



Office of the City Manager

WORK SESSION  
October 11, 2011

To: Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Wendy Cosin, Interim Director, Planning and Development Department

Subject: Development Fees

### INTRODUCTION

The Council directed staff to schedule a work session to bring together information on impact fees and how new fees might affect development feasibility. The City currently has the following impact fees:

- Affordable Childcare Mitigation Fee (applicable only to commercial development)
- Affordable Housing Fee (applicable only to commercial development)
- Inclusionary Housing Requirements (applicable only to residential condominiums; pay in-lieu fee or provide affordable housing on site)

On June 14, 2011 the City Council adopted Ordinance No. 7,192-N.S., authorizing future adoption of an affordable housing mitigation fee for rental projects. The following two other potential impact fees have also been discussed and Nexus Studies have been prepared that provide the basis for a maximum fee that can be charged to new development.

- A fee to implement the Downtown Area Plan's Streets and Open Space Improvement Plan (SOSIP), and
- A Transportation Services Fee (TSF) to implement a Transportation Demand Management (TDM) Program and capital projects as described in the West Berkeley Circulation Master Plan (WBCMP) Report.

In addition, draft zoning regulations to implement the Downtown Area Plan (DAP) suggest two in-lieu fees, which could contribute to development of SOSIP projects. As currently drafted, an applicant could choose to pay these fees rather than meeting on-site open space or parking standards.

- Open Space In-Lieu Fee
- Parking In-Lieu Fee

The draft zoning regulations to implement the DAP also call for developers to include Transportation Demand Management programs, including provision of transit passes to commercial tenants and residents. There are additional requirements for "Green Pathway" projects (such as affordable housing and prevailing wages); however, these

apply only at the applicant's choice. While these are not fees, they add to the cost of development. As described further below, the bottom line is balancing many needs without pushing a project beyond financial feasibility.

Two studies have been prepared to help address how the fees described above might affect development feasibility. In November 2010, after the West Berkeley TSF Nexus Study was released, a Comparative Fee Burden analysis was prepared to provide an overview of City fees, a comparison with other cities, and an analysis of how the proposed TSF would affect development feasibility in West Berkeley. More recently, the AECOM Downtown Development Feasibility Study was completed. It provides information about development anticipated under the DAP and the ability for development to contribute to new fees, over and above existing fees and development costs.

The following documents are attached.

- A. Downtown Development
  - 1. Development Feasibility Study: Memorandum prepared by AECOM (September 27, 2011)
  - 2. Streets and Open Space Improvement Plan (SOSIP) Fee Nexus Study (September 2011) (The Downtown SOSIP Project Cost and Financing Plan (October 2010), which is the basis of the cost estimates, 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))
- B. West Berkeley Development
  - 1. Transportation Services Fee (TSF) Background and Overview: Staff Reports – July 15, 2010 and September 15, 2010
  - 2. West Berkeley TSF Nexus Study (July 9, 2010) (The West Berkeley Circulation Master Plan Report, which is the basis of the cost estimates, is available at: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=556>)
  - 3. West Berkeley TSF Comparative Fee Burden Analysis (November 2010)
- C. Affordable Housing Impact Fee
  - 1. May 31, 2011 City Council Work Session report. (The Nexus Study is available at: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=74682>)

## OVERVIEW

Staff understands that the purpose of the Work Session is to discuss the available information about fees and provide comments on direction for adoption of future fees.

The Council discussed the Affordable Housing Impact fee at several meetings; therefore, it will not be described in detail in this report. Although the SOSIP and TSF fees were generally discussed during consideration of the Downtown Area Plan and the West Berkeley Circulation Master Plan Report, there has never been a detailed discussion of either fee. This report and the attachments provide more information about those fees.

Nexus studies prepared for impact fees identify the maximum amount that can be charged to new development. Since impact fees can only be charged based on the proportional impact from new development, they never generate enough money to fully fund improvements that will serve both existing and future development.

