ACTION CALENDAR
April 7, 2015

TO: Members of the City Council

FROM: Mayor Tom Bates and Councilmembers Jesse Arreguin, Laurie Capitelli and Darryl Moore

SUBJECT: Public Comment and Council Discussion on Significant Community Benefits for New Tall Buildings in the Downtown

RECOMMENDATION

Receive public input and hold a Council discussion on April 7 about the "significant community benefits" that are required for development projects over 75 feet in Berkeley's Downtown – for the purpose of considering whether to quantify and further define what constitutes "significant community benefits." Approaches to consider include financial contributions that a project could make as well as specific community benefits that could be provided by the project directly.

BACKGROUND

Downtown development is guided by Berkeley's 2012 Downtown Area Plan and its provisions established in Berkeley Municipal Code Chapter 23E.68, C-DMU Downtown Mixed Use District Provisions. The Municipal Code allows a maximum of five new buildings over 75 feet tall: two residential buildings up to 180 feet (with ground-floor commercial), one hotel up to 180 feet, and two office or residential buildings up to 120 feet.

The Downtown Area Plan and the Municipal Code require that buildings over 75 feet provide "significant community benefits" beyond what would otherwise be required by the City. The Municipal Code says the benefits may be provided "either directly or by providing funding for such benefits to the satisfaction of the City." It says further that the benefits "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."

Berkeley already requires development projects to provide a broad range of public benefits that are not required in many other cities. In our Downtown area, the requirements include:

> Affordable housing requirements – The City's Affordable Housing Mitigation Fee ordinance requires residential rental projects to pay $20,000 per unit as a mitigation fee to the City's Housing Trust Fund or provide 10% affordable housing on site.

Adding affordable housing on site entitles projects to add more units under the State Density Bonus, which would trigger additional $20,000-per-unit mitigation fee requirements for the added units.

<u>Green requirements</u>

- LEED Gold or equivalent for buildings more than 20,000 square feet
- Free transit pass for each residential unit and each employee
- Recycling and composting
- Parking spaces for car share vehicles
- Parking spaces pre-wired for Level 2 electric vehicle charging stations
- Bicycle parking for commercial development
- Zero net storm water run-off

<u>Open space requirements</u>

- SOSIP (Streets and Open Space Improvement Plan) fee of $2.23 per square foot for new residential and $1.68 for new commercial
- On-site open space or in-lieu fee

<u>Affordable Childcare Mitigation Fee</u> – for commercial development:

With several proposed projects over 75 feet now at various stages in the pipeline, a number of participants in the approvals process and other community members have expressed concern that the definition of the additional “significant community benefits” is not spelled out. One key issue is the value of the significant community benefits. Should it be a payment to a City Fund established to receive the payment or should the developer provide the benefits directly in the project?

The Zoning Adjustments Board on March 12 voted to ask the Council to create a quantifiable framework for significant community benefits that goes beyond items required with traditional land-use authority and that includes community input. The Housing Advisory Commission voted March 11 to recommend that additional affordable housing requirements be included as a required component of significant community benefits for the proposed Residences at Berkeley Plaza project on Harold Way and the proposed Downtown hotel.

A review of several other cities in California and across the nation found that there is no agreed-upon solution to the challenge of how to require extra community or public benefits from projects that seek extra density above a certain baseline, Generally, the various approaches adopted by other cities tend toward two types: 1) relatively unstructured, case-by-case policies that often involve extensive negotiations on each project and benefit, and 2) quantified plans that include formulas and/or set fees.

Advantages of unstructured approaches include maximum flexibility with the ability to tailor benefits to the unique characteristics of the project and conditions at that time. Disadvantages include an increased uncertainty for potential developers seeking to estimate costs ahead of time and increased likelihood of protracted negotiations leading to costly delays requiring substantial amounts of time and resources of City staff, members of City commissions, developers, consultants and interested members of the community. In Palo Alto, which relies on the flexible case-by-case approach, it took more than 15 years to complete the Alma Village project (which includes a large grocery beneath 14 residential units and 37 single-family homes.)

