

# Santa Monica Zoning Ordinance Update



## Community Benefits and Incentives: Issues, Options, and Case Studies



City of  
**Santa Monica**

*Prepared by:*

**DYETT & BHATIA**  
Urban and Regional Planners

**AUGUST 2012**



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# 1 Introduction

A core principle underlying Santa Monica's Land Use and Circulation Element (LUCE) is the importance of ensuring that the development occurring under the LUCE will provide benefits to the community. Traditional approaches to land use regulation have long required development to meet minimum standards intended to protect public welfare and to help achieve the community's shared vision of a quality environment. The LUCE goes a step farther, proposing a more comprehensive and structured approach based on the principle that in exchange for allowing incremental increases in development intensity, the developer must include in the project certain preferred uses, beneficial design features, or other development standards that serve the community's core needs. These requirements are also intended to address the additional burden that more intense development may place on the community. The challenge will be to strike the right balance, so the procedures for implementing the LUCE community benefits policies is not too onerous and time-consuming and developers see sufficient economic value at the end, with some certainty, that providing the community benefits makes sense to them. Lessons from peer cities provide some guidance on how this can be done.

## PURPOSE

The creation of an effective, legal, and workable regulatory framework to implement the LUCE policies for returning benefits that contribute directly to the community's fundamental social, cultural, physical, transportation and environmental goals and also reduce the effects that increased development may have on the City will be one of the most challenging tasks for the zoning update process. To do this, the Zoning Ordinance needs to define and detail critical components of the City's strategy. The purpose of this paper is to identify and analyze the key issues the City needs to think about as it develops regulations for implementing the community benefits policies established by the LUCE for projects that exceed the base standards. The paper does this by identifying the specific LUCE policies regarding community benefits and examining how a selected group of other cities regulate and administer their community benefits programs, highlighting those features that are most likely to be appropriate for Santa Monica. This will provide background information and examples to help City officials, residents and other stakeholders engage in a dialogue about policy issues and directions that should be considered during the zoning update. Although the primary focus of this paper is the set of regulations applicable to projects that require a Conditional Use Permit (Tier 2), it also identifies some issues to consider as the City reviews its regulations for development agreements.

## APPROACH AND ISSUE PAPER ORGANIZATION

This issue paper is organized as follows to provide a basis for discussing specific choices to be made to guide the actual drafting of regulations for community benefits:

1. *Identify issues critical to Santa Monica*
  - Overview of LUCE policies and proposals that establish the City's objectives for the community benefits program
  - Authority for community benefits regulations and implications for Santa Monica.
2. *Analysis of Peer Communities*
  - Key components of community benefit regulations that other cities have enacted
  - Elements of other cities' regulations that may be appropriate for consideration by Santa Monica.

3. ***Outline alternative approaches to implementation of LUCE community benefits policies***

- Identification and classification of community benefits proposed in the LUCE including:
  - Benefits provided through the imposition of standards applicable to all new development;
  - Benefits provided by projects in exchange for allowing specific increments of additional development;
  - Benefits provided by projects based on discretionary determination of measures necessary to mitigate project impacts or accommodate additional increments of development; and
  - Benefits provided by projects based on negotiation of development agreements.
- Procedures for identifying citywide and neighborhood/district benefits not explicitly specified in the LUCE but consistent with LUCE policies.
- Issues related to establishment of a formalized Transfer of Development Rights Program
- System for evaluation and adjustment of the community benefits program over time.

4. ***Recommendations***

- Options for Santa Monica to consider based on analysis of the intent of the community benefits program according to the LUCE and lessons learned from peer communities.
- Discussion questions

## **KEY ISSUES AND QUESTIONS FOR DISCUSSION**

This report identifies a variety of issues that the City will need to address as it establishes regulations to implement the LUCE's approach to obtaining community benefits from future development.

### **Identification and Assessment of Benefits**

- Identifying a list of benefits to be provided by new development including specific facilities and services to address the effects of more intense development
- Economic analysis and valuation of benefits to inform the ordinance requirements
- Determining requirements for achieving benefits
- Allowing flexibility for other appropriate benefits
- Balancing citywide and neighborhood preferences

### **Decision-Making and Administrative Process**

- Developing a clear ministerial process for granting Tier 1 bonuses
- Options for obtaining Tier 2 bonuses
- Monitoring compliance

### **Other Considerations and Issues**

- Clarifying applicability of State density bonus requirements
- Implementing development rights transfer

**Questions for Discussion**

- Which projects should be eligible for receiving benefits?
- Which project features should be eligible for bonuses (e.g. height, FAR, density)?
- How should community benefits be identified and evaluated?
- How should the incentives and bonuses for individual projects be determined?
- Should the regulations allow for alternative approaches to compliance (e.g. benefits not included on a list)?
- What kind of monitoring is needed?

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## 2 Issues for Santa Monica

A core principle underlying Santa Monica's Land Use and Conservation Element (LUCE) is ensuring that the development occurring under the LUCE will provide benefits that both improve the community and address any burdens it imposes. Traditional approaches to land use regulation have long required development to meet minimum standards intended to protect public welfare and to help achieve the community's shared vision of a quality environment. The LUCE goes a step farther. It proposes a more comprehensive and structured approach based on the principle that in exchange for allowing incremental increases in development intensity, the community should, in return, receive certain benefits including preferred uses, beneficial design features and other development requirements that serve the community's core needs. These benefits should also be related to the effects associated with more intense development.

The legal basis for regulating to obtain community benefits is derived from a body of law that enables cities to regulate development to ensure that approved projects will not create detriment and will be developed to implement policies intended to achieve community objectives. State law also allows cities to obtain public benefits in exchange for providing incentives that increase project value. Jerold Kayden describes incentive zoning as a "market-based regulatory approach" that "expressly enlists market forces by offering developers a choice of regulatory incentives that either increase revenue or reduce costs."<sup>1</sup> In contrast to more traditional "command-and-control" schemes, which typically restrict what a landowner can do with her property, incentive zoning makes it attractive for developers to provide the amenities that cities want by generating greater profits, which becomes "the quid pro quo for providing the amenity or design sought by the community."<sup>2</sup>

The State of New York, which was the first to codify the application of incentive zoning, defines incentives as "adjustments to the permissible population density, area, height, open space, use or other provisions of a zoning ordinance or local law for a specific purpose authorized by the town board". The New York statute defines community benefits as "open space, housing for persons of low or moderate income, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the town board."<sup>3</sup> In addition to the specific incentives such as those that California Government Code Section 65915 et seq. provides to developers who include affordable housing and child care facilities, the courts have long recognized that local agencies can require developers to provide other improvements and facilities of benefit to the community when they are reasonably related to the project's effects.

These approaches are all rooted in the police power of the city to protect the public health, safety, and welfare of its residents. In particular, the City of Santa Monica is a charter city, and its power to regulate land

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<sup>1</sup> Jerold S. Kayden, Market-Based Regulatory Approaches: A Comparative Discussion of Environmental and Land Use Techniques in the United States, 19 B.C. Envtl. Aff. L. Rev. 565 (1992), 568. <http://lawdigitalcommons.bc.edu/calr/vol19/iss3/11> Also see J. Getzels & M. Jaffee, *Zoning Bonuses in Central Cities*, Planning Advisory Service Report No. 410, American Planning Association, 1988

<sup>2</sup> Michael Murphy & Joseph Stinson, Incentive Zoning, Pace University School of Law Land Use Law Center, (1996), <http://www.law.pace.edu/landuse/incen.html>.

<sup>3</sup> N.Y. TOWN LAW § 261-b (2) (McKinney 2007)

uses is derived directly from the state constitution, subject to limitations in the City’s Charter and enactments of the legislature on matters of statewide concern. As the courts’ view of land use regulation as a legitimate exercise of policy power has broadened, so have the approaches local agencies devised to achieve the increasingly complex and comprehensive objectives of local plans.

This chapter reviews the LUCE’s provisions regarding community benefits, the authority for establishing such regulations, and the regulations that Santa Monica is currently implementing to ensure that community quality will be improved and not degraded as new development occurs.

