

CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR  
 February 14, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (author), Vice Mayor Ben Bartlett (co-sponsor), Councilmember Kate Harrison (co-sponsor), Councilmember Mark Humbert (co-sponsor)

Subject: Referral: Southside Impact Fee Nexus Study

RECOMMENDATION

1. Refer to the City Manager to establish a development impact fee for projects within the Southside Plan boundary for the purpose of funding Southside public realm improvements. Staff should complete all necessary actions, including preparation of a Nexus Study pursuant to the Mitigation Fee Act.
2. Refer \$250,000 to the FY 2023 budget process for a consultant to be engaged over a two-year process, starting in 2024, to assist with the vision, capital list, nexus study, fee schedule, and other requirements.

BACKGROUND

Under the Mitigation Fee Act, local governments are authorized to impose fees on development projects to fund new public facilities. Prior to approval of an impact fee, a Nexus Study is required to establish the purpose of the impact fee, the uses the fee will fund, the reasonable relationship of the fee, and the types of development that will be subject to the fee.

The Downtown Streets and Open Space Improvement Plan (SOSIP), adopted in 2013, is funded by development impact fees and in-lieu fees alongside grants and other sources.<sup>1</sup> The SOSIP implements the Downtown Area Plan and provides guidance for actions to make Downtown Berkeley more bicycle- and pedestrian-friendly, support community vitality, and promote economic development. Examples of major projects identified in the SOSIP include the Downtown Berkeley BART plaza, Shattuck reconfiguration, and Milvia bike lanes.

Much like Downtown, Southside is an economically vibrant, dense, mixed-use neighborhood with high levels of pedestrian activity. Southside also serves as the gateway between the UC Berkeley campus and the City of Berkeley. Establishing a

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<sup>1</sup><https://berkeleyca.gov/your-government/our-work/adopted-plans/streets-and-open-space-improvement-plan-sosip>

Southside SOSIP to fund public realm projects would enable the City to close funding gaps and meet the neighborhood's infrastructure needs.

While the list of projects that can be funded by the impact fee are subject to the findings of the Nexus Study, potential projects include those outlined in the Telegraph Public Realm Plan (TPRP). The TPRP is a vision plan established in 2016 that seeks to “enhance Telegraph Avenue as a pedestrian-friendly place and distinctive destination” through scramble intersections, sidewalk improvements, public art, and more. The Southside SOSIP impact fee could also generate funding for Car-Free Telegraph, which was established as a Council priority through a February 2022 referral. Funding allocations for Southside SOSIP projects shall be determined in consultation with the appropriate City Councilmembers and shall be approved by the City Council.

#### ALTERNATIVES CONSIDERED

The Council could also consider an open space in-lieu fee. City staff is considering amendments to the 2011 Southside Plan to encourage the production of housing at all income levels.<sup>2</sup> The draft objective standards presented in September 2022 propose a reduction in the minimum open space requirement — referring to areas such as balconies, courtyards, and rooftops — in order to increase floor area dedicated to residential development.<sup>3</sup> Establishing an open space in-lieu fee would allow developers to pay the fee and opt out of building on-site open space, allowing more flexibility in project design.

#### FINANCIAL IMPLICATIONS

Staff time and \$250,000 from the General Fund.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant  
Chloe Park, Intern

#### Attachments:

- 1: Berkeley Municipal Code 23.204.130: Open Space Requirements for C-DMU
- 2: Staff Report and Resolution Adopting C-DMU Open Space In-Lieu Fee
- 3: Downtown Area Plan SOSIP Fee Nexus Study

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<sup>2</sup> <https://berkeleyca.gov/your-government/our-work/adopted-plans/southside-plan>

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20WS%20Item%2001%20Residential%20Objective%20Standards.pdf>

### **23.204.130 C-DMU Downtown Mixed-Use District.**

A. *District Purpose.* The purpose of the C-DMU district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

B. *Allowed Land Use.*

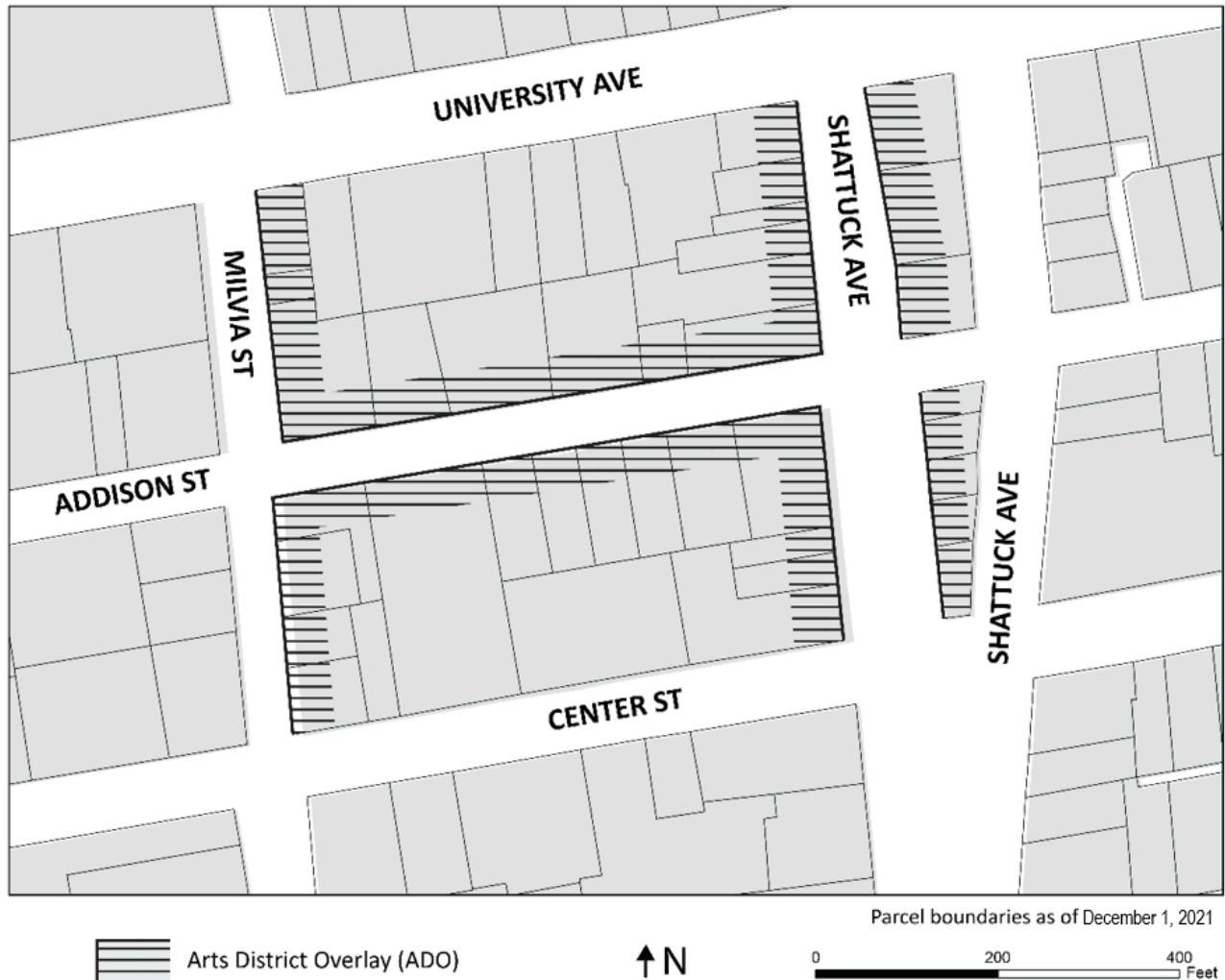
1. *General.* See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. *Automatic Teller Machines (ATM).* An ATM inside a non-bank building is allowed with an AUP.
3. *Banks and Financial Services, Retail.* Retail banks and financial services in the C-DMU require permits as follows:
  - (i) Under 7,500 square feet outside of the Arts District Overlay: Zoning Certificate.
  - (ii) All other retail banks and financial service uses: AUP.
4. *Media Production.* Recording studios are allowed with an AUP. Broadcast studios require a Use Permit.

