

2211 Harold Way
Proposed Significant Community Benefits Pursuant to City Council Guidance
September 3, 2015

To: City of Berkeley Landmarks Preservation Commission and Zoning Adjustments Board
From: Rhoades Planning Group

In anticipation of the upcoming public meetings on the 2211 Harold Way project, this memo addresses the implementation and application of the significant community benefits requirement per Zoning Ordinance Section 23E.68.090.E and the guidance recently provided by the City Council on July 14, 2015, in response to the Zoning Adjustments Board's request. As described below, the 2211 Harold Way project's proposed significant community benefits program well exceeds the Council's direction and the amount of land value recapture estimated by the City's consultant to be feasible for projects of this nature. The total amount required to be provided under the Council's direction is approximately **\$13.5 million**. The project is proposing nearly **\$27.7 million** in additional community benefits – or approximately \$14.2 million more than the Council direction would otherwise require.

It is important to note that the baseline consideration for an urban infill redevelopment project of this nature is not required by state, federal or local law to retain any uses on the property except subject to lease agreements between the property's owner and the individual tenants. It is important to note also that local government is barred from requiring a property owner to maintain or keep particular tenants or uses on a piece of privately owned property. Indeed, the original proposal for the 2211 Harold Way project did not include consideration for new theaters and instead proposed a generous privately owned publicly accessible mid-block plaza and no consideration for any existing users that occupy the site.

It is only as a result of the Zoning Ordinance requirements for additional community benefits that the following proposal is made.

Guidance on Significant Community Benefits Provided by City Council

The City Council Resolution includes Guiding Principles for application of this direction on significant community benefits. Guiding Principles Section C discusses significant community benefit options. Because the proposed project has already been in the permit process for more than two years prior to June 25, 2015, Guiding Principles Section C.2 is the applicable direction. This section states that the significant community benefits 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'.

The guidance states that alternatively, such projects may propose benefits of an equivalent value subject to evaluation by the Zoning Adjustments Board, pursuant to Section D., Evaluation Process.

Total Significant Community Benefit Value

The total significant community benefit value is based on the above stated payments of \$100 per rentable residential square foot between 75'-120' and \$150 per rentable residential square foot for floor area between 121'-180'. The square footage above 75', and the applicable fees, are shown in the table below:

| Level | Total Residential Sq. Ft. | Community Benefit Fee |
|--------------------------|---------------------------|-----------------------|
| 8 | 14,041 | 1,404,100 |
| 9 | 14,041 | 1,404,100 |
| 10 | 14,041 | 1,404,100 |
| 11 | 14,041 | 1,404,100 |
| 12 | 14,041 | 1,404,100 |
| Total 75-120' | 70,205 | \$7,020,500 |
| 13 | 8,390 | 1,258,500 |
| 14 | 8,400 | 1,260,000 |
| 15 | 8,400 | 1,260,000 |
| 16 | 8,400 | 1,260,000 |
| 17 | 4,874 | 731,100 |
| 18 | 4,896 | 734,400 |
| Total 120' to Top | 43,370 | \$6,504,000 |
| Total Fee | | \$13,524,500 |

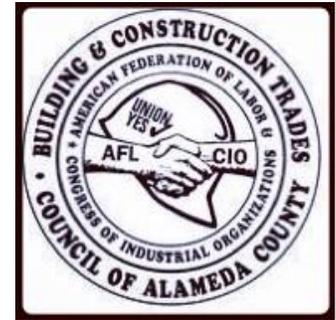
Significant Benefits Proposed by 2211 Harold Way Project

In accordance with the Section C.2 of the Guiding Principles provided by the City Council, the project will propose benefits of a value that significantly exceeds the \$13,526,000 expressed by Council's guidance and subject to evaluation by the Zoning Adjustments Board. These proposed benefits are as follows:

| Additional Community Benefit/Land Value Recapture | Actual \$ Value |
|--|---------------------|
| Project Union Labor Construction Agreement | \$10,000,000 |
| Movie Cinema Complex Construction | \$17,420,000 |
| Additional Payments (Includes onetime \$250,000 Habitatot benefit) | \$350,000 |
| Total Value | \$27,770,000 |

- **Project Labor Agreement**
The project representatives and the Alameda County Building Trades Council have signed a full Project Labor Agreement (PLA) with 100% union participation in the project's construction, with no trade or work exclusions. It is anticipated that the project will create 250 to 300 union construction jobs for the two and a half year period the project is under construction.

