



Planning Commission Report

Planning Commission Meeting: April 3, 2013

Agenda Item: 9-A

To: Planning Commission

From: Jory Phillips, Deputy Director – Special Projects

Subject: Zoning Ordinance Update: Implementing Tier 2 Community Benefits

Executive Summary

To encourage projects in Tier 2, a simple, predictable, and effective community benefits system is needed. Tier 2 must strike the right balance between Tier 1, which offers a simple, predictable process for applicants and the community, and Tier 3, which offers higher levels of development but with less certainty for the applicant.

Staff has considered but does not recommend a point and menu system for Tier 2 community benefits. While a point and menu system can offer flexibility, it would be challenging to administer, potentially unbalanced across different land use designations, and difficult to make attractive relative to Tiers 1 and 3.

Staff's recommendation is to focus on LUCE priorities in Tier 2: Affordable Housing, Transportation, Open Space, and Childcare (Social and Educational Facilities). Taking advantage of the preparation of "nexus" studies related to LUCE priorities, staff recommends that Tier 2 projects be able to provide either additional fees justified by these studies or develop actual on-site amenities with an equivalent value to satisfy Tier 2 requirements for these priority benefits. Additional flexibility in benefit types may be sought by applicants through the Development Agreement process, and Tier 2 on-site benefits can be tailored to specific locations such as Downtown and Bergamot.

Background

In fall of last year, an issue paper on community benefits was presented to the Planning Commission. The paper discussed the basis and framework for community benefits at the Tier 2 level, summarized how several other cities approach community benefits, provided examples of how it could work in Santa Monica, and asked several questions:

- Is menu/point system appropriate?
- What is the appropriate process for identifying and prioritizing benefits?
- How much flexibility should there be in providing Tier 2 benefits?
- How attractive to development should Tier 2 be relative to Tier 1 and 3?
- Should Transfer of Development Rights (TDR) be available for Tier 2?

In summary, staff heard the following from the Planning Commission:

- A point and menu system is appropriate.
- Development in Tier 2 should be equally desirable to Tiers 1 and 3, and possibly preferred.
- TDR should be available at Tier 2.
- The system should be simple and flexible.

Since that presentation, staff and the consultant have been working on draft zoning ordinance language to implement the community benefits program envisioned by the LUCE. It has become clear that to be successful, the Tier 2 community benefits system needs to be clear, simple, and properly balanced. If the procedure and rules for obtaining community benefits in Tier 2 is not easy to administer and predictable for applicants, it will be less likely to be used.

Discussion

Flexibility and Simplicity

There are several components to consider in accomplishing a successful Tier 2 community benefits program. First is balancing the desire for both flexibility and simplicity. In this context, “flexibility” means allowing different types of benefits, and providing an opportunity for new ideas to be readily incorporated. “Simplicity” means that the system is easy for the public and applicants to understand and is easy for the City to administer. To maximize flexibility, either the list of benefits needs to be extensive, or the regulatory process to incorporate and allow them needs to be nimble enough to allow new ideas when new applications are received, or both. Both of these characteristics would, however, tend to result in a more complex system. While a point and menu system provides the ability to be flexible, the process to assign value to the menu of benefits results in a level of complexity that makes such a system difficult to administer. Staff recommends that for Tier 2, simplicity be prioritized over flexibility, as a great deal of flexibility is available at the Tier 3 level of development.

Consistency

Another component that needs to be addressed is the inconsistent differential between the maximum amounts of floor area allowed in Tiers 1 and 2 across land use designations. The following chart shows the commercial and mixed-use land use designations from the LUCE that will be implemented in the revised Zoning Ordinance. The Mixed-Use Boulevard (MU-B) designation has the highest differential, at 0.75 FAR. Mixed-Use Boulevard Low (MU-BL) and General Commercial (GC) all have a differential of 0.25 FAR.

Proposed Maximum Tier 1 and 2 Floor Area Ratios (FARs)

	<i>MU-BL</i>	<i>MU-B</i>	<i>GC—Santa Monica Boulevard</i>	<i>GC—Lincoln & Pico Boulevards</i>	<i>NC</i>	<i>NC—Main Street^{1,2}</i>	<i>NC—Ocean Park & Montana²</i>
<i>Tier 1—Base Standard</i>	1.5	1.5	1.25	1.5	1.5	0.8	0.75
<i>Tier 2—With Provision of Community Benefits</i>	1.75	2.25	1.5	1.75	NA	1.5	NA
<i>Difference</i>	0.25	0.75	0.25	0.25	NA	0.7	NA

The community benefit approach should balance the amount of community benefit provided with the additional FAR Tier 2 allows. It should be fair across zones: providing the same pro-rata amount of benefits should entitle applicants to receive the same amount of additional FAR. Maintaining consistency across zones is a difficult challenge in implementing a point/menu system for Tier 2 community benefits.