In addition, as discussed in the AECOM Development Feasibility Study and the Fee Burden Analysis, funding for public benefits is constrained to the extent that fees can affect feasibility of development. If the fee amount or structure discourages development, other revenue that would be generated, such as increased property taxes, may be lost. Guidance will be needed from the City Council to prioritize and balance the public benefit needs and potential impact fees.

## DISCUSSION

### **A. Downtown Development**

#### 1. AECOM Development Feasibility Study

AECOM will present the attached Development Feasibility Study at the October 11<sup>th</sup> work session. The purpose of the study, which was funded by an ABAG grant, was to analyze development costs and integrate policy and public finance recommendations for affordable housing, transportation demand management, parking, open space and other investments. The Development Feasibility Study will also be presented to ABAG's Regional Planning Committee.

The AECOM report can inform policy debate on the extent to which new development can pay fees for public benefits, while remaining financially viable. The analysis is a snapshot of many moving parts that cannot be entirely predicted and that change over time. The value of the AECOM report is that it provides significant detail on many aspects of development and provides context for discussion of policy options, especially related to downtown. The conclusions of the report are based on a model that weighs various assumptions. The assumptions can be changed to show how they affect development feasibility.

The AECOM report analyzed 32 development scenarios to test market conditions in Downtown Berkeley, including the following:

- Site area: Four options – 13,000 sq. ft. mid-block and corner sites, and 20,000 sq. ft. mid-block and corner sites
- Building height: Three options – 60, 120, & 180 feet
- Development type: Three options: rental housing, residential condominiums, & office (offices were not tested at 180 feet)

The AECOM Report summarizes all of the development assumptions, which are also provided in detail in the appendices, and which can be manipulated in the model. The

details of potential development projects were determined by defining setbacks, parking, and open space for the various lot sizes and building heights. Financial feasibility was determined by analyzing:

- Land cost
- Construction costs (LEED Gold)
- Revenue and operating costs
- Developer profit

Land prices vary widely in downtown Berkeley from \$80 to over \$200 per lot square foot. The analysis assumed \$100 per lot square foot with a 25 percent premium placed on the 20,000 square foot sites. The study acknowledges that these assumptions represent the lower price of prevailing land values in Berkeley, which means that the feasible projects described in the report may not occur if landowner expectations are higher.

The following public benefits were included as development costs and built into the model:

- Adopted child care and affordable housing mitigation fees for commercial development (\$1 and \$4/sq. ft. respectively)
- Adopted inclusionary housing requirements for residential condominiums
- \$20,000 affordable housing mitigation fee per market rate rental unit. Although not an adopted fee, the analysis included an amount lower than the maximum-allowable amount per the Nexus Study to test feasibility.
- \$35,000 payment per parking space, in lieu of meeting on-site parking requirements. Although not an adopted fee, this amount was included in the pro-forma analysis for any parking spaces that would be needed below the first level of underground parking. In other words, parking was assumed to be provided on site except where excavation costs would be prohibitive, in which case an in-lieu fee less than the cost of excavated parking was assumed for these spaces.

The report concludes, as summarized in the bullets below, that eight (8) prototypes out of the 32 analyzed demonstrated financial feasibility (based on current market conditions and the stated assumptions). For these projects, the report concludes that money would be available to contribute to additional public benefits (beyond those listed above) after accounting for all costs and developer's profit.

- All of the tested heights were feasible for the rental residential prototype on 20,000 sq. ft. mid-block and corner sites (6 prototypes).
- The only rental project feasible on a 13,000 sq. ft. site was at the 120-foot height.
- The only office project that was feasible was a 60 foot build-to-suit office building on a 13,000 sq. ft. corner site. Office development was only viable as an assumed build-to-suit single user tenant with rents well above prevailing office lease rates.

In addition, the following projects are near feasibility and could potentially become feasible if inclusionary requirements were reduced or construction costs decreased.

- 60 and 180 foot rental housing projects on 13,000 sq. ft. lots
- 120 and 180 foot condominium projects on 20,000 sq. ft. lots

Some of AECOM's conclusions for Downtown Berkeley are summarized below.

