



Commission on Labor

Regular Meeting AGENDA

Wednesday, July 20, 2022, 7:00 p.m.

To join the meeting online:

<https://us06web.zoom.us/j/85399338378>

To join by phone: Dial US: 1-669-900-6833 and Enter Meeting 853 9933 8378

Commission Secretary: Joshua Oehler JOehler@cityofberkeley.info

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Preliminary Matters

1. Roll Call
2. Public Comments
The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.
3. Approval of Draft May 18, 2022. Meeting Minutes (*Attachment 1*)

Action Items

The Commission may take action related to any subject listed on the Agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

4. Presentation and Discussion - Housing, Unions, and CEQA by Robert Selna (*Attachment 2*)
5. Fair Work Week Policy – Status update (Botello and Katz)

6. Discussion and possible action regarding the role of the Commission on Labor to provide technical assistance to the community (Botello)
7. Berkeley Federation of Teachers (teachers' union) contract negotiations with Berkeley Unified School District (Harlow)
8. Discussion of Labor Education in Schools Subcommittee updates (Schriner)
9. REI Labor Organizing in Berkeley (Scantlebury)
10. City Clerk Agenda Format for Commissions (*Attachment 3*)
11. Future Agenda Items
12. Announcements

Adjournment

Attachments

1. Draft March 9, 2022 Meeting Minutes
2. San Francisco Chronicle Opinion Column from July 3, 2022 – “How a few unions are hijacking California environmental law” by Robert Selna
3. City Clerk Commission Agenda Template - Sample Content

COMMUNICATION ACCESS INFORMATION

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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Written material may be viewed in advance of the meeting at the Housing & Community Services Department, 2180 Milvia, 2nd Floor, during regular business hours or at the Berkeley Public Library, Shattuck/Kittredge Streets, during regular library hours at the Reference Desk. The Commission Agenda and Minutes may be viewed on the City of Berkeley website: <https://berkeleyca.gov/your-government/boards-commissions/commission-labor>.

Secretary:

Joshua Oehler
Health, Housing & Community Services
Department
(510) 981-5408
E-mail: JOehler@cityofberkeley.info

Mailing Address:

Commission on Labor
Joshua Oehler, Secretary
2180 Milvia, 2nd Floor
Berkeley, CA 94704



Commission on Labor

Attachment 1

Draft Minutes

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Preliminary Matters

1. Roll Call

Commissioners Present: Berne, Botello, Harlow, Jones, Katz, Osborne, Scantlebury, Schriener. Absent: None.

Staff: Joshua Oehler

Members of the Public: None.

2. Public Comments

The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

None

3. Approval of Draft March 9, 2022. Meeting Minutes

Vote: (M/S/C: Harlow/ Scantlebury. Yes: Berne, Botello, Harlow, Jones, Katz, Osborne, Scantlebury, Schriener. Noes: None. Abstentions: None. Absent: None).

Action Items

The Commission may take action related to any subject listed on the Agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

4. Presentation and Discussion - Sweatshop Free Ordinance reports for FY2019, FY2020 and FY2021 by Daryl Sweet, General Services Manager, City of Berkeley.
No Action
5. Fair Work Week Policy – Status update for the Council action on April 12, 2022 regarding Commission on Labor Council Report for the proposed Fair Workweek Ordinance (Botello and Katz)
No Action
6. Discussion of Health and Life Enrichment Committee presentation on May 9, 2022 for Fair Work Week Policy (Botello)
No Action
7. Discussion and possible action regarding the role of the Commission on Labor to provide technical assistance to the community (Botello)
No Action
8. Discussion of Berkeley Federation of Teachers (teachers' union) contract negotiations with Berkeley Unified School District (Harlow)
No Action
9. Discussion of Labor Education in Schools Subcommittee updates (Schriner)
No Action
10. Discussion of Labor Shortage Subcommittee updates (Schriner)
No Action
11. Discussion of white paper report for Council regarding Labor Shortage (Berne)
No Action
12. Recommendations to Council regarding State legislation (Katz)
Motion: Recommend City Council support the following pieces of legislation and authorize the Chair or Commissioner Katz to present on legislation:
AB 1949 (Low) - Bereavement Leave
AB 2182 (Wicks) - Family Caregiver Discrimination
SB 1162 (Limon) - Pay Transparency for Pay Equity Act

Vote: (M/S/C: Harlow/ Scantlebury. Yes: Berne, Botello, Harlow, Jones, Katz, Osborne, Scantlebury. Noes: None. Abstentions: Schriener. Absent: None).

