

Office of the Mayor

TIME CRITICAL AGENDA MATERIAL

Meeting Date: September 19, 2023

Item Description: Authorizing the City Attorney to Submit an Amicus Brief in Support of the UC Regents in *Make UC a Good Neighbor v. Regents of University of California*

On March 21, 2023, the Berkeley City Council authorized the City Attorney to file an amicus curiae letter in support of UC's petition for review in the California State Supreme Court. The State Supreme Court has accepted this review, so a new amicus brief is needed in support of the University of California Regents' in *Make UC a Good Neighbor v. The Regents of University of California*. The deadline for submittal is September 25, meaning that this item must be submitted as a time critical item in order to meet the deadline.

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or Council Member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. **Per BMC 2.06.060 (D), Time Critical items must be accompanied by complete reports and statements of financial implications.**

If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar



Office of the Mayor

ACTION CALENDAR
September 19, 2023

To: Honorable Members of the City Council
From: Mayor Jesse Arreguín (author); Councilmember Rigel Robinson (co-author)
Subject: Authorizing the City Attorney to Submit an Amicus Brief in Support of the UC Regents in *Make UC a Good Neighbor v. Regents of University of California*

RECOMMENDATION

Adopt a Resolution Authorizing the City Attorney to submit an amicus brief in support of the University of California Regents' in *Make UC a Good Neighbor v. The Regents of University of California*, currently before the California State Supreme Court on appeal.

BACKGROUND

In 2021, *Make UC a Good Neighbor* filed a lawsuit against the Regents of University of California, arguing that the Environmental Impact Report (EIR) for the University's planned development at People's Park and its 2021 Long Range Development Plan violates the California Environmental Quality Act (CEQA). In August 2022, the Alameda County Superior Court ruled that construction could proceed, and that the proposed development does not violate CEQA. However, construction was placed on pause, and shortly following an appeal by the plaintiff, the State Court of Appeals issued a stay order pausing construction.

On February 24, 2023, the California Court of Appeals in the First District issued a ruling that effectively halted the proposed project at People's Park by noting that student residents generate negative external impacts due to noise, and that these impacts must be mitigated by the University. Such noise is argued to have the potential to disrupt neighboring residential areas, despite the fact that such concerns are already addressed through the City of Berkeley's Noise Ordinance and UC Berkeley's Residential Code of Conduct. In addition, the decision ruled that the University did not conduct a thorough review of alternative sites in addition to People's Park for the planned housing project. Shortly after the ruling, the University announced its intent to appeal the decision to the California Supreme Court. The ruling received widespread condemnation, including from the Governor and Lieutenant Governor.

On March 21, 2023, the Berkeley City Council authorized the City Attorney to file an amicus curiae letter in support of UC's petition for review in the California State Supreme Court, a copy of the filed amicus letter is attached. The University appealed the decision

to the Supreme Court in April, and the court granted review shortly thereafter. The case is currently pending before the State Supreme Court for adjudication.

On August 28, 2023, the California State Legislature approved Assembly Bill (AB) 1307, which amends the Public Resources Code to clarify that the noise generated by the occupants or guests of a housing project is not a significant impact required to be studied under CEQA. The bill also provides that an EIR need not consider alternatives to the project if specific conditions are met. Senate amendments provide that a public university need not study alternative locations for a residential or mixed-use project if it is on a site of no more than 5 acres and surrounded by urban uses and the project has been evaluated in a recent EIR for the campus long-range development plan. The bill is now on Governor Newsom's desk for signature. If signed, the bill would take effect immediately.

Despite the passage of AB 1307 which amended CEQA to clarify two key findings in the case, the issue still needs to be adjudicated in the Supreme Court before construction of the People's Park housing project can commence.

The Supreme Court must apply the new statute to this case and determine that the EIR for the project met legal requirements. The trial court determined that the EIR was legally adequate, and the city's contention is that the EIR meets legal requirements and adequately studies and mitigates any impacts.

Resolution of this case is critical to advance an important project providing over 1,000 beds of needed student housing and 125 units of permanent supportive housing. The City has committed \$14.5 million in housing funds to support the construction of the 125 unit supportive housing project at People's Park. It is in the city's interest to intervene in this case and file an amicus brief in support of UC's position.