The full cost of this PLA was estimated by two different Bay Area contractors to be between 5% and 10% of the project's construction cost. However, in accordance with the guidance provided by the Council, the PLA accounts for a credit of 5% of the project's construction cost against the total fee. With a total construction cost of approximately \$120 million (estimated Guaranteed Maximum Construction Contract per pre development work with licensed union shop contractors, includes hard costs and fees related to General Contractor), the PLA would account for **\$6 million** of the total Significant Community Benefits fee based on the City Council's recommended formula. However the actual value of the full PLA, consistent with the figures outlined in the attached contractors' letters and confirmed by the Building and Construction Trades Council of Alameda County, is **more likely \$10 million to \$12 million**.



- **Movie Theater Construction**

The original project proposal did not propose to retain the existing Shattuck Cinema movie theaters. Instead, the original project proposed a large, privately owned and publicly accessible midblock plaza that would have been accessible from all four surrounding streets. In addition, the remaining underground area was proposed to be additional parking, which would have generated additional project income.

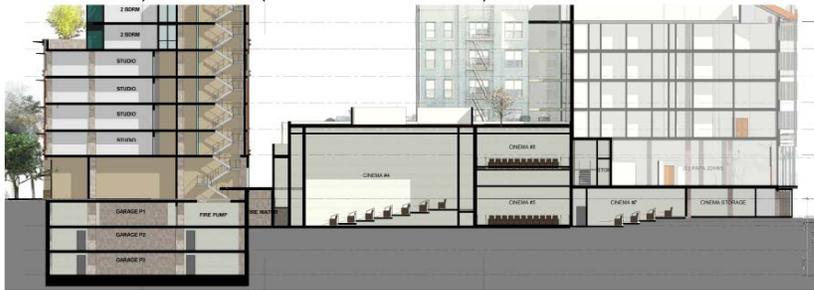
DAP Policy LU-1.2.b: Retain and support Downtown's cinemas. Consider incentives for retaining existing movie theaters and upgrading their facilities.

As a direct result of extensive community and Commission requests, the 2211 Harold Way project team redesigned the project after the initial submittal to include state of the art movie theater spaces and a new cinema concourse instead of a large publicly accessible mid-block plaza. The project will preserve Downtown Berkeley's critical mass of movie theaters, which have been identified as a vital aspect of the Downtown's cultural arts attractions. The current proposal by Landmarks Theaters as it is represented in the latest set of project drawings is ten cinemas and 641 seats in a new state of the art configuration. Consistent with DAP policies the project will therefore preserve Downtown Berkeley's critical mass of movie theaters, which have been identified as a vital aspect of the Downtown's cultural arts attractions.



The Council guidance on significant community benefits identifies on-site arts and culture benefits as a priority. The proposal is to construct approximately 21,000 square feet for movie theater space. The value of the cinema complex benefit is the cost of constructing the theaters plus the additional incurred cost of the ongoing rent subsidy over and above the theater construction costs. A 20 year horizon is used for the purpose of the analysis below, but the actual subsidy is greater because the benefit runs with the project.

Cinema construction is specialized and therefore costly even when it is a stand-alone, above-ground building. In this case, the cinemas will be partially below ground, and attached to the new tower and its garage on one side, and attached the retail strip on Shattuck Avenue on the other side. The project team asked independent contractors to provide estimates for the cost of constructing new movie theaters to the specifications of Landmark Theatres. One contractor estimated the theater construction costs to be approximately \$16,000,000 to \$17,000,000. A second contractor estimated the construction budget for the cinema portion of the project to be \$16,070,000 including all finishes. Please see the attached letters from Suffolk Construction and Rudolph & Sletten General and Engineering Contractors for further details.



