



Fair Campaign Practices Commission
Open Government Commission

**CONCURRENT MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION
AND THE OPEN GOVERNMENT COMMISSION**

MEETING AGENDA

November 19, 2020

7:00 p.m.

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting will be held telephonically. Members of the public interested in attending will be able to observe and address the meeting using the following information:

Please use the following link to join the Zoom meeting:

<https://us02web.zoom.us/j/89577289844>

Or Telephone: +1 669 900 6833

Meeting ID: 895 7728 9844

Secretary: Samuel Harvey, Deputy City Attorney

The Commission may act on any item on this agenda

1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes for October 15, 2020 concurrent regular meeting.

Fair Campaign Practices Commission (FCPC) Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
6. Complaint alleging violations of BERA by Committee for Ethical Housing; discussion and possible action. (Presented by Deputy City Attorney Brendan Darrow)

7. Investigation re Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502); discussion and possible action.
8. Investigation re Maria Poblet for Rent Board 2022 (ID # 1407904); discussion and possible action.
9. Complaint alleging violations of the Berkeley Election Reform Act by Re-Elect Mayor Jessie Arreguin 2020; discussion and possible action.
10. Complaint regarding campaign signs advocating for the election of Councilmember Cheryl Davila; discussion and possible action.
11. Complaint alleging violation of BERA by Rent Board candidates Leah Simon-Weisberg, Mari Mendonica, Andy Kelley, Dominique Walker, and Xavier Johnson.; discussion and possible action.
12. Complaint alleging violations of BERA by Wayne Hsiung for Mayor 2020 and Compassionate Bay; discussion and possible action.
13. Referrals from the City Clerk re Public Finance Program campaigns; discussion and possible action:
 - a. Andrew for Berkeley Council 2020
 - b. Wayne Hsiung for Mayor 2020

Open Government Commission (OGC) Agenda

14. Reports.
 - a. Reports from Chair.
 - b. Reports from Staff.
15. Referral from the Office of the City Clerk re failure by multiple City lobbyists to file quarterly reports; possible creation of rules, procedures and regulations to guide the Lobbyist Registration Act enforcement process; discussion and possible action.
16. Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings; discussion and possible action.
17. Scheduling next concurrent meeting and drafting 2021 regular meeting schedule
18. Adjournment.

Communications

- Email from Cordell Hindler

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). Please refrain from wearing scented products to this meeting.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** 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 the City Attorney's Office at 2180 Milvia St., 4th Fl., Berkeley, CA.



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

October 15, 2020

CONCURRENT REGULAR MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting was held telephonically.

Secretary: Samuel Harvey, Deputy City Attorney

Members Present: Brad Smith (Chair), Jedidiah Tsang (Vice Chair), Jessica Blome, Janis Ching, Dean Metzger, Patrick O'Donnell, Patrick Sheahan

Also Present: Samuel Harvey, Staff Secretary / Deputy City Attorney
Michael MacDonald, City Clerk

1. **Call to Order**

Chair Called the meeting to order at 7:01 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment (items not on agenda)**

No speakers.

4. **Approval of minutes for the September 17, 2020 concurrent regular meeting**

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to approve minutes with edit (M/S/C: Ching/O'Donnell; Ayes: O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: McLean, Metzger.)

Fair Campaign Practices Commission (FCPC) Agenda

5. **FCPC Reports**

- a. Report from Chair.
- b. Report from Staff.

6. **Complaint alleging violation of BERA by Bahman Ahmadi, Soulmaz Panahi, Dan McDunn, Wendy Saenz Hood Neufeld, and Home Owners for Berkeley Rent Board**

- a. Public comment: three speakers.
- b. Commission discussion and action.

Motion to make a finding of probable cause of violation of BMC § 2.12.335 by Bahman Ahmadi, Soulmaz Panahi, Dan McDunn, Wendy Saenz Hood Neufeld and Pawel Moldenhawer for failure to provide adequate disclosures on joint campaign website (M/S/C: Blome/Ching; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: McLean.)

Motion to direct staff to negotiate a stipulated agreement with respondents for a penalty of \$50 per campaign committee (M/S/C: Blome/Sheahan; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: McLean.)