Rationale for recommendation

The construction of this development is essential to reducing strain on our housing market and providing needed housing for our unhoused residents. The City has partnered with the University to ensure that its development of the People's Park site serves the interests of students, of the Berkeley community, and especially of unhoused residents. The University's development plans for the site will provide over 1,000 units of urgently needed housing for students and over 100 units of permanent supportive housing for unhoused residents.

A portion of the planned development on People's Park will be set aside for the construction of a permanent supportive housing development that will end homelessness for dozens of unhoused residents by providing over 100 units of badly needed permanent supportive housing (PSH). The City has already committed \$14.5 million¹ to the construction of this planned permanent supportive housing. Permanent supportive

¹ [2021 Housing Trust Fund Request for Proposals Funding Reservations](#)

housing has been proven to end homelessness by combining wraparound services with stable, permanent housing for unhoused people.²

In addition to committing funding to the permanent supportive housing project that will be built on-site, the City is working in partnership with the University to provide temporary housing at the former Rodeway Inn for unhoused residents who previously resided at People’s Park.

The City has committed millions of dollars to providing housing to the unhoused residents who previously resided at People’s Park — both by committing to fund the permanent supportive housing development the University is planning on-site and by partnering with the University to make the Rodeway Inn available as temporary housing and, now, potentially as permanent supportive housing.

In addition to the impact this decision has on the People’s Park project, this new interpretation of CEQA concluding that the noise impacts of the residents of a housing project must be studied and mitigated has the potential to delay or derail the construction of student housing off-campus in the city’s jurisdiction. The City is currently developing new zoning in the Southside area immediately adjacent to the UC Berkeley campus. This decision could enable parties who oppose student housing, affordable housing or any kind of residential or commercial development to delay projects arguing that noisy occupants are an environmental impact.

FINANCIAL IMPLICATIONS

This resolution has no direct financial implications. However, further delay of the University’s development project at People’s Park may cause the City to incur costs to continue temporarily housing unhoused residents, in addition to additional staff time.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100
Councilmember Rigel Robinson 510-981-7170

Attachments:

- 1: Resolution
- 2: April 20, 2023 Amicus Curiae Letter in Support of Petition for Review in Make UC a Good Neighbor et al. v. The Regents of the University of California (Resources for Community Development)

² [Permanent Supportive Housing - National Alliance to End Homelessness](#)

RESOLUTION NO. ##,###-N.S.

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE AN AMICUS BRIEF IN SUPPORT OF THE UC REGENTS PETITION FOR REVIEW IN *MAKE UC A GOOD NEIGHBOR V. THE REGENTS OF UNIVERSITY OF CALIFORNIA*

WHEREAS, students are an essential part of the community of the City of Berkeley; and

WHEREAS, the City of Berkeley has committed \$14.5 million to the construction of permanent supportive housing units to provide essential permanent housing to unhoused community members in the University's planned housing development at People's Park; and

WHEREAS, The University of California has demonstrated through a thorough environmental impact report its commitment to identifying and mitigating any impacts caused by the housing development at People's Park; and

WHEREAS, the February 23, 2023 decision by the Court of Appeals of the State of California states that the Regents of University of California ought to have considered alternative sites in their CEQA analysis; and

WHEREAS, the February 23, 2023 decision also interprets student noise to be an admissible negative impact under the California Environmental Quality Act; and

WHEREAS, on March 21, 2023, the Berkeley City Council authorized the City Attorney to file a letter in support of the UC Regents' petition for review in the California Supreme Court. The city's amicus letter was filed on April 20, 2023; and

WHEREAS, the California State Supreme Court granted review of the case in April and it is pending hearing in the court; and

WHEREAS, the court concluded that the noise impacts of the residents of a housing project must be studied and mitigated has the potential to delay or derail the construction of student housing off-campus in the city's jurisdiction; and

WHEREAS, the City is currently developing new zoning in the Southside area immediately adjacent to the UC Berkeley campus; and

WHEREAS, this decision could enable parties who oppose certain student housing, affordable housing or residential or commercial developments to delay projects arguing that noisy occupants are an environmental impact; and