C. *Additional Permit Requirements.* See Section [23.204.030](#)--Additional Permit Requirements.

D. *Arts Overlay District.*

1. *Purpose.* The purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities and supportive retail and commercial uses in the C-DMU district. The ADO is intended to generate more pedestrian vitality in the downtown, promote Berkeley's regional leadership in the arts, and encourage broader economic revitalization of the area. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, seated food service, and uses which provide pedestrian scale and siting.
2. *Boundaries.* The boundaries of the ADO are shown in Figure 23.204-4: C-DMU Downtown Arts District Overlay Boundaries.

#### **Figure 23.204-4. C-DMU DOWNTOWN ARTS DISTRICT OVERLAY BOUNDARIES**



3. *Use Limitations; Findings.* Food service establishments and offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that:

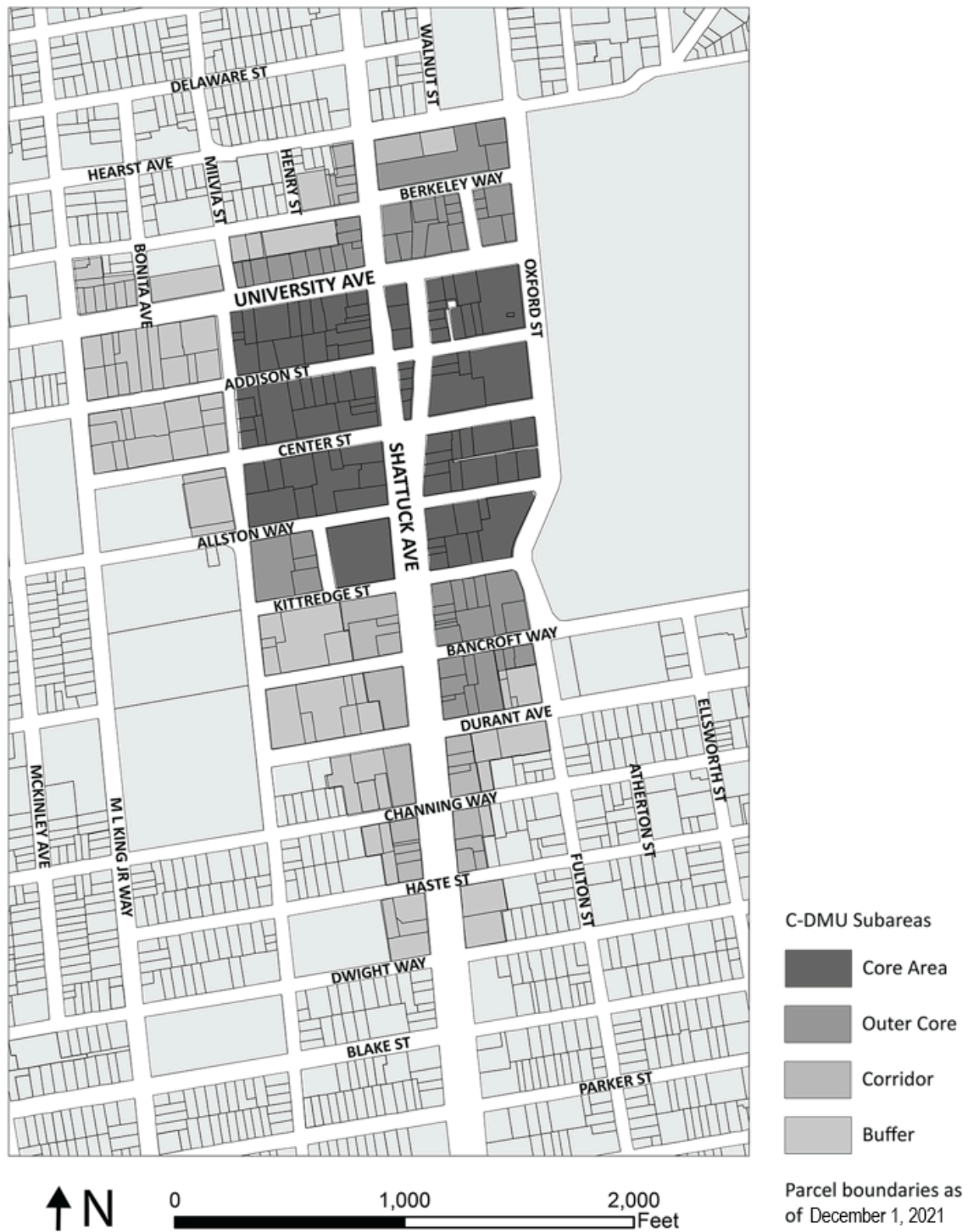
- (a) The project meets the purposes of the Arts Overlay District as set forth above; and
- (b) The location, size, type, appearance, and signage of the proposed use will:
  - i. Animate and enhance the pedestrian experience on the street; and
  - ii. Be generally open to the public evenings and on weekends, whenever practicable.

E. *Development Standards.*

1. *Height.*

- (a) *Height Limits.* Table 23.204-37: C-DMU Height Limits shows height limits in the C-DMU district, except as otherwise allowed by Paragraph [2](#) below. See Figure 23.204-5: C-DMU Sub-Areas for district sub-area boundaries.

Figure 23.204-5. C-DMU SUB-AREAS



**Table 23.204-37. C-DMU HEIGHT LIMITS**

SUB-AREA	MINIMUM	MAXIMUM	MAXIMUM WITH USE PERMIT
Core Area	50 ft.	60 ft.	75 ft.
Outer Core	40 ft.		
Corridor	40 ft.		
Buffer	No minimum	50 ft.	60 ft.

(b) *Parapet Walls.* For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.

(c) *Minimum Height.* The minimum height standard applies to new buildings only, measured to the top of the plate. Theater and museum buildings are exempt.

2. *Increased Height Allowance.*

(a) *Allowed Height.* The ZAB may issue a Use Permit for up to five buildings that exceed the C-DMU height limits as shown in Table 23.204-38: C-DMU Increased Height Allowance.

**Table 23.204-38. C-DMU INCREASED HEIGHT ALLOWANCE**

Sub-Area	Number of Buildings	Height	
		Minimum	Maximum
Combined Core and Outer Core	2	75 ft.	120 ft.
Core	3	120 ft.	180 ft.

(b) *Application Process.*

i. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six-month intervals until the first application has been submitted. Once the first application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.

ii. A project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and beginning

construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.

iii. Failure of a permit holder to strictly comply with the schedule established by the Use Permit is grounds for revocation of the Use Permit pursuant to Chapter [23.404.080](#) (Permit Revocation).

(c) *Community Benefit Required.*

i. To approve a Use Permit for increased building height under this section, the ZAB 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.

ii. Significant community 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.

iii. This community benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement with the City that shall be binding on all successors in interest.

3. *Setbacks.*

(a) *Basic Standards.* Table 23.204-39 shows minimum required lot line setbacks in the C-DMU district. Additional standards are listed in [23.204.130.3.d](#).

**Table 23.204-39. C-DMU Setback Standards**

Portion of Building at Height of:	Front	Minimum Interior Side		Minimum Rear
		65' and less from lot frontage	Over 65' from lot frontage	
Zero to 20 feet	No minimum. 5 ft. max.	No minimum		
21 feet to 75 feet	No minimum.	No minimum	5 ft.	
76 feet to 120 feet	15 ft. min.	5 ft.	15 ft.	
Over 120 feet	15 ft. min.	15 ft.		

(b) *Modifications to Standards.* The ZAB may modify the setback standards in Table 23.204-39 with a Use Permit upon finding that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

(c) *Residential Transitions.* The setback standards in Table 23.204-39 shall not apply to commercial lots abutting or confronting residential zoning. Such lots shall comply with Section [23.304.030.C.2](#)--Setbacks (Lots Adjacent to Residential Districts).

(d) *Additional Standards.*

- i. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
  - ii. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
  - iii. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
  - iv. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
  - v. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50 percent of the surface area of the side of the building on which the projections are located.
4. *Usable Open Space.* Table 23.204-40 shows minimum required usable open space in the C-DMU district.

