

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Public Comment: 2440 SHATTUCK AVENUE

From: David Kellogg <david.kellogg@gmail.com>
Sent: Monday, May 23, 2022 2:54 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: Public Comment: 2440 SHATTUCK AVENUE

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Dear ZAB,

Please do not enforce the illegal BMC Section 23.322.040(K)(2) against this housing project. The BMC purports to exclude residents who live in newly constructed homes from participation in the residential parking permit (RPP) program.

The Berkeley codes that seek to exclude various residents are illegal, as explained by former AG Kamala Harris - link: https://oag.ca.gov/system/files/opinions/pdfs/14-304_1.pdf

As stated by then-AG Harris, "we next consider whether, in issuing residential parking permits, local authorities may further distinguish among residents based on the type of dwelling in which they live—for example, by making permits available only to those residents who occupy single-family dwellings or small (two-to four-unit) multifamily dwellings. We conclude that local authorities may not do so." "We conclude that Vehicle Code section 22507 does not authorize local authorities, in issuing long-term residential parking permits, to distinguish among residents **based on the type of dwelling in which they live.**"

During deliberations of the present RPP rules, the Harris memo was brought to the attention of the CoB. The city responded by dropping the plan to discriminate based on building size, and adopted the present rules related to building age. Since the Harris memo doesn't tolerate any discrimination between residents, the City's change was immaterial. The city has never provided an affirmative defense of the current rules wrt to the Harris memo.

Best,
David