## **LUCE APPROACH TO COMMUNITY BENEFITS**

In contrast to the previous General Plan and existing zoning ordinance, which establish a range of maximum building heights for different parts of the City, the LUCE generally establishes a maximum base height of 32 feet and, in some cases, a maximum density or Floor Area Ratio (FAR), in those areas where future growth will be directed. In order to exceed these base standards, projects will have to incorporate features that will contribute to the community’s overall social, cultural, physical, transportation and environmental goals. The LUCE identifies five categories of Community Benefits and provides examples of measures that fall into each category:

- ***Trip Reduction and Traffic Management***
  - Bicycle facilities;
  - Dedicated shuttles;
  - Car-sharing;
  - Transit passes;
  - Parking “cash-out;”
  - Shared parking; and
  - Pricing parking separately from housing units (i.e. unbundling parking)
- ***Affordable and Workforce Housing***
  - Housing affordable to households earning up to 80 percent of adjusted median income (AMI) and work force housing; and
  - Located near transit, services and existing job centers (e.g., hospitals, Santa Monica College, school district offices, entertainment industry centers)
- ***Community Physical Improvements***
  - Reconnecting the street grid;
  - Quality pedestrian, biking, and Green connections;
  - Community gathering and green open spaces;
  - Recreational open space; and
  - Neighborhood-serving retail and services
- ***Social and Cultural Facilities***
  - Arts and cultural facilities and uses such as providing public art and/or gallery space within building; and

- Child-care, senior, or youth facilities as part of the project
- **Historic Preservation**
  - Preservation of historic structures or adaptive reuse to conserve exterior features

The LUCE establishes three approval tiers or procedural tracks to regulate development that are tied to the type, location, and level of development. The tiers provide for ministerial or by-right approval of projects that meet all applicable requirements and do not exceed the base standards and two discretionary tiers, both of which require applicants to provide community benefits in order to receive approval to increase the project's height and/or floor area. Projects eligible for Tier 2 will typically be subject to a Conditional Use Permit while Tier 3 projects require the developer to enter into a development agreement with the City. In most commercial areas of the City, including the major boulevards such as Wilshire Boulevard and portions of Lincoln and Santa Monica Boulevards, Tier 1 allows buildings up to 32 feet (two stories) through a ministerial process (i.e. by right). The maximum FAR varies from 1.25 to 1.5 depending on the area. (See LUCE pp. 2.1-33 to 2.1-39) Projects that include affordable housing on-site in compliance with the City's existing Affordable Housing Production Program or within close proximity to transit corridors are eligible for a four-to seven-foot height bonus, allowing for an additional floor of housing.

Under Tier 2 procedures, projects may request building heights up to 60 feet and up to 3.0 FAR (depending on the area and the amount of housing provided) if they provide community benefits subject to discretionary review. Applicants that propose heights or floor area ratios that exceed the Tier 2 standards must also provide additional benefits that are established in a development agreement that is negotiated through a process the City establishes subject to State and local law. Several land use designations have a lower base height (Tier 1), a lower maximum height for Tier 2, and no Tier 3 with some specific exceptions.

In the Downtown, the LUCE deferred the establishment of development parameters to the preparation of a Downtown Specific Plan. In the interim, development standards from the existing Bayside District Specific Plan and other applicable land use designations continue to apply. (See LUCE p. 2.1-48)

Although the three-tier approach is the focus of discussion of this paper, the LUCE includes other policies that intended to ensure that the community obtains some level of benefit from all development through the preservation of buildings and other features that contribute to community identity, encouraging arts and culture, enhancing the City's urban form, and protecting and enhancing the beach and oceanfront. These policies will be implemented through the updated zoning ordinance.

Housing projects that include only affordable units will continue to be eligible to receive incentives such as a building height that does not exceed the maximum height at the highest tier, as well as reduced parking requirements and potential reductions in required ground-floor, pedestrian-oriented uses, which may include community services, arts, and similar uses. Housing projects with 50 units or less that are affordable to households earning no more than 80 percent of median income are not subject to discretionary review but, like most new development, do require design review. (SMMC Sections 9.32.120 and 9.32.170)

## **AUTHORITY FOR COMMUNITY BENEFITS PROGRAMS**

One of the primary objectives of land use and development regulations is to ensure that development implements policies intended to achieve community aspirations expressed in adopted plans. The traditional approach to regulating development was for many years relatively straight forward—projects in compliance with zoning regulations were entitled to obtain a building permit so long as the construction complied with applicable construction codes. Early zoning codes typically included a discretionary procedure for granting

variances or waivers from standards when justified by unique physical conditions, but such situations were the exception.

### **Police Power and Zoning**

The legal basis for all land use regulation is the police power of the city to protect the public health, safety, and welfare of its residents. As the courts' view of land use regulation as a legitimate and elastic exercise of policy power has broadened, so have the approaches local agencies devised to achieve the increasingly complex and comprehensive objectives of local plans.

The legal basis for community benefits programs is derived from a body of law that enables cities to regulate development to achieve three broad objectives:

- Ensure that approved projects do no harm by degrading existing conditions;
- Ensure that projects conform to local policies intended to achieve community objectives; and
- Achieve public benefits in exchange for providing incentives that increase development opportunities.

More specifically, in California cities can exercise their police power and statutory authority to:

1. Mitigate the impacts of increasing development intensity by adopting standards or imposing conditions of approval that will result in reduction of potential adverse impacts through compliance with adopted performance measures or based on case-by-case discretionary review.
2. Implement policies adopted to achieve goals and objectives intended to maintain and improve the community by requiring conformance with adopted standards or based on case-by-case discretionary review;
3. Adopt regulations that allow additional height, floor area, or other incremental increases in development intensity in exchange for providing specific benefits; and
4. Negotiate development agreements to obtain benefits for the community that exceed those required by adopted standards in exchange for granting benefits that allowing incremental increases in development intensity that are consistent with adopted general plan policies, but may exceed what would be allowed solely through implementation of zoning standards otherwise applicable to the project.

In addition to using the environmental review process to identify ways to reduce or eliminate a project's potentially significant impacts on the physical environment, cities may also impose conditions on projects subject to discretionary review under the zoning ordinance. Such conditions can be formulated to address project effects on a case-by-case adjudicative basis or they may be expressed as standards that are incorporated in the zoning ordinance and adopted through the legislative process. In both situations, the conditions that a city imposes must be reasonably related to the project's effects based on information in the record.

The City of Santa Monica has conducted a series of detailed studies that provide the rationale for several of its legislatively enacted project requirements and for its impact fees. As early as 1982, the City conducted a study of the fiscal and housing impact of office development, for example, showed that the City facilities most used by office employees were City streets and parks (*Office Development in Santa Monica: The Municipal Fiscal and Housing Impact*, pp. 34-35) and that the cost of providing and maintaining such facilities exceeded the revenues generated by office development.

## **Mitigation Requirements**

Various State laws enable (and, in some cases, require) local agencies to enact and implement regulations to mitigate project impacts and require applicants to provide specific community benefits. These include the California Environmental Quality Act, the Mitigation Fee Act (Gov. Code Section 66000 et seq.), and the Subdivision Map Act (Gov. Code Sec. 66410 et seq.) In addition to mitigating impacts on the physical environment identified through environmental review, cities may impose direct charges or dedications on a one-time basis as a condition of an approval being granted by the local government so long as the purpose of the fee or exaction is reasonably related to a need created by the development and the amount of the fee or dedication is proportional to the cost of improvement.

The Mitigation Fee Act (“MFA”) applies to development impact fees imposed by local agencies to finance all or part of the cost of public facilities (such as streets, traffic signals, bridges and major thoroughfares, drainage and flood control facilities, water and sewer, and government buildings) but does not apply to taxes or special assessments (which are not fees), Quimby Act fees, or processing fees. The MFA applies to both legislatively enacted fees that apply to an entire class of projects and fees imposed on an ad hoc basis as a condition of approval. The Act also requires the agency to show that there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed. If fees are going to be used to finance public facilities, the Act requires that the facilities be identified in a capital improvement plan, applicable general or specific plan, or some other public document. A recent Appellate Court decision concluded that listing types of new facilities rather than specific facilities met the Act’s requirements. (*Home Builders Ass’n of Tulare/Kings Counties v. City of Lemoore* (2010), 185 Cal. App 4th 554)

As noted above, the City of Santa Monica has historically placed an emphasis on supporting affordable housing, childcare, park space, and the arts and existing regulatory fees reflect this emphasis. These fees are intended to mitigate the impacts of certain development projects, to require private development to provide specific community benefits, and to provide incentives for specific types of development in addition to the incentives for building affordable housing available under State law. The childcare linkage fee (SMC Section 9.72.040) was enacted under the MFA but the general and medical office fee predates the State law. The office fee program, applicable to projects that include more than 15,000 square feet of new general or medical office development or more than 10,000 square feet of additions to existing development, require developers to pay impact fees or provide low and moderate income housing or new park space (SMMC Part 9.04.10.12). The City also imposes a transportation management fee (SMC Sections 9.16.050), which will be incorporated in an expanded multimodal transportation impact fee on new development under the LUCE. (*Draft Transportation Impact Fee Nexus Study*, March 2012).