**Table 23.204-40. C-DMU USABLE OPEN SPACE REQUIREMENTS**

	<b>MINIMUM USABLE OPEN SPACE</b>	<b>SUPPLEMENTAL STANDARDS</b>
Residential Uses	80 sq. ft./unit [1]	<a href="#">23.304.090</a> —Usable Open Space
Non-Residential Uses	1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area.	

**Note:**

**[1]** Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space.

5. *Privately-Owned Public Open Space.*
- (a) If a privately-owned public open space is indoors or enclosed, it shall include natural light in the form of windows, skylights, entryways, or other openings.
  - (b) Privately-owned public open space must be:



- i. Clearly identified with signage in a publicly conspicuous location at street level indicating the area that is open to the public, the hours the space is open, and the party responsible for maintenance; and
- ii. Separated from the grade of the public sidewalk by a height no greater than 3 vertical feet unless an AUP is obtained.

#### 6. *Open Space Alternatives.*

- (a) In lieu of providing the open space required by this section on-site, an applicant may either:
  - i. Pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP); and/or
  - ii. Construct public improvement consistent with the SOSIP.
- (b) Payment of a fee in lieu of providing publicly accessible open space requires a Use Permit. To allow payment of an in-lieu fee, the ZAB must find that the payment will support timely development of open space improvements that will serve the needs of project residents and other people living in and using the downtown.
- (c) Construction of public improvements consistent with the SOSIP in lieu of open space requires a Use Permit. To allow construction of public improvements, the ZAB must find that the public improvements:
  - i. Will be located within the vicinity of the project and are consistent with the SOSIP;
  - ii. Will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
  - iii. Will be finished before issuance of a certificate of occupancy for the project, unless otherwise allowed by the project conditions of approval.

#### 7. *Ground Floor Street Frontage.*


- (a) Special ground floor street frontage requirements in Paragraph [\(b\)](#) below apply to the following uses in the C-DMU district:
  - i. Insurance Agents, Title Companies, Real Estate Agents, Travel Agents.
  - ii. Office, Business and Professional.
  - iii. Group Class Instruction.
  - iv. Gym/Health Club.
- (b) New ground floor uses listed in paragraph [\(a\)](#) above that are adjacent to a street frontage shall either:
  - i. Include a storefront window display; or

ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

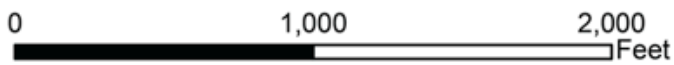
8. *Residential Entrance Limitations.* In new buildings constructed on public serving frontages, as shown in Figure 23.204-6, entrances to individual dwelling units and to living quarters in group living accommodations are not permitted on the street-facing side of the street-level floor.

**Figure 23.204-6. C-DMU PUBLIC SERVING FRONTAGES**



 Public-Serving Frontage Required

Parcel boundaries as of December 1, 2021



F. *Streets and Open Space Improvement Plan (SOSIP) Fee.* In addition to any other requirement of this section, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan.

G. *Green Building Provisions.*

1. *New Buildings.* Construction of any new building shall attain either:

- (a) LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
- (b) Building performance equivalent to this rating, as determined by the Zoning Officer.

2. *Additions 20,000 Square Feet or Less.* Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.

3. *Additions More than 20,000 Square Feet.* Additions of more than 20,000 square feet shall attain either:

- (a) LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
- (b) Building performance equivalent to this rating, as determined by the Zoning Officer.

H. *Environmental Impacts.* Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program for the Downtown Area Plan.

I. *Permit Findings.* To approve an AUP or Use Permit for a project in the C-DMU district, the review authority must make the findings in Section [23.406.040](#) (Use Permits) and find that the proposed use or structure:

- 1. Is compatible with the purposes of the district; and
- 2. Is compatible with the surrounding uses and buildings. (Ord. 7835-NS § 4, 2022; Ord. 7830-NS § 4, 2022; Ord. 7810-NS § 7, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

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**The Berkeley Municipal Code is current through Ordinance 7836-NS, and legislation passed through October 11, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)  
[Code Publishing Company](#)



Office of the City Manager

PUBLIC HEARING  
June 13, 2017

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Carol Johnson, Director, Planning and Development Department  
Phillip L. Harrington, Director, Department of Public Works  
Subject: Open Space In-Lieu Fee for New Downtown Buildings

### RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution setting the Open Space In-Lieu Fee for the Downtown Mixed-Use Zoning District at \$196 per square foot of required on-site open space that is waived or reduced.

### FISCAL IMPACTS OF RECOMMENDATION

Revenues from this fee will be deposited into the Streets and Open Space Improvement Fund 452-4950-326.10-04. Total potential revenue is unknown as this voluntary fee relates only to new buildings receiving open space waivers, not to other buildings. As of the date of this writing, three buildings located in the downtown area have been approved with a requirement to pay the fee. Using the proposed \$196 per square foot fee amount, the owners of these buildings would pay a total of \$1,043,112. The appropriation of these and any other fees collected will occur in future amendments to the Annual Appropriations Ordinance.

### CURRENT SITUATION AND ITS EFFECTS

On March 20, 2012, Council adopted the Downtown Area Plan (DAP)<sup>1</sup> and the Downtown Mixed-Use (C-DMU) Zoning District that implements the DAP (BMC Chapter 23E.68).<sup>2</sup> The C-DMU regulations require that new buildings provide on-site residential and/or commercial open space, depending on the buildings' uses. Such residential open space may be private and/or publicly accessible, while commercial open space must be publicly accessible. Consistent with DAP policies LU-2.1 and LU-2.4, the C-DMU zoning also allows developers to pay a fee in lieu of providing the required open space, provided that fee is used for "timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown."<sup>3</sup> The C-DMU further specifies in-lieu fees are to be used for projects in the Downtown Streets and Open Space Improvement Plan (SOSIP).<sup>4</sup>

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<sup>1</sup> The DAP is available at <http://bit.ly/2q0dJZ5>.

<sup>2</sup> The C-DMU zoning regulations are available at <http://bit.ly/2nW6Fep>.

<sup>3</sup> BMC Section 23E.68.090.G.1

<sup>4</sup> BMC Sections 23E.68.070.D.3 and 23E.68.090.G.1

On January 29, 2013, after review and input by a joint subcommittee of the Parks and Waterfront Commission, Planning Commission, Public Works Commission, and Transportation Commission, Council adopted the SOSIP. The SOSIP addresses public open space needs in the downtown area through improvements to existing City-owned streets and open spaces, as distinct from acquisition of private property for construction of new parks. SOSIP projects with substantial open space features include the Center Street Plaza and Greenway, Shattuck Square Improvements, and the Shattuck Avenue “Park Blocks”.<sup>5</sup>

As noted above, the Zoning Adjustments Board has approved three buildings with a requirement to pay this fee.<sup>6</sup> In order to collect the fee, however, Council must first adopt a resolution setting the fee amount. Consistent with the DAP policies and zoning provisions discussed above, the proposed fee is based on what it would cost the City to construct an amount of SOSIP open space improvements that is proportional to the amount of private open space that is waived, with an adjustment to account for differences between public and private open space.<sup>7</sup>

#### BACKGROUND

Paying the in-lieu fee will allow developers to voluntarily “opt out” of building on-site open space, thus allowing more flexibility in project design and relieving developers of on-site open space costs, including construction, maintenance, security and liability. The fee will also provide much-needed funding for creation of new and improvements to existing City-owned open spaces, which are larger and more readily accessible to the public than privately-owned open space. The fee does not adversely impact development feasibility in comparison with the status quo, because it is not required for projects that meet open space requirements, and it provides developers with design flexibility and reduced construction and operational costs.

As discussed earlier, Council has already determined through adoption of the DAP, the SOSIP and C-DMU zoning that open space in-lieu fees should be directed toward public improvements as specified in the SOSIP. Given this established policy, staff has calculated proposed fees using the following method (see Attachment 2 for detailed calculations):

1. Identify SOSIP projects with substantial open space features (noted above), and remove other projects from calculation;

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<sup>5</sup> The SOSIP is available at <http://bit.ly/2ob4dnl>; see pp. 20-40 (policies 1.6-1.9) for discussion of the referenced projects.

