

City Attorney Analysis

Initiative Ordinance Amending Downtown Zoning Provisions and Creating Civic Center Historic District Overlay Zone

This measure would amend Zoning Ordinance provisions in the Downtown area.

Heights

Currently, ~~the maximum heights generally permitted buildings of up to 75' are allowed~~ in the Downtown area ~~are 75', and except that buildings are limited to 60'~~ in the buffer area. A map depicting these areas is at [http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/DAP%20Zoning%20And%20Addresses_4-25-12\(1\).pdf](http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/DAP%20Zoning%20And%20Addresses_4-25-12(1).pdf).

The initiative would reduce these height limits to 60' in the Downtown, and 50' in the buffer area, with a 10' penthouse bonus for extra parking.

The existing Downtown Area Plan and zoning allow up to two buildings in the core area at heights up to of 120' and three in the core area with heights up to 180'. The initiative would not change these height limits.

Under the Green Pathway in Measure R, and the Downtown Area Plan and Zoning Ordinance, applicants may offer certain community benefits in return for either "as of right" approval (~~for~~ buildings 75' and under) or priority processing (~~for~~ buildings over 75'). The initiative would replace these provisions with requirements for various community benefits in order to build over certain heights 60' in the core and outer core. For buildings over 60'-only: additional affordable housing; ~~(including units with more bedrooms);~~ prevailing wage for some categories of construction, hotel, security and maintenance workers; and increased local hire and new apprenticeship requirements for construction workers; and in addition, for buildings over 75': additional affordable housing; units with 2 and 3 bedrooms; public restrooms; and attainment of LEED Platinum rather than LEED Gold ratings.

Retroactivity

These requirements would apply to all new applications as well as applications pending as of November 4, 2014.

Pre-application landmarks review

Currently an applicant~~Under Measure R, an applicant~~ must obtain pre-application review by the Landmarks Preservation Commission of all affected buildings before submitting a Green Pathway application, and a building that is a historic resource is ineligible for the Green Pathway. The initiative eliminates these provisions.

Downtown C-DMU Zoning District

The measure would amend the existing C-DMU (Commercial ~~-~~Downtown Mixed-Use) zoning district to: prohibit columbia and adult uses; limit the hours of uses involving alcohol; eliminate the ability to modify setbacks; increase parking requirements in the "buffer" subarea; require additional bike parking; limit parking waivers and require payment of an in-lieu fee for them; ~~require add a requirement for additional disabled~~; electric vehicle charging stations and car sharing spaces; require all parking to be provided onsite; require new buildings to attain a LEED Gold rating; prohibit any new project from creating runoff; and require on-site composting and recycling facilities.

Fees and exactions

Requirements for buildings over 7560' in the core and outer core include public restrooms and an additional fee for streets and open space improvements. Requirements for all projects would include a

new in-lieu fee for projects not providing the required open space and a new fee to fund a loan program for businesses seeking to retain or create jobs in Berkeley. The legal validity of these requirements is uncertain.

Historic District Overlay

The measure would create a Civic Center Historic District overlay zone that limit permissible uses in the commercial parts of the zone, and permit new uses in the residential parts of the zone.

This measure was placed on the ballot as the result of a voter petition.