WHEREAS, on August 28, 2023, the California Legislature gave final passage to Assembly Bill 1307 (Wicks) which amends the Public Resources Code to clarify that the noise generated by occupants or guests of a residential housing project is not an impact under CEQA. The bill also clarifies that if a university has studied a residential project in an EIR for a long-range development plan, analysis of additional project locations is not needed; and

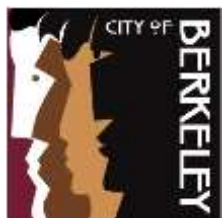
WHEREAS, the bill is currently on Governor Newsom's desk for signature. If adopted, it would take effect immediately; and

WHEREAS, Given the adoption of AB 1307, the Supreme Court must apply the new law to this case, if the bill is signed by the Governor. The Court must also find that the project EIR is legally adequate; and

WHEREAS, the City's contention is that the project EIR is legally adequate and is the result of several years of public input including written comments by the City and verbal comments by the City Council; and

WHEREAS, given the critical shortage of student housing and affordable housing, it is in the City's interest to intervene in this case in support of the UC Regents in order to ensure that the People's Park housing project can proceed to construction.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Attorney is hereby authorized to submit an amicus brief in support of the UC Regents in the Supreme Court of the State of California in *Make UC a Good Neighbor v. The Regents of University of California*.



Office of the City Attorney

April 20, 2023

Chief Justice Patricia Guerrero and
Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: Supreme Court Case No. S279242: Amicus Curiae Letter in Support of Petition for Review in *Make UC a Good Neighbor et al. v. The Regents of the University of California (Resources for Community Development)*

Dear Honorable Chief Justice Patricia Guerrero and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, the City of Berkeley respectfully requests that the Supreme Court grant the Petition for Review of filed in *Make UC a Good Neighbor et al. v. The Regents of the University of California (Resources for Community Development)*, Supreme Court Case No. S279142.

The Petition seeks review of the published opinion of the Court of Appeal, First District, Division Five, which held that Petitioner The Regents of the University of California (“the Regents”) violated the California Environmental Quality Act (“CEQA”) by not analyzing the potential noise impacts of constructing urgently needed student housing at the University of California, Berkeley (“UC Berkeley”). As the Petition states, this holding could set new and dangerous precedent that public agencies must analyze and mitigate not just environmental impacts of projects, but also perceived social impacts that may be caused by their intended occupants as well. This added layer of analysis, coupled with the potential for stereotypes and biases to affect it, finds no basis in CEQA—the State’s principal *environmental* protection law—and could significantly disrupt and delay much-needed housing development across the state. For this reason, the City of Berkeley urges the Court to grant the Petition for Review.

I. Statement of Interest of Amicus Curiae

The City of Berkeley is a charter city duly organized and existing under Government Code sections 34000, et seq. It is also the home of UC Berkeley. As such,

the City is keenly aware of the need for additional, on-campus student housing. The lack of such student housing at UC Berkeley has had ripple effects throughout the community for years. Not only does it lead to significant disadvantages for UC Berkeley students—ranging from unaffordable housing to overcrowded living conditions off-campus to student homelessness—but it also places significant strain on the City’s housing market for other residents, increasing housing prices and displacing long-time members of the community. According to the Turner Center for Housing Innovation at UC Berkeley, “Racial disparities in the region’s migration patterns are pronounced: Hispanics and Blacks make up a disproportionately large share of low-income out-movers, and are more likely than others to move to the more affordable parts of California.” available at: https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Disparity_in_Departure.pdf). The impacts of this housing strain are felt most acutely by the City’s historically disadvantaged, minority communities.

The City is also aware of the desperate need for supportive housing for the region’s unhoused residents. According to recent counts, there are nearly 1,000 people living without shelter in the City of Berkeley. City of Berkeley Homeless Count and Survey Comprehensive Report 2019 at 13 (available at https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf). When asked, approximately 42% of these unhoused residents indicated that they suffered from “psychiatric or emotional conditions,” while over 30% indicated they had drug or alcohol abuse issues and/or PTSD. *Id.* at 34. To address these issues, the City has prioritized “[c]reat[ion of] affordable housing and housing support services for our most vulnerable community members” in its long-term planning. (See City of Berkeley Strategic Plan, summarized at <https://berkeleyca.gov/your-government/our-work/strategic-plan>.)