<sup>6</sup> These projects are 2129 Shattuck Ave. (16-story hotel and bank), 1935 Addison St. (6-story residential/commercial building), and 2120 Berkeley Way (6-story office building). Based on the proposed fee amount, these projects would pay fees of \$899,836, \$114,660, and \$28,616, respectively.

<sup>7</sup> The fee would allow construction of 1.5 square feet of public open space for each square foot of private open space that is waived. The ratio of 1.5 to 1 is an “equivalency factor” to ensure that open space produced using the in-lieu fee is roughly commensurate in user benefit with the private open space being waived. For further details on the fee calculation and equivalency factor, see page 3, items 1-4, and Attachment 2.

2. Update project cost estimates from the 2010 SOSIP financing plan to reflect current construction costs;
3. Calculate total area (square footage) of SOSIP projects and average cost per square foot; and
4. Multiply average cost by “equivalency factor” of 1.5 to account for differences between public and private open space.<sup>8</sup>

The resulting fee represents the average amount that the City would pay to construct 1.5 square feet of SOSIP public open space improvements. Because developers would pay this amount for each square foot of waived or reduced open space, adequate public open space would be constructed to replace the reduced private open space, and the fee would act as a good trade-off. As with other development fees, the amount would need to be increased periodically to keep pace with design, construction, and administrative costs.

Staff did not base the calculation on potential savings or greater yield realized by developers, because these will vary widely depending on project circumstances, and because in-lieu fees are generally calculated based on cities’ actual costs to provide a public improvement or service equivalent to the private feature being waived. As discussed in the attached report from Economics and Planning Systems, based on current market conditions, developers would be more likely to pay the proposed fee only for “mid- and high-value projects”. This indicates the proposed fee amount is set at an appropriate balance point: sufficiently low to generate funds for SOSIP projects (consistent with DAP policy), but sufficiently high that relatively few projects would realize major profits through open space waivers.

#### ENVIRONMENTAL SUSTAINABILITY

Consistent with SOSIP policies, fee revenues would be spent on public improvements that help achieve various sustainability goals, including improving stormwater quality and pedestrian and bicycle safety.

#### RATIONALE FOR RECOMMENDATION

The recommended action is consistent with Council-adopted DAP policies and the Zoning Ordinance, and would allow near-term revenues of about \$1 million for open space improvements in the downtown area, as well as additional revenues over time.

#### ALTERNATIVE ACTIONS CONSIDERED

Council could elect to set lower fees than staff proposes, which may incentivize more developers to pay the fee instead of providing on-site open space. Further analysis would be required to determine if this would increase total revenues. Staff did not

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<sup>8</sup> This “equivalency factor” accounts for the fact that open space located in the public right-of-way does not benefit the occupants of new buildings in the downtown area as much as open space incorporated into those buildings, due to increased distance from the building site, increased noise from adjacent streets and higher user density; and reduced privacy. The equivalency factor helps ensure open space produced using the in-lieu fee is roughly commensurate in user benefit with the private open space being waived.

pursue this approach because the proposed fee amount is expected to be attractive to developers for many, but not all, projects, which will help encourage both substantial fee revenues and production of on-site open space.

CONTACT PERSONS

Aaron Sage, Principal Planner, Transportation Division (510) 981-6399

Alex Amoroso, Principal Planner, Land Use Planning Division (510) 981-7520

Attachments:

- 1: Resolution
- 2: Fee Calculation
- 3: Report from Economic & Planning Systems
- 4: Public Hearing Notice



RESOLUTION NO. ##,###-N.S.

DETERMINING THAT THE PREVIOUSLY CERTIFIED DOWNTOWN AREA PLAN ENVIRONMENTAL IMPACT REPORT MAY BE RELIED UPON FOR APPROVAL OF THE OPEN SPACE IN-LIEU FEE AND SETTING THE OPEN SPACE IN-LIEU FEE AT \$196 PER SQUARE FOOT OF REQUIRED ON-SITE OPEN SPACE THAT IS WAIVED OR REDUCED FROM A DEVELOPMENT PROJECT

WHEREAS, on March 20, 2012, the Council certified the environmental impact report prepared for the Downtown Area Plan (DAP), and adopted CEQA findings and a mitigation monitoring and reporting program; and

WHEREAS, DAP policies LU-2.1 and LU-2.4 call for the creation of an open space in-lieu fee and specify that such fee be used to fund improvements in the Downtown Streets and Open Space Improvement Plan (SOSIP); and

WHEREAS, the adopted C-DMU zoning district allows for the waiver or reduction of on-site open space through the granting of a Use Permit and the payment of an in-lieu fee, and specifies that open space in-lieu fees be used to fund improvements in the SOSIP.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that approval of the Open Space In-Lieu Fee may be based on the Downtown Area Plan Environmental Impact Report as certified on March 20, 2012, and that none of the conditions set forth in Public Resources Code section 21166, California Code of Regulations 15162, or any other applicable regulation require an additional environmental review.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby sets the Open Space In-Lieu fee at \$196 per square foot of required on-site open space that is waived or reduced from a development project.

## Open Space In Lieu Fee Calculation

4/27/2017

### Calculation Steps:

1. Identify SOSIP projects with significant open space features, remove other projects from calculation (Column A).
2. Update project estimates to reflect current construction costs and add anticipated environmental review cost (Column B).
3. Calculate total area of projects (Column C) and average cost per square foot (Column B / Column C).
4. Multiply average cost (Column D) by equivalency factor (Column E) to account for differences between public and private open space.
5. Column F is proposed fee amount.

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
Project Name	Project Costs (Design, Construction, & Mgmt.)		Project Area	Avg. Cost Per Sq. Ft.	Equivalency Factor	Proposed Fee
	2010	2016				
Center Street Greenway - Shattuck to Oxford Phase 1	\$3,400,000	\$4,230,000	11,550			
Center Street Greenway - MLK to Milvia	\$1,231,621	\$2,170,000	28,010			
Shattuck Square - University to Center	\$1,760,000	\$3,740,000	28,182			
Shattuck Park Block - Allston to Kittredge	\$940,000	\$1,820,000	14,400			
Shattuck Park Blocks - Durant to Haste	\$2,806,496	\$4,470,000	45,626			
Environmental Review Contingency		\$250,000				
<b>TOTALS</b>	<b>\$10,138,117</b>	<b>\$16,680,000</b>	<b>127,768</b>	<b>\$130.55</b>	<b>1.5</b>	<b>\$196</b>

## MEMORANDUM

To: Aaron Sage

From: Benjamin C. Sigman and Teifion Rice-Evans

Subject: Downtown Area Plan On-Site Open Space Opportunity Cost Analysis; EPS #161004

Date: May 10, 2017

*The Economics of Land Use*



The City of Berkeley is establishing an in-lieu fee that may be paid to satisfy on-site open space requirements for new real estate development projects in the City's C-DMU (Downtown Mixed Use) Zoning District. The City engaged Economic & Planning Systems (EPS) to assist with the process by advising on fee calculations and assessing the resulting fee levels in the context of Downtown development economics. This memorandum summarizes findings from EPS review of the proposed fee, specifically the magnitude of the fee relative to the value that may be created for project applicants when open space requirements are satisfied off site.

### Background

The C-DMU Zoning District (Municipal Code Chapter 23E.68) requires that new buildings shall provide on-site open space, or pay an in-lieu fee to help fund projects in the Downtown Streets and Open Space Improvement Plan (SOSIP). For residential uses, the code requires 80 square feet of usable open space per unit. This amount may be reduced by 50 percent if the open space is publicly accessible. For nonresidential uses, the code requires one square foot of publicly accessible open space per 50 square feet of commercial floor area. In lieu of providing the open space required on site, an applicant may elect to pay an in-lieu fee.

A City of Berkeley analysis has calculated the in-lieu fee at \$196 per square foot of open space required on site but not provided. The fee calculation reflects the total cost to the City to provide off-site open space, consistent with the SOSIP, which achieves a similar level of public benefit as the required on-site open space. In the event that an applicant chooses to satisfy on-site open space requirements through a contribution to SOSIP improvements, the applicant would pay the in-lieu fee. For example, a 50,000-square foot office building with the responsibility to provide 1,000 square feet of on-site open space could pay \$196,000 to waive the requirement for on-site open space.