Advantages of structured or quantified policies include more certainty in advance about what developers can expect to pay and certainty of what the City will receive. Projects in certain areas of downtown San Diego, for example, can gain extra density above the baseline in two quantified ways: 1) More density -- measured in FAR, or floor area ratio -- can be obtained according to a menu of community benefits that assigns a fixed amount of extra FAR for each benefit that is provided, and 2) extra FAR can be purchased for a flat fee, set at $15 per square foot when implemented in 2007 with increases pegged to the Consumer Price Index.

Similarly, the types of community benefits that projects are required or encouraged to provide vary among different cities. Many cities have identified one or more specific benefits that have been determined as priorities for that community. These typically include such benefits as those noted above in the Berkeley Municipal Code. Many cities allow projects to gain extra density by directly providing the benefits or making an in-lieu payment or both. In Mountain View's recently adopted plan, for example, projects seeking extra density in some areas along El Camino Real can directly provide benefits consistent with the "public benefits" identified in El Camino Real Precise Plan (affordable housing, pedestrian and bicycle amenities, public parking facilities, public parks and open space, and others) or make a $20-per-square-foot payment.

The value of what developers are asked to contribute under community benefits plans is typically based on localized calculations that include the costs to developers, including other city fees and requirements as well as development costs determined by the economy and local conditions, with the aim of equitable sharing between the developer and the public of the increased value to be obtained from the extra density.

Attached is a table from a Greenbelt Alliance report comparing plans in three cities, and another table comparing plans in six cities. Also attached is a report providing brief descriptions of several cities' community benefit plans.

In addition, several reports by a variety of organizations and consultants offer helpful overviews of community benefits programs and summaries of approaches in various cities. Here are links to some of those reports:

- "Community Benefits Program Brief," prepared for Redwood City Community Benefits Program by Dyett & Bhatia, Nov. 2014: http://www.redwoodcity.org/phed/planning/CommunityBenefitsProgram/RCCommunityBenefitsBrief_111114.pdf

- "White Paper on Theory, Economics and Practice of Public Benefit Zoning," prepared for East Housing Organizations, Association of Bay Area Governments and Metropolitan Transportation Commission by Nico Calavita and Marian Wolfe, Nov. 2014:

http://ebho.org/images/Research_and_Reports/LVR-White-Paper-Full_141113.pdf

- "Revised Community Benefits Strategy Memorandum Report," prepared for the City of Mountain View by Strategic Economics Inc., July 17, 2014: http://laserfiche.mountainview.gov/WebLink/0/doc/81364/Electronic.aspx

- "Public Benefit Bonus Policy Brief," Greenbelt Alliance, Nov. 2012: http://www.greenbelt.org/wp-content/uploads/2013/06/public-benefits-bonus-policy-brief.pdf

- "Community Benefits and Incentives: Issues, Options and Case Studies," Santa Monica Zoning Ordinance Update, Dyett and Bhatia, Aug. 2012 http://www.smgov.net/uploadedFiles/Departments/PCD/Zoning/Community-Benefits-Issues.pdf

- "Summary and Index of Community Benefit Agreements," Public Law Center, May 2011 http://www.law.tulane.edu/uploadedFiles/Institutes_and_Centers/Public_Law_Center/Summary%20and%20Index%20of%20%20Community%20Benefit%20Agreements.pdf

FISCAL IMPACTS
There is no direct fiscal impact from receiving public input and Council discussion, though any change in Berkeley's requirements for significant community benefits from tall Downtown projects could have substantial and long-lasting impacts on City finances.

ENVIRONMENTAL SUSTAINABILITY
There is no direct environmental impact from receiving public input and Council discussion, though any change in Berkeley's requirements for significant community benefits from tall Downtown projects could have substantial impact depending on what changes are adopted.

