



Office of the Mayor

ACTION CALENDAR
February 23, 2010

To: Members of the City Council

From: Mayor Tom Bates

Subject: Discussion of Proposed Revisions to the Downtown Area Plan, including Building Heights, Provision of Public Benefits by Developers, and Developmental Feasibility. Refer recommendations to the City Manager for Staff Analysis and Return to the City Council for Action.

RECOMMENDATION:

In the event that the City Council rescinds the Downtown Area Plan (Resolution 64,581 N.S.), Discuss the Proposed Revisions to the Downtown Area Plan (DAP) Building Heights, Provision of Public Benefits by Developers, and Developmental Feasibility, and Request the City Manager to Return to City Council with Staff Analysis and Recommendations for Action.

BACKGROUND:

On July 14, 2009, Berkeley's City Council adopted a Downtown Area Plan (with a vote of 7 ayes and 2 nays). One month later, sufficient signatures were submitted for a local Referendum on the Plan.

The Referendum Against Resolution No. 64-581-N.S., (the Downtown Area Plan) cited concerns over building heights, transit options, protections for workers, greenhouse gas emissions and the "quality of life in and around downtown".

For the past few months I have been consulting with members of the community to develop revisions for to the DAP that address the concerns identified in the Referendum.

Below is a summary of the proposed revisions for consideration. For greater detail and comparison with the original DAP see Attachment A.

1. Building Heights in the Core, Outer Core and Buffer (LU-1)
 - a) Reduce the Maximum allowed height with a use permit from 85 feet to 75 feet.
 - b) Change number of Taller Exceptions in the Core to six (6) buildings not to exceed 140 feet.
 - c) To provide greater protection and smoother neighborhood transition, I am recommending that along Martin Luther King Jr. Way, new buildings would not

exceed 55' and where adjacent to or confronting existing residential buildings, new buildings will not exceed 45'.

2. Provision of Public Benefits by Developers of Tall Buildings (Policy LU-8.2)

While the original Downtown Area Plan had a range of Public Benefits for Tall buildings, the Plan remained vague in how the City would ensure the desired level of Public Benefits. This new proposal clearly defines required public benefits, and it creates a new entitlement process to ensure a green and vibrant downtown (a desired element referred to in the Referendum).

Under this proposal, the Public Benefits provisions will be secured through two avenues of entitlements, a) the Voluntary Green Pathway Development; and, b) the Standard Development Process.

a) Voluntary Green Pathway Development: This voluntary process requires the developer to provide all of the following public benefits, regardless of the building heights:

- Meet LEED Gold or equivalent.
- Provide Car sharing opportunities and on site bike parking.
- Provide AC Transit passes (To Be Determined-TBD).
- Exceed title 24 energy requirements (TBD).
- Provide onsite open space or by a fee to an open space fund (TBD).
- Parking requirement may be reduced or eliminated by a fee to Transportation Demand Management fund (TBD).
- Parking spaces must be rented separate from dwelling units.
- Not eligible for Residential Parking Permits.
- Ensure no new net water runoff.
- Must provide on-site recycling opportunities.
- Provide 20% affordable housing onsite or in a building located in the Downtown Area or by paying a fee to the Housing Trust Fund (in range of \$80,000 per unit - TBD).
- Waive right to the State Density bonus.
- Project must employ approximately 30% (TBD) of its workforce from the Berkeley, and if qualified persons are not available in Berkeley, from cities in the East Bay Green Corridor.
- Pay prevailing wages, hire approximately 20% (TBD) State Certified Apprenticeships from Berkeley or from the East Bay Green Corridor in buildings with more than 100 units.

Developers who chose the **Green Pathway** will have the following new entitlement process:

For Buildings At or Below 75':

- Submit application to planning staff.
- Determine if property is historic resource with study paid by property owner.
- Submit completed application to Landmarks Preservation Commission (LPC) for determination. LPC shall complete its determination within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council.
- Design Review Commission (DRC) has up to 90 days to assess whether the project conforms to Downtown design guidelines, subject to appeal directly to City Council.
- Zoning Certificate is issued upon completion of this process. No Zoning Adjustment Board (ZAB) review required.