7. **Enforcement referrals from the office of the City Clerk:**

a. Re Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502)

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to direct staff to investigate and return at a future meeting with a report (M/S/C: Sheahan/O'Donnell; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: McLean.)

b. Re Maria Poblet for Rent Board 2022 (ID # 1407904)

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to direct staff to investigate and return at a future meeting with a report (M/S/C: Blome/Ching; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: McLean.)

Open Government Commission (OGC) Agenda

8. **OGC Reports**
 - a. Report from Chair.
 - b. Report from Staff.

9. **Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings**
 - a. Public comment: No speakers.
 - b. Commission discussion

Commissioner Sheahan recused due to conflict as member of Zoning Adjustments Board.

10. **Brown Act presentation for City officials and employees**
 - a. Public comment: No speakers.
 - b. Commission discussion.

11. **Conflict of Interest presentation for City officials and employees**
 - a. Public comment: No speakers.
 - b. Commission discussion.

Joint FCPC-OGC Agenda

12. **Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)**
 - a. Public Comment: No speakers.
 - b. Commission discussion and action.

Motion to amend report to City Council by removing phrase “prohibit or” from phrase “. . .prepare an ordinance amending [BERA] to prohibit or regulate officeholder accounts . . .” in Recommendation section of report. (M/S/C: Metzger/Sheahan; Ayes: Metzger, Sheahan; Noes: O’Donnell, Ching, Blome, Tsang, Smith; Abstain: none; Absent: McLean.)

Motion to submit report to City Council recommending creation of a subcommittee of members of the Council, FCPC and OGC to (1) prepare an ordinance prohibiting or regulating officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies. (M/S/C: Blome/Metzger; Ayes: O’Donnell, Ching, Blome, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: McLean.)

13. **Adjournment**

Motion to adjourn. (M/S/C: O'Donnell/Tsang; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: McLean.)

The meeting adjourned at 9:34 p.m.



Fair Campaign Practices Commission

Date: November 13, 2020

To: Fair Campaign Practices Commission

From: Brendan Darrow, Deputy City Attorney

Subject: Complaint alleging violation of BERA by the Committee for Ethical Housing.

On October 26, 2020, Commission staff received the attached complaint alleging violations of the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12) by the Committee for Ethical Housing (“Committee”) an independent committee responsible for independent expenditures in support of a slate of Rent Stabilization Board candidates in the November 2020 election.

The complaint alleges that the Committee withheld information from the public regarding the date of receipt of the Committee’s sole contribution. As evidence, the complaint notes that although the Committee reported the receipt of a \$30,000 contribution as occurring on October 23, 2020, online advertisements from the Committee published as early as October 14, 2020 included a disclaimer noting the contribution. The complaint alleges that this is evidence that the contribution was received prior to the date disclosed in the Committee’s filings.

As discussed below, staff do not believe the complaint alleges a violation of BERA and staff therefore recommends the Commission dismiss this complaint.

Legal Background

BERA section 2.12.335.A requires that:

Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase “Major Funding Provided By” immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure.

Additionally, BERA section 2.12.280 outlines the requirements for the information required in committee campaign reports. Specifically, section 2.12.280.G requires campaign reports to include:

November 12, 2020

Page 2 Re: Committee for Ethical Housing

The full name of each person from whom a contribution or contributions totaling fifty dollars or more has been received . . . the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed.

Analysis

Staff have reviewed the campaign reports filed by the Committee. The Committee's Campaign Statement (Form 460) covering the period January 1, 2020 to October 17, 2020 (Attachment 2) indicates no contributions received or made and a zero cash balance during this period. That campaign statement was filed on October 22, 2020.

On October 20, 2020, the Committee filed five Independent Expenditure Reports (Form 496) one for each of the five Rent Stabilization Board candidates supported by the Committee's independent expenditures: Bahman Ahmadi, Soulmaz Panahi, Dan McDunnn, Wendy Saenz Hood Neufeld, and Pawel Moldenhawer. (Attachment 3.) Each Form 496 indicates independent expenditures occurring on October 19, 2020 in support of these candidates in the amount of \$5,755.97. This amounts to \$28,779.85 total expenditures in support of the five candidates. The expenditures are coded with the standard notations for "postage, delivery and messenger service," "print ads," and "information technology costs (internet, e-mail)."

On October 26, 2020, the Committee filed a Contribution Report (Form 497) indicating receipt of a \$30,000 contribution from Highview Strategies, Inc. on October 23, 2020. (Attachment 4.)