In addition, **ongoing rent subsidization for theaters is required to make the theater construction and operation possible.** The table below summarizes the theater subsidy calculation. It should be noted that even though the following table shows first, 10 and 20 year return scenarios the actual community benefit is much more significant because it is required to run with the project in perpetuity. The subsidy required for the theaters to continue operation is greater than the cost of construction by approximately \$1,350,000 over the lowest return expectation in the 20 year horizon. This negative difference is added to the cost of the theater construction.

| Average Cost to construct Theaters | | | | | | \$ 16,500,000 | | |
|--|------------------------------|-----------------------|-----------------------|-------------------------|------------|--|---------------------------|---------------------------|
| Approximate Total Square Feet of Cinema Space | | | | | | 20,000 | | |
| Net Return on Investment | Monthly Rent / SF Equivalent | Estimated NNN Charges | Gross Rent Equivalent | Current Rent / SF Gross | Difference | Projected Subsidy Year 1 | Projected 10 Year Subsidy | Projected 20 Year Subsidy |
| 6.000% | \$ 4.13 | \$ 0.90 | \$ 5.03 | 2.04 | \$ 2.99 | \$ 716,400 | 7,844,380 | 17,406,636 |
| 6.500% | \$ 4.47 | \$ 0.90 | \$ 5.37 | 2.04 | \$ 3.33 | \$ 798,900 | 8,747,732 | 19,411,169 |
| 7.000% | \$ 4.81 | \$ 0.90 | \$ 5.71 | 2.04 | \$ 3.67 | \$ 881,400 | 9,651,084 | 21,415,702 |
| 7.500% | \$ 5.16 | \$ 0.90 | \$ 6.06 | 2.04 | \$ 4.02 | \$ 963,900 | 10,554,436 | 23,420,235 |
| 8.000% | \$ 5.50 | \$ 0.90 | \$ 6.40 | 2.04 | \$ 4.36 | \$ 1,046,400 | 11,457,788 | 25,424,768 |
| Net return on Investment is what any developer would expect for the risk and cost to build | | | | | | | | |
| Assumes the rent per SF for the new cinemas would be the same as the existing | | | | | | Current Rent/SF Gross per property owner | | |
| Assumes the rent grows 2% per year for 20 years | | | | | | | | |
| Current NNN Charges for retail tenants average approximately | | | | | | \$ 0.79 | | |

While there has not been any detailed contract negotiation with the tenant (not possible until the entitlements are granted and the owner can know what the project is to secure more detailed construction pricing), we believe the market rent for this space would not justify its development as a cinema/theater. This was our original conclusion which was reflected in the original proposal for the project, which did not include any theaters.

In the event that the movie theaters go out of business the project owner will have two years to enter into a new lease or a letter of intent (LOI) with a new theater operator. In the event that a lease or an LOI cannot be obtained by the end of two years then operation of the theater spaces

will be handed over to the City of Berkeley rent free for 5 years. The City or its designee for operating the theater spaces will pay all utilities, pro rata taxes, etc. At the end of five years the space either reverts back to the owner or the City of Berkeley or its designee can continue to operate the theater spaces at one-half market rent as determined by an independent third party appraiser and subject to market increases each five years.

- Additional Community Benefit Compensation

In addition to the construction of new state of the art movie theaters and the full Project Labor Agreement the project will provide **an additional \$350,000 cash payment** for the City's benefit. We understand the high level of interest in the community relevant to the need to help offset the stated \$250,000 in moving expenses that will be incurred by Habitot Children's Museum at the conclusion of their lease at the 2211 Harold Way property. It is our strong recommendation, pursuant to their request and the public support for this use, that the City of Berkeley allocate **\$250,000 of the \$350,000 to meet Habitot's request.**



Community Benefits Already Included as Zoning Requirements

It is important to remember that the City Council's adoption of the implementing zoning standards for the Downtown Area Plan and overwhelmingly successful ballot initiative created an entire new set of standards for projects in the Downtown, in particular projects of height greater than 75'. Although they are being counted towards the significant community benefits per Zoning Ordinance Section 23E.68.090.E, the following project community benefits bear repeating because they also incur significant additional cost to the project.