13. Future Agenda Items

14. Announcements

Adjournment

Motion to adjourn at 8:26 PM

Vote: (M/S/C: Harlow/ Scantlebury)

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Secretary:

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Most Popular

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- 2. Berkeley law professor calls Josh Hawley's remarks 'transphobic' in...
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OPINION // OPEN FORUM

How a few unions are hijacking California environmental law

Robert Selna

Updated: July 3, 2022 3:17 p.m.





A 222-unit housing development is planned at site of the burned-down Red Star Apartments in West Oakland. The project is stalled after a CEQA challenge.

Leah Millis/The Chronicle 2014

Since its enactment in 1970, the California Environmental Quality Act — or CEQA, as it is widely known — has expanded exponentially beyond its original scope of protecting the natural environment. It now includes numerous public health considerations such as traffic, noise and tenant displacement to its list of “environmental” impacts that must be analyzed in reviewing development projects.

As most people who follow California housing news know, this expansion of CEQA’s scope has become a favorite tool of NIMBYs who file dubious legal challenges under the law to preserve their neighborhood’s status quo. Less known, however, is how special interest groups have harnessed the law not to protect the environment, but to extract a self-serving toll from housing developers.

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As a lawyer who has seen environmentally sound projects in the Bay Area stalled for years by specious CEQA claims, allow me to fill you in on how this racket works. Faced with the prospect of a CEQA lawsuit, housing developers are forced to make a financial choice about whether to fight an expensive court battle, cave to demands or simply give up on their development. Each of these scenarios is lose-lose, stalling or killing projects or driving up the cost of construction — and therefore rents. Typically, developers choose a non-litigation option.

Opponents of CEQA reform argue that litigation is rarely used to stop housing development. Their oft-cited statistic is that only 2% of projects requiring CEQA-mandated environmental impact reports are subjected to legal claims. But that statistic is a diversion; a much higher percentage of projects are targeted for meritless CEQA litigation *threats* rather than actual lawsuits.

In an example from the East Bay, where I represent housing developers, leveraging the threat of CEQA litigation has been the longstanding strategy of an association of four building trade unions — that demand high-priced no-bid contracts from developers in exchange for an agreement to stand down on meritless CEQA claims.

The association goes by the reasonable-sounding name “East Bay Residents for Responsible Development.” In reality, they are the Plumbers and Pipefitters, Local 342; Electric Workers, Local 595; Sheet Metal Workers Local 104; and Sprinkler Fitters Local 483. They make up just a fraction of the trades needed to complete a housing project, but their involvement in politics, including campaign

contributions, and skillful use of CEQA, give them outsize influence over whether housing gets built in cities like Oakland.

I learned firsthand how the CEQA scheme works several years ago while representing a developer on a 167-unit, middle-income housing project on a long-vacant parking lot near BART in San Lorenzo.

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First, my client received a call from an East Bay Residents rep requesting no-bid contracts for its trade unions. My client refused. And so the unions opposed the

project on CEQA grounds, including specious claims that potential construction emissions and a possible catastrophic gas explosion were not properly analyzed. The county planning commission approved the project anyway, but the unions appealed it to the Alameda County Board of Supervisors. That led to a meeting with a supervisor who represented San Lorenzo, where it was made clear to me and my client that the project likely would not be approved by the board. Further negotiations with the unions, however, might be move things along.

There was no discussion of the project's potential environmental impacts.

In the end, my client agreed to use some, but not all of the unions. The supervisors approved the project. But the project's cost — paid in part by future renters — increased significantly. The no-bid union contracts were estimated to be 10%-20% higher those that would go out to bid.

More recently, East Bay Residents went after a proposed 222-unit project, including 16 low-income units, on a vacant lot adjacent to the West Oakland BART Station. In March 2021, the Oakland Planning Commission unanimously approved the project — and specifically noted that the project's environmental review was sound.

After being denied no-bid contracts, however, the trades appealed the commission's approval to the Oakland City Council. They claimed, among other things, that the project's environmental documents failed to adequately assess soil contamination. In reality, the project's property had undergone extensive soil cleanup and had been the subject of three separate environmental studies, including one that covered all of West Oakland, according to the project's developer.

Nonetheless, in September, the Oakland City Council paused the project to consider whether to require yet another environmental report. That move

prompted California's newly formed Housing Accountability Unit to investigate whether the city council violated state housing laws, which prohibit the denial of legally compliant housing projects. The state has still not released the results of its investigation.