Whether it is a percentage of on-site affordable units, a ratio of open space to site or project size, or a fee that is based on the square footage of a project, the requirements for providing community benefits should be proportionate to the Tier 2 increase. Basing

¹ The LUCE does not include a Tier 2 for the Neighborhood Commercial (NC) designation. However, it does permit higher FARs than the existing Zoning Ordinance, and an additional FAR bonus in Tier 1 for affordable housing. In the Draft Mixed-Use Development Standards Module, staff and consultants presented a concept to add Tier 2 to Main Street NC designations, reflecting the 0.7 FAR difference between the maximum FAR allowed for “preferred permitted projects” and the lowest maximum FAR for “CM” Main Street Commercial zones in the existing zoning ordinance.

² Staff is recommending lower Tier 1 maximums in the Zoning Ordinance for NC-designated areas along Montana Avenue, Main Street, and Ocean Park Boulevard to reflect their existing scale and character.

requirements and fees directly on the amount of additional Tier 2 floor area proposed is a simple way to maintain this proportionality.

Transparency and Perception

Community Benefits are an integral concept of the LUCE and its implementation, and there is a high level of expectation about what the community will receive as a benefit from projects that are built at the Tier 2 and higher levels. If primarily (or only) fees are collected as community benefits, a highly transparent system to track the collection and use of fees will need to be established, and if the fees are governed by the Mitigation Fee Act, its requirements will need to be complied with. In many cases, on-site benefits can appear much more tangible than the collection of fees.

As an example, if each new Tier 2 project provided a publicly-accessible pocket park, the community would quickly and concurrently achieve a visible benefit as part of the development. On the other hand, a park that is funded by fees from several projects could be larger, more meaningful, and potentially more valuable than a series of small pocket parks, but it might take longer to fund and build. A system that can accommodate both of these scenarios, and provides the community and applicants with ample information about where collected fees are spent is important to the success of the community benefits program.

Clear, Objective, Consistent Review of Tier 2 Projects

The review and approval of development proposals and the community benefits they provide at the Tier 2 level will be different than for projects that require Development Agreements (typically at Tier 3). Development Agreements are generally based on negotiations between the City and applicants, with existing zoning regulations as a starting point and LUCE policies establishing the maximum development envelope.

It is anticipated that a process equivalent to that used to review Development Review Permits established in the existing Zoning Ordinance will be used for Tier 2 projects (there may be some restructuring or renaming of permits and permit process, discussed in a forthcoming module on administrative procedures). Generally speaking, the findings required for approval or denial of Tier 2 permits will need to be clear, objective, and consistent from project to project. Negotiation over requirements or aspects of Tier 2 projects, such as community benefits, should not be a factor: the revised Zoning Ordinance should clearly outline the community benefit requirements that allow the additional height and FAR for Tier 2 projects. When an applicant includes those benefits in a proposal, assuming it meets other standards and criteria for approval, decision making should be focused on evaluating whether the project satisfies requisite findings, rather than negotiating the appropriateness of codified benefits.

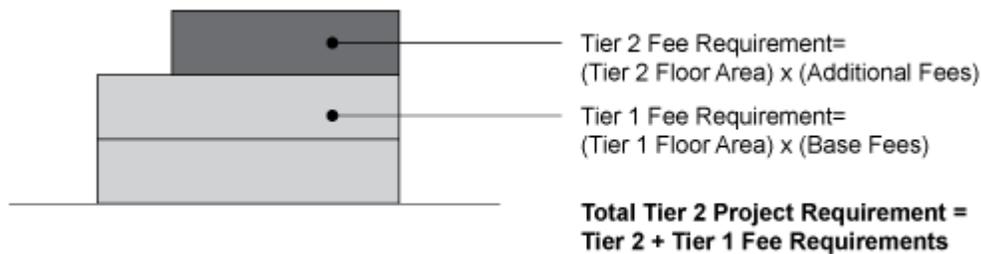
Regulations that provide greater clarity and certainty for applicants by allowing them to determine the cost of meeting community benefit requirements early in the development review process may also encourage the development of more projects at Tier 2 levels.