The nexus and proportionality requirements of the Mitigation Fee Act do not apply to development agreements, which are contracts with a city into which a developer voluntarily enters. This approach, which this report discusses below, provides greater flexibility.

## **Incentive Programs**

Starting with New York City in 1961, many major American cities have been offering incentives for developers to incorporate desired features into their buildings. In most cases, the city offers the builder a “bonus” in terms of additional building height or building floor area (usually by increasing the floor area ratio or FAR), or reduced parking or fee payments, in order to change the building economics and make the desired features affordable. The State of California has gone a step farther by requiring local agencies to grant

as-of-right density bonuses and other incentives to developers proposing to include affordable housing or childcare facilities in their projects. According to the American Planning Association, at least ten states, including California, have enacted legislation expressly enabling local governments to adopt regulations offering bonuses and incentives to applicants who provide certain public benefits.<sup>1</sup>

While some cities require an individual hearing before granting any incentive, another practice is to agree on the bonus conditions ahead of time and then grant the bonus without discretionary (and sometimes time-consuming and controversial) review. Investors need the predictability of knowing that if they offer an amenity that meets the city's standards, they can budget on the additional height or space and avoid running the risk of having that reduced or denied in a discretionary hearing. This added certainty makes incentive programs work more effectively than if every detail has to be negotiated.

The American Planning Association's *Growing Smart Legislative Guidebook* includes a model statute for granting incentives that incorporates provisions from California's density bonus law but also authorizes development incentives for incorporating a variety of "public benefit amenities" such as parks, plazas, arcades, cultural facilities, and improved access to transit.<sup>2</sup> The model statute outlines a "unified incentives ordinance" that includes the following provisions:

- Statement of the types or categories of public benefit amenities for which a bonus ratio or density bonus shall be authorized, the amount of the respective bonus ratio or density bonus, and the zoning use district or overlay district to which public benefit amenity and the respective bonus ratio or density bonus apply;
- Locational and other development standards for the public benefit amenities, including a statement of the minimum "bonusable" area that a public benefit amenity must contain in order to be eligible for a bonus ratio or a density bonus; and
- Requirements for permanent public access to the public benefit amenity, including signage indicating the nature of the public access, secured by either:
  - Conveyance of the plaza, park, or other open space, or access to transit stations or transit easements, to the local government or appropriate governmental unit as a public use as a condition of approval of the development permit, provided that the conveyance is in a form approved by the attorney of the local government or governmental unit; or
  - Where the public benefit amenity will not be owned by the local government or another governmental unit, provisions in the development agreement requiring permanent maintenance by the property owner, except that permanent public access may be limited to normal business hours.
- Advisory design guidelines to assist developers in the preparation of applications for community design and open space incentives
- Statement of the maximum "bonusable" area that a public benefit amenity may contain in order to be eligible for a bonus ratio or a density bonus;

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<sup>1</sup> Stuart Meck, Editor, *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change*, American Planning Association, January 2002, pp. 9-99 <http://www.planning.org/growingsmart/guidebook/>

<sup>2</sup> Ibid, p. 9-99

- Provisions for allowing the developer to provide the public benefit amenity offsite as a condition of receiving a bonus ratio or density bonus, including standards of proximity of the development to the offsite public benefit amenity; and
- Provisions for adoption of an incentive overlay applicable to all or portions of existing zoning use districts.

In addition to establishing regulations to implement the State's requirements for granting incentives to developers who provide affordable housing and child care facilities, Santa Monica has enacted a Cultural Arts Program that provides incentives for private developers to incorporate public art in their projects as an alternative to paying a fee to support cultural facilities. The ordinance requires those who develop commercial projects with 7,500 square feet or more, remodels or improvements of 25,000 square feet or more, and residential projects with five or more units to include on-site public art projects or pay an in-lieu fee to support cultural arts (SMC Part 9.04.10.20). The rationale for the program is that without incentives, on-site art would be the preferred option of the developer in most cases because art integrated into a project can add value that will eventually be recaptured by the developer at the time of sale. (See *Summary and Recommendations Report: Developer Cultural Arts Requirement, Survey and Evaluation of Options*, pp. 13-17) Because the community as a whole derives greater benefit from in-lieu fees that can be used for a wide variety of cultural programs and facilities anywhere in the city, developers who select that option make a contribution equivalent to one percent of the average square foot of construction compared with the two percent expenditure for on-site cultural projects if the developer selects that option.

### **Development Agreements and Community Benefits**

To a greater extent than many other California cities, Santa Monica uses development agreements for larger projects and proposes to continue to do so under the LUCE to negotiate optimal community benefits. The major advantage of the development agreement process is that it is flexible. It allows for a broad range of potential benefits that are relevant for the site and district, and permits both the applicant and the City to ask for specific benefits or bonuses that meets both parties' objectives and are not subject to the same constraints applicable to quasi-judicial actions. On the other hand, the process is time-consuming and subject to case-by-case negotiation.

The Legislature's intent in establishing the development agreement process was to address the lack of certainty in the development approval process, providing assurance to applicants that upon approval they can proceed with projects that could take years to develop without worrying about changes to land use regulations. The process is also intended to ensure that the availability and adequacy of public facilities does not impede projects by allowing for agreements whereby applicants provide for financing of necessary public facilities. (Gov. Code Sec. 65864) Development agreements are particularly appropriate for phased projects that will be built out over a period of years during which applicable regulations may be subject to change but the enabling legislation does not limit their applicability to such ventures.

Development agreements consume considerable time and resources for City staff and decision-makers. The City's January 2011 annual report on the status of development agreements identified 16 agreements entered into since 1982 that are currently being monitored. A more recent report from the Planning and Community Development Department listed 24 projects that are the subject of pending development agreements approved or pending since adoption of the LUCE in July 2010. Community benefits for these agreements are being shaped by early input from the community, Planning Commission, and City Council, through an early review process called a "float-up". Further, the City is in the process of preparing the Bergamot Area Plan and Downtown Specific Plan, two areas where development activity is currently heavily concentrated.

Although, as this paper explains, the development agreement process is by no means the only tool available to obtain community benefits, because of the flexibility this approach allows Santa Monica has used the development agreement process to a somewhat greater extent than other California cities. Since the adoption of the LUCE in July 2010, the City has also relied on this mechanism as a way to resolve inconsistencies between the existing zoning ordinance and the LUCE requirements for Tier 2 and 3 projects.

Part of the City's existing procedure for reviewing projects subject to development agreements is the preparation of a number of economic analyses that demonstrate the enhanced value the developer is receiving from greater height and FAR as well as pro formas that identify the "internal rate of return". While this economic analysis is helpful to understanding the enhanced value the developer is receiving from the height and FAR incentives, it is not the primary means by which the appropriate level of community benefits is determined. Benefits currently negotiated in these agreements are being guided by the five priority categories identified in the LUCE and the extensive public process associated with the project and the Area Plans. While the framework for community benefits in the Plan areas is still being developed, prioritization of community benefits is being informed by draft principles and results from the community engagement process and an enhanced understanding of existing and future needs. In addition to imposing the legislatively enacted impact fees listed above, the City has used the economic analysis as one consideration when negotiating community benefits such as transportation infrastructure, publicly accessible green open space, affordable housing, contributions to childcare and cultural arts, first source hiring, and historic preservation.

