arreguin	510-981-7100
Kate Harrison, Councilmember, District 4	510-981-7140

### Attachments:

- 1: Resolution with track changes
- 2: Clean Version of Resolution
3. Berkeley Municipal Code Chapter 22.16 "Development Agreement Procedures"

RESOLUTION NO. - N.S.

AMENDING THE PROCESS AND STANDARDS FOR EVALUATING “SIGNIFICANT COMMUNITY BENEFIT” PACKAGES FOR BUILDINGS OVER 75 FEET IN THE DOWNTOWN

WHEREAS, Berkeley Municipal Code Section 23E.68.090.E provides:

E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest;

and

WHEREAS, the Zoning Adjustments Board has requested the Council to provide direction as to how it should evaluate significant community benefit proposals under Section 23E.68.090.E; and

WHEREAS, the City Council understands the Zoning Adjustments Board’s request as a request for guidance as to how the Council believes Section 23E.68.090.E should be implemented; and

WHEREAS, the Council has considered this request and has agreed to provide guidance to the Zoning Adjustments Board in the form of this Resolution, which is intended solely to express how the Council would be inclined to address the issue of community benefits should a project subject to Berkeley Municipal Code Section 23E.68.090.E come before it.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley as follows:

The following description of how the City Council would be inclined to evaluate the finding required by Section 23E.68.090.E should a project subject to that section come before it, and requests that the Zoning Adjustments Board takes this into consideration when it evaluates such projects.

A. General Principles

1. Entitlements for developments of buildings over 75 feet in the Downtown result in added value to the project developer and such additional value should be shared with the community.

2. "Significant community benefits" shall be defined as follows:

A significant community benefit is defined as a contribution to the broader community 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. The value of the significant community benefit will be determined, after consideration of an independent economic analysis, at a level that ensures a relationship to increased value while not resulting in project infeasibility.

3. Project developers should address the financial impact of displacement created by the project on community resources (including but not limited to non-profits and arts and cultural amenities/organizations) which serve the Berkeley community. Such payments should be made upon the issuance of a project's building permit.

#### B. Application

1. Prior to the public hearing required in Section D, the project applicant shall propose a package of significant community benefits, with a total value based on the policy set forth below. The community benefits package should specify whether the project plans to provide benefits on site or as payments to the City; this determination may be modified, but shall be fixed at the time of entitlement. The University of California has voluntarily agreed to comply with the policies of the Downtown Area Plan. Therefore, the University should comply with this significant community benefits policy.

2. The community benefits package shall include a pro forma showing pre-development, soft, and hard cost estimates, as well as the projected rate of return the applicant expects the project to generate, based on revenues (sales price or rental income stream) anticipated once the project is completed. This analysis shall cover two scenarios: (1) a base case building of 75 feet or less; and (2) a high-rise building over 75 feet, taking into account all factors including increased rental rates for higher floors as well as costs associated with building over 75 feet. This analysis shall reflect trends in rental income in determining the dollar range of benefits the City could reasonably request.

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

4. The financial information will be reviewed by an independent consultant selected by the City and paid for by the applicant. In determining the total value of significant community benefits, the independent consultant shall identify the highest reasonable amount that the project can support. The total value of the benefits must bear a reasonable relationship to the value generated by the project. 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 Zoning Adjustments Board (ZAB).

### C. Significant Community Benefit Options

1. An applicant for a building over 75 feet shall propose a significant community benefits package that satisfies the criteria of either Option A or Option B, below.
2. Option A: Affordable Housing, Labor, and Other Benefits. Significant community benefits under Option A shall include: (a) an additional affordable housing benefit that exceeds the existing requirements for all projects in the City; (b) a Project Labor Agreement (PLA); and (c) at least 1 other category of significant community benefits depending on the total value of the public benefits that the City determines the project can reasonably bear. In order to incentivize the immediate production of community benefits, developers may provide 90% of that predetermined total value (minus the labor credit) if they complete the community benefits prior to/concurrent with a certificate of occupancy.
3. Option B: Square Footage Flat Fee. Significant community benefits under Option B shall include: (a) a PLA; and (b) a per square foot fee determined by an independent financial consultant that would capture the highest reasonable value while maintaining financial feasibility of the project. Such fees would be paid into a City fund that is restricted to providing the community benefits specified in this Resolution.
4. Under both Options A and B, a PLA shall entitle the applicant to a credit of 5% of the construction cost of the project against the total fee. After the Project Labor Agreement credit is applied, at least 60% of the remaining amount should be allocated to affordable housing units by making a payment to the City's Housing Trust Fund or by providing the equivalent units on site for tenants with qualifying incomes. The remaining percentage shall be allocated to fulfilling the other benefit categories described herein.
5. The community benefit categories are as follows.