Fees and Nexus

Staff has spent a considerable amount of time assessing the legal basis for requiring community benefits at the Tier 2 level, and its legal and operational requirement boundaries. California State statutes, as well as federal and state land use case law, have influenced the recommendations in this report. To the extent a community benefit constitutes an exaction, the City will need to demonstrate a reasonable relationship between both intended use and amount of the exaction and the deleterious public impact of the development. In general, an exaction involves divesting a developer of money or a possessory interest in property.

In most cases, the base fees that the City imposes for transportation, and other public facilities and community amenities are lower than the cost of mitigating the project's impact on the need for transportation infrastructure, public parks and recreation or other facilities and services. This means that it is possible for the City to impose higher fees authorized by nexus studies, allowing fees collected as community benefits to be higher than typical fee amounts, and potentially closer to the cost of mitigating project impacts, on the more intense development allowed at Tier 2. The LUCE generally discusses community benefits as something that is provided beyond basic requirement levels; because of this, staff believes that the policy choice of requiring higher fees for Tier 2 portions of projects is appropriate.

Proposed Fee Formula for Tier 2 Projects



Types and Inclusiveness of Community Benefits

Different types of community benefits are less complex to administer than others. The City already has detailed requirements for obtaining affordable housing benefits from new development. This or any type of benefit that is already administered by the City will be easier to implement in Tier 2 than a type of benefit for which the City has no current program, such as Transfer of Development Rights (TDR) for historic preservation. Essentially, benefits with existing fee programs will be easier to implement and administer.

Affordable and Workforce Housing

The LUCE specifically requires that all projects above 32 feet provide affordable housing or an affordable housing fund contribution. As noted above, affordable housing will be easier to implement relative to other community benefits. The City has existing regulations in place, as well as systems to collect and administer fees, and a nexus study that supports in-lieu fee requirements for residential development. Notably, affordable housing fees for residential development are already collected at the full amount identified in a nexus study, unlike other fees. However, an affordable housing fee that would apply to new commercial uses and development is being studied and the base fee under consideration may be less than the nexus study identifies as addressing the impact of commercial development, allowing additional fees to be recommended as a Tier 2 benefit.

It is sometimes preferable to have affordable housing built on-site, depending on the location and size of the project, type of housing, and affordability levels. On-site requirements for Tier 2 affordable housing could be a percentage of the additional square footage proposed beyond the Tier 1 maximum; the percentage could vary based on the level of affordability provided, as is the case with existing on-site affordable housing requirements. While California case law remains in flux, staff believes case law distinguishes and treats in-lieu fees differently than the actual provision of on-site affordable housing, treating the latter as a development standard subject to the traditional zoning rational basis standard. Staff recommends that higher levels of on-site affordable housing than standard AHPP requirements be used as a community benefit standard to develop at the Tier 2 level.

Staff from Housing and Economic Development has indicated that workforce housing, which is specifically discussed in the LUCE, would be best implemented as a community benefit through requirements for units that are owned, and not rented, by households earning between 100-180% of average median income (AMI). There are challenges to monitoring and enforcing ownership units, and while deed restrictions for such units would likely be in place, considerable City staff and attorney time could be occupied assisting buyers, sellers, and lenders. Additional work will be required to ensure that workforce housing is implemented appropriately, and at this point workforce housing is not recommended as a Tier 2 benefit. However, workforce housing could be provided as a benefit in Tier 3 projects.

GHG Emissions and Future Congestion Reduction Requirements

The LUCE specifies additional Transportation Demand Measures (TDM) beyond basic requirements as being a community benefit. Staff recently presented the Planning Commission with options and recommendations for different levels of TDM requirements that vary based on the project location. Projects in areas with lower TDM requirements could potentially provide certain specified additional measures to meet community benefit requirements. To maintain simplicity and

fairness across zones, the measures that are tied to the overall project size will be easiest to implement: for example, providing an additional number of bicycle storage lockers or showers per square foot of building area beyond basic requirements. Areas of the City that have higher trip reduction goals, such as Downtown and Bergamot, will likely include more robust TDM measures in their plans.

Another efficient alternative to obtain additional GHG emission and transportation impact reduction benefits at the Tier 2 level is to use the recently adopted Transportation Impact Fees (TIFs), which could be collected at greater amounts than imposed by the TIF Ordinance but below the level established by its nexus study. The purpose of the TIF is specifically to make transportation network improvements to achieve no net new trips during the P.M. peak hour, and is important for reducing emissions and congestion.