The LUCE's reliance on the development agreement process is based on the assumption that this process "has greater public review and participation, allows more flexibility to create high-quality projects and achieve greater community benefit, providing the greatest discretionary control to the City" (LUCE, p. 3.2-6). While these assertions may be valid, a carefully conceived approach for deriving community benefits from Tier 2 projects could have similar attributes. Moreover, in some cases requiring development agreements may be a disincentive for desired projects that conform to LUCE policies. This paper is predicated on the assumption that, in many cases, a typical adjudicative, discretionary review process is sufficient to achieve the community benefits the City was seeking when it adopted the LUCE. This paper does not propose revising the LUCE to allow more intense development to be processed under the Tier 2 procedures but it does suggest approaches that are intended to ensure that projects approved through a conditional use permit process will have a high level of public review, will be high-quality development, and will also generate substantial benefit for the community.

Based on the very specific policies that the LUCE incorporates, there is good reason to conclude that the City can formulate a regulatory structure that will provide benefits from projects that are approved through quasi-judicial review (e.g. discretionary permits) from a specific list. One of the objectives of this paper is to evaluate various ways to instill more clarity and objectivity into the development review process by specifying benefits and bonuses in the Zoning Ordinance that will, in some cases, even be available through an objective ministerial procedure.

## **ESTABLISHING AND CALCULATING BENEFITS AND INCENTIVES**

There is considerable variation among the types of incentives cities offer and the range of approaches cities use to grant them. Increasingly, however, ordinances reflect the view that new development should provide benefits that are proportionate to the intensity and impact of a project. The LUCE establishes a tiered system that stipulates the types of benefits that must be provided to exceed base heights, but except for affordable housing does not quantify the benefits associated with particular incentives or bonuses.

The process for determining how to implement Santa Monica's approach to achieving public benefits must distinguish those basic requirements that are imposed on new development as baseline standards in the Zoning Ordinance versus those that the City imposes through discretionary review. All development, including projects that do not require discretionary review, have to comply with a wide variety of standards and requirements that the updated zoning ordinance will incorporate to implement the LUCE and other General Plan requirements. These include, but are not means limited to transportation demand management (TDM) measures and requirements for incorporating amenities such as open space, sidewalks, landscaping, etc. In some cases and subject to applicable legal requirements, the City may require that these features be accessible to the public. Projects subject to discretionary review are subject to an additional level of requirements imposed on a case-by-case basis to minimize the specific detrimental effects of new development through the environmental review process or as when the City requires the provision of benefits through negotiation of development agreements. According to the community benefits process that the LUCE establishes projects that are only code compliant or are not located in areas where incentives are available would not be eligible for bonus height/building intensity or other incentives.

The LUCE provides relatively specific direction regarding the incentives that will be offered in exchange for providing different types and levels of affordable housing because of the City's historical priorities. The LUCE also lists programs and measures that can be used to reduce traffic congestion, preserve historic structures, and achieve other goals but these are more difficult to quantify and tend to be far less detailed. Development above the base height on Lincoln Boulevard, for example, will be required to participate in a shared parking district and TDM strategies (LUCE p. 2.4-71) but the strategies are not described. Projects on Lincoln and Pico Boulevards that provide community benefits other than affordable housing may also receive approval to increase FAR from 1.5 to 1.75 subject to Tier 2 discretionary review but no further guidance is provided regarding the type or value of benefits eligible for consideration. The Ordinance will need to provide additional detail about how these policies should be applied. Key issues to be resolved are the procedures for determining which benefits may be offered and how they relate to specific increments of development.

### ***Procedures for Identifying, Calculating and Granting Benefits***

Incentive systems should be predictable, equitable and easy to administer. To comply with principles of due process and avoid the abuse of discretion or claims of arbitrariness, adjudicative permit procedures (in contrast to the legislative process applicable to development agreements) may not rely on individual, case-by-case negotiations. Moreover, codifying the benefits regulations in the Zoning Ordinance provides an opportunity for public input and review up front and as a baseline, in addition to review during any discretionary actions.

As recommended by the American Planning Association, the Ordinance should describe the types of community benefits and amenities that would make a project eligible for additional height or floor area. Rather than listing specific community projects, the Ordinance should establish a process for identifying specific projects such as neighborhood parks and street improvements that would be separate from the zoning approval process. The development review process for applicants who pay in-lieu fees to contribute to these projects could be shorter. The Ordinance should also establish a format and methodology for how community benefits will be calculated and the bonus height/intensity rewarded and provide a process to answer the following questions:

- *How will the relative value of benefits be calculated?* As the analysis of peer communities reveals, there are many ways that cities have allocated awards for community benefits, including: (1) a point system where projects qualify for bonus points based on whether the project meets certain criteria; (2) development value/pro forma-based where the bonus is related to the increase in the

project's value, which requires an analysis that complies with the California Supreme Court's admonition that there must be a reasonable relationship between the community benefit cost and the adverse or deleterious public impact of various development intensity levels; or (3) pass/fail thresholds, a menu of benefit options that specifies the additional height or density available to projects that incorporate amenities selected from a specific list. In each case, the points or thresholds are converted into a percentage increase in height or FAR, up to some maximum.

- *How will benefits be prioritized?* The various districts and typologies defined in the LUCE have different priorities. For example, while trip reduction and traffic management may be critical in high traffic areas, such as Activity Centers and Mixed-Use Centers, they may not be a high priority in lower traffic areas, such as residential neighborhoods. The community benefits program can allow for prioritization by district to ensure that the intent of the LUCE is met and the most relevant benefits achieved.
- *Who will decide?* The regulatory program will also need to define the decision-making process. This paper helps to weigh the benefits and drawbacks of a ministerial process (e.g. a menu of options with clear findings for staff review and determination) versus discretionary review (e.g. through the development agreement process or determination by the Planning Commission or other body).

### ***Calculating the Value of Benefits and Incentives***

In order for incentives to work, they need to be grounded in local real estate economics (i.e., they need to really encourage developers to build what is wanted) and they need to offer bonuses that exceed what would otherwise be available. Economic analysis may be used to assess the feasibility of incentives in comparison to the cost of providing community benefits.

The following table, which is included only for illustrative purposes, shows one approach to assigning value to specific benefits that uses a point system. By earning points a project could be entitled to additional height, additional FAR, or a combination of elements that would increase the intensity and value of the project. A separate table would list the bonuses provided to projects that achieve a specific number of points. As the table below shows, values can be assigned based on their monetary value, physical size, or percentage of the site. An economic valuation study can help to establish the value for various components. Even if the provision of public open space, right-of-way improvements, and other exactions for public use are enacted by ordinance, there is a body of case law stating that incorporating such benefits as zoning standards requires analysis to demonstrate that there is a reasonable relationship between the benefit and the detrimental impact of the subject project and that the basis for calculating point costs are roughly proportionate to benefits obtained.<sup>1</sup>

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<sup>1</sup> See *San Remo Hotel v. City & County of San Francisco* (2002); *Ebrlich v. Culver City* (1996), *Building Industry Association v. City of Patterson* (2009)

**TABLE 2A: RELATIVE VALUE OF SAMPLE BONUS FEATURES**

<i>Type of Benefit</i>	<i>Maximum Points</i>	<i>Basis for Calculating Points (Pts.)</i>
Publicly Accessible Open Space exceeding park-dedication standards	50	50 pts: 15 percent+ of site area (min. 2,000 s.f.) as privately owned open space 35 pts: 10 percent+ of site area (min. 1,600 s.f.) as privately owned open space. 20 pts: 5 percent+ of site area (min. 1,000 s.f.) as privately owned open space. 10 pts: Contribution to citywide parks fund
Sustainable Design	30	20 pts: If 75 percent of total building roof as accessible eco roof, provided eco roof and “eco landscape” together exceed 50 percent of total site area. 25 pts: LEED™ Platinum or equivalent (third-party certification req’d) 20 pts: LEED™ Gold or equivalent (third-party certification req’d)
Alternative Energy	20	20 pts: If 10 percent of total building energy load provided by solar panels or other on-site renewable sources, including co-generation.
Public Right-of-Way Improvements	30	Pts to be based on dollar value of off-site improvements x 10 divided by average development cost per square foot or other case-by-case determination.
Utility Undergrounding	20	Pts to be based on dollar value of undergrounding x 10 divided by average development cost per square foot or other case-by-case determination.
Transportation Demand Management	20	Pts based on meeting a menu of TDM elements (transit passes, bike lockers and showers, guaranteed ride home, etc.) 5-yr. TDM commitment required, and TDM obligations may be revised based on 5-yr. review
Family Friendly Development exceeding basic requirement in the zoning ordinance	20	Projects providing more than 10 percent of housing units as three bedroom or larger units: 15 pts: More than 50 percent of total gross floor area for residential use 12.5 pts: Less than 50 percent of total gross floor area in residential use 1 pt: For each 15 sq. ft. per unit of common area open space with amenities for children, teens or seniors that exceed minimum standards.
Neighborhood Centers Retail, restaurants/cafés, public uses, and flex spaces in designated Centers	15	7.5 pts: For each 15 percent increase in building frontage devoted to ground-floor space permanently reserved for neighborhood retail, restaurants/ cafés, flex spaces, public or art-related uses above a base requirement of 60 percent of the building’s principal frontage (with the min. depth for space required).
Small Businesses	15	7.5 pts: For each 15 percent of the total gross leasable area for non-residential uses in a building are devoted to small-businesses.
Recycled or gray water use	10	Allowed only for a project with dual plumbing to accommodate recycled/gray water for more than (50percent) of building and site water use
Public Parking	30	One square foot of bonus floor area allowed for every square foot of public parking provided, above the minimum required by the Ordinance up to maximum bonus of 2.0 FAR. Parking must be permanently available for public use subject to easement with restrictions and covenants acceptable to City.
Total Points	100	(Theoretical maximum exceeds 100, but only a maximum of 100 points will be credited to the bonus FAR/bonus height calculation.)

