

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE R

In 2009, the City Council adopted the Downtown Area Plan ("DAP") for Berkeley's downtown, but rescinded it in early 2010 after a referendum qualified. In July 2010, the Council placed this measure on the ballot.

This measure would:

- designate Downtown as the area bounded by Hearst Street, Dwight Way, Oxford/Fulton Street and Martin Luther King, Jr. Way, with a "Core area" within 1 block of the Downtown BART Station
- adopt a "Green Vision" for the Downtown;
- adopt policies for downtown development that generally continue existing policies pertaining to cultural uses, retail revitalization and the preservation of historic resources; and
- advise the Council with respect to building heights.

The proposed measure seeks to direct future growth to the downtown core by: encouraging affordable housing, hotels and conference facilities; requiring new buildings to be compatible with downtown's historic context; calling for streetscape improvements and amenities; giving priority to pedestrians and promoting alternatives to single-occupant automobiles, and encouraging green building and sustainable development.

This measure differs from prior plans by including a voluntary "Green Pathway" that would provide a streamlined permit process for buildings providing public benefits that could not otherwise be obtained. Only projects without landmarks could use the "Green Pathway", and the Landmarks Preservation Commission would determine whether buildings qualify as landmarks under a set timeframe.

For Green Pathway projects, new buildings up to 75' would qualify for a streamlined design review process, and be permitted as a matter of right, if they provide 20% affordable housing on site or downtown or pay an *in lieu* fee, and waive any state law density bonus, and approximately 30% of construction workers are from Berkeley and East Bay Green Corridor cities.

Green Pathway projects with new buildings over 75' would qualify for a streamlined review process that includes zoning review with public hearings. Projects with buildings over 75' would have to provide these additional public benefits:

1. Buildings with more than 100 units of housing and office buildings would pay prevailing wages for construction workers and hire approximately 16% of the workers from State Certified Apprenticeships with a record of graduating apprentices.
2. Hotels would pay prevailing wages for hotel employees.

This measure would also provide advisory guidance for future Council decisions regarding building heights:

1. 60' height limit in the Downtown Area, except for:
 - a. 2 residential buildings in the Core, with commercial on the ground floor, no taller than existing 180-foot buildings;
 - b. 1 hotel with conference facilities in the Core up to 180';
 - c. 2 mixed-use or office buildings up to 120'; and

- d. Buildings up to 75' with a use permit on Shattuck Avenue from Hearst Avenue to Haste Street and University Avenue from Oxford to Milvia Streets.
2. 55' height limit on Martin Luther King Jr. Way.
3. 45' height limit adjacent to or confronting existing residential buildings, and 55' with a 10' set-back on the 5th floor.

This measure would require the Council to regularly evaluate and considering amending any new DAP.

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