Community Physical Improvements

The LUCE discusses the potential for physical improvements, including street grid connections, pedestrian, bike, and green connections, and open space, trees, and wider sidewalks as community benefits. The TIF helps fund some of these improvements. The need for these types of improvements can vary widely from neighborhood to neighborhood, making development agreements or specific/area plans an ideal way to identify which benefits are needed based on the project location and type.

An open space fee study is currently being conducted, and will recommend fees for different types of uses on a per-square foot and/or per-residential unit basis. Similar to housing and TIF, adopted open space fees are expected to be lower than fee amounts justified by the nexus study, potentially allowing higher fee amounts to be collected for Tier 2 projects. Additionally, the study could be used to identify an appropriate amount of square footage of open space per person to be developed, which could be useful for allowing on-site public open space improvements as community benefits.

Social, Cultural, and Educational Facilities

The LUCE calls out child care, senior care, and youth and teen services, and educational facilities as community benefits. These are among the more challenging on-site benefits to administer in Tier 2, as projects will consist of different uses and sizes, and it may not make sense to allow them as community benefits in all or most projects. Further, a service provider must be involved to occupy the space, and there is no guarantee that a provider will remain in the space. These on-site benefits may be better provided through a Development Agreement, where the parameters of the facility can be more easily defined and monitored.

Among these benefit priorities, childcare will be the easiest to implement for Tier 2, as the City already implements such a program. A nexus has been established and fees adopted below that nexus, again potentially allowing higher fee amounts to be collected for Tier 2 projects. The existing Cultural Arts fee, however, is more complicated to expand for Tier 2, as it is not regulated under the State Mitigation Fee Act or based on a nexus study.

Historic Preservation

The LUCE mentions adaptive reuse, sensitive restoration and treatment, the compatibility of new construction, and Transfer of Development Rights (TDR) as potential community benefits in its Historic Preservation discussion. It is anticipated that the revised zoning ordinance, design guidelines, and design review process will largely encourage the first three of this list. TDR is generally more complex, and may require the development and administration of a system that staff believes may not be often used. Further, a purely fee-based system would not implement TDR.

It is possible that the Zoning Ordinance could enable a TDR system that requires a “donor” site to have an amount of development capacity at or above the amount of floor area being proposed as the additional amount of Tier 2 floor area above the base level of Tier 1 floor area at the “receiving” site. The donor site would need to be deed restricted, and a flag put into the City’s permit system to track such sites. Enabling such a system raises several questions. For example, should a “donor” site only be allowed in the case of a landmarked and appropriately preserved site or building, or are other conditions sufficient to enable the transfer? Additional research and analysis is necessary to reach an effective recommendation, and to develop an operational TDR system. As with social, cultural, and educational facilities, this benefit may be enabled most effectively through a Development Agreement.

Recommendations

Based on the factors in the above discussion, staff's recommended approach for implementing Tier 2 community benefits in the Zoning Ordinance Update is summarized as follows:

A. At the Tier 2 level, focus on the priority community benefits that can be easily and fairly implemented and administered. Continue to allow more flexible and more complex options for community benefits for Tier 3 Development Agreement projects.

B. Allow fees and/or on-site benefits to meet requirements:

1. Require additional on-site affordable housing beyond AHPP requirements for Tier 2 eligibility. Fees for commercial uses could be included once the studies currently underway are complete, and increased if justified by the nexus study.

2. Require increased Transportation Impact Fees above TIF Ordinance amounts for proposed floor area beyond the Tier 1 level.

3. Require additional open space (fees, or publicly accessible on-site or on a nearby property) proportionate to floor area proposed beyond the Tier 1 level based on nexus study.

4. Require additional childcare fees proportionate to floor area proposed beyond the Tier 1 level.

C. Require other fees similarly to the base Tier 1 portion of the project.

D. Allow Specific Plans to implement additional community benefit priorities at the Tier 2 level.

This approach is consistent with the fee portion of recent Development Agreement community benefit approaches, and would provide additional funds and on-site benefits that have been identified in the LUCE as priorities. The approach may not be as flexible as what was envisioned during the LUCE process or in prior Planning Commission discussions on community benefits, but represents an approach that staff believes will be effective in attracting development to the Tier 2 level, and can be easily implemented.

Question for the Planning Commission

1. Is this approach appropriate?
2. Are there higher-priority benefits not identified in this report that need exploration?

Next Steps

Once staff has gotten feedback from the Planning Commission and public, we will refine the recommendations and draft zoning ordinance language, and will submit it for further review in an upcoming citywide regulations module. Staff will also begin work to determine the appropriate “above base” fee levels for the different benefit types.