### ***Identification of Additional Bonuses or Community Benefits***

The LUCE identifies five categories of community benefits in exchange for height and FAR bonuses. However, there may be other benefits that are consistent with and further implement the vision of the LUCE as well as other types of bonuses that may provide incentives for project applicants.

### ***Evaluation and Adjustment***

To ensure that community benefit objectives are still relevant and the requirements are still salient, the Zoning Ordinance must allow for periodic review, evaluation and adjustment over time. For example, the City may decide that the Citywide or neighborhood need for a particular type of facility has been met and would like to encourage more TDM measures instead. Also, the value of certain benefits may decline because changes in technology have made them very inexpensive or because they are required by statute or ordinance. This was the case when the State Green Building Code went into effect and some previously optional building features became mandatory. The Ordinance must provide an opportunity for regular review and revision.

### 3 Review and Analysis of Peer Communities

This section describes how other cities have structured their community benefits and bonus height/intensity programs. These cities include: Berkeley, Chicago, Emeryville, Juneau, Portland, Seattle, Tampa, and Vancouver. The analysis is based on review of city ordinances and supplementary information available online. It highlights those aspects of each set of procedures that may be appropriate for consideration by Santa Monica.

**TABLE 3A: RELATIVE VALUE OF SAMPLE BONUS FEATURES**

<i>Jurisdiction</i>	<i>Program Type</i>	<i>Bonus Type</i>	<i>Community Benefits</i>
Berkeley	Agreement	Streamlined entitlement process	Environmental benefits and sustainability improvements above what is required
Chicago	Development costs and criteria-based	Residential and non-residential intensity (FAR)	Affordable housing, streetscape improvements, green roofs, underground parking, parks/plazas, adopt-a-landmark, and others.
Juneau	Points at discretion of Director	Residential density and height	Public improvements, views, sensitive lands preservation
Portland	Stated percentage/points bonus	Residential density	Family-friendly features, green building, sound insulation, open space, crime prevention
Seattle	Criteria-based	Residential and non-residential intensity (FAR)	Affordable housing, child care, open space, landmark preservations
Tampa	Development costs of amenities	Residential and non-residential intensity (FAR)	Public improvements, affordable housing, green building, public art
Vancouver	Stated percentage/points bonus	Residential density	Alternative transportation improvements (including TDM)

## BERKELEY GREEN PATHWAY

The City of Berkeley has adopted zoning amendments to implement a new Downtown Area Plan to achieve greenhouse gas reduction targets and create an environmentally healthy and sustainable downtown. <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=832> One of the key components of the Plan is to require environmentally sustainable buildings that meet LEED Gold or equivalent; car sharing, on-site bike parking and transit passes; on-site open space or in-lieu fees; and “unbundling” parking rents from dwelling unit rents.

As proposed in the Plan, which was also the subject of a voter-approved ballot measure, the implementing ordinance establishes a voluntary “Green Pathway” development review process that streamlines the permit process for buildings providing additional public benefits that exceed the requirements. Notably, since the Green Pathway is voluntary, applicants waive certain rights and agree to certain obligations that the City could not otherwise impose in return for certain processing benefits. In particular, Green Pathway projects must provide affordable housing and pay prevailing wages as described in the table below. The ordinance authorizes the City Manager to issue regulations to implement the Green Pathway program including requiring recorded agreements or other measures to ensure that the public benefits will be provided as stipulated in the ordinance.

Similar to the LUCE, the Downtown Area Plan stipulates two tiers based on building height (above and below 75 feet), with concessions/requirements and streamlining provisions based on these tiers.

**TABLE 3B: CONCESSIONS AND STREAMLINING BY BUILDING HEIGHT TIER**

	<i>Tier 1: Developments At or Below 75 Feet</i>	<i>Tier 2: Developments Over 75 Feet or 100+ Dwelling Unit and Hotels</i>
<b>Concessions/ Requirements</b>	Provide 20 percent affordable housing (for very low-income households) onsite or in the Downtown Area (or pay into a housing trust fund).	
	Waive right to the State Density Bonus Law.	
	Employ at least 30 percent of a project’s construction workers from Berkeley.	
		Construction workers must be paid prevailing wages.
		16 percent of construction workers should be apprentices from a State Certified Apprenticeship program.
<b>Streamlining Process</b>	Projects may be approved as a matter of right with a Zoning Certificate if they comply with the applicable zoning requirements, standards and requirements in this Chapter and the Downtown Design Guidelines and the property does not include an historic resource. Such projects shall be subject to design review and require a determination that the property is not an historic resource.	
	Design Review Committee determines whether the project conforms to the Downtown Design Guidelines and must action within 90 days.	
		The Zoning Adjustments Board shall take final action within 210 days.

The Planning Commission has recommended approval of the draft ordinance, which is still under review by the City Council. Because of the additional benefits Green Pathway projects have to provide and the requirement for review by the Landmarks Preservation Commission to ensure that the property is not an historic resource, applicants may conclude that the streamlined ministerial approval process is not a sufficient incentive to pursue this option.

## CHICAGO DOWNTOWN DENSITY BONUSES

A downtown density bonus program offers residential developers bonus square footage in exchange for a variety of amenities, including for the provision of affordable housing, public open space, and green roofs: [http://www.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordina nc?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicagozoning\\_il](http://www.amlegal.com/nxt/gateway.dll/Illinois/chicagozoning/chicagozoningordinanceandlanduseordina nc?f=templates$fn=default.htm$3.0$vid=amlegal:chicagozoning_il).

The table below describes a sample of amenities available to applicants. For some amenities, the way that bonuses are calculated use factors (e.g., 0.3 to 2, as shown below) to assign a premium on the items that are more desired by the city. A worksheet helps applicants to calculate amenity values and bonus eligibility.

**TABLE 3C: CHICAGO BONUSABLE AMENITIES (SAMPLE)**

<i>Bonusable Element</i>	<i>How it Works</i>	<i>Approval</i>	<i>Maximum Bonus</i>
Affordable Housing	On-site units: four square feet of market-rate bonus space for every square foot of affordable housing provided. In lieu fee: equal to the bonus floor area multiplied by 80 percent of the land value of one square foot of buildable area.	Zoning Administrator	20 -30 percent of the base FAR, depending on the zone
Outdoor Through-Block Connections	Bonus FAR = (area of the outdoor through-block connection ÷ lot area) × 1 × Base FAR. Length, landscaping, art, and accessibility requirements.	Zoning Administrator	None
Sidewalk Widening	Bonus FAR = (setback area devoted to widened sidewalk ÷ lot area) × 2 × Base FAR. Width of sidewalk, length, landscaping requirements.	Zoning Administrator	None
Green Roofs	Bonus FAR = (area of roof landscaping in excess of 50 percent of net roof area ÷ lot area) × 0.30 × Base FAR. Size, soil, and planting requirements.	Zoning Administrator	2 FAR
Streetscape Improvements	Cost of 1 square foot of floor area = 80 percent × median cost of land per buildable square foot. Location, landscaping, and lighting requirements. *	Planned Development Approval Process	20 percent of the base FAR
Transit Station Improvements	Cost of 1 square foot of floor area = 80 percent × median cost of land per buildable square foot. Improvement type and location requirements. *	Planned Development Approval Process	20 percent of the base FAR
Adopt-A-Landmark	Cost of 1 square foot of floor area = 80 percent × median cost of land per buildable square foot. Location, identification by the Commission on Landmarks and compliance with landmark guidelines. *	Planned Development Approval Process	20 percent of the base FAR

\* Floor area bonuses for qualifying improvements based on the value of property within the geographic area, based on sale prices within most recent 5 years and the following formula: Cost of 1 square foot of floor area = 80% × median cost of land per buildable square foot.