For Buildings Above 75':

- Submit application to planning staff.
- Green Pathway Projects receive Priority Status to meet the approval deadlines.
- Submit application to determine if property is historic resource. The necessary study to be paid by the property owner.
- Upon submission of complete application, LPC determination shall be completed within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council.
- Design Review Commission (DRC) and Zoning Adjustment Board (ZAB) process not to exceed a combined total of 210 days.
- ZAB action is appealable to City Council.

b) Standard Development Process

Developers will still have the option of following the City's standard development process. However, in this new proposal, the following Public Benefits will be required of all development regardless of height:

- Meet LEED Gold or equivalent.
- Provide Car sharing opportunities and on site bike parking.
- Provide AC Transit passes (TBD).
- Exceed title 24 energy requirements (TBD).
- Parking spaces must be rented separate from dwelling units.
- Tenants are not eligible for City's Residential Parking Permits.
- Ensure no new net water runoff.
- Must provide on-site recycling opportunities.

- Payment to Public Open Space Fund (TBD)
- Payment to Transportation Management Demand (TDM) Fund (TBD)

The Standard Entitlement Process remains intact.

- Submit application to planning staff.
- When application is deemed complete it is sent to the ZAB.
- If building is over 40 years old it is referred to the LPC for review for potential designation. This review is not a formal application to designate a property. There is no timeline required for decision.
- A formal application for landmark status on a property can be submitted at any time by an individual, group of citizens, or organization, even if the entitlement process is complete and a use permit has been approved on appeal by the Council.
- If the proposal is a commercial or mixed use structure it is automatically referred to the DRC.
- After LPC and DRC recommendations come back to ZAB, ZAB makes a decision, subject to appeal to the City Council.

3. Developmental Feasibility (LU-8.3)

This section has been perceived as an escape clause for developers to avoid providing public benefit. I am recommending the section LU-8.3 be removed.

FINANCIAL IMPLICATIONS:

Staff time necessary for analysis.

CONTACT:

Mayor Tom Bates

981-7100

To: Members of the City Council
 From: Mayor Tom Bates
 Date: February 8, 2010

Subject: Attachment to Proposed Revisions to the Downtown Area Plan

LAND USE:	Original DAP (Adopted July 14, 2009)	Proposed Revisions for New Plan
Allowable Building Heights in Core, Outer Core, and Buffer Areas (Table LU-1)	<ul style="list-style-type: none"> • Maximum Height with Use Permit - 85' • Taller Exceptions: <ul style="list-style-type: none"> ○ Downtown Core - 2 buildings at 180' with one up to 225' if hotel. ○ Core and Outer Core - <ul style="list-style-type: none"> ○ 4 buildings at 120' ○ 4 buildings at 100' ○ Only 2 can be office buildings ○ 2 UC building at 120' 	<ul style="list-style-type: none"> • Maximum Height with Use Permit - 75'. • Taller Exceptions <ul style="list-style-type: none"> ○ Downtown Core - - 6 buildings at 140' ○ Core and Outer Core-- 2 buildings at 120' ○ Only 2 can be office buildings ○ 2 UC buildings at 120'
Allowable Building Heights in Corridor-Buffer (Table LU-1)	Buildings with use permit for increased height not to exceed 65'.	<ul style="list-style-type: none"> • Along MLK new buildings would not exceed 55' • Where adjacent or confronting existing residential, new buildings will not exceed 45'.
Provision of Public Benefits by Developers of Tall Buildings (Policy LU-8.2)	Buildings in excess of 85' must provide significant benefits beyond what would otherwise be required, accompanied by a list of benefits includes green building principles, open space, transportation demand management, and affordable housing.	<p>Public Benefits provisions through two avenues for entitlements:</p> <ol style="list-style-type: none"> 1. Voluntary Green Pathway Development 2. Standard Development Process <p>See Details Attached</p>
Developmental Feasibility (LU-8.3)	When establishing provisions for new fees and financing strategies, consider how fees and exactions may discourage development, so as to make these provisions consistent with the intent of this Plan.	<ul style="list-style-type: none"> • Remove all of LU Policy 8.3

VOLUNTARY GREEN PATHWAY
Buildings At or Below 75'