CONTACT PERSONS

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ATTACHMENTS
1. Greenbelt Alliance table comparing community benefits programs in Palo Alto, Santa Monica and San Diego
2. Table comparing community benefits plans in Culver City, Portland, San Diego, San Francisco, Santa Monica and Tampa
3. Summaries of community benefit programs in San Francisco, Santa Monica, San Diego, Portland and Austin

Case Studies

Public benefit bonus programs began in large cities such as Chicago and New York City over 50 years ago, but became widely popular in cities and towns of all sizes during the development boom of the early and mid-2000s. Unfortunately, many policies that were created during that time have not met their potential, largely because of changing market conditions. The three case studies highlighted here – San Diego, Santa Monica, and Palo Alto – were chosen because they were considered particularly relevant for Mountain View, they demonstrate a range of program design and implementation options, and they have had some success to evaluate. While Santa Monica's program has not been implemented yet, their process and the studies commissioned are instructive.

Below is a snapshot summary of the three case studies:

	San Diego	Santa Monica	Palo Alto
Target Area	Select areas in downtown only	Neighborhoods as designated in the General Plan	City-wide
Public Benefits (partial list)	Affordable housing; 3-bedroom units; public open space; eco-roofs	Affordable housing; traffic reduction strategies; physical improvements; social and cultural amenities; historical preservation	Not pre-determined – benefits are proposed by developer for each development.
Bonus	FAR increase either for purchase or in exchange for benefits	Increased FAR and/or height	Not pre-determined – bonus is determined through zoning change process
Balance of benefits and bonus	Cost of purchasing FAR set at $15/sq ft in 2007 with annual increase based on CPI. Other benefits have predetermined ratio (e.g. 10% open space for 0.5 FAR increase).	The City established three tiers of bonus: Tier 1: No bonus, no benefit Tier 2: Increase in height/FAR for some benefits Tier 3: Additional increase in height/FAR for additional benefits	Negotiated by City case-by-case
Implementation	Select benefit and bonus from pre-determined list, with staff approval	Though not yet adopted, the City is considering three levels: Tier 1: Ministerial action Tier 2: Discretionary action Tier 3: Likely Development Agreement	Request change in zoning code (quasi-judicial)

ATTACHMENT 2: Table comparing 6 cities' community benefits plans, prepared by Councilmember Jesse Arreguin's office			
	Culver City	**Portland**	**San Diego**
Target Area	Community Benefit Incentive Program is city-wide, focused on Mixed use zoning.	All residential areas.	Downtown community plan
Public Benefits	Public parking, open space, streetscaping, green construction.	Outdoor recreation, 3bd units, child play areas, storage areas, sound insulation, solar water heating, tree preservation.	Eco-roofs, open spaces, 3bd units, affordable units
Bonus	Increase from 35 units per acre to 50.	Density increase (up to 50%)	Increased FAR
Calculation	Number of additional units multiplied by the market value of each unit multiplied by 15%	Percentage of all benefits are added up, then applied to calculate the additional units allowed.	$15/sf fee to increase FAR up to 5 (adjusted annually based on CPI) - funds go to downtown parks. Increase 1FAR for eco-roof, 1FAR for 3bd, 0.5-1FAR for open space.
Implementation	Estimate the value of additional units (agreed upon the city and developer), and use 50% of the value enhancement towards community benefits.	Developer must prove all benefits will be met, then permit is issued. Additionally, developers must sign a covenant ensuring that benefits will continue during the life of the project.	Developers select benefits and bonuses from predetermined list, with the approval of City staff.

	San Francisco	**Santa Monica**	**Tampa**
Target Area	Neighborhoods (mostly former industrial converting to mixed residential).	Land Use and Circulation Element (LUCE) set in several neighborhoods.	Planned Development areas and Central Business District periphery area
Public Benefits	Funds go to capital infrastrucure (open space, transit, streetscape, etc). Increased affordable housing requirements.	Affordable workforce housing, GHG emission reductions, community improvements, social, cultural and educational facilities, historic presevation.	Affordable housing, open space, transit subsidies, waterfront/streetscape improvements, green construction, artist studio space, child care.
Bonus	Increased height and density,removal of certain conditional use permits.	Additional height and FAR depending on the Tier	Density bonus
Calculation	3 tier provide fee guidelines (residential and commercial) Tier 1: $8/gsf, $16/gsf Tier 2: $12/gsf, $20gsf Tier 3: $16/gsf, $24/gsf	3 tiers provide bonuses Tier 1: Basic, no additional bonuses Tier 2: Bonuses in exhchnge of benefits Tier 3: Even more than 2, developer agreements required.	10:1 ratio. For every $1 developments give to benfits, they receive $10 in bonuses. High priority benefits such as affordable housing give an additional 0.1 FAR.
Implementation	Citizen Advisory Committee formed to provide City input on prioritization of public benefits.	3 steps. Step 1: Provide economic analysis of value of increased FAR. Step 2: Determine type of community benefits. Step 3: Financial fesibility to gain most benefits without making project infeasible	City works with developers to prioritize list of public benefits. Developer submits bonus cost incentive estimates to zoning administrator for review and evaluation.