Given this backdrop, the City strongly supported the Regents’ plan to build more than 1,000 units of student housing and more than 100 units of permanent supportive housing for unhoused residents on the UC Berkeley campus. The City worked with the Regents to ensure that this development would serve the interests of students and the community, especially its unhoused members.

In fact, the City committed \$14.5 million to the construction of the supportive housing project. Permanent supportive housing has been proven to end homelessness by combining wraparound services with stable, permanent housing for unhoused people. The City is also working in partnership with the Regents to provide temporary housing for unhoused residents who previously resided on the project site, which is known as People’s Park.

Because of the City’s geographic, historic, and financial connection to the project at issue in this case, it submits this letter in support of granting review.

II. Review by this Court is necessary to ensure that CEQA analysis remains focused on environmental impacts, not social impacts perceived to be associated with particular groups of people.

The Supreme Court may grant review of an appellate decision to secure uniformity of the law and to settle important legal questions. (California Rules of Court, rule 8.500, subd. (b)(1).) Here, the legal question at issue is whether the CEQA (Public Resources Code sections 21100 et seq.) requires public agencies to consider, analyze and mitigate potential project impacts caused by perceived social traits of the people who will ultimately inhabit the project. The court of appeal answered this question in the affirmative, opening the door to an entirely new realm of analysis—and entirely new bases for legal challenge under CEQA.

As the Petition notes, requiring this new analysis could dramatically impact the process for approving not only the project at issue in this case, but all projects designed to house groups of people that have historically been excluded from our communities due to racism, classism, and other prejudice. It does not require much imagination to envision the comment letters the City and others will face when processing future affordable housing projects, group homes, senior facilities, daycare centers, rehabilitation facilities, etc., if this ruling is allowed to stand. Not only could these comments slow down the development process substantially, but they may also require special “mitigation” for such impacts, making these much needed projects ever more expensive to develop.

CEQA does not require this result. The purpose of CEQA is to require public agencies to consider, minimize, and mitigate the *environmental* impacts of their actions. (*See, e.g.*, Pub. Resources Code, §§ 21100 [EIRs are required for projects that “may have a significant effect on the environment”], 21151.) Economic and social changes, on the other hand, are not required to be addressed under this statute. (*See, e.g.*, CEQA Guidelines §§ 15064, subdivision (e) [“[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment”], 15382 [“[a]n economic or social change by itself shall not be considered a significant effect on the environment”]; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 577 [CEQA does not require analysis of a project’s impacts on “community character”].)

The court of appeal’s decision to expand CEQA’s focus in this case and require analysis of impacts associated with student parties is especially misguided here, given that the purpose of the project is to alleviate overcrowding in student housing and reduce the need for students to live off-campus in Berkeley’s residential neighborhoods, where many of the noise complaints cited by the Court of Appeal occur. (*See, e.g.*, *Make UC a Good Neighbor v. Regents of the University of California* (2023) 88 Cal.App.5th 656, 686 [“noise from student parties is a problem in Berkeley’s residential neighborhoods near the campus”]; *id.* [“In 2007, the City of Berkeley found that parties *in residential*

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and Associate Justices
April 20, 2023
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areas “frequently become loud and unruly,” cause “excessive noise,” and constitute a public nuisance].) The City is directly involved with the issues of off-campus “mini-dorms,” which include large, single family homes in residential neighborhoods rented to numerous students with no oversight from the University, and adopted an ordinance regulating them due to their potential neighborhood impacts. (*See generally* Berkeley Municipal Code Chapter 13.42)

But the project at issue in this case is designed to address the reason why these problematic “mini-dorms” have sprung up in residential neighborhoods in the first place: the lack of sufficient *on-campus* student housing. (See Berkeley Municipal Code § 13.42.010(A).) The student housing proposed for People’s Park would be supervised, unlike these “mini-dorms,” with on-site Resident Assistants, Resident Directors, and a Residential Code of Conduct and a formal Residential Conduct Process. Thus, in addition to being inconsistent with the purpose of CEQA, the court of appeal’s decision also appears to mistake the remedy for the cause of the neighborhood impacts alleged in the case.

For all of these reasons, the City supports the Regents’ Petition for Review. Thank you for your consideration of our views.

Very truly yours,



Farimah Faiz Brown
City Attorney