### Base Benefits

- a. Affordable Housing. Either (1) additional on-site affordable housing that exceeds standard requirements; or (2) affordable housing fees that exceed standard City requirements.
- b. Labor Requirements. In addition to agreeing to enter into a Project Labor Agreement, applicants would be required to sign an agreement stating that no less than 20% of the project's construction workers be Berkeley or Green Corridor/Alameda County residents, with priority in that order.

### Additional Community Benefits

- a. Arts and Culture. On-site or off-site benefits for arts and culture, including publically accessible art or performance space or an in-lieu fee to the Public Art Fund.
- b. Street and Open Space Requirements (SOSIP). Additional funding for SOSIP beyond what is currently required by law, or construction of SOSIP or similar/updated projects approved by the City, which can include, but are not limited to:
  - Enhanced parks and streetscapes, such as funding for the Center Street Plaza
  - Improving bicycle networks
  - Permeable street paving
  - Pedestrian amenities
  - Transportation mitigations
- c. Sustainable Development and Transportation. Environmentally friendly community benefits beyond what is currently required, such as, but not limited to:
  - State-of-the-art sustainable building practices (e.g. Zero Net Energy, LEED Platinum)
  - On-site gray water infrastructure
  - Rainwater re-use
  - Funding or building green infrastructure projects in the Downtown area
  - Secure bicycle parking for public use
- d. Restoration of Historic Civic Center Buildings. Contributions to the restoration of Old City Hall and/or the Veterans Memorial Hall. Such contributions could be used for other listed community benefits in the event the City determines that restoration of one or both of these buildings is not likely within the foreseeable future.
- e. Supportive Social Services and Shelter. Contributions to supportive social services which may include, but are not limited to:

- Funding for the Pathways Project
  - Funding for Flexible Housing Subsidies Pool
  - Funding for the HUB (Coordinated Entry System) or the Downtown Drop-In Center
  - Public restrooms
  - Funding for non-profit organizations serving Berkeley's youth
6. Alternate Community Benefits Proposals. In the event an applicant believes that compliance with the foregoing community benefits standards would violate any state or federal law or constitutional provision, an applicant may make an alternative proposal.

#### D. Evaluation Process

1. The Zoning Adjustments Board will review the community benefits package proposed by the applicant, along with the independent economic analysis, to determine whether to accept the benefits package, reject it, or propose modifications. ZAB must hold one public hearing to solicit input on the significant community benefits package.
2. In its decision to approve the benefits package, the ZAB should make specific findings that the Significant Community Benefits proposed by the applicant:
  - a. Are beyond what would otherwise be required by the City;
  - b. Do not principally benefit the project or occupants of the project, but rather the broader Berkeley community;
  - c. Consider the highest amount the City determines the project can reasonably afford;
  - d. Comply with the required benefits categories;
  - e. That the value of the community benefits bear a relationship to the value generated by the project.
3. Once the Zoning Adjustments Board approves the community benefits package, the Board can make the finding required by Section 23E.68.090.E.

#### E. Community Benefits Agreement

All significant community benefits agreed to by the applicant and approved by the City shall be included as Conditions of Approval, and shall be reflected in a community benefits agreement and if necessary a notice of limitation, that must be fully executed and recorded against the property on which the project is located prior to issuance of a building permit. Approved Use Permits, including Conditions of Approval requiring provision of Significant Community Benefits, may be subject to the Compliance and Revocation standards as set forth in Berkeley Municipal Code (BMC) Chapter 23B.60.

#### F. Alteration of Community Benefits Package

If after a project's initial pro forma analysis is conducted City staff determine that the project is substantively altered in a way that may impact the project's feasibility or profitability, the pro forma analysis should be updated. If the updated pro forma shows that the change did in fact substantively alter the project's feasibility or profitability, the Community Benefits Agreement should be modified to reflect those changes, following the procedures as set forth in Section (E). Community Benefits Packages approved by the Council shall be subject to the Compliance and Revocation standards as set forth in Chapter 23B.60 of the BMC.