ATTACHMENT 3: Summaries of community benefits programs in 5 cities, prepared by Mayor Bates' office

Community Benefits Plans in San Diego, Portland, Austin, Santa Monica and San Francisco

Introduction

Municipalities offer bonuses for community benefits in a variety of ways, including:

(1) a point system in which projects qualify for bonus points based on whether the project meets certain criteria;

(2) a development value/pro forma-based approach in which the bonus is related to the increase in the project's value, which requires an analysis that complies with California Supreme Court guidance that there be a "reasonable relationship" between the community benefit cost and the public impact of various development intensity levels;

(3) pass/fail thresholds in which a menu of benefit options in which the bonus is awarded as a percentage increase in height or FAR, up to a defined maximum.

To ensure compliance in cases where the project pledges to directly provide on-going benefits, some cities such as Portland use a covenant requiring that promised benefits will continue to be provided in the future. In cases where a project provides benefits through an in-lieu payment, some cities require developers to make the payment into a dedicated fund (e.g. Affordable Housing Trust Fund).

> **Formula or point based plans:** San Diego, Portland, and Seattle have a point or percentage based system or a formula so that developers can calculate the amount of bonus they will receive for a given benefit. One of the simplest ways to implement a bonus program is to make additional FAR available for purchase, such as in San Diego. In that scenario, the City must establish a spending plan to make transparent how the funds will support needed public benefits. Under a point system, a project can earn points that entitle it to additional height, additional FAR, or a combination of elements that would increase the density and value of the project.

San Diego, California

Program: FAR density bonus program whereby developers could build above the maximum baseline FAR in exchange for providing public benefits. Developers could additionally purchase extra FAR in some parts of downtown with higher density. The revenue from payments for the FAR that can be purchased is used to provide new parkland and open space under a Transfer of Development Rights (TDR) for designated sites.

Benefits: As shown in the table below, additional FAR can be obtained from a menu of benefits that include affordable housing, open space, 3-bedroom units, etc.

Pricing: For the extra FAR that can be purchased, the fee was set at $15 per additional square foot when the program was implemented in 2007 and is adjusted annually according to the Consumer Price Index.

Who collects and administers the funds? Civic San Diego collects and administers the funds because of the role they play in administering planning functions in the downtown area. In most cities, this roles is played by the City directly.

Where do the funds gathered through FAR purchase program go?

- Restricted to the downtown area
- Must be used for parks, open space, or acquiring additional right of way for parks and open space.

Developers select the desired benefit and bonus from a pre-determined list, outlined in Section 156.0309 of the Municipal Code, available at:
docs.sandiego.gov/municode/MuniCodeChapter15/Ch15Art06Division03.pdf

In 2012, the FAR bonus program was amended in order to tighten the public benefit requirements. For example, the original ordinance allowed for a bonus FAR of 1.0 for an eco-roof, which has been amended to either 0.5 or 1.0 FAR depending on whether the eco-roof is accessible to residents. The 2012 amendment also included increases in the maximum FAR that some projects could receive.

Affordable housing advocates are working with the City to explore creating an additional off-site affordable housing density bonus in collaboration with nonprofit housing developers to increase the use of the affordable housing density bonus option.

