

DEVELOPMENT INCENTIVE PROGRAM

LAKE MERRITT STATION PLAN AREA



The purpose of this document is to outline the preliminary framework for a Development Incentive Program, a land use tool that could help achieve the vision of high quality new development accompanied by valuable public amenities, such as affordable housing, public open space, better urban design, community centers, public art, streetscape improvements.

What is a Development Incentive Program?

A Development Incentive Program encourages a developer to voluntarily provide some kind of community benefit in exchange for building incentives.

An **Incentive Program** is typically part of a menu of implementation strategies, including zoning requirements and standard conditions for approval, State and Federal grants and matching programs, special district financing, exactions and fees, capital improvement projects, that are used to achieve public policy goals,

Development incentives can include height, density, and Floor Area Ratio (FAR) bonuses; relaxation of parking requirements; fee waivers, and expedited city approvals. Since a Development incentive Program is voluntary, it can not include required development exactions, in-lieu and impact fees, or off-site improvements.

What are the Advantages of an Incentive Program?

A voluntary incentive program is often easier to implement than traditional requirements and exactions, which require expensive and lengthy **nexus studies** - a legally required proof of nexus between an impact of a development and an exaction. Unlike impact fees and other exactions that take a long time to legislate and implement, an incentive program can become a part of the Specific Plan and implemented immediately to guide development in the neighborhood.

What Makes a Good Incentive Program?

A good incentive program is a “win-win” solution for both the public and developers. It must be structured in a way that makes it attractive for a developer to voluntarily provide good quality public amenities. It must be a clear, simple, and predictable program that real estate developers will take advantage of.

In the core of this program is an exchange of value given to a developer in the form of incentives for benefits given back to the community in form of desirable public amenities. The ratio of this exchange is very important. It needs to be fair and make economic sense to both parties. This tool will only work when the incentives for attaining the program goals outweigh the additional development costs incurred. A careful analysis is required to estimate how much value the City should offer in exchange for what amount of public benefit.

Another important feature of a good incentive program is its predictability - a very important aspect for any development. The rules of the exchange are laid out before development commences leaving no room for uncertainty.

Legal Aspects Behind Exactions

The framework for determining the legal aspects of development exactions was established by the famous U.S. Supreme Court cases, *Nolan v. California Coastal Commission* & *Dolan v. City of Tigard*. These rulings require the government to show a clear nexus between the impacts of a development and the burden of a condition. If a city can establish this legally required nexus, it can require a specific exaction from developers, often in the form of in-lieu or impact fees, to offset the direct burdens of a development and promote specific public goals. For example, some cities require developers of large office buildings to invest in road improvements and affordable housing because the addition of new offices will result in increased traffic and demand for housing.

Incentive Programs in Other Cities

The four cities reviewed here use *voluntary density bonus programs* to achieve community amenities and can provide guidance on how to implement a similar system for the Lake Merritt Station Planning Area.

Emeryville, CA

The City of Emeryville is currently drafting new regulations to implement a bonus Floor Area Ratio (FAR), height, and residential density program to encourage developers to participate in a voluntary points-based bonus system in exchange for community amenities. Their draft bonus program would give a developer points for each bonusable element included in their project, be it open space or a childcare facility, which can then be redeemed for additional FAR, building height, and density. The exact incentive-to-benefit ratio (1 sq. ft. of amenity = x ft. of FAR) has yet to be established.

According to their draft program, **the bonus FAR increment** would be capped for each zoning district. The number of points for bonusable amenities and the amount of the additional FAR a developer can receive would be linked via a formula that translates the points into FAR units. In Emeryville, this incremental bonus FAR would range between 0.4 and 2 depending on a zone. Note that Emeryville's allowed FAR ranges between 0.5 and 6 are much lower than those described in the General Plan for the Lake Merritt Station Planning Area.

Each bonusable element would be equal a different number of points. The weight of each element is estimated based on cost, desirability, the amount of bonusable amenities, and their importance for the community. According to the Emeryville General Plan, the bonusable elements include, but are not limited to the following: public open space, family-friendly development (larger units), sustainable design, Transportation Demand Management (bicycle storage), public right-of-way improvements, public parking, neighborhood centers, water efficiency, small businesses, alternative energy, public art, public parking, and historic preservation.

A developer would be free to choose which bonusable amenities to provide and to what extent in order to earn the optimal FAR bonus. For instance, a developer might decide to invest in attractive open spaces, a community center, and public art; or commission a LEED-certified building, improve the streetscape, and contribute to the city's park fund. The points-based bonus system would be sensitive to both the community and the developer's needs, and allow for flexibility.