#### G. Exemption To Already Approved Projects

Projects that have already been granted entitlements at the time of the implementation of these standards shall be exempt from the provisions of this resolution and instead shall follow the procedures as set forth at the time of their approval. Projects shall lose their exemption and become subject to all the provisions of this resolution if staff concludes that the Use Permit requires modification under BMC Section 23B.56.020, or the Use Permit is subject to compliance or revocation action under BMC Chapter 23B.60.

AND BE IT FURTHER RESOLVED that Resolution No. 67,172-N.S. is hereby rescinded.

## Revised Section C

### C. Significant Community Benefit Options

1. An applicant for a building over 75 feet shall propose a significant community benefits package that contains the following elements:
  - a. Additional affordable housing benefit that exceeds the existing requirements for all projects in the City. At least 60% of the amount remaining for the significant community benefits package after the PLA credit is applied should be allocated to this category.
  - b. A Project Labor Agreement (PLA). This shall entitle the applicant to a credit of 5% of the construction cost of the project against the total value of the community benefits package as determined by the independent economic analysis.
  - c. At least 1 other category of significant community benefits. The community benefit categories are as follows:

#### BENEFITS CATEGORIES

2. In order to incentivize the immediate production of community benefits, developers may provide 90% of the requirements in (1)(a) and (1)(c) if they complete the community benefits prior to/concurrent with a certificate of occupancy.
3. Alternate Community Benefits Proposals. In the event an applicant believes that compliance with the foregoing community benefits standards would violate any state or federal law or constitutional provision, an applicant may make an alternative proposal.

RESOLUTION NO. 67,172 - N.S.

ESTABLISHING A PROCESS AND STANDARDS FOR EVALUATING "SIGNIFICANT COMMUNITY BENEFIT" PACKAGES FOR BUILDINGS OVER 75 FEET IN THE DOWNTOWN

WHEREAS, Berkeley Municipal Code Section 23E.68.090.E provides:

E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest;

and

WHEREAS, the Zoning Adjustments Board has requested the Council to provide direction as to how it should evaluate significant community benefit proposals under Section 23E.68.090.E; and

WHEREAS, the City Council understands the Zoning Adjustments Board's request as a request for guidance as to how the Council believes Section 23E.68.090.E should be implemented; and

WHEREAS, the Council has considered this request and has agreed to provide guidance to the Zoning Adjustments Board in the form of this Resolution, which is intended solely to express how the Council would be inclined to address the issue of community benefits should a project subject to Berkeley Municipal Code Section 23E.68.090.E come before it.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

The following description of how the City Council would be inclined to evaluate the finding required by Section 23E.68.090.E should a project subject to that section come before it, and requests that the Zoning Adjustments Board takes this into consideration when it evaluates such projects.

## A. General Principles

1. Entitlements for developments of buildings over 75' in the Downtown result in added value to the project developer and such additional value should be shared with the community.
2. "Significant community benefits" shall be defined as follows:

A significant community benefit is defined as a contribution to the broader community, either physically constructed 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. The value of the community benefit will be determined based on a portion of the increased value. The portion attributable to community benefits must not result in project infeasibility.
3. Project developers should address the detriment created by the project on non-profits which serve the Berkeley community.

## B. Application

The initial permit application for a building over 75' in the Downtown must include a proposed package of significant community benefits, with a total value based on the policy set forth below. The University of California has voluntarily agreed to comply with the policies of the Downtown Area Plan. Therefore the University should comply with this significant community benefits policy.

The application shall include a *pro forma* showing pre-development, soft, and hard cost estimates, as well as the projected rate of return the applicant expects the project to generate, based on revenues (sales price or rental income stream) anticipated once the project is completed. This analysis shall cover two scenarios: (1) a base case building of 75' or less; and (2) a high-rise building over 75'. This analysis shall reflect trends in rental income in determining the dollar range of benefits the City could reasonably request. The total value of benefits must bear a reasonable relationship to the value generated by the project.

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

The 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 Zoning Adjustments Board.

C. Significant Community Benefit Options

1. Except as set forth in paragraph 2, an applicant for a building over 75' shall propose a significant community benefits package that satisfies the criteria of either Option A or Option B, below.
2. Projects Already in the Permitting Process. For projects that have been in the zoning review permit process for more than two years prior to June 25, 2015, significant community benefits shall consist of the following:
  - a. Payment of \$100 per square foot for all rentable residential square footage between 75'–120'; and
  - b. Payment of \$150 per square foot for all rentable residential square footage between 121-180'.

Alternatively, such projects may propose benefits of an equivalent value, subject to evaluation by the Zoning Adjustments Board as set forth below.