### How It Works

For projects that are subject to planned development review, the Zoning Administrator reviews proposed floor area bonus requests and make a recommendation to the Commissioner of Housing and Economic Development and the Chicago Plan Commission, who in turn make a recommendation to the City Council. Decision-making bodies must evaluate proposed amenities based on their contribution to and the degree to which they enhance the quality of life and benefit the public in the surrounding area. Before the issuance of any final zoning certificate or final building permit for a building that includes bonus floor area pursuant to this section, the applicant must file with the Zoning Administrator a bonus worksheet that identifies the improvements or public amenities to be constructed and the bonuses allowed.

## JUNEAU RESIDENTIAL DENSITY BONUS FOR PRESERVATION AND IMPROVEMENT

The City of Juneau awards residential bonus density and height for “major” developments through a more discretionary program (Chapter 49.60) that seeks to preserve sensitive land, provide public facilities, enhance alternative transportation, develop a mixed-use project with residential, and protect scenic views. The Planning Director determines the number of points awarded and the Commission is responsible for review/approval: [http://www.juneau.org/law/code/documents/49.60\\_Bonus\\_Procedures\\_And\\_Policies\\_001.pdf](http://www.juneau.org/law/code/documents/49.60_Bonus_Procedures_And_Policies_001.pdf)

**TABLE 3D: JUNEAU BONUSABLE AMENITIES**

<i>Bonus Amenity</i>
Protection of and provision of public access to sensitive areas
Non-vehicular transportation, such as pedestrian paths, sidewalks, and bike paths
Alternative transportation, such as bus pull-outs and shelters
Traffic mitigation on public roads
Public services and facilities, such as improvements to firefighting/fire risk and provision of sewer connections, water connections, parks, storm drain connections, or street lights
Reductions in the consumption of energy and/or peak energy demand
Mixed-use residential development in the downtown area
Project design that provide for scenic vistas from public places or, in the commercial, waterfront and mixed-use districts, that provide storefront awnings, marquees and canopies over public ways
More than the minimum required percentage of vegetative cover

### How it works:

- Discretionary Calculation: The planning director determines the points accrued based on (1) the extent to which the proposal furthers the intent of the stated policies; and (2) the magnitude of the benefit or amenity with respect to the size of the development. The planning commission approves the bonus determination.

## PORTLAND DENSITY BONUS PROGRAM TO ENCOURAGE FAMILY-ORIENTED HOUSING

The City of Portland has an “amenity bonus” program (33.120.265) within its Multifamily Zones designations: <http://www.portlandonline.com/auditor/index.cfm?c=28197&a=53296>. The objective is to improve livability in multi-family developments and promote family-oriented housing. Developers can choose the amenity they wish to provide including: family-friendly features, green building, sound insulation, open space, and crime prevention. As described in the code, the amount of the bonus for each option is a result of balancing several factors:

- The likelihood that the amenity will be provided without the use of incentives;
- The potential cost to the developer; and
- The importance of the amenity.

**TABLE 3E: PORTLAND BONUSABLE AMENITIES**

<i>Residential Amenity</i>	<i>Bonus Percentage</i>
Outdoor recreation facilities	2 percent for each half of 1 percent of the overall project development cost spent on outdoor recreation facilities. Maximum of 10 percent.
Children’s play areas	5 percent. Must comply with standards for size, layout, play equipment fencing.
Three bedroom units	5 percent if 10 percent of development’s units have at least 3 bedrooms (10 percent if 20 percent+).
Storage areas	5 percent. Must comply with standards for size, location, and type.
Sound insulation	10 percent. To qualify, interior noise levels must be reduced in three specified ways.
Crime prevention	10 percent. Must comply with Portland Police Bureau’s Residential Security Recs.
Solar water heating	5 percent. Applicants must provide documentation that provisions are met.
Larger outdoor areas	5 percent. At least 96 square feet of outdoor area is required for each dwelling unit.
<b>Total</b>	<b>Maximum 50 percent</b>

**How it works:**

- **Computation:** The percentages of all the bonus options included in the project are added together. The total is then applied to the allowed number of units to determine the additional units allowed.
- **Maximum:** The maximum density increase allowed for a development is 50 percent.
- **Compliance:** The bonus amenity standards must be met in full to receive the bonus; exceptions are prohibited. Adjustments to the development standards of the base zone, overlay zone, or plan district are prohibited if the project is to receive any density bonuses.
- **Documentation:** It is the responsibility of the applicant to document that all of the amenity bonus requirements are met. Documentation is required prior to issuance of building permits.
- **Covenants:** The applicant must sign a covenant that ensures that the amenities provided to receive any bonus density will continue to be provided for the life of the project.

**SEATTLE BONUS PROGRAM FOR GREEN BUILDING AND AFFORDABLE HOUSING**

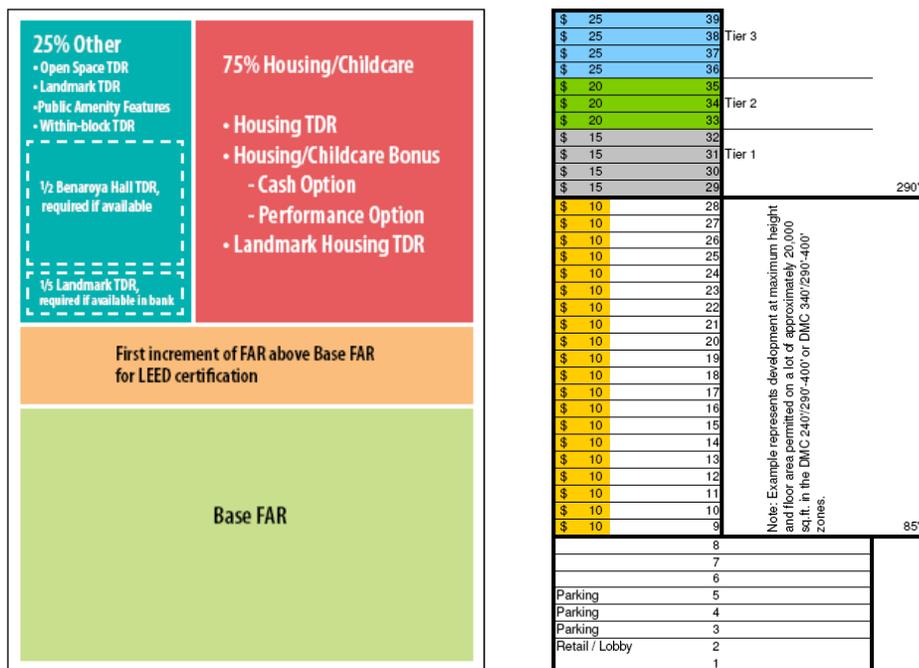
The City of Seattle allows bonus building intensity and height for both commercial and residential buildings in exchange for LEED certification (or equivalent), affordable housing, child care, and other amenities: <http://www.seattle.gov/housing/incentives/default.htm>. To receive the first bonus increment of FAR above the base, developers must achieve LEED Silver certification (although this is will soon be a base requirement). To receive the second bonus increment of FAR for commercial developments, applicants must participate in a combination bonus/TDR option: 75 percent of the additional floor area must be earned through affordable housing/child care options, and the remaining 25 percent through other menu options. For residential buildings, the next increment of building height may be obtained through the provision of affordable housing or in lieu fees (although the latter is only an option for residential buildings over 85 feet).