1. Most important of all and consistent with the City of Berkeley Climate Action and General Plans – the project proposes 302 transit-oriented dwelling units next to the Downtown Berkeley BART Station
2. \$6,040,000 in lieu payment to the City of Berkeley Affordable Housing Trust Fund
3. LEED Gold or equivalent environmental performance
4. Reduced massing above the street level (five story plinth height instead of allowable six story height)
5. Privately owned and maintained public open space at the corner of Harold Way and Kitteridge Street
6. \$491,000 in Streets and Open Space Improvement fees
7. Dynamic/real time garage occupancy signage
8. Parking unbundled from dwelling units
9. Two transit passes (or equivalent) per dwelling unit (one is required)
10. Five publicly accessible car share spaces
11. Enhanced streetscape
12. Nearly \$1,000,000 per year in new economic benefit, including more than \$775,000 per year in direct property tax increase

Please do not hesitate to contact us with any questions.

Mark Rhoades
Rhoades Planning Group

build
smart

SUFFOLK

January 30, 2015

Mr. Joseph Penner
Hill Street Realty
11150 Santa Monica Blvd., Suite 1010
Los Angeles, CA 90025

Dear Mr. Penner:

In response to your questions about some of the project parameters for the construction of the Residences at Berkeley Plaza to be located at 2211 Harold Way in Berkeley, CA, please refer to the following:

1. The difference between Union and Non-Union construction is estimated to be approximately \$ 11,750,000. This is based on the following trades being non-union; metals, thermal and moisture protection, window systems, flooring, painting, Mechanical and Electrical. The base union estimate was prepared with input from current historical pricing and subcontractor input for the major MEPS and skin trades from firms such as J.W. McClenahan, Broadway Mechanical, etc.. Non union pricing has been confirmed by subcontractor input from skilled non union subcontractors such as Helix Electric.
2. The anticipated construction duration is 26 to 30 Months from the notice to proceed including demolition. The cinema construction is assumed to be concurrent with the residential construction.
3. The construction budget for the Cinemas alone is \$ 16,070,000 including all finishes. In addition, approximately \$ 400,000 is included in the residential construction to assist the cinema structure in accommodating lateral loads.

Please contact me at your convenience with any questions/comments.

Sincerely,



Peter Tuozzolo
Vice President of Preconstruction

Enclosure



January 22, 2015

Mr. Joe Penner
Hill Street Realty
11150 Santa Monica Blvd. Suite 1010
Los Angeles, CA 90025

RE: The Residences at Berkeley Plaza

Dear Mr. Penner,

Below please find our response to your questions regarding The Residences at Berkeley Plaza project:

- 1) Construction Duration: We have put together a very detailed schedule for the project and talked with many of the subcontractors that would be potentially performing the work. Based on our analysis, we determined that the construction duration from the start of demolition to the certificate of occupancy will be approximately 30 to 33 months.
- 2) Theater Construction Costs: We have put together a schematic level estimate for the new 9 theater configuration and determined the construction costs to be approximately \$16,000,000 to \$17,000,000.
- 3) Minimal Union Labor vs 100% Union Labor: The average increase in cost between minimal union labor and 100% union labor is roughly between 5% and 10% of the total construction costs. Therefore, the potential increase in cost to this project, which is preliminary estimated at \$130,000,000 (based on 100% union labor), would be between \$7,500,000 and \$13,000,000.

Please contact me at (650) 216-3671 if you have any questions or require any additional information in regards to this project.

Sincerely,
RUDOLPH AND SLETTEN, INC.

Mike Detata
Preconstruction Executive