Community Benefits for Buildings At or Below 75'	Entitlement Process for Buildings Below 75'
<ul style="list-style-type: none"> • Meet LEED Gold or equivalent. • Provide Car sharing opportunities and on site bike parking. • Provide AC Transit passes (TBD*). • Exceed title 24 energy requirements (TBD). • Provide onsite open space or by a fee to an open space fund (TBD). • Parking requirement may be reduced or eliminated by a fee to Transportation Demand Management (TDM) fund (TBD). • Parking spaces must be rented separate from dwelling units. • Not eligible for Residential Parking Permits. • Ensure no new net water runoff. • Must provide on-site recycling opportunities. • Provide 20% affordable housing onsite or in a building located in the Downtown Area or by paying a fee to the Housing Trust Fund (in range of \$80,000 per unit - TBD). • Waive right to State Density bonus. • Project must employ approximately 30% (TBD) of its workforce from the Berkeley, and if qualified persons are not available in Berkeley, from cities in the East Bay Green Corridor. • Pay prevailing wages, hire approximately 20% (TBD) State Certified Apprenticeships from Berkeley or from the East Bay Green Corridor in buildings with more than 100 units. <p>*TBD – To Be Determined</p>	<ul style="list-style-type: none"> • Submit application to planning staff. • Determine if property is historic resource with study paid by property owner. • Submit completed application to Landmarks Preservations Commission (LPC) for determination. LPC shall complete its determination within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council. • Design Review Commission (DRC) has up to 90 days to assess whether the project conforms to Downtown design guidelines, subject to appeal directly to City Council. • Zoning Certificate is issued upon completion of this process. No Zoning Adjustment Board (ZAB) review required.

VOLUNTARY GREEN PATHWAY

Buildings Over 75'

Community Benefits for Buildings Over 75'	Entitlement Process for Buildings Over 75'
<ul style="list-style-type: none"> • Meet LEED Gold or equivalent. • Provide Car sharing opportunities and on site bike parking. • Provide AC Transit passes (TBD*). • Exceed title 24 energy requirements (TBD). • Provide onsite open space or by a fee to an open space fund (TBD). • Parking requirement may be reduced or eliminated by a fee to TDM fund (TBD). • Parking spaces must be rented separate from dwelling units. • Not eligible for Residential Parking Permits. • Ensure no new net water runoff. • Must provide on-site recycling opportunities. • Provide 20% affordable housing onsite or in a building located in the Downtown Area or by paying a fee to the Housing Trust Fund (in range of \$80,000 per unit - TBD). • Waive right to State Density bonus. • Project must employ approximately 30% (TBD) of its workforce from the Berkeley, and if qualified persons are not available in Berkeley, from cities in the East Bay Green Corridor. • Pay prevailing wages, hire approximately 20% (TBD) State Certified Apprenticeships from Berkeley or from the East Bay Green Corridor in buildings with more than 100 units. <p>*TBD – To Be Determined</p>	<ul style="list-style-type: none"> • Submit application to planning staff. • Green Pathway Projects receive priority status to meet the approval deadlines. • Submit application to determine if property is historic resource. The necessary study to be paid by the property owner. • Upon submission of complete application, LPC determination shall be completed within 90 days. (Determination shall be in effect while in an active pursuit of the use permit). LPC action appealable to City Council. • Design Review Commission (DRC) and Zoning Adjustment Board (ZAB) process not to exceed a combined total of 210 days. • ZAB action is appealable to City Council.

**Standard Entitlement Process
Proposed Public Benefits for All Building Applying
(Not Using the Green Pathway)**

In addition to the standard building requirements, the following are required benefits:

Community Benefits	Standard Entitlement Process
<ul style="list-style-type: none"> • Meet LEED Gold or equivalent. • Provide Car sharing opportunities and on site bike parking. • Provide AC Transit passes (TBD). • Exceed title 24 energy requirements (TBD). • Parking spaces must be rented separate from dwelling units. • Tenants are not eligible for City's Residential Parking Permits. • Ensure no new net water runoff. • Must provide on-site recycling opportunities. • Payment to Public Open Space Fund* • Payment to Transportation Management Demand (TDM) Fund* <p>*Payments to be determined.</p>	<ul style="list-style-type: none"> • Submit application to planning staff. • When application is deemed complete it is sent to the ZAB. • If building is over 40 years old it is referred to the LPC for review for potential designation. This review is not a formal application to designate a property. There is no timeline required for decision. • A formal application for landmark status on a property can be submitted at any time by an individual, group of citizens, or organization, even if the entitlement process is complete and a use permit has been approved on appeal by the Council. • If the proposal is a commercial or mixed use structure it is automatically referred to the DRC. The DRC is advisory to ZAB. • After LPC and DRC recommendations come back to ZAB, ZAB makes a decision subject to appeal to the City Council.