San Diego, CA

The City of San Diego currently uses a voluntary bonus program to award additional FAR rights in exchange for community benefits. The difference from Emeryville's proposed system is that it is not point based. The table below outlines the San Diego program in detail.

In this example, each bonusable element corresponds to a specific range of FAR increment. There are also a limited number of bonusable elements; therefore, a developer has less flexibility to choose amenities that are most appropriate for a particular site. However, the community has more control over what amenities it would receive in return.

San Diego FAR/ Density Bonus Table:

Public Benefit	FAR Bonus
Urban Open Space 10% of site 20% of site	0.5 1.0
Three-bedroom units	0.5 to 1.0 depending on the share of large units
Eco Roofs	Up to 1.0
Employment Uses	Up to a max FAR
Public Parking	One s.f. of public use parking for every one s.f. of additional FAR
FAR Payment Bonus Program	Up to 2.0
Green Building	Up to 2.0

Density bonus is a density increase over the maximum density allowed by right.

FAR Bonus Increment is the maximum allowed FAR (floor area ratio) above the base FAR in a specific city district.

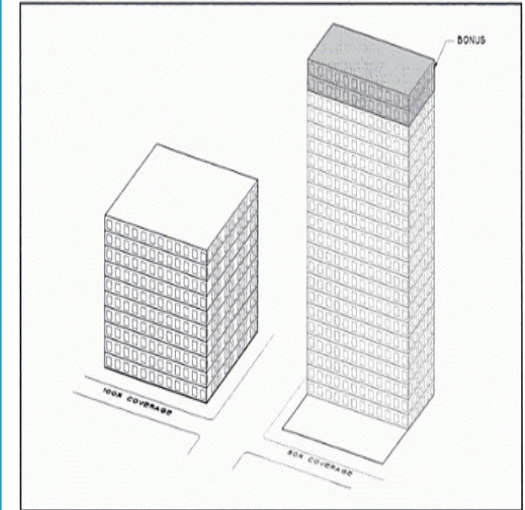


illustration of the bonus FAR in exchange for a building setback

Portland, OR

FAR provisions in Portland consist of *base entitlements* and *bonus provisions*. Portland uses FAR bonuses to achieve neighborhood-specific amenities.

Portland's bonus system encourages specific amenities in specific locations. Unlike in Emeryville or San Diego, the City of Portland is more prescriptive about amenities that it wants for exchange for extra FAR bonus. Each neighborhood district sets its own goals for the future development. This neighborhood-specific approach addresses the needs of local communities in a way area specific plans do so in Oakland. The specific requirements are outlined in the planning code allowing for a predictable development.

Portland rewards developers with bonus provisions for providing public art, water features, bicycle storage, public open space, large dwelling units, below grade parking and other amenities. For example, each square foot of daycare facility, development can receive three square feet of additional floor area; one square foot developed as theater can earn two feet of floor area; and each square foot of rooftop garden receives one square foot of additional floor area.

Seattle, WA (South Lake Union)

The City of Seattle recently changed its development regulations for the high-density, mixed use district known as South Lake Union, and incorporated incentives for increases in height and FAR that will provide valuable neighborhood amenities.

First, Seattle established new development standards to ensure that towers are well spaced and floor plates are limited to preserve openness to the sky. Second, additional height and FAR may only be obtained through contribution of public amenities. As in other examples, the maximum bonus FAR increment is capped.

For commercial development, 75% of the maximum bonus FAR increment can be gained through the provision of affordable housing and child care. For residential development, 60% of the maximum bonus FAR is gained through the provision of affordable housing, and 40% through transfer of development rights - to protect historic buildings.



Rendering of a future street in South Lake Union neighborhood established on the principles of the new development standards.

Applicability to Lake Merritt Station Planning Area

Oakland can learn from the places outlined above as it begins to draft its own development incentive program for the Lake Merritt Station Planning Area. The Oakland incentive program will need to list specific incentives and ask for specific public benefits that make sense for the local community.

Emeryville's draft point based system might be a model for Oakland. However, Emeryville's zoning has much lower FAR limits in a range between 0.5 and 6. The allowed FAR in Oakland's existing Central Business District zoning is already very high, averaging about 17. In the current market conditions where very few large projects take place, it would be difficult for a developer to justify extra spending on community amenities in exchange for a FAR bonus that cannot be profitably used.

