

2211 Harold Way Mixed-Use Project

Study Session – Significant Community Benefits

Zoning Adjustments Board
September 10, 2015



2211 Harold Way

An 18-story mixed-use development with the following main project components:

- 302 dwelling units
- 10-theater cinema complex
- Approximately 10,877 square feet of ground-floor commercial (retail and restaurant) space
- 177-space underground parking garage with 74 bicycle parking spaces

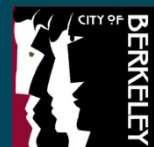
Significant Community Benefits

- **BMC Section 23E.68.090.E:** In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070B, 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.

2211 Harold Way

Date	Task/Event
December 21, 2012	Application for Consideration Submitted
January 9, 2013	Pre-Application Submitted
February 21, 2013	DRC Preview
February 27, 2013	Use Permit (UP) and Structural Alteration Permit (SAP) Applications Submitted
March 7, 2013	LPC Preview
March 14, 2013	ZAB Preview
November 2013	LPC/DRC SF Walking Tour
May 19, 2014	Notice of Preparation (NOP) Released
June 5, 2014	LPC Scoping Session
June 12, 2014	ZAB Scoping Session
October 6, 2014	Publication of Draft EIR
March, April, May, July, October 2014	LPC and DRC Subcommittees
November 4, 2014	DRC DEIR Comment Session
November 6, 2014	LPC DEIR Comment Session
November 13, 2014	ZAB DEIR Comment Session
December 1, 2014 ¹	Close of Draft EIR Comment Period
December 11, 2014	ZAB hearing on Community Benefits
November 20 and December 18, 2014	DRC Preliminary Design Comment
January 8, 2015	ZAB Hearing on Community Benefits
February 26, 2015	LPC Preliminary Design Comment
March 12, 2015	ZAB Passed Community Benefits Referral to Council
March 19, 2015	DRC Preliminary Design Comment
March 30, 2015 ²	Publication of Final EIR/Response to Comments Document
April 16, 2015	DRC Preliminary Design Recommendation
April 23, 2015	ZAB Hearing on Final EIR Certification
May 7, 2015; June 4, 2015	LPC Preliminary Design Review
May 14, 2015	ZAB Hearing on Final EIR Certification Continued
June 15, 2015	Addition to Final EIR: Alternative Published
June 25, 2015	ZAB Final EIR Certification
July 9, 2015	LPC SAP Continued
July 14, 2015 ³	Council Adopts Resolution on Community Benefits
August 13, 2015	LPC SAP Approved
August 27, 2015	ZAB Study Session
September 10, 2015	ZAB Study Session
September 30, 2015	Anticipated ZAB Hearing

2211 Harold Way Project



ZAB Consideration

ZAB held hearings on significant community benefits

- December 11, 2014
- January 8, 2015
- March 12, 2015

On March 12, ZAB passed the Community Benefits Referral to City Council.

Council Consideration

The City Council held hearings on significant community benefits:

- April 7, 2015
- May 26, 2015
- June 25, 2015

On July 14, 2015, Council adopted Resolution No. 67,172-N.S. to establish a process and standards for evaluating “significant community benefit” packages for buildings over 75 feet in the downtown.

Public Comments

Community Benefits could include:

- Preservation of Shattuck Cinemas
- Affordable housing
- Assistance to existing tenants, specifically Habitot
- Labor agreement and local hire policy
- Development of performing arts space
- Environmental protection/sustainability
- Transportation Demand Management
- Open space

Council Established Payment

For projects that have been in the permitting process for more than two years prior to the date of the adoption of the resolution, the Council Resolution establishes a per square foot payment:

- \$100 per square foot rentable residential square footage between 75 and 120 feet, and
- \$150 per square foot rentable residential square footage between 121 and 180 feet.

Council Established Payment

Starting Height	Level	Total Res. Sq. Ft.	\$ Fee Per Level
73'8"	8	14,014	1,404,100
83'4"	9	14,041	1,404,100
93'0"	10	14,041	1,404,100
102'8"	11	14,041	1,404,100
112'4"	12	14,041	1,404,100
Total 75' to 120':		70,249	7,020,500
122'0"	13	8,390	1,258,500
131'8"	14	8,400	1,260,000
141'4"	15	8,400	1,260,000
151'0"	16	8,400	1,260,000
160'8"	17	4,874	731,100
170'4"	18	4,896	734,400
Total 120' to 180':		43,360	6,504,000
TOTAL FEE			13,524,500

Project Labor Agreement

Total project construction: \$120 million

PLA cost: between 5% (\$6 million) and 10% (\$12 million) of project construction

The City Council resolution states that a PLA shall entitle the applicant to a credit of 5% of the construction cost, and as such the PLA benefit: **\$6 million**

Movie Theater

Construction of the ten movie theater complex is estimated to cost \$16.5 million.