On April 19, Oakland's City Council voted unanimously to once again delay the project and requested further review the soils issue. At the close of the meeting,

City Council Member Dan Kalb encouraged the developer to meet with the East Bay Residents for Responsible Development for further negotiations.

About Opinion

Guest opinions in **Open Forum and Insight** are produced by writers with expertise, personal experience or original insights on a subject of interest to our readers. Their **views do not necessarily reflect** the opinion of The Chronicle editorial board, which is committed to providing a diversity of ideas to our readership.

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Based on my experience in San Lorenzo, those words were eerily familiar. It's clear that the only thing negotiable between unions and developers is construction contracts. Environmental impacts either exist or they do not.

Thankfully, state authorities seem to be making good on Gov. Gavin Newsom's recent promises to hold jurisdictions accountable when they wrongly reject housing projects. But it remains unclear if dubious environmental study demands violate housing laws or the extent to which those violations can be enforced if they are indeed illegal. California's Housing Accountability Act limits cities' discretion to reject housing that complies with all planning and zoning laws, but that does not

free a project from having to conduct an environmental review under CEQA.

The fact that so many union CEQA appeals have less to do with environmental concerns than no-bid contracts does not appear to phase many local elected officials. It's simply how business is done.

That's why sharper tools are needed to stop the law's abuse. One Los Angeles developer is suing a CEQA-abusing project opponent, alleging three counts of the

Racketeer Influenced and Corrupt Organizations Act, known as RICO. Plaintiffs use RICO to allege extortion.

So long as unions continue to wield the specter of environmental harm alongside their political influence, California's housing crisis will spiral even further out of control.

Robert Selna is a founder of Selna Partners LLP, an Oakland law firm specializing in real estate and litigation.

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Written By

Robert Selna

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Attachment 3



COMMISSION NAME REGULAR OR SPECIAL MEETING

**Wednesday, July 17, 2019
12:00 PM**

1947 Center Street, Basement - Multi-Purpose Room

Commission Members (Optional/Preference)

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

May insert relevant rules from bylaws here

Minutes for Approval

Draft minutes for the Commissions consideration and approval.

1. **Minutes of June 14, 2019**

From: Commission Secretary

Recommendation: Approve the draft minutes of the June 14, 2019 regular meeting.

Chairperson's Report: *The Commission Chair may make announcements or provide information to the Commission in the form of an oral report. The Commission will not take action on such items but may request the items be placed on a future agenda for discussion.*

Commission Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. May insert public comment rules from adopted bylaws.

Commission Action Items

2. Adopt a Recommendation to the City Council to Proceed with the Proposed \$5 million University Avenue Landscaping Improvements

From: Commissioner Jones

Recommendation: Review University Avenue Landscape Improvement Plan and recommend that Council proceed with the improvements with the exception of a community garden on the University Avenue median strip.

The agenda must be clear on what action, if any, may be taken on an item. Use the 20-word guideline (never use acronyms) when writing the recommendation. Agendas must have enough information to enable members of the public to determine the general nature of subject matter of each agenda item to be discussed. NO ACTION CAN BE TAKEN ON ITEMS THAT ARE NOT NOTICED ON THE PUBLISHED AGENDA.

3. Discussion of Recommendation to Council to Sponsor Earth Day Parade

From: Commissioner Lee

Recommendation: Request that Council Sponsor the Earth Day Parade and waive all associated fees.

4. Consider updates to the Cannabis Ordinance

From: Commissioner Garcia

Recommendation: Review and discuss recommendations from the Ordinance Review Subcommittee and vote on recommendation to the City Council. Changes would relate to delivery-only retailers, lounges, buffers, discretion for retailers, and expansion of cultivation beyond the M District, signage, and changes in ownership/location and retail microbusinesses.

Presentations *(for information only, no final action taken)*

5. East Bay Municipal Utility District Mountain Lion Pipeline plan.

Committee Updates

6. Grants Subcommittee

7. Sidewalks Subcommittee

Information Items: *All items for discussion only and no final action.*

8. Update on Measure T1

From: Commissioner Apple

Items for Future Agendas

These items are not scheduled for discussion or action at this meeting. The Commission may schedule these items to the Action Calendar of a future Commission meeting.

- **Discussion of items to be added to future agendas**

Adjournment

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*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to <<Secretary phone and email>>.*

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*Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at \_\_\_\_\_ Department located at \_\_\_\_\_.*



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I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 10, 2019.

SECRETARY SIGNATURE

Communications

You may list the communications received from the public here (optional).