San Diego's approach could also be used as a model for Oakland, but more bonusable elements would need to be added to tailor it to the specific needs of the Planning Area, and weights of each bonusable element could be adjusted to incentivize the highest priority improvements. Also, a specific maximum FAR bonus increment would need to be established.

Portland's density bonus system may also be useful in the Lake Merritt Station Planning Area if the community sees a shortage of a few specific amenities that are abundant in other parts of the city. For example, FAR incentives could be given in exchange for community-oriented facilities like youth and recreational centers, but not others like green roofs or water efficiency, depending on priorities. This system might be more prescriptive and efficient at providing what is most needed right now. However, asking for very specific amenities may limit the freedom of developers to choose what makes the most economic sense.

Seattle's incentive program may be too limiting. The South Lake Union neighborhood decided to focus on intensifying affordable housing, child care, and historic preservation, for which FAR bonus is given. Seattle decided that it makes more sense to gain these amenities through incentive zoning and obtain others, like open space and streetscape improvements, through other mechanisms like standard requirements, grants, and special programs.

The most appropriate elements from the example incentive programs outlined above could be combined into Oakland's own incentive program.

Ideas for the Lake Merritt Planning Area's Incentive Program

Here are initial ideas for an attractive voluntary incentive program, which, together with other tools, could be used to bring positive improvements in the Planning Area neighborhoods:

Types of Incentives

Some of the basic voluntary incentives could include:

Reduction in Parking Requirements

Currently, the City of Oakland Planning Code (Chapter 17.116) requires developers to provide at least one off-street parking space per living unit in the Planning Area's zoning districts. One parking space might cost anywhere between \$20,000 and \$60,000, greatly adding to the cost of a development. This requirement may be relaxed in exchange for providing community amenities that encourage alternative modes of transportation, like improved walking and bicycling facilities in this transit-oriented neighborhood where many households do not rely on cars for their daily commute.

Reduction of Permit Fees

Currently, the City of Oakland has a program (Mills Act) that waives certain Planning permit fees for designated historic buildings in order to incentivize preservation and reuse of these resources. Similar approach might be able to be applied to developments that agree to provide community amenities.

FAR/Density/Height Bonus

Development could be allowed to achieve a certain proportion of maximum floor, height or density in exchange for the provision of different types of community benefits.

Reduction in Private Open Space Requirements

Relaxation of existing private open space requirements in favor of privately managed public open space might give the community extra options when it comes to recreation, gathering and events.

Applicability of Incentive Program for Desired Community Benefits

In general, amenities that can be incorporated directly into a development are more easily obtainable, and should be prioritized in an Oakland Incentive Program. On the other hand, off-site improvements to area parks, apprenticeship training, or assistance to small businesses is more readily achieved through other means like specific grants, special funding districts, and in-lieu or impact fees. It could focus on the most important amenities that cannot be otherwise achieved.

Affordable Housing is one of the central concerns in the Planning Area, but it is also one of the most expensive public amenities. A subsidy for one rental unit ranges from \$101,000 to \$141,000; each owner occupied unit requires from \$74,000 to \$234,000 in subsidies. The ratio of incentive benefit to amenity cost might show that relatively few affordable housing units may be achieved through this incentive program alone. State, Federal and other local support for affordable housing needs to be used along side this incentive program.

Family Housing typically includes larger units with multiple bedrooms. In order to accommodate families in the Planning Area, a developer could receive incentives in exchange for provision of these larger, more family-appropriate units.

Youth/Recreation Center is another high-priority community amenity. Since the construction, operation and maintenance of such a facility is a very expensive undertaking, one development project alone is unlikely to provide a sufficient facility, but combining the incentive program with various grants and collaborating with non-profit organizations may make this community benefit obtainable.

On-site Public Open Space might be achievable through an Incentive Program. A developer is likely to consider the creation of attractive plazas and gardens as not only a community benefit, but also as a boost to the marketability of their own development.

Cultural Preservation and Public Art would also be a good fit for an Incentive Program and could focus on providing public art that reflects the cultural identity of the local community. Pavement patterns, building embellishments, historical markers and signs, can provide meaning and tell a story of the place and communities.

Affordable Housing

Under existing State Law (Section 65915-65918), a city is required to grant a density bonus and other incentives to developers that want to provide affordable housing and ask for such bonuses. Chapter 17.107 of the Oakland Planning Code outlines this process in a greater detail. This existing density bonus is linked solely to the provision of affordable housing, but not other desirable amenities. It is different from other height/density/intensity bonuses and incentives in exchange for public amenities.