

Downtown Oakland Zoning Program Technical Review

March 2023

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Process

The DOSP includes goals to intensify development in the downtown in order to achieve goals for environmental sustainability, economic growth and City revenues to fund increased levels of service. However, many community members expressed concerns about allowing this increased height, residential density and commercial square footage without creating additional requirements for community benefits. In response, Staff and consultants developed a Zoning Incentive Program (ZIP), which builds this requirement for a specific set of community benefits into the Planning Code.

Several experts in the economic development and housing fields generously offered to review the draft program and the analysis behind it and provide feedback on the analysis and additional insights into how to structure and present the program.

The participants participated in an introductory meeting on March 1, 2023 to learn about the context and analysis and ask questions about the methodology. They had two weeks to review the analysis and draft program, and then provided feedback at a meeting on March 15, 2023.

Participants

City Planning & Consultant Team

- Linda Hausrath, Hausrath Economics Group
- Sally Nielsen, Hausrath Economics Group
- Stephanie Skelton, Public Service Representative, Planning & Building
- Laura Kaminski, Strategic Planning Manager, Planning & Building
- Ed Manasse, Deputy Planning Director, Planning & Building

- Joanna Winter, Project Manager, Planning & Building

Advisors (Internal & External)

- Rick Jacobus, Street Level Advisors
- Sujata Srivastava, SPUR
- Jeff Levin, East Bay Housing Organizations (EBHO)
- Jason Moody, Economy & Planning Systems (EPS)
- Jinnhua Su, Economic Workforce and Development, Real Estate
- Eric Simundza, Economic Workforce and Development
- Shawnee Keck, Economic Workforce and Development, Business Development
- Brian Mulry, Deputy City Attorney

Feedback Summary

Analysis & Program Overall Structure

“Flawless” but subtle analysis: The assumptions, methodology and analysis are flawless. If anything, is overly elegant and subtle and the resulting program may confuse users.

On-the-ground outcomes: Although the analysis is sound conceptually, the program could be over-prescriptive given the dynamic conditions downtown (in addition to more broadly changing economic environment and construction costs, just one restaurant or vacancy could completely change the conditions in an area). What works under one condition might not work as well under another.

Program

Compelling: This is a compelling model for developers (earn increased density for a fee), and is a very thoughtful and pioneering program to achieve these benefits.

Complexity: The program may be too complex for a developer to be able to use easily. Complexity includes:

- Three different fee areas
- Dozens of combinations of base vs. ZIP maximum intensity
- Tables describing the amount of benefits are confusing to use the way they are currently presented

Developers want something easy to figure out. This is particularly important for a developer who doesn't already have a property that they are assessing, but instead are trying to determine where in the downtown to purchase and develop.

[Notes:

1. The fee areas and ZIP will all be mapped on the City's interactive zoning map. A developer would be able to click on their particular parcel and see what the base and ZIP maximum intensities are as well as the fee area, so this aspect is less of an issue.

2. Tables are being updated to show the affordable housing units required as a percentage of the total number of units, which should be easier to use.]

Why so many combinations?: City needs to explain that this complex number of combinations started from a vision of what we want downtown to look like.

Single Fee: Consider a single fee instead of three. You would have to go to the lowest common denominator (for example, requiring \$12,000 instead of \$22,000 per unit for housing), but it would be simpler and this amount of precision is unnecessary given that other factors (construction type, size of site) will have more of an impact than the market area.

Other models: Consider a simple table and map like Emeryville's, which has far fewer combinations of base and outcome. [Note: Emeryville's program was not based on a value capture analysis.]

Separate residential & non-residential projects: Consider requiring the benefits for residential buildings be provided as housing and allowing non-residential projects to choose the other benefits. Another option would be to reserve the incentive program for all the non-housing benefits while increasing the Affordable Housing Impact Fee.

Desired Outcomes

Beneficiaries of benefits: Community members will be concerned about any revenues that go into the General Fund. Benefits need to accrue to BIPOC and low-income communities to address affordability, homelessness, and displacement. Revenues in the General Fund are not guaranteed to do this.

[Note: Tax revenues go into the General Fund. Impact Fees and ZIP in-lieu fees do not.]

Preference for on-site housing?: Providing small quantities of on-site housing is an expensive administrative monitoring task for both developers and the City's Housing and Community Development Department (HCD). Reconsider incentivizing on-site housing. This is a policy question for the City that it will discuss as the 5 year impact fee study considers an inclusionary requirement. Inclusionary requirements provide less units, and they are less deeply affordable. Counterpoint: The fee option under the ZIP is dramatically preferable for developers and they are unlikely to be swayed toward it by a 10% discount for on-site; so this may not be a problem.

State Density Bonus Interactions

State Density Bonus (SDB) Base: If you are considering the ZIP Maximum Density to be a "new base" for the State Density Bonus, wouldn't developers be able to treat the density allowable under Emeryville's program a new "base" for it as well? How would Oakland's program be any different?

SDB vs. ZIP Option: Be clear that developers have the option of choosing between the ZIP and the SDB or both. Otherwise the State will be concerned that you are preventing the SDB from being used.

Use of SDB: One reviewer stated that they believe that half the projects using the State Density Bonus are 100% affordable projects using the SDB for concessions and waivers. Understanding how many

market-rate projects so far are providing on-site units through the SDB could give some indication of how advantageous a developer sees the density incentive.

Concessions: Consider offering concessions and waivers as part of the Zoning Incentive Program to make it more like that a developer will take advantage of it rather than the SDB. These are often the most valuable part of the SDB to a developer, not the increased density itself.

Implementation

BMR Commercial Rate: Determining below-market rate for commercial space is tricky; a discount on a corner would be different from one down the street. Most developers are also subsidizing the ground floor space now.

Tenancing: Consider what happens if a developer can't find a tenant for a BMR commercial space. [Note: Business Development will be supporting with wrap-around services.]

Framing & Presentation

Required vs. optional: The City needs to be clear to stakeholders what is required of development and what is optional. Presenting the ZIP benefits on their own doesn't show the full scope of the benefit that development provides for affordable housing (or other community needs), and can therefore appear inadequate.

The analysis is clear that there is not any additional value captured by the increase in development that could be used for additional benefits under the ZIP. However, the City could consider increasing the *requirements*, such as the affordable housing impact fee.

Impact vs. Value Capture: There is confusion that the ZIP is designed to address the impact of development to housing. It is not; there is already an impact fee for this. Be clear about the other sources of funding for affordable housing (e.g. Measure U, an Enhanced Infrastructure Financing District, etc.).

Obstacles to other funding: Be clear about obstacles to using funding mechanisms other than the General Fund that the ZIP fees could help with (e.g. impact fees can only be used for one-time investments, not maintenance, operating subsidies or below market-rate commercial space).