The following table shows San Diego's menu of additional FAR that can be obtained in certain downtown areas from specified community benefits:

The public benefits and development amenities that may earn an FAR bonus are the following:

Table 4-3: San Diego FAR Bonus Program

Public Benefit/Development Amenity	*FAR Bonus (to be added to maximum Base FAR)*	*Notes*
Affordable Housing	Consistent with the State Density Bonus Law	
Urban Open Space 10% of site 20% of site	 0.5 1.0	Must meet certain criteria and be open to the general public between 6:00 a.m. and 10:00 p.m.
Three-bedroom units	0.5 1.0	10% of the units must be three or more bedrooms
Eco-Roofs	Up to 1.0	Bonus based on amount of roof area that is planted or landscaped and designed to sustain and support vegetation
Employment Uses	Up to maximum bonus FAR for providing 100% employment uses Up to 50% maximum bonus FAR for providing 50% employment uses	
Public Parking	1 sq ft for every 1 sq ft of public parking area	
FAR Payment Bonus Program	Up to 2.0	
Green Building	Up to 2.0	Incentives for buildings that exceed CALGreen standards

Source: San Diego Municipal Code Section 156-0309-A; Dyett & Bhatia.

Portland, Oregon

Program: Additional units are allowed based on a calculation of the sum of amenities provided; each amenity is assigned a certain bonus percentage amount as defined in the ordinance. The maximum density increase allowed for a development is 50 percent over the maximum base density permitted in that multi-dwelling zone. Portland defines six “multi-dwelling zones” distinguished primarily by density and development standards.

Benefits: As shown in the table below, community benefits that can earn extra density include outdoor recreation facilities, children play areas, 3-bedroom units, storage areas, sound insulation, crime prevention, solar water heating and larger outdoor areas.

Bonus Amenity	**Density Bonus**
Outdoor recreation facilities.	2 percent for each 1/2 of 1 percent of the overall project development cost spent on outdoor recreation facilities. There is a

	maximum of 10 percent density increase allowed for this bonus.
Children's play areas	5 percent
Three bedroom units	5 percent is allowed if 10 percent of the development's units have at least 3 bedrooms. A bonus of 10 percent is allowed if 20 percent or more of the development's units have at least 3 bedrooms. If between 10 percent and 20 percent of the units have at least 3 bedrooms, then the bonus is prorated.
Storage areas.	5 percent
Sound insulation	10 percent
Crime prevention	10 percent
Solar water heating	5 percent
Larger required outdoor areas	5 percent
Tree preservation	5 percent

Calculation: The percentages of all the benefit options included in the project are added together. The total is then applied to the allowed number of units to determine the additional units allowed. Fractions of additional units earned are not counted. The maximum density increase allowed for a development is 50 percent.

Portland's Municipal Code defines details of the benefits in Section 33.120.265 Amenity Bonuses. For example, a Children's Play Area is assigned explicit standards and requirements for fencing, play equipment and. See:
http://www.portlandonline.com/auditor/index.cfm?c=28197&a=53296

Applicant Responsibilities: It is the responsibility of the applicant to document that all of the amenity bonus requirements are met. Documentation is required prior to issuance of building permits for the bonus units.

Covenants: The applicant must sign a covenant that ensures that the amenities provided to receive any bonus density will continue to be provided for the life of the project. The covenant must comply with the standards in Municipal Code Section 33.700.060, Covenants with the City.

The following table shows the baseline development standards in Portland's Multi-Dwelling zones:

Table 120-3 Summary of Development Standards in Multi-Dwelling Zones						
Standard	R3	R2	R1	RH	RX	IR
Maximum Density (See 33.120.205)	1 unit per 3,000 sq. ft. of site area	1 unit per 2,000 sq. ft. of site area	1 unit per 1,000 sq. ft. of site area	FAR of 2 to 1 or 4 to 1	FAR of 4 to 1	See 120.205
Minimum Density (See 33.120.205)	1 unit per 3,750 sq. ft. of site area	1 unit per 2,500 sq. ft. of site area	1 unit per 1,450 sq. ft. of site area	1 unit per 1,000 sq. ft. of site area	1 unit per 500 sq. ft. of site area	none
Maximum Height (See 33.120.215)	35 ft.	40 ft.	25/45 ft.	25/65 ft. 75/100 ft.	100 ft.	75/100 ft.
Minimum Setbacks - Front building setback - Street building setback - Side and rear building setback. - Garage entrance setback (See 33.120.220)	10 ft. - - See Table 120-4 18 ft.	10 ft. - - See Table 120-4 18 ft.	3 ft. 3 ft. See Table 120-4 5/18 ft.	0 ft. 0 ft. See Table 120-4 5/18 ft.	0 ft. 0 ft. 0 ft. 5/18 ft.	1 ft. for every 2 ft. of bldg. height, but in no case less than 10 ft.
Maximum Setbacks (See 33.120.220) Transit Street or Pedestrian District	20 ft.	20 ft.	20 ft.	20 ft.	10 ft.	10 ft.
Max. Building Coverage (See 33.120.225)	45% of site area	50% of site area	60% of site area	85% of site area	100% of site area	70% of site area
Max. Building Length (See 33.120 230)	No	Yes	Yes	No	No	No
Min. Landscaped Area (See 33.120.235)	35% of site area	30% of site area	20% of site area	15% of site area	none	20% of site area
Required Outdoor Areas (See 33.120.240)	Yes	Yes	Yes	No	No	No

Austin, Texas

Austin's "Downtown Density Bonus Program" grants bonus area through 12 specified community benefits, with the additional option of a project submitting its own community benefit proposal. At least 50 percent of the bonus area must be obtained by providing affordable housing as the community benefit. Austin also has strict environmental standards for its applicants.

The requirements are spelled out in great detail in Austin's Municipal Code Section 25-2-586 and in an Ordinance amending it: https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART3ADRECEDI_SPAGERE_S25-2-586DODEBOPR.

http://www.austintexas.gov/edims/document.cfm?id=206958

Below are some of the requirements identified in Municipal Code:

If the applicant chooses to achieve 100 percent of the desired bonus area by providing community benefits described in (E)(1) - (12), the director may approve the bonus area administratively.

(1) Affordable Housing
(2) Rainey Street Subdistrict Historic Preservation
(3) Day Care Services
(4) Cultural Uses
(5) Live Music.
(6) On-Site Improvements for Historic Preservation
(7) Development Bonus Fee for Off-Site Historic Preservation
(8) Green Building
(9) Publicly Accessible On-Site Plaza
(10) Off-Site Open Space Development Bonus Fee
(11) Green Roof
(12) Other Community Benefits.

(a)An applicant may offer to provide other community benefits not described in (E)(1) - (11). The applicant must provide sufficient information about the other community benefits for the director to determine whether the other community benefits serve a public and municipal purpose considering the criteria listed below.

(b)The director will consider the following to make a determination:

(i)if members of the general public will be able to enjoy it freelythe proposed other community benefit without paying for its access, use or enjoyment;

(ii)if the proposed other community benefit will connect to and be accessible from public right-of-way or other publicly-accessible space;

(iii)if the proposed other community benefit will provide a public amenity that is particularly lacking in the proposed location;

(iv)if the proposed other community benefit will impose a significant burden on public resources for maintenance, management, policing, or other reasons; and,

(v)any other information provided by the applicant that shows the other community benefit serves a public and municipal purpose and furthers the City's comprehensive planning goals.

(c)If a proposed other community benefit provides a partial benefit to a project, it will not be disqualified; the director will allocate only the cost of the public portion of the benefit to the other community benefits.

(d) If the director determines that the proposed benefit qualifies as a community benefit, the director shall:

(i) quantify the monetary cost for the proposed other community benefit by using standard industry sources as well as locally based data on development costs

to quantify the monetary cost, without mark-up, for the proposed other community benefit; and,

(f) The director's recommendation concerning the proposed other community benefit and the monetary value that is applied to achieve the bonus area shall be presented to the planning commission for recommendation and the city council for approval.

(g) If the applicant proposes to achieve bonus area by providing other community benefits, the value of the public portion of the proposed other community benefits must be equal to or greater than the total dollar amount the applicant would pay if the payment were based on the applicable development bonus fee required to earn that requested bonus area.