**How it Works**

The bonus program is implemented through a process, which authorizes the Director of the Office of Housing to accept and execute a covenant as a condition of approval prior to issuance of a building permit. In practice, applicants have only achieved bonuses through the payment of in-lieu fees. The City is considering ways to prioritize the production of affordable housing over in-lieu payments. In addition, the applicability of different requirements and priorities to various locations and districts in the City has proven

to be onerous for staff and complicated for applicants. The City is looking to consolidate the program into one set of provisions: Chapter 23.58A.

TABLE 3F: SEATTLE INCENTIVE PROGRAM



Bonus intensity for commercial buildings requires LEED certification to obtain the first FAR bonus beyond the base, then a combination of housing/child care and other amenities.

Bonus building height for residential buildings also requires LEED certification to obtain the first height bonus beyond the base. To achieve additional height bonus, the applicant must build affordable housing on-site, or contribute in-lieu fees, calculated as the lesser of the actual construction costs of the units or the per square foot of net residential floor area, as illustrated above.

### TAMPA BONUS PROGRAM FOR TRANSIT, STREETScape AND PUBLIC IMPROVEMENTS

The City of Tampa awards bonus intensity (FAR) for development in planned development (PD) districts (Sec. 27-328) and the Central Business District (CBD) (Sec. 27-329) in exchange for the provision of community amenities, including transit stops, pedestrian and streetscape improvements, and public facilities/services. The calculation method for bonuses in the CBD is based on development costs. The zoning administrator determines compliance with the program and reports findings to the City Council for consideration. This regulatory program is described below and in extensive detail in the code: <http://www.municode.com/resources/gateway.asp?pid=10132&sid=9>. Tampa has also adopted provisions for negotiating amenities and bonuses for the PD districts through developer agreements. Under this procedure, which is not described below, the applicant proposes the nature and timing of the amenities proposed, desired density/intensity increase and penalty for noncompliance.

**TABLE 3G: BONUSABLE AMENITIES FOR TAMPA CENTRAL BUSINESS DISTRICT (PARTIAL LIST)**

<i>Bonus Amenity</i>	<i>How Amenity is Calculated</i>
Attainable housing*	10 percent of the project’s dwelling units as affordable housing
Public open space*	Based on development costs (construction costs + land value)
Transit support subsidy*	The developer shall fund on either an annual basis or as a lump sum payment, the cost per rider based on the projected population of the project. The subsidy shall be provided for a period of no less than 20 years with the first annual payment made to the Transit Authority prior to the issuance of the first certificate of occupancy for the development.
Child care center space	Need is based on the estimated number of children generated by the project multiplied by 85 square feet per child which determines the required square footage. The percentage of that total requirement provided shall be equal to the bonus (maximum limit is 100 percent).
Green Building	Leadership in Energy and Environmental Design certified construction

\* Signify the City’s current priorities.

**How it works:**

- **Computation:** Bonus intensity is based on the amenity’s construction cost (based on RS Means index) and land value (calculated by CBD Sub-District or the most recent, recorded sales price, per property appraiser and/or clerk of the circuit court records, whichever is greater). In order to fine-tune the incentive, a cost factor is applied to either increase or decrease the impact. A bonus cost ratio of 10:1 means that for every \$1 contribution to the City in the form of a bonus amenity, the developer receives \$10 in equivalent development dollars, which then translates to a bonus FAR based on the proposed improvements SF overall development costs.
- **Prioritizing Amenities:** Developments that propose to incorporate the City’s high priority amenities (see table above), receive an additional 0.10 in FAR per amenity up to the maximum allowable.
- **Approval:** The zoning administrator determines compliance with the program and reports findings to the City Council for consideration. Subsequent to approval and prior to the issuance of the first permit for construction, the developer must submit certified materials and construction cost estimates to the zoning administrator for review of compliance with the bonus-related rezoning conditions.

**VANCOUVER RESIDENTIAL DENSITY BONUS TO ENCOURAGE ALTERNATIVE TRANSPORTATION**

The City of Vancouver awards residential density bonuses and reductions in the transportation impact fee in exchange for transportation improvements, including transportation demand management (TDM) measures. The program identifies bonus points/intensity percentage increases for various amenities, awarding bonuses only if at least five amenities are provided. The objective is to encourage development within the Transit Overlay District (20.550.050):

[http://www.cityofvancouver.us/MunicipalCode.asp?menuid=10462&submenuID=10478&title=title\\_20&chapter=550&VMC=050.html](http://www.cityofvancouver.us/MunicipalCode.asp?menuid=10462&submenuID=10478&title=title_20&chapter=550&VMC=050.html)

**TABLE 3H: VANCOUVER BONUSABLE AMENITIES**

<i>Bonus Amenity</i>	<i>TIF Reduction/ Bonus Percentage</i>
Construction of direct walkway connection to the nearest arterial	1 percent
Installation of pedestrian-convenient information kiosk, with maintained information	2 percent
Installation of on-site sheltered bus-stop or bus stop within 1/4 mile of site	1 percent
Installation of bike lockers	1 percent
Development to be occupied by employer subject to Commute Trip Reduction Ordinance	4 percent
Voluntary compliance with Commute Trip Reduction Ord., where compliance not required	5 percent
Connection to existing or future regional bike trail	1 percent
Direct walk/bikeway connection to destination activity	2 percent
Construction of on-site internal walk/bikeway network	2 percent
Installation of parking spaces which will become paid parking	3 percent
Installation of preferential carpool/vanpool parking facilities	1 percent
Regular distribution of TDM information packet to all new tenants	1 percent
<b>Total (Maximum)</b>	<b>24 percent</b>

**How it Works:**

- **Transportation Impact Fee Reduction Computation and Compliance:** Each amenity is assigned a percentage reduction based on nationally accepted relationships between TDM measures and traffic generation. For actions which require maintenance, the TIF reduction granted shall be revoked and the amount of the reduction shall become due if the regular maintenance is discontinued in whole or in part during the six years following the granting of the TIF reduction.
- **Residential Density Bonus Computation:** Any development within the first tier of the Transit Overlay District shall receive a bonus equal to the percentage shown if five or more of the actions listed are implemented.

**CONCLUSION**

The survey of community benefit programs illustrates several trends and preferences that can inform Santa Monica’s evaluation of alternative approaches:

- There is a preference for menu-based programs that employ a list of benefits from which the applicant can choose the community benefit to be offered. Benefits should be prioritized based on neighborhoods, zone districts.
- Quantifying and/or assigning a value to bonusable features is desirable because it makes the process more transparent for the public and provides more certainty for applicants, who can incorporate the cost of benefits into a financial pro forma
- Except for affordable housing, where ordinances typically quantify the amount of housing and depth of subsidy required for eligibility, higher cost benefits usually require more discretionary review.
- It is possible to offer incentives without discretionary review when there is a menu of specific benefits, which have a quantified point value.

- Staff-level approval of use permits may be workable where the regulations specify clear criteria and rules for making decisions, specific and quantified benefits will be provided and, there is little or no need for case-by-case negotiation.
- Providing flexibility for “alternative compliance” will typically require more public review and approval by the Planning Commission and/or elected officials.
- Except for Berkeley, cities have not offered expedited or streamlined processing as an incentive. Most of the cities do, however, allow Staff-level approval of some projects providing benefits or authorize Staff to negotiate a package of benefits from a pre-approved menu. Appeal to a higher-level body is typically provided in such cases.

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## 4 Recommendations

The following recommendations draw from the review of incentive programs that other cities have established emphasizing those approaches that appear most appropriate for Santa Monica in light of the specific goals of the zoning update.

