

RESOLUTION NO. 66,001–N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Noes: None.

Absent: None.

Attest:


Mark Numainville, CMC, Acting City Clerk

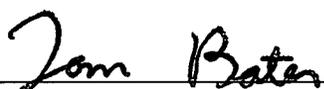
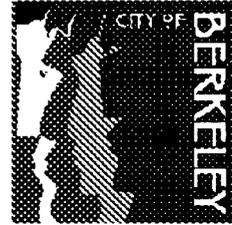

Tom Bates, Mayor

Exhibit A



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

Prepared by
City of Berkeley
Planning and Development Department

City of Berkeley
September, 2011

Table of Contents

Executive Summary.....	3
Introduction	3
Policy Support	4
Fee Purpose	5
Fee Use/Cost of Improvements (Benefit)	6
New Development's Contributions (Impact)	7
Reasonable Relationship.....	9
Fee Calculation.....	10
Applicability.....	12
Credits	12
Exemptions	12
Preferred Uses - Reduction to Fee.....	12
Phasing of Implementation.....	13
Requirements for Funds Use	13
Review.....	13
Appendix.....	14

Executive Summary

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

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

Introduction

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

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

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

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

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

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

Policy Support

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

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

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

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

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

Fee Purpose

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

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

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

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

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

Fee Use/Cost of Improvements (Benefit)

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

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

Table 1: Summary of DAP Improvements

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

New Development's Contributions (Impact)

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

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

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

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

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

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

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

Reasonable Relationship

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

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

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

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

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

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

Fee Calculation

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

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

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

Table 3
Calculation of Service Population – 2010 Development Base

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

Table 4
Calculation of Service Population - 2035

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

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

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

Applicability

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

Credits

Credit for Project Improvements:

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

Credit for Existing Uses:

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

Exemptions

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

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

Preferred Uses - Reduction to Fee

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

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

Phasing of Implementation

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

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

Requirements for Funds Use

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

Review

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

- project improvement costs, and
- development assumptions.

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

Appendix

Appendix A: SOSIP Projects Cost and Financing Report (October 2010) is available at:

http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/SOSIP/AppendixB.pdf