*Economic & Planning Systems, Inc.  
One Kaiser Plaza, Suite 1410  
Oakland, CA 94612-3604  
510.841.9190 tel  
510.740.2080 fax*

*Oakland  
Sacramento  
Denver  
Los Angeles*

[www.epsys.com](http://www.epsys.com)

EPS collaborated with the City on the fee analysis by providing a review of the fee calculation and methodology. The proposed fee level reflects current cost estimates associated with the City development of the significant public open space elements contained in the SOSIP. To reflect differences between on-site public open space and the public spaces contained in the SOSIP, the City analysis appropriately relies on an equivalency factor adjustment to ensure that off-site open space developed through the in-lieu fee program achieves a community benefit that is commensurate with that which would have been achieved through the on-site open space. The City analysis assumes that 50 percent more SOSIP open space is needed to achieve equivalency with the public benefit of on-site open space.

**Opportunity Cost Analysis**

This opportunity cost analysis assesses the proposed on-site open space in-lieu fee in the context of current real estate and economic conditions present in Downtown Berkeley. The purpose of the analysis is to evaluate whether the magnitude of the fee is roughly commensurate with the value that would be created for development projects when the in-lieu fee option increases site development potential by reducing on-site open space. While this analysis does not directly consider financial feasibility, it does offer potentially valuable information regarding the economic tradeoffs that applicants may face when considering whether to supply on-site open space or pay the in-lieu fee.

In some cases, the flexibility allowed by the on-site open space in-lieu fee could create a net value for a project applicant. Specifically, when the option to pay the in-lieu fee allows for greater development capacity (i.e., a bigger building), the increased land value generated by the additional development potential may exceed the on-site open space in-lieu fee burden, resulting in a net benefit for the applicant. In cases where on-site open space can be provided by a project without negatively affecting development capacity (e.g., rooftop open spaces), it is likely that the project will provide the required open space on site. However, when the provision of on-site open space reduces the quantity of income-producing building square footage, the applicant is more likely to pay the in-lieu fee.

The opportunity cost analysis considers the case in which the on-site open space requirement directly and proportionately reduces development capacity. First, the analysis considers the range of real estate value and associated land value for new, finished buildings in Downtown Berkeley. Second, the analysis estimates the value that would be given up to provide on-site open space. If the value that would be given up to provide on-site open space exceeds the in-lieu fee burden, project value is maximized by paying the in-lieu fee and enjoying the net value of additional real estate development potential. The analysis focuses on land value as the best measure of benefit that might accrue to a project based on the regulatory flexibility offered by the in-lieu fee option.

<p><b>Tradeoff Decision</b></p> <p><b>IF:</b> Land value increase from off-site open space is greater than (&gt;) the on-site open space in lieu fee</p> <p><b>THEN:</b> Pay the fee</p>
--

**Real Estate Value**

EPS reviewed over 200 commercial real estate transactions in Berkeley, including a significant number of property sales in the vicinity of Downtown.<sup>1</sup> The data included hotel, office,

<sup>1</sup> Research conducted during June 2016. Commercial real estate market trends have exhibited increasing value since then.

residential, and mixed-use property transactions. While there is a paucity of new construction and well documented transactions of new buildings downtown, this review established that newer buildings commonly trade in the range of \$300 to \$600 per gross square foot of built space. Additional review of financial projections for future buildings in the Downtown area indicates that developers anticipate achieving product value that is at the upper end of this range. Recognizing that projects will be more or less valuable given varied site locations, use mixes, market positioning, and other factors, EPS concludes that finished values for Downtown projects generally will range between \$400 and \$600 per gross built square foot, given recent real estate market conditions.

The analysis goes on to assume that land value associated with these new buildings will be in the range of 10 percent to 20 percent of finished value, reflective of EPS experience conducting financial feasibility analysis of new real estate development projects throughout the urbanized San Francisco Bay Area. It is important to note that this assumption reflects healthy real estate development and economic conditions, in which development costs including fees and entitlement burdens bear a reasonable relationship to finished product values. EPS has not conducted financial feasibility analysis to verify that these residual land values are achievable, but recent developer activity in Downtown Berkeley is a good indication that development economics are healthy.

### **Open Space Requirement**

The 2012 Downtown Area Plan (DAP), which provides the policy basis for the C-DMU Zoning District, describes the City's intentions concerning the design and benefits of on-site open space.

**Open Spaces on Private Property.** *Downtown open spaces also include plazas, courtyards and walkways on private land. Streetside plazas provide active gathering places connected to public life. Midblock courtyards offer intimate and protected environments that complement the bustle of streets and streetside spaces. Midblock walkways provide "short cuts" that make Downtown more walkable. Open space can also be shared among residents within a building or complex of buildings. Shared open spaces include courtyards and roof gardens that offer protected spaces for the enjoyment of residents. (DAP Policy OS-4)*

The Zoning Ordinance definition of on-site open space leaves room for interpretation on a project-specific basis, and thus there is a range of potential open space formats and configurations that might be employed across various project types. Of particular relevance to this analysis is the number of building floors that would be given up to provide on-site open space. Due to the flexibility provided in the Zoning Ordinance, and the project-specific requirements that may be imposed through the City's discretionary review process, it is not



*2211 Harold Way Preliminary Design Rendering Presented to the Design Review Committee on December 8, 2014*

possible to predict exactly what types of open space may be allowed on future projects. One project might carve out an interior courtyard completely open to the sky, while another may cantilever over an open space area to create a partially covered courtyard. In the latter case, it might be that only two floors of building space are given up to provide an on-site open space.

Plans for a recent Downtown project (2211 Harold Way) included this type of covered open space (in addition to public space open to the sky), as shown in the architectural rendering above. If this open space had been designed to be fully open to the sky, additional building square footage would have been given up to provide more light and air to the open space.

### Findings from Analysis

Due to the range of potential real estate and associated land values in Downtown Berkeley, as well as uncertainty around the format of on-site open space that might be developed within a new building project, the EPS analysis yields a range of opportunity cost outcomes that might result if public open space is developed on site. The findings identify the approximate magnitude of land value that might be lost in providing public open space on site.

The analysis finds that in many cases where the on-site open space requirement cannot be accommodated on site without a loss of developable square footage (i.e., it results in a direct and proportional reduction in building space), the applicant will seek to pay the in-lieu fee (i.e., real estate value potential is greater than the fee). However, for relatively low value projects it may be financially optimal for the applicant to give up potential building space to provide publicly-accessible on-site open space, rather than to pay the fee (i.e., foregone real estate value potential is less than the fee). **Figure 1** presents key assumptions and the range of analytical findings. The figure highlights (using a blue box) the mid- and high-value project scenarios in which an applicant is most likely to pay the in-lieu fee. In these cases, the applicant is likely to pay the in-lieu fee because the lost real estate value from providing on-site open space exceeds the cost of the proposed in-lieu fee.

### Conclusions

New buildings constructed under the City of Berkeley's C-DMU Zoning District are required to provide on-site open space. The C-DMU District provides an in-lieu fee option that creates flexibility for projects that cannot easily accommodate on-site open space. Projects may opt to pay an amount determined to be commensurate with the cost to provide equivalent open space off site. Fee payment is not required and in some cases may serve to improve the feasibility of a project, relative to the provision of on-site open space.

The current in-lieu fee proposal of \$196 per square foot of open space that is required, but not provided on site, appears to be high enough that some projects will maximize value by building on-site open space while other projects will maximize value by paying the in-lieu fee. Based on EPS analysis, the proposed in-lieu fee likely is an attractive option for mid- to high-value projects. For these projects, the land value supported by the additional building space likely is sufficient to warrant paying an in-lieu fee to satisfy the on-site open space requirement.