To summarize, the Committee reported no contributions or expenditures through October 17, 2020. The Committee reported expenditures of \$28,755.97 on October 19, 2020 and receipt of a \$30,000 contribution on October 23, 2020. The Committee has reported no other activity.

The complaint alleges that a Facebook page published by the Committee included the following disclaimer as early as October 14, 2020:

Ad paid for by Committee for Ethical Housing, supporting Ahmadi, Panahi, McDunn, Saenz Hood Neufeld and Moldenhawer for Rent Stabilization Board 2020, committee major funding provided by Highview Strategies (Sacramento, \$30,000)

This advertisement was not authorized by a candidate or a committee controlled by a candidate

Staff have confirmed that this disclaimer appeared on the Facebook page on a post dated October 14, 2020. The Complaint alleges that the October 14, 2020 post indicates that the Committee had received the \$30,000 contribution prior to the date reported in its campaign reports. As evidence, the Complaint points to the Committee's Form 460 for the period January 1, 2020 to October 17, 2020 which shows no contributions received in this period. Instead, the Committee reported on the Form 497 filed October 26, 2020 the receipt of the \$30,000 contribution on October 23, 2020.

November 12, 2020

Page 3 Re: Committee for Ethical Housing

The same disclaimer appeared on print mailers circulated by the Committee on October 19, 2020. (Attachment 5.) The expenditure associated with these mailers was reported on October 19, 2020. (See Attachment 3.)

In performing an initial investigation, staff have reviewed the Committee's bank statement which indicates that the October 23, 2020 date of receipt indicated on the Committee's Form 497 is accurate. Based upon the documentary evidence provided, the Committee's reporting of the receipt was consistent with the requirements of BMC § 2.12.280.G.

However, as the disclaimers on the Committee's advertisements indicate, the Committee was aware that the \$30,000 contribution would be received prior to the date the contribution was actually received by the committee. Nonetheless, staff have determined that early disclosure of the contribution on the advertisement disclaimers does not constitute a violation of BERA.

First, the reporting rules for campaign committees requiring reporting a contribution on the date the contribution was received by the committee. (BMC § 2.12.280.G.) As noted above, staff have confirmed that the contribution was received on October 23, 2020 as reported by the committee on the Contribution Report (Form 497) filed October 26, 2020 (Attachment 4.)

Second, by including the \$30,000 contribution in its advertisement disclaimers prior to the actual date of receipt, the Committee did not withhold information from the public, but rather provided more information than the public would have received simply from looking at the Committee's campaign reports.

Under the Commission's Procedures, at this stage, the Commission may (1) direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (2) dismiss the complaint; or (c) find probable cause to believe BERA has been violated. (FCPC Procedures Section V.B.2.) Staff recommends the Commission dismiss the complaint. As outlined above, the complaint fails to allege activity which would constitute a violation of BERA

Attachments:

1. Complaint of Igor Tregub and attachments
2. Campaign statement for 1/1/2020 – 10/17/2020 (Form 460)
3. Independent Expenditure Reports (Form 496)
4. Contribution Report (Form 497)
5. FCPC Mass Mailing Certification



Fair Campaign Practices Commission

Complaint of Noncompliance Berkeley Election Reform Act ("BERA")*

Full Name: Igor Tregub
Date: 10/26/2020
Address: [REDACTED]
E-mail (optional but suggested): itregub@gmail.com
Phone (optional but suggested): 510-295-8798

Party or parties alleged to have committed or are about to commit a violation of BERA:
Committee for Ethical Housing, Supporting Ahmadi, Panahi, McDunn, Saenz Hood Neufeld and Moldenhawer
for Rent Stabilization Board 2020, Major Funding Provided by Highview Strategies

Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If additional space is needed, you may attach additional pages:

I wish to bring your attention a possible violation of a timeliness provision for BERA- and FPPC-mandated campaign disclosure. It is at this point no secret that an astronomical and completely unprecedented amount of funding has been spent by the subject party listed above on behalf of Rent Board candidates Ahmadi, Panahi, McDunn, Saenz Hood Neufeld, and Moldehauer. According to the following Facebook post that was in effect as of at least 10/23/20 (see Attachment 2), High View Strategies contributed \$30,000 to this committee. However, as recently as 10/21/20, when the subject committee's most recent Form 460 was time stamped, the committee purports to have spent \$0.00 on any Rent Board candidates. In fact, according to this Facebook post - <https://www.