Community Benefit Calculations for Mixed-Use Projects. *Mixed-use projects shall provide community benefits in proportion to the amount of floor area in the project that is devoted to different use categories.*

Austin Program Requirements.

(1) Gatekeeper Requirements.

(a) To receive bonus area, the director must determine that the project substantially complies with the Urban Design Guidelines.

(i) The applicant must submit to the director a schematic level site plan, building elevations, and other drawings, simulations or other documents necessary to fully describe the urban design character of the project and relationship of the project to its surroundings.

(ii) The Design Commission shall evaluate and make recommendations regarding whether the project complies with the Urban Design Guidelines and the director shall consider comments and recommendations of the Design Commission.

(b) The applicant shall execute a restrictive covenant committing to provide streetscape improvements along all public street frontages, consistent with the Great Streets Standards.

(c) The applicant shall execute a restrictive covenant committing to achieve a minimum two star rating under the Austin Energy Green Building program using the ratings in effect at the time the project is registered with the Austin Energy Green Building program. The applicant shall also provide the director with a copy of the project's signed Austin Energy Green Building Letter of Intent before the director may approve bonus area for a site.

(2) After the director determines the applicant meets the gatekeeper requirements, the applicant shall provide sufficient written information so that the director can determine:

(a) the site's primary entitlement;

(b) the amount of bonus area that the applicant is requesting;

(c) the total dollar amount the applicant will pay if the applicant chooses to obtain the entire bonus area exclusively by paying a development bonus fee, and the amount of the fee to be dedicated to each community benefit; and,

(d)the community benefits the applicant proposes to provide to obtain bonus area if the bonus area will not be obtained exclusively by paying a development bonus fee.

Development Bonus Fee (from Ordinance): *Development bonus fee for affordable housing. The project may achieve bonus area by paying a development bonus fee at the dollar per square foot amount set by ordinance. The fee will be paid into the Affordable Housing Trust Fund. The development bonus fee may vary by use and downtown district. The applicable development bonus fee within each of the nine districts is established by ordinance.*

What if the community benefit cannot be followed through on? Sample language from the code:

Historic Preservation - An applicant who cannot complete restoration as proposed must pay into the Historic Preservation Fund the applicable development bonus fee for the bonus area initially granted for this community benefit. The applicant's payment will be based on the development bonus fee in effect at the time the applicant pays the fee.

Day Care Services - If the day care services use is non-operational for more than 180 consecutive days or for 180 days in any 365 day period, the owner must pay into the Affordable Housing Trust Fund the applicable development bonus fee for the bonus area initially granted for this community benefit. The payment will be a pro-rated amount based on the time left in the term of the agreement and based on the development bonus fee in effect when the owner pays.

Santa Monica

In 2010, Santa Monica adopted the Land Use and Circulation Element (LUCE) that includes a community benefits component. The LUCE has been circulating for community input for the past several months prior to incorporation into the zoning code. The community benefits element applies to projects requesting an increase in the base height of 32 feet. It has three tiers.

- Tier 1 establishes the base height and FAR. No community benefits in addition to the existing ones are required, and the approval process is ministerial. Three to seven extra feet are allowed if affordable housing is provided on-site or close to transit corridors.

- Tier 2 allows additional height and FAR when community benefits are provided.

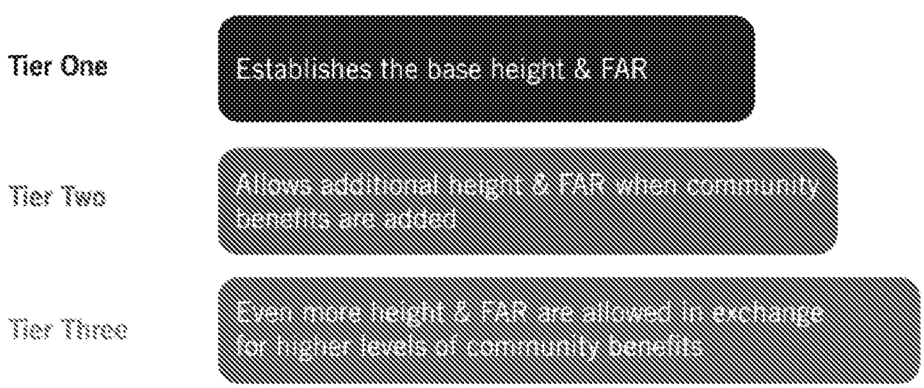
- Tier 3 allows even more height and FAR in exchange for higher levels of community benefits. Tier 3 density increases require development agreements. This process requires additional public review and flexibility and encourages high-quality projects. Tier 3 projects are larger in scale, and development agreements provide developers with a greater degree of entitlement certainty.