### IDENTIFICATION AND EVALUATION OF BENEFITS

- **Identify List of Community Benefit Projects:** Establish a public process to identify a set of specific projects that could be provided by developers in exchange for additional floor area. This list, which could probably be incorporated in the Capital Improvement Program, should be the outcome of a community-based effort that is separate from the project approval process and structured to allow participation from all members of the community, regardless of whether they are associated with a neighborhood or community organization. The process should be designed to generate list of projects that will provide citywide benefits as well as projects that will benefit specific neighborhoods or districts. The list should be updated on a regular basis. Benefits could be prioritized as specific plans are prepared to provide additional opportunity for public input; the Bergamot Transit Village planning process might serve as a model.
- **Conduct Economic Study to Value Benefits:** Update existing nexus studies or undertake an economic study to analyze the relationship of different types of development to demand for facilities and services, the cost of providing facilities, and the value of development bonuses available to applicants. Additional information may be available from economic feasibility studies prepared for recent development agreements. This study should include the list of project types as well as specific projects that could be undertaken by developers and assign a value to the benefit derived from each one. As described earlier, bonus value/criteria may be expressed by a points system, based on construction value, or as binary thresholds (e.g. incorporating at least X square feet of publicly accessible open space for every Y square feet of office space). These criteria may be used in combination, as is appropriate for the type of amenity and adjusted using factors that give more weight and allow a greater development bonus to some benefits over others. The study should be designed to demonstrate that there is a reasonable relationship between and benefit and the subject project and that the assigned value is justified.
- **Determine Requirements for Achieving Benefit:** Once the list of benefit projects has been identified and the values assigned, the ordinance needs to describe the criteria and requirements for obtaining the bonus. This may include a minimum lot size, unit type, whether facilities are provided on-site or within a certain distance from the project site, or the extent of the benefit. For example, for the affordable housing benefit, the requirements may specify the income level mix, minimum number of units, period of affordability, etc. in coordination with Housing Element implementation. The requirements should also be designed to facilitate administration and monitoring over the life of the project.

**Allow Flexibility for Other Appropriate Benefits:** The code should allow for some flexibility to allow additional categories of benefits. Development agreements previously executed and under consideration by the City identify programs, such as student internships, local hiring provisions, employment training, and rehabilitation services. Should the Ordinance allow for these and other different types of benefits that do not fit into the five categories specified in the LUCE? If so, what discretionary process should the City establish to accommodate applicants that may propose a currently undefined public benefit that is significant, consistent with the

LUCE, and substantially beyond normal requirements? Under which circumstances should the City accept in-lieu fees that would be reserved for projects that will require substantially greater more funds than the City has available or can be born by an individual project? Should the City provide incentives to encourage developers to pay fees as it does with cultural arts program?

- **Balance Neighborhood/District Preferences with a Clear Easy-to-Implement Program:** To ensure that the intent of the LUCE is met and the most relevant benefits achieved, the City may want to assign value to various amenities based on the location, type, and size of a project. Community benefit priorities could be ranked by LUCE designations or by geographic area. Trip reduction and traffic management measures may, for example, be more important in mixed use areas where development can have traffic and parking impacts on adjacent residential neighborhoods. Historic preservation may be a higher priority in Ocean Park or Downtown.

## DECISION-MAKING AND ADMINISTRATIVE PROCESS

- **Develop a Transparent Ministerial Process for Tier 1 Bonuses:** There should be a clear ministerial process for allowing Tier 1 bonuses. Through a menu of options associated with the requisite density bonus, an applicant should be permitted a bonus through a ministerial process. Clarifying the actions required and benefits received at the outset will increase the transparency of the process for the applicant and reduce the burden on City staff. The bonus program will also need to define work-force housing (e.g. 130 percent of AMI) and clarify whether it qualifies as a Tier 1 bonus.
- **Conditional Use Permit Process for Tier 2 Bonuses.** Establish two approaches for obtaining Tier 2 Bonuses. Applicants could select bonuses and required benefits from a specific list or propose benefits not identified in the ordinance but designed to achieve LUCE and meet the purposes of the Ordinance objectives based on additional findings. Both options would require approval of a conditional use permit but selection from the prescribed list might allow for expedited processing. In some cases, development agreements may also be required for to obtain Tier 2 bonuses (see LUCE pp. 3.2-5 and 3.2-6)
- **Development Agreements for Tier 3 Bonuses.** In some areas (e.g. Mixed-Use Boulevards, pp. 2.1-32 and 2.1-33), the LUCE states that Tier 3 projects will be subject to a discretionary review process but does not require a development agreement. Even though there may be circumstances under which the City may want to promote projects by making them eligible to receive Tier 3 development bonuses rather than requiring a development agreement, this approach would probably require changes to the LUCE that are not within the scope of the current zoning update. This might include projects in areas where the City believes an additional incentive is needed to encourage development or certain types of projects such as rental housing designed for larger households with children. Which projects should continue to be subject to a development agreement? Are the incentives that Tier 3 offers sufficient to make the development agreement a viable option for projects where the City believes this extra level of discretion is necessary to maximize community participation and benefits?
- **Monitoring Compliance.** The City already has requirements in place to ensure that projects subject to State and local affordable housing programs remain affordable and comply with other conditions of approval. Should the ordinance include provisions for monitoring and enforcement to ensure that other project features intended to provide community benefits are developed and maintained? Should the City monitor the benefits provided to determine whether they provide their anticipated value?

## **OTHER CONSIDERATIONS AND ISSUES**

- **Define and Incentivize Production of Work-Force Housing.** The LUCE proposes to “incentive housing along the City’s commercial corridors where there is transit, local-serving retail and an enhanced pedestrian environment, facilitating a complete neighborhood for a range of socioeconomic levels.” It also states, “While affordable housing is identified as a primary community benefit, the provision of a significantly higher percentage of workforce housing units is also a community benefit.” Although the LUCE doesn’t specify an affordability level that could be used to define such units, in reviewing development agreements since the adoption of the Plan, Staff has suggested interpreting the term to mean housing affordable to households earning up to 130 percent of AMI. This is an appropriate definition that should be incorporated in the revised Ordinance. In order to further encourage the development of work-force housing along commercial corridors and close to transit, the policy requiring approval of a development agreement for any residential or mixed-use project that includes only housing above the first floor (LUCE, p. 3.2-6) should be implemented with regulations stipulating that for purposes of this provision affordable housing means any project in which all of the units are affordable to households earning 130 percent of AMI or less. The staff report for the City Council’s February 14, 2012 study session on housing revealed that the greatest need is in the category of ownership workforce housing. Should incentives be offered to developers that include units for sale that are affordable to households earning up to 130 percent of AMI? Should the ordinance be designed to place a higher priority on rental housing affordable to low-income households earning up to 80 percent of AMI?
- **Development Rights Transfer.** The LUCE proposes to include participation in a Transfer of Development Rights program as a community benefit supporting historic preservation, which would entitle an applicant to a development bonus. Transfer of Development Rights (TDR) is a mechanism that allows development rights that are not used on one site to be transferred and used on another site. TDRs have commonly been used to preserve historic landmarks and open space; manage growth; and protect affordable housing. Communities often utilize TDR as a way to use market forces to pay for preservation allowing property owners who agree to limit development and preserve valuable resources to be reimbursed for this restriction by allowing developers to buy the forgone development rights in another appropriate location.

Saleable development rights are calculated by taking the difference between a property’s development potential and. These development rights may be sold and transferred to a “receiving site” where extra FAR and height can be used to exceed the thresholds otherwise allowed. TDR systems vary by community depending on the jurisdiction’s specific needs or preservation goals. The LUCE recognizes that in order for TDR programs to work, there must be an ample supply of receiver sites where the additional density or height transferred from the sending site can be used without triggering additional requirements. The LUCE goes on to suggest that sites with proximity to transit, particularly along the Expo Light Rail line may be suitable to receive development rights while the Downtown core, which has the highest concentration of commercial buildings with historic and cultural value, may be suitable for designation as donor sites.

The Santa Monica Municipal Code does not currently include a TDR program and although the LUCE identifies areas that are potentially suitable for both sending and receiving development rights, the feasibility of using this mechanism requires further analysis. In the Bergamot Transit Village District the LUCE would allow projects providing community benefits to build up to 75 feet and 3.5 FAR subject to a development agreement and compliance with the Bergamot Area Plan. This may be a sufficient incentive but in other areas with lower maximum development

intensity for Tier 3 projects, the TDR option may be less attractive unless the cost of purchasing development rights is less than the cost of providing other benefits. If the developer of the receiving site has to provide additional community benefits to increase height or FAR to accommodate the transferred development rights there may be limited interest in this option.

Some communities require that both the sending site and receiving site be within a single block or require the donor and receiver parcel to be owned by the same person. Other jurisdictions place no restrictions and allow an open market TDR. Another variation on the TDR system is the creation of a TDR “bank” that purchases and holds TDRs for future sale where additional development is most appropriate. Rather than establishing a formal TDR program, another option would be to specify that the transfer of development rights be among the approaches that can be negotiated in development agreements.

Should the City devote resources to analyzing the feasibility of establishing a formal TDR program? In the interim, should the ordinance identify the sale of development rights as community benefit on a case-by-case basis for projects subject to negotiation of a development agreement?



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