Rent subsidy of \$1.35 million is required

Total theater benefit: \$17.85 million

Cash Payment

The project will provide an additional **\$350,000** cash payment

The applicant recommends that \$250,000 of this be provided to Habitatot Children's Museum which is relocating as a result of the proposed Project.

Summary

Payment Required: **\$13,524,500**

Significant Community Benefits Package
Proposed:

PLA: \$6,000,000

Movie Theaters: \$17,850,000

Cash: \$350,000

Total: **\$24,200,000**

Enforcement/ Conditions of Approval

1. Prior to issuance of any building permit, the applicant shall file a Notice of Limitation on Use of Property, and shall provide a recorded copy of this document to the City. The Notice of Limitation shall be filed for all Significant Community Benefits provided on the property, including the approximately 28,250 square foot, 10 screen movie theater use.

Notice of Limitation

1. Project Labor Agreement (PLA). The applicant shall sign a PLA to require 100% of the project's construction workers to be union labor, with no trade or work exclusions. A copy of the PLA shall be provide to the City Attorney with the application for building permits.

Notice of Limitation

2. Project Labor Agreement (PLA). Per City Council Resolution No. 67,172-N.S. a PLA shall entitle the applicant to a credit of 5% of the construction cost of the project against the total fee. Construction cost shall be verified at the time of building permit, to be reviewed by the City's Chief Building Official.

Notice of Limitation

3. The applicant shall submit verification of a tenant for the movie theater in the form of an executed lease agreement between the property owner and the movie theater operator, to include initial rental rate in the amount of no more than \$2.04 per gross square foot and any increase in rent shall be by no more than 2% per year, for 20 years.

Notice of Limitation

4. Prior to issuance of a building permit for any portion of the building that would be above 75 feet, the applicant shall submit building permit plans that include all tenant improvements necessary for occupancy of the 28,250 square foot, 10 screen movie theater complex, including, but not limited to: complete floor plans with all rooms and areas labeled, interior elevations and details, interior finish schedule, door/window schedule, complete restroom build-outs, complete mechanical, plumbing & electrical drawings including lighting plans and light fixture schedule, commercial energy compliance documentation, etc.

Notice of Limitation

4. Continued

No portion of the building above 75 feet may be occupied (i.e., no occupancy permit would be issued) until the construction of the 28,250 square foot, 10 screen movie theater space is complete, a lease is signed, and an occupancy permit for the movie theater is issued.

Notice of Limitation

5. To ensure continued occupancy of the approximately 28,250 square foot, 10 screen movie theater complex with a community benefit use, the applicant shall:

a) Notify the City in writing within 30-calendar days of any pending vacancy of the movie theater complex.

Said notice to the City shall provide the following:

- The date of vacancy;
- A marketing plan to include the list of agencies/organizations to be contacted, rental amount and all promotional materials; and
- Expected re-occupancy date.

Notice of Limitation

5 Continued

b) In the event of vacancy, offer the movie theater complex to any theater use on a month-to-month basis pending finalization of a long-term lease. Such month-to-month tenancy shall be at a rate that is less than the amount paid by the theater operator, per the following schedule:

- 6 months after vacancy, rent shall be reduced to 50% of the last monthly amount paid prior to vacancy; and
- 12 to 18 months after vacancy, rent shall be reduced to 25% of the last monthly amount paid prior to vacancy.

In no event shall short-term rentals take precedence over a long-term lease agreement.

Replacement user is subject to review by the Zoning Officer.

c) Pay for needed improvements, if necessary, for subsequent tenants that cannot utilize the theater tenant improvements.

Notice of Limitation

5 Continued

d) In the event that the owner cannot find a tenant for the theater space for over 18 consecutive months within 55 years of project construction (measured from final certificate of occupancy), the property owner shall reimburse the City of Berkeley the City's determined value of the theater benefit times (numbers of years occupied divided by 55 years).

Notice of Limitation

6. Applicant's Offer of Additional Community Benefit Payment: The applicant has offered to make a payment to the City of \$350,000. This money shall be distributed and paid as follows:
- a) Prior to issuance of a building permit, a minimum of \$250,000 shall be paid to Habitot Children's Museum. The applicant shall ensure that a letter from Habitot verifying the payment is submitted to the Zoning Officer for the project file.

Notice of Limitation

6. Continued

b) Prior to issuance of the Certificate of Occupancy, a minimum of \$100,000 shall be paid into the City of Berkeley Housing Trust Fund.

Evaluation Process

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