3. Option A: Affordable Housing, Labor, and Other Benefits. Significant community benefits under Option A shall include: (a) an additional affordable housing benefit that exceeds the existing requirements for all projects in the City; (b) a Project Labor Agreement (PLA); and (c) at least 1 other category of significant community benefits depending on the total value of the public benefits that the City determines the project can reasonably bear. In order to incentivize the immediate production of community benefits, developers may provide 90% of that predetermined total value (minus the labor credit) if they complete the community benefits prior to/concurrent with a certificate of occupancy.
4. Option B: Square Footage Flat Fee. Significant community benefits under Option B shall include: (a) a PLA; and (b) a per square foot fee determined by an independent financial consultant that would capture the highest reasonable value while maintaining financial feasibility of the project. Such fees would be paid into a City fund that is restricted to providing the community benefits specified in this Resolution.
5. Under both Options A and B, a PLA shall entitle the applicant to a credit of 5% of the construction cost of the project against the total fee. After the Project Labor Agreement credit is applied, 60% of the remaining amount should be allocated to affordable housing units by making a payment to the City's Housing Trust Fund or by providing the equivalent units on site for tenants with qualifying incomes. The remaining 40% should be allocated to fulfilling the other benefit categories described herein.
6. The community benefit categories are as follows.

## Base Benefits

- a. Affordable Housing. Either (1) additional on-site affordable housing that exceeds standard requirements; or (2) affordable housing fees that exceed standard City requirements.
- b. Labor Requirements. In addition to agreeing to enter into a Project Labor Agreement, applicants would be required to sign an agreement stating that no less than 20% of the project's construction workers be Berkeley or Green Corridor/Alameda County residents, with priority in that order.

## Additional Community Benefit

- a. Arts and Culture. On-site or off-site benefits for arts and culture, including publicly accessible art or performance space or an in-lieu fee to the Public Art Fund.
- b. Street and Open Space Requirements (SOSIP). Additional funding for SOSIP beyond what is currently required by law, or construction of SOSIP or similar/updated projects approved by the City, which can include, but are not limited to:
  - Improving bicycle networks
  - Permeable street paving
  - Tree plantings
  - Pedestrian amenities
  - Transportation mitigations
- c. Sustainable Development. Environmentally friendly community benefits beyond what is currently required, such as, but not limited to:
  - Higher green building standards
  - Water and wastewater infrastructure repair and reinvestment
  - On-site gray water infrastructure
  - Waste diversion
  - Rainwater re-use
  - GreenTRIP certification<sup>1</sup>
- d. Restoration of Historic Civic Center Buildings. Contributions to the restoration of Old City Hall and/or the Veterans Memorial Hall. Such contributions could be used for other listed community benefits in the event the City determines that restoration of one or both of these buildings is not likely within the foreseeable future.

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<sup>1</sup> <http://www.transformca.org/landing-page/greentrip-certification-program>

- e. Supportive Social Services. Contributions to supportive social services which may include, but are not limited to:
  - Funding for the Housing Crisis Resolution Center (HCRC) or the Downtown Drop-In Center
  - Public restrooms
  - Funding for non-profit organizations serving Berkeley's youth

7. Alternate Community Benefits Proposals. In the event an applicant believes that compliance with the foregoing community benefits standards would violate any state or federal law or constitutional provision, an applicant may make an alternative proposal.

D. Evaluation Process

The Zoning Adjustments Board will review the community benefits package proposed by the applicant to determine whether to accept the benefits package, reject it, or propose modifications. Once the Zoning Adjustments Board approves the community benefits package, the Board can make the finding required by Section 23E.68.090.E.

E. Community Benefits Agreement

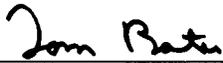
All significant community benefits agreed to by the applicant and approved by the City shall be included as Conditions of Approval, and shall be reflected in a community benefits agreement and if necessary a notice of limitation, that shall must be fully executed and recorded against the property on which the project is located prior to issuance of a building permit, provided that any payments required by the community benefits agreement would not be due prior to issuance of a building permit, but would be prior to the issuance of a Certificate of Occupancy.

The foregoing Resolution was adopted by the Berkeley City Council on July 14, 2015 by the following vote:

Ayes: Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, and Bates.

Noes: Anderson and Worthington.

Absent: None.

  
\_\_\_\_\_  
Tom Bates, Mayor

Attest:   
\_\_\_\_\_  
Rose Thomsen, Deputy City Clerk