



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

**February 13, 2018
9:30 a.m. – 11:00 a.m.**

Council Chambers, 2134 Martin Luther King Jr. Way

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, January 30, 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”



Kate Harrison
City Councilmember, District 4

ACTION CALENDAR
January 23, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember Kate Harrison and Mayor Jesse Arreguin
Subject: Resolution Strengthening Provisions of Significant Community Benefits in the Downtown

RECOMMENDATION

Adopt a Resolution to establish a more specific process and more precise standards for evaluating “Significant Community Benefit” packages for buildings exceeding 75 feet in the Downtown area, and rescind Resolution No. 67,172-N.S.

BACKGROUND

In 2010, the voters of Berkeley approved Measure R, guiding development of the Downtown. Among the provisions approved was one allowing, but not requiring, five buildings to be built in the Downtown that exceed normal height limits in exchange for significant community benefits from project applicants. That term was not precisely defined in the measure.

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 was in response to a request by the Zoning Adjustments Board that the Council provide direction as to how it should evaluate significant community benefits proposals to comply with Berkeley Municipal Code Section 23E.68.090.E. The resolution laid out the categories in which benefits should be provided by developers.

The former resolution:

- 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 provide greater clarity to both the community and developers by:

- Requiring ZAB to hold a public hearing specifically on the Community Benefits package being offered
- Specifying the types of findings that ZAB needs to make
- Requiring Community Benefits Packages consider the highest level that the project can financially support based on an independent economic analysis
- 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
- Requiring that payments to entities at the project site that are adversely impacted be made no later than the issuance of a building permit
- Clarifying that changes requested in the underlying project requested by the applicant or made by the Zoning Adjustments Board that result in significant changes in profitability require a review of the Community Benefits Package

FISCAL IMPACTS OF RECOMMENDATION

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

Kate Harrison, City Councilmember, District 4, (510) 981-7140

Attachments:

- 1: Proposed Resolution
- 2: Resolution with track changes
- 3: Unaltered and Revised Provisions

RESOLUTION NO. 00,000 - 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 Council seeks to provide direction as to how it will evaluate significant community benefit proposals under Section 23E.68.090.E.

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

Adopts the attached description of how City staff, Boards, and Commissions shall evaluate the finding required by Section 23E.68.090.E should a project subject to that section come before them; and,

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

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, 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, after consideration of the independent economic analysis, at a level that ensures a relationship to increased value while resulting in an opportunity to make a reasonable rate of return.

3. Project developers should address the detriment created by the project on community resources (including but not limited to non-profits, locally owned businesses, and arts and cultural amenities) which serve Berkeley and, as part of their Community Benefits Agreement, pay for the cost of relocation of resources displaced by their development if such payments are not already required of the developer. Such payments shall be made upon the issuance of a project's building permit.

B. Application

1. The initial permit application for a building over 75 feet in the Downtown must include a proposed package of significant community benefits, with a total value based on the policy set forth below. The permit application must also specify whether the project plans to provide benefits on site or as payments to the City; this determination 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 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 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. The total value of benefits to be provided must consider the highest reasonable amount the City determines that the project can support and must bear a reasonable relationship to the value generated by the project.

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. 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 complies with subsection (A)(3) and 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 shall 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 Benefit

- 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:
 - 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 (<http://www.transformca.org/landing-page/greentrip-certification-program>)
- 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. 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

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. Exclusion of Existing Requirements from Community Benefits Agreements

Nothing may be included in a Community Benefits Agreement that is separately legally required of the developer, whether by law or by contractual agreement with any party, public or private, or by any other legally binding means.

E. 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 Berkeley community;
- c. Take into consideration the highest amount the City determines the project can reasonably afford;
- d. Comply with the required benefits categories.
- e. Comply with the requirements of subsection (D)

3. Once the Zoning Adjustments Board approves the community benefits package, the Board can make the finding required by Section 23E.68.090.E.

F. 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.

G. 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.

H. Exemption To Already Approved Projects

Projects that have already been granted entitlement 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, except that they shall be subject to the alteration procedures as set forth in Section G above. Projects shall lose their exemption and become subject to all the provisions of this resolution if their approved Community Benefits Package requires compliance, revocation, or modification action as provided for in Section G.

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 seeks to provide direction as to how ~~it should evaluate it will 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:

~~Adopts T~~ the following attached description of how ~~the City Council would be inclined to~~ City staff, Boards, and Commissions shall evaluate the finding required by Section 23E.68.090.E should a project subject to that section come before ~~it them,~~ and requests that the Zoning Adjustments Board takes this into consideration when it evaluates such projects; and,

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

|

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, 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 after consideration of the independent economic analysis, at a level that ensures a relationship to increased value while resulting increased value. The portion attributable to community benefits must not result in an project infeasibility opportunity to make a reasonable rate of return.

3. Project developers should address the detriment created by the project on ~~non-~~profits community resources (including but not limited to non-profits, locally owned businesses, and arts and cultural amenities) which serve Berkeley and, as part of their Community Benefits Agreement, pay for the cost of relocation of resources displaced by their development if such payments are not already required of the developer. Such payments shall be made upon the issuance of a project's building permit.

B. Application

1. The initial permit application for a building over 75' feet in the Downtown must include a proposed package of significant community benefits, with a total value based on the policy set forth below. The permit application must also specify whether the project plans to provide benefits on site or as payments to the City; this determination 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 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' 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. The total value of benefits to be provided must consider the highest

reasonable amount the City determines that the project can support and must bear a reasonable relationship to the value generated by the project.

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. 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. ~~Except as set forth in paragraph 2, a~~An applicant for a building over 75' feet shall propose a significant community benefits package that complies with subsection (A)(3) and 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:~~

~~· Payment of \$100 per square foot for all rentable residential square footage between 75'-120'; and~~

~~· 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.~~

~~8-2.~~ 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.

~~9-3.~~ 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.

~~10.4.~~ 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~~ shall 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%percentage should~~ shall be allocated to fulfilling the other benefit categories described herein.

~~11.5.~~ 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 Benefit

- 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:
 - Improving bicycle networks
 - Permeable street paving
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 - 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
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- GreenTRIP certification (<http://www.transformca.org/landing-page/greentrip-certification-program>)

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. 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

12.6. 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. Exclusion of Existing Requirements from Community Benefits Agreements

Nothing may be included in a Community Benefits Agreement that is separately legally required of the developer, whether by law or by contractual agreement with any party, public or private, or by any other legally binding means.

D.E. 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. ~~Once the Zoning Adjustments Board approves the community benefits package, the Board can make the finding required by Section 23E.68.090.E. 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 Berkeley community;
- c. Take into consideration the highest amount the City determines the project can reasonably afford;
- d. Comply with the required benefits categories.
- e. Comply with the requirements of subsection (D)

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.F. 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.~~

G. 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.

H. Exemption To Already Approved Projects

Projects that have already been granted entitlement 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, except that they shall be subject to the alteration procedures as set forth in Section G above. Projects shall lose their exemption and become subject to all the provisions of this resolution if their approved Community Benefits Package requires compliance, revocation, or modification action as provided for in Section G.

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

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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 certification¹
- 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.

¹ <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