**Figure 1 On-Site Open Space Opportunity Cost Analysis**

Analytical Element	Low Estimate	Midpoint Estimate	High Estimate	Notes
<b><u>Real Estate Value</u></b>				
Market Value Per Square Foot	\$400	\$500	\$600	Value per gross building square foot, excluding parking
Land Value Share of Total Value	10%	15%	20%	Share of built value attributable to underlying land asset
Land Value Per Square Foot	\$40	\$75	\$120	Value of land per gross building square foot, excluding parking

**On-Site Open Space Requirement Opportunity Cost**

		Opportunity Cost Per Square Foot of On-Site Open Space		
Four-Story Loss of Building Space	\$160	\$300	\$480	Values reflect the lost real estate value per square foot of on-site open space that displaces saleable real estate
		<div style="border: 2px solid blue; padding: 10px; width: fit-content; margin: 0 auto;"> <p><b>Lost real estate value exceeds proposed in-lieu fee</b></p> </div>		

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL  
DOWNTOWN OPEN SPACE IN-LIEU FEE**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Departments of Planning and Development and Public Works are proposing to set the open space in lieu fee for new Downtown buildings at \$196 per square feet of waived or reduced open space. Collection of this fee is already allowed under the Downtown zoning regulations (BMC Section 23E.68.070.D.3), but the fee amount has not been set.

The hearing will be held on Tuesday, June 13, 2017 at 7:00 p.m. in the City Council Chambers, 2134 Martin Luther King, Jr. Way.

For further information, please contact Aaron Sage, Principal Planner, Public Works Department, at (510) 981-6399.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of June 1, 2017.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 12 days prior to the public hearing.

**Published:** June 2, 2017 and June 9, 2017 – The Berkeley Voice





I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 1, 2017.

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Mark Numainville, City Clerk

RESOLUTION NO. 66,001–N.S.

DETERMINING THAT THE PREVIOUSLY CERTIFIED DOWNTOWN AREA PLAN ENVIRONMENTAL IMPACT REPORT MAY BE RELIED UPON FOR APPROVAL OF THE DOWNTOWN STREETS AND OPEN SPACE IMPROVEMENT PLAN (SOSIP) IMPACT FEE; APPROVING THE NEXUS STUDY FOR THE SOSIP IMPACT FEE; AND SETTING THE SOSIP IMPACT FEE AT THE MAXIMUM JUSTIFIABLE LEVEL

WHEREAS, on January 26, 2010 the City Council appointed a SOSIP Subcommittee, comprised of members of the following commissions: Parks, Recreation & Waterfront, Public Works, Transportation, and Planning; and

WHEREAS, on September 30, 2010, the SOSIP Subcommittee voted unanimously to recommend policies and design concepts contained in the draft SOSIP, entitled “SOSIP Subcommittee Recommendations for the Downtown Streets & Open Space Improvement Plan, dated September 2010; and

WHEREAS, the SOSIP Subcommittee recommendations were presented to seven Commissions, each of which endorsed and commented on the SOSIP; and

WHEREAS, on November 7, 2012, the Planning Commission considered all of the Commission comments and recommended approval of a 2012 SOSIP for approval to the Council; and

WHEREAS, approval of the SOSIP is consistent with the Downtown Area Plan (DAP), which includes Policy OS 1.2 to adopt a Streets & Open Space Improvement Plan (SOSIP) to guide the comprehensive design of significant positive alterations and additions to Downtown’s parks, plazas, and streetscapes, as was approved by the Council on March 20, 2012; and

WHEREAS, on March 20, 2012, the Council certified the environmental impact report prepared for the DAP, and adopted CEQA findings and a mitigation monitoring and reporting program; and

WHEREAS, the only activities under the SOSIP that would result in potentially significant adverse environmental impacts are the Major Projects which may eliminate traffic lanes; and

WHEREAS, the program-level DAP EIR analyzed the elimination of traffic lanes on Shattuck and University Avenues, and the closure of Center Street; and

WHEREAS, other SOSIP policies for improved pedestrian and bicycle facilities, and policies regarding watershed management, landscaping, furnishings, signage, and lighting would not create significant adverse environmental impacts; and

WHEREAS, the Council adopted the SOSIP plan on January 29, 2013; and

WHEREAS, the California Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*) allows cities to establish impact fees to mitigate the impacts of new development; and

WHEREAS, Berkeley Municipal Code Chapter 22.20 authorizes the City Council to adopt and impose mitigation fees; and

WHEREAS, the City has prepared a Nexus Study as required by the Mitigation Fee Act to establish the reasonable relationship of the fee, the uses the fee will fund and the types of development that will be subject to the fee and established the proportional contribution of new development to the impacts that will be mitigated by the fee.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that approval of the SOSIP Impact Fee may be based on the Downtown Area Plan Environmental Impact Report as certified on March 20, 2012, and that none of the conditions set forth in Public Resources Code section 2116 California Code of Regulations 15162 or any other applicable regulation require an additional environmental review.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby approves the Nexus Study for the Downtown Streets and Open Space Improvement Plan (SOSIP) Impact Fee, Exhibit A attached.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby sets the SOSIP Impact fee at

- \$2.23 per square foot of new residential use
- \$1.68 per square foot of new commercial use
- \$1.12 per square foot of new institutional use.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby approves, at the discretion of the City Manager or designee, a dollar for dollar credit of up to the amount of the Impact Fee for construction of a SOSIP identified capital project.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby approves an exemption from the SOSIP Impact Fees for projects less than 1,000 square feet of new development and for projects that require neither a use permit nor a building permit.

The foregoing Resolution was adopted by the Berkeley City Council on January 29, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

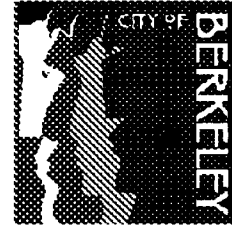
Noes: None.

Absent: None.

Attest:

Mark Numainville  
Mark Numainville, CMC, Acting City Clerk

Tom Bates  
Tom Bates, Mayor



# Downtown Area Plan Streets and Open Space Improvement Plan (SOSIP) Fee Nexus Study

Prepared by  
City of Berkeley  
Planning and Development Department

City of Berkeley  
September, 2011

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### Executive Summary

The purpose of the proposed Downtown Berkeley Streets, Open Space and Improvement Fee (SOSIF) is to ensure that new Downtown development mitigates its impacts on the Downtown environment by contributing its fair share of funding for the capital improvements to streets and open space to meet the demands of additional residents and businesses. Those capital improvements are set forth in the Downtown Streets and Open Space Improvement Plan (SOSIP) and in the Downtown Area Plan Environmental Impact Report. Prior to approval of an impact fee, a Nexus Study is required, which must explain the reasonable relationship between the proposed fee, its uses, and the type of development project on which the fee will be imposed. In brief summary, this Nexus Study is based on the following information projections and calculations.

- A Capital Improvement Program specific to Downtown Streets and Open Space of \$17,123,117
- New development of residential, commercial and institutional uses is expected to add 2,892,519 square feet of floor area to Downtown by 2030.
- The "Service Population" for Downtown Streets and Open Space will increase from 10,456 to 15,332, or about 46%
- Based on the relative use of the new public improvements constructed under the SOSIP, the maximum justifiable fee per square foot of new development is:
  - \$2.23 per square foot of new residential use
  - \$1.68 per square foot of new commercial use
  - \$1.12 per square foot of new institutional use
- Over the 25 year time frame, the fee is expected to raise \$5.445M with the remaining \$11.68M from grants, parking in-lieu fees and other revenue sources as described later in this report.

### Introduction

A Downtown Area Plan was adopted by the City Council on March 20, 2012. The plan area stretches from Hearst Avenue in the north to Dwight Way in the south and from Oxford Avenue in the east to Martin Luther King Avenue in the West. One of the key implementation measures in the Downtown Area Plan is the adoption and implementation of a Streets and Open Space Improvement Plan. This plan was prepared in 2010 and is expected to be adopted by the City Council on January 29, 2013 with the intent of establishing "a framework for Downtown Berkeley's public realm, which is comprised of public parks, plazas, and street rights-of-way, which together comprise about 40% of the Downtown Area. The SOSIP offers a simple playbook that communicates a

clear vision for vibrant parks, plazas, and streets that are shared by pedestrians, cyclists, and cars traveling at slow speeds." (Draft SOSIP, 2011)

An Environmental Impact Report (EIR) was prepared in 2009 for a draft of the Downtown Area Plan and certified as adequate for the DAP when it was adopted.