- Financial feasibility of the prototypes is primarily contingent on the type of development proposed, site configuration, height, and parking. The analysis showed that the most feasible development is a 180-foot rental residential project on a 20,000 sq. ft. site, which could generate up to \$33,000 per unit for additional public benefits.
- For the feasible prototypes, the AECOM report states that average public benefit potential for Downtown Berkeley is \$18,000 per residential rental unit (in addition to the \$20,000 affordable housing mitigation payment that was included in the model), but that considering the wide variation in the capacity of development to support additional public benefit, the analysis estimates that the feasible projects could support roughly \$10,000 in additional public benefit per unit.
- The primary reasons that condominium projects were not feasible were the higher market demand for parking, which was very expensive to construct, and the formula for selling affordable units or paying an in-lieu fee as required by the City's inclusionary ordinance.

The AECOM report states that in general, lowering the inclusionary standards, the affordable housing mitigation fee requirements, or the parking in-lieu fee could increase project viability and encourage more development, which could ultimately yield more funds for public benefits. However, the report also notes that if property owners demand higher land values due to reduced fees or other lowered City requirements, then redevelopment may remain difficult, resulting in ultimately in less development and lower fees, property taxes, and other benefits.

Although the AECOM report was prepared for Downtown Berkeley, it can also inform consideration of fees in other geographic neighborhoods. Some important variables that would need to be taken into consideration are:

- Land prices should be less in other areas
- Parking demand is higher in areas that are not as well served by public transit, which could significantly affect costs.
- Rents would be lower and unit sizes would be slightly larger with less focus on student housing.

In addition to providing information about the ability of downtown Berkeley projects to contribute to public benefits, the development assumptions included in the AECOM report provide information about the feasibility of the development standards included in the DAP, Measure R (the advisory ballot measure approved in November 2010 regarding downtown policies and development standards), and the proposed downtown

zoning. As indicated above, the details of proposed projects were developed by defining setbacks, parking, and open space for the various site areas and building heights. However, floor area ratio (FAR: lot area divided by floor area) was not one of the criteria included. Calculations show that the FAR for the development options analyzed in the Development Feasibility Study exceed the FAR standards included in Measure R for the 120 and 180 foot buildings. Staff will use the model to analyze this further and discuss the implications with the Planning Commission as the zoning regulations continue to be developed.

## 2. SOSIP Nexus Study

The attached Nexus Study was prepared by City staff to establish the amount that new development can be required to pay for the SOSIP capital projects. Capital costs were taken from the Economics & Planning Systems, Inc. (EPS) report entitled Downtown Streets and Open Space Improvement Plan (SOSIP) Project Cost and Financing Plan Report, completed in October 2010, which is available on the DAP website. However, rather than including the full SOSIP costs, a more realistic goal for the next 20 years was used by not including the most costly creek-related features. This reduced the SOSIP costs from approximately \$35,000,000 to \$17,123,117.

The Nexus Study describes the square footage of existing and new development and the “service population”. Service population was determined by a “use factor”, which recognized that residents use public street facilities more than commercial or institutional users, who are not in the area for as many hours. For example, the number of new residents at build out is 23.4% of the total current and future service population in 2035. Therefore, new residential development is responsible for 23.4% of the total SOSIP cost. This total cost is then divided by the amount of new square footage expected, to get a maximum amount that can be charged for each residential square foot of new development. Based on this methodology, SOSIP fees could be charged to new development as follows:

- Dwelling units           \$ 2.23 per sq. ft.
- Commercial             1.68 per sq. ft.
- Institutional             1.12 per sq. ft.

Since impact fees can only be charged based on the proportional impact from new development, they would generate approximately \$5 million, which is not enough money to build all of the SOSIP projects, even without the most expensive creek-related features. The zoning regulations that are currently under consideration by the Planning Commission provide an option for in-lieu open space fees and in-lieu parking fees to be paid, which could also support SOSIP improvements. Even with the in-lieu fees, however, additional funding will be needed from grants and other sources.

The SOSIP has been reviewed by several Commissions and will be presented to the City Council for approval along with the revised DAP and zoning regulations. The

zoning regulations reference a fee to implement SOSIP; however, the fee would need to be adopted by the City Council as a separate action.