Given the high costs of development agreements, the City is now pursuing a ministerial approach as part of its zoning code update.

San Francisco

San Francisco's Eastern Neighborhoods Area Plans, adopted in early 2009, include a Public Benefits Program that, like Santa Monica's plan, uses a 3-tier approach. It requires projects to pay a fee into the Eastern Neighborhoods Public Benefits Fund dedicated to providing community benefits in exchange for increased project height. Alternatively, instead of paying the fee, projects may propose to directly provide community benefits as in-lieu improvements, subject to approval by the City.

Projects that remain within baseline zoning are classified as Tier 1. In mixed-use areas, a second and third tier of impact fees are triggered for sites where the Plan grants additional heights. Specifically, Tier 2 applies to an increase of one to two stories, and Tier 3 applies when three or more stories are permitted. The fees for Tiers 2 and 3 constitute baseline fees plus additional public benefit zoning fees.



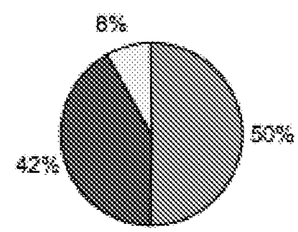
The following table illustrates the Tier increases in fees required for density bonuses in four of the Eastern Neighborhood Area Plans. The fees are indexed annually.

Impact Fee	City Area Subject to the Fee	Ordinance Reference	Use	Fees	Residential & Non-Residential Threshold
Eastern Neighborhoods Infrastructure Impact Fee (Mission District, Central Waterfront, SOMA, Showplace)	**Eastern Neighborhoods**	Planning Code Section 423	Residential Dwelling Units + Non-Residential Uses	* Tier 1: $8.71/square foot for Residential, * $7.28/square foot for Non-Residential; * Tier 2: $14.56/square foot for Residential, * $12.14/s.f. for Non-Residential; * Tier 3: $19.42/square foot for Residential, * $16.99/square foot for Non-Residential (Table 423.3A). Credit given for existing use on site (Table 423.3B).	**Residential:** At least one net new residential unit or additional space in an existing unit of more than 800 gross square feet; **Non-Residential:** Any new construction, or additional space in an existing building of more than 800 gross square feet

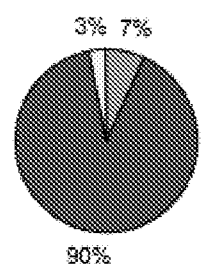
The Public Benefits identified by the City to be supported by the fund include Affordable Housing, plus Open Space and Recreation, Transit, Streetscape and Public Realm Improvements, Community Facilities, and Other Enhanced Livability Requirements

Breakdown of Eastern Neighborhoods Public Benefit Fee

Impact fees will be used to fund capital infrastructure and improvements demanded by new development, including open space and recreational facilities, transit and transportation improvements, community facilities such as child care and public library needs. The fee may also be used to fund housing needs, such as housing construction and preservation. The base fee of $8/residential gsf and $16 gsf shall always be directed towards infrastructure, and increased fee revenue above that base level shall generally be directed towards infrastructure as well. Fee revenue should be allocated to accounts by improvement type as supported by Eastern Neighborhoods Nexus Studies, according to the following percentages:



- *For residential development:* open space and recreational facilities = 50%, transit, streetscape and public realm improvements = 42%, community facilities (child care and library materials) = 8%.



- *For commercial development:* open space and recreational facilities = 7%, transit, streetscape and public realm improvements = 90%, community facilities (child care and library materials) = 3%.