Development impact fees are subject to constitutional limitations, which are codified in California in the Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*). Section 66001(a) requires a local government proposing to exact a development impact fee to:

- (1) Identify the purpose of the fee.
- (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may... be made by reference to a capital improvement plan... or... other public documents that identify the public facilities for which the fee is charged.
- (3) Determine how there is a reasonable relationship between the Fee's use and the type of development project on which the fee is imposed.
- (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

The local agency must also "determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed." (Gov. Code §66001(b).)

### **Policy Support**

Several key elements of the Downtown Area Plan were submitted in a ballot measure (Measure R) for the consideration by voters in November, 2010. Measure R was passed by the voters with almost two-thirds of the vote.

A fundamental tenet of the Downtown Area Plan is that downtown streets must serve multiple functions: as open space, as public gathering and meeting places, as carriers of pedestrians, auto and transit, as stormwater treatment facilities, as retail mall and as the "front yard" of residential buildings. Dedicated open spaces are also critical elements of an overall downtown environment and also serve multiple functions, including gathering spaces, places of celebration, eating places, occasional marketplaces, recreational locations, stormwater treatment and as elements of the pedestrian network. Together, Downtown streets and open spaces form Downtown's "public realm": the public environment in which commerce, travel

and community networking takes place. It is the quality of the streets and open space in the Downtown that in large measure determine its livability and attractiveness for new development. At the same time, development places new demands on that network as new residents and businesses make use of the public realm. This is especially true in higher density environments such as a downtown where there is limited private open space.

When developing new streets and open spaces and rehabilitating and modifying old ones, all of the overlapping functions of streets and open space must be addressed in a cohesive way. For that reason, the concept of a single Streets and Open Space Improvement Fee to pay for the necessary improvements to the public realm is found in many different portions of the Downtown Area Plan, including under Environmental Sustainability, Land Use, Access, and the Streets and Open Space Chapters.

The SOSIP is expected to be adopted on January 29, 2013 and includes more detailed plans, priorities and financing options on which this Nexus Study is based.

#### **Fee Purpose**

The purpose of the proposed SOSIF is ensure that new development contributes its fair share of funding for the street and open space improvements necessary to support Downtown as a vibrant, active neighborhood for current and future residents and workers. Specific improvements have been identified in the SOSIP. The fee will not support ongoing maintenance or operational needs.

The SOSIF will supplement State, Federal and City funds that may also be available to support the proposed SOSIP capital projects:

- State Strategic Growth Council Grants
- MTC/ABAG Livable Cities Grants
- MTC Grants in Support of Priority Development Areas (PDA's)
- General Fund Revenues
- In-lieu fees from on-site open space requirements
- In lieu fees for on-site parking requirements (for transit and pedestrian access improvements identified in the SOSIP)

Most of these funding sources are described in SOSIP Project Cost and Financing Plan Report (October, 2010). The SOSIF will ensure that new development pays its proportionate share of improvement costs. Other funds and grants will be used to address the local share attributable to existing development.



It should be emphasized that the City has been very successful in obtaining grants to support Downtown improvements over the years. In 2010, the City was awarded a grant Downtown BART Plaza redesign and development project, and has previously received grants for sidewalk enhancements along Addison Street and Center Street. As one of the most transit-accessible locations in the region, Downtown Berkeley has been designated a regional "Priority Development Area." As required by SB 375, ABAG/MTC are developing a Sustainable Communities Strategy (SCS) that is targeting transit-accessible PDA's as the primary locations for development over the next 25 years in order to reduce Greenhouse Gas Emissions. Early scenarios of the SCS have identified Downtown Berkeley as an important infill site. SB 375 also requires that regional transportation improvement funds be targeted to support development in PDA's. Additional grant funds are therefore likely to be available for Downtown improvements over the next 20 years.

**Fee Use/Cost of Improvements (Benefit)**

The SOSIP Project Cost and Financing Plan Report (October, 2010) identified the costs of the improvements to implement the SOSIP over 20 years. The list of each improvement proposed to be funded by the SOSIF and its cost described fully in Appendix A. The Financing Plan Report also identified a near-term set of improvements for \$8.8 M. Detailed cost estimates for the near term projects are also found in the Financing Plan Report, Appendix A.

Table 1, below, summarizes a subset of the improvements that are proposed to be funded partially by the SOSIF. The projects do not include some of the more costly features in the SOSIP and establish a realistic set of goals for the use of the fee over the next 20 years (see Appendix A for a further description). It is assumed that the features that are not included in the list, such as a Strawberry Creek feature on Center Street (Oxford to Shattuck) and day-lighting it in Martin Luther King Park, would be funded through special grants available for creek-related or similar improvements.

Table 1: Summary of DAP Improvements

Project	Cost (\$)
<b>Center Street Greenway:</b>	
• Shattuck to Oxford, Phase 1 Improvements	3,400,000
• Center Street Greenway, Milvia to MLK	1,231,621
• Center Street Greenway, Milvia to Shattuck	830,000
<b>University Avenue, Oxford to Shattuck</b>	\$1,380,000
<b>Shattuck Avenue</b>	
• Shattuck Square, University to Center	1,760,000
• Park Block, Allston to Kittredge	940,000
• Sidewalk Widening, Kittredge to Bancroft	510,000
• Sidewalk Widening, Bancroft to Durant	550,000
• Sidewalk Widening, Haste to Dwight	530,000
• Lower Park Block Durant to Haste	2,806,496
<b>Milvia Street</b>	
• University to Center (Shared Street)	\$590,000
• Center to Allston (Shared Street, Traffic Calming & Green Infrastructure)	\$295,000
<b>Hearst Avenue</b>	
• Greenway adjacent to UC Helios Walnut-Oxford and UC Health Campus Henry to Walnut	\$1,300,000
<b>Downtown Street Trees</b>	
• Planting of New Street Trees in Downtown Outside of Above Projects	\$1,000,000
<b>TOTAL</b>	\$17,123,117

#### **New Development's Contributions (Impact)**

As the proposed improvements to be funded by the SOSIF will serve both existing and future development, the proportion of the costs to be paid by new Downtown development is derived by estimating the new demand for improvements generated by new development relative to the total that will exist in Downtown as of a forecast year, in this case 2030.

The Funding Plan Report found (as shown in Table 2) that there was about 3.2 M square feet of existing commercial development in the Plan area, and about 2.2 M square feet of residential use (Funding Plan Report). In addition, the University of California, the City of Berkeley, Berkeley City College and other institutional uses comprised about 1.2 M square feet of Downtown floor area. Based on the Funding Report forecast, over the next 20 years, there will be approximately 1.795 M square feet of new residential use, .38 M square feet of new commercial development and .716 M square feet of new institutional floor area (primarily University of California). Overall, all new development will constitute roughly 30.4 percent of all Downtown building space in 2030.

**Table 2**  
**Projected Growth**  
**Downtown Berkeley SOSIP\***

Growth Scenario	Commercial [1]	Institutional	Residential [2]	Total
<b>Development</b>				
Existing Downtown Dev. (sq. ft.)	3,223,552	1,182,354	2,219,403	6,625,309
<i>Share of Total</i>	33.9%	12.4%	23.3%	69.6%
New (2030 Baseline) Dev. (sq. ft.)	379,575	716,059	1,795,089	2,890,724
<i>Share of Total</i>	4.0%	7.5%	18.9%	30.4%
Total (2030 Baseline) Dev. (sq. ft.)	3,603,127	1,898,413	4,014,492	9,516,032
<i>Share of Total</i>	37.9%	19.9%	42.2%	100.0%

[1] Commercial includes retail and restaurant, office, entertainment, and hotel.

[2] Assumes 1,000 square feet per residential unit.

Sources: City of Berkeley; Economic & Planning Systems, Inc.

### Reasonable Relationship

Based on the above estimates of existing and projected Downtown development, new Development after 2010 will constitute about 30.4 percent of all development in 2030.

In estimating a streets and open space improvement fee on new development, consideration must be given to the proportionate share of the impact of new development relative to that of existing development, and to the relative need for and use of the resource. The use made of streets and open spaces is generally related to the number of people in Downtown and the amount of time those people will typically spend there. Streets and open space serves all users of Downtown, including employees and employers, residents, retail businesses and institutional users. Not only are SOSIP projects intended to improve the experience of Downtown, but also address the safety and comfort of pedestrians, bicyclists, transit riders and other non-auto users of the Downtown street system.

The need for and use of streets and open space is roughly proportional to the number of hours spent in the Downtown environment, and also on the number of visitors and others that are typically attracted to Downtown by the uses. Existing space in Downtown consists of three categories of use: residential, commercial, and institutional uses. Each of these categories of use comprises a fairly wide range of intensities and more fine-grained uses, which have different characteristics in terms of how much the occupants (residents and employees) use Downtown and how much they attract other people to Downtown.

- Residential uses range from Single Room Occupancy hotel rooms with 200 or less gross square feet of space per person, to condominiums with 800+ gross square feet of space per person or more. For purposes of analyzing benefit, an assumed average of 500 gross square feet per person was used. Residents will tend to be in Downtown considerably more than workers, and will attract visitors but not a significant number at any given time.
- Commercial uses comprise office-based uses that tend to be relatively intense (4 people per 1000 square feet of space) and retail uses that are much less intense in terms of workers (2 people per 1000 square feet). For purposes of analyzing impact, it is assumed that most future commercial buildings in Downtown will be multi-story office buildings with a relatively small portion of the building devoted to retail uses on the ground floor. Accordingly an average of 3 people per 1000 square feet was used as an average intensity of use for these buildings. Employees of offices and shops will be in and use Downtown less than residents. While office uses will tend to attract relatively

few people to the Downtown, retail uses are dependent on attracting people and rely on an attractive, safe pedestrian environment. However, new retail space is expected to comprise a small percentage of future new commercial building space.

- Institutional Uses include a wide range of uses from educational (classroom) and cultural institutions (theaters) with relatively few workers per 1000 square feet to administrative offices that are similar to office uses, and labs that are somewhat less intense than offices. Because of this wide range of uses, it is assumed that, on average, these uses will be less intense with 2 workers per 1000 square feet of space. Workers in institutional space will tend to be similar to office users in terms of how much they use Downtown. Cultural and some types of educational use (classrooms) have a very low intensity of employment but attract large number of “visitors” and customers.

### Fee Calculation

The following three tables set forth the basis for the proposed fee. Table 3 takes 2010 square footage of development, translates the amount of space into population, and then into “user population”, assuming residents have the most use of Downtown (a factor of “1”), while office and institutional uses spend comparatively less time in (a factor of “0.5”) Downtown. Based on that analysis, in 2010, the “user population” was 10,456.

Table 4 shows expected 2010-2035 growth and makes the same calculation, translating square feet to user population.

Finally, Table 5 calculates the cost per square foot. Simply stated, this is based on the increase in user population for each development type as a proportion of the total cost of implementing the SOSIP, and then assigning that cost on a per square foot basis. For example, new residential uses are expected to generate 23.4 percent of the Downtown “user population” in 2035, and are therefore responsible for 23.4 percent of the total SOSIP cost, or \$4.01M. That total cost is then divided by the amount of new square feet expected ( $\$4.01\text{M}/1.795\text{M sq. ft}$ ) to get a per square foot maximum fee per square foot of \$2.23.

**Table 3**  
**Calculation of Service Population – 2010 Development Base**

		2010			
		Intensity	Pop	Use Factor	Service Pop
Dwelling Units	2,219,403	2/1000 sf	4,439	1	4,439
Commercial	3,223,552	3/1000 sf	9,671	0.5	4,835
Institutional	1,182,354	2/1000 sf	2,365	0.5	1,182
Total	6,625,309				10,456

**Table 4**  
**Calculation of Service Population - 2035**

		2010-2035		
	New	Pop	Use Factor	Service Pop
Dwelling units	1,795,089	3590	1	3,590
Commercial	379,575	1139	0.5	569
Institutional	716,059	1432	0.5	716
				4,876

**Table 5**  
**Maximum Cost per square foot of new development by type of use**

Percent New Service Population of Total	New Service Population X Total Cost	Cost/Square Feet of New development
Residential - 23.4%	\$4.010 M	\$2.23
Commercial - 3.7%	\$.636 M	\$1.68
Institutional - 4.7%	\$.800M	\$1.12

### **Applicability**

The proposed fee would be applicable to all new floor area developed in Downtown. Although the University of California is generally exempt from the City's land use authority, the University has consistently indicated in public statements that it would be willing to pay its fair share for improvements so long as it was treated the same as any other developer in the Downtown. Should the University or other public entity choose to not participate in the fee, the costs could not be distributed to other new development, but would have to be absorbed by other funding sources.

### **Credits**

#### **Credit for Project Improvements:**

A project's SOSIF payment may be reduced if an applicant constructs all or a portion of a capital project which is included on the SOSIF list, at the discretion of the City. Credit is given on a \$1 to \$1 ratio up to the amount required by the SOSIF. An applicant may also be required to construct an off-site SOSIF capital improvement as a standard condition of project approval (i.e. basic street frontage requirements) or based on the project's environmental review.

#### **Credit for Existing Uses:**

Existing occupied Downtown building floor area may be demolished or converted to a new use as part of a larger construction project. In such cases, the area demolished or converted will be credited against the gross square feet of new floor area to determine net gross feet of floor area added. The SOSIF fee shall only be applied to new gross square feet of floor area (not including parking areas). Should a building renovation lead to a net reduction in floor area (e.g., removal of an interior mezzanine) no credit will be given toward future development on-site unless it is part of a phased project.

### **Exemptions**

Properties that might otherwise be subject to the fee are exempt if:

- Modification or development of less than 1,000 square feet (one time exemption)
- Site changes which trigger neither a use permit nor a building permit

### **Preferred Uses - Reduction to Fee**

Preferred uses as identified by the City Council may be exempt from the SOSIF or be assigned a reduced fee. However, the loss of funding from such a reduction cannot be passed to other

uses to which the SOSIF is to be applied, but rather would create additional burden for local funding.

#### Phasing of Implementation

As developers have often based land and project feasibility assessments based on current requirements and fees, a graduated approach to implementing the fee may be advisable. The Council in enacting this fee may choose to reduce fees in the initial years of application. One example of such an option would be to apply the fees at 50% of the justifiable rate for the first year and 75 percent for the second year after the fee's enactment.

The shortfall resulting from such a graduated implementation, would need to be made up from either the local funding match, revenue from additional development not projected in the Nexus Study, or a more aggressive program of grant solicitations. This alternative has the benefit of allowing the City to move forward while the information to support a fee is current, while acknowledging the current difficult economic conditions. A graduated roll out could create an incentive for land holders to move forward prior to the full fee implementation, which would be economically advantageous to the City.

#### Requirements for Funds Use

Revenues resulting from the imposition of the SOSIF must be kept and administered in a separate account or fund dedicated to the public improvements being financed and must not be commingled with other revenues and funds of the local agency (Government Code section 66006). In addition, five years after the first deposit into the account or fund, the local agency must make specific findings regarding any unexpended funds, whether those funds are committed to expenditure or not (Government Code section 66001). The same findings must continue to be made once every five years thereafter. If these findings are not made, statute requires the agency to refund the fees to the current owner of the affected property. Refunds may be made by direct payment, temporary suspension of fees, or "other reasonable means," at the discretion of the local agency.

#### Review

The SOSIF will be reviewed and revised on an as-needed basis to account for material changes in circumstances, including changes in:

- project improvement costs, and
- development assumptions.



It is also anticipated that the SOSIP will be updated and additional improvements proposed over the next 20 years and then added to the list of improvements eligible for funding with the SOSIP . Additional Downtown improvement projects were discussed during the SOSIP development process but were not included in the final SOSIP to ensure a reasonable focus on the most desired projects.

#### Appendix

Appendix A: SOSIP Projects Cost and Financing Report (October 2010) is available at:  
[http://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/SOSIP/AppendixB.pdf](http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/SOSIP/AppendixB.pdf)