## **B. West Berkeley Development**

### **1. Transportation Services Fee (TSF) Nexus Study**

The 2009 West Berkeley Circulation Master Plan (WBCMP) Report and the West Berkeley Project EIR identified the need for a fee to be collected to mitigate additional traffic associated with new development in West Berkeley. The Nexus Study, dated July 9, 2010, is described in detail in the attached staff reports, dated July 15 and September 15, 2010. The proposed fee would support a Transportation Demand Management (TDM) program and capital improvements. Information about the proposed fee was presented to the Project Area Committee and the Planning and Transportation Commissions. In response to a request for more information regarding other Berkeley fees, the attached Comparative Fee Burden analysis, dated November 2010, was prepared by City staff.

Minor changes were recommended to the West Berkeley TSF Capital Improvement Program after the release of the Nexus Study, which will have to be updated prior to adoption of a TSF. The most up-to-date recommendation for the West Berkeley TSF, as reflected in the Planning Commission staff report, is as follows:

#### Proposed Transportation Services Fee by Use

Residential – Corridor	\$630 per dwelling unit
Residential – Non-Corridor	\$1,206 per dwelling unit
Office (General office)	\$3.89 per sq ft
Retail	\$5.10 per sq ft
General Light Industry	\$2.63 per sq ft
Warehouse	\$1.10 per sq ft
Heavy industrial	\$1.37 per sq ft
R&D	\$2.82 per sq ft

### **2. Comparative Fee Burden**

The 2010 fee burden analysis compares existing and proposed fees in Berkeley relative to other communities. The report lists existing building permit-related fees for the following prototypes:

- Residential – 100 unit mixed use project
- R&D – 100,000 sq. ft.
- Light Industrial – 50,000 sq. ft

Only existing Berkeley impact fees were included: the childcare and affordable housing impact fees applicable to commercial development. Housing impact fees were not included. Economic Planning Systems (EPS) reviewed the nexus study and indicated that an additional TSF fee of less than 5% of development costs should be feasible without additional burden to financing. The proposed fee was within this range (residential development costs in West Berkeley were estimated at \$350 per square foot; the proposed fees listed above are well below 5% of this).

Berkeley's fees were compared with seven jurisdictions along the 1-80 corridor (Alameda, Emeryville, Fremont, Hayward, Oakland, Richmond, and San Leandro). In brief, the report concludes as follows:

- Other cities have more impact fees than Berkeley.
- Berkeley's residential fees are generally lower than other jurisdictions, but are higher than commercial fees. However, commercial rents are also higher than local comparable communities, compensating developers for the higher initial investment.
- Berkeley building permit fees are higher than other communities. This can be difficult to compare due to differing methods of calculating valuation and fees.
- Although the percent difference in building permit fees is high, the relative dollar value is less than the savings a developer can realize under the lower Berkeley parking requirements, as compared to other cities.

The Comparative Fee Burden analysis concluded that the proposed West Berkeley TSF appeared supportable in terms of the market position of Berkeley as compared to competitive locations. However, as indicated above, housing impact fees were not included in the analysis so it does not reflect the cumulative impact of those fees.

#### NEXT STEPS

Staff can return with a recommendation regarding fee amounts after the Work Session.

Draft zoning language for implementation of the DAP has been provided to the Planning Commission and it is anticipated that a public hearing will be scheduled soon. Given the complexity of the DAP and zoning, staff recommends that Council action establishing a SOSIP fee not be scheduled until after adoption of the DAP and zoning.

#### CONTACT PERSON

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#### Attachments:

1. AECOM Development Feasibility Study (September 27, 2011)
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3. Transportation Services Fee (TSF) Background and Overview: Staff Reports – July 15, 2010 and September 15, 2010

4. West Berkeley TSF Nexus Study (July 9, 2010)
5. West Berkeley TSF Comparative Fee Burden Analysis (November 2010)
6. Affordable Housing Impact Fee - May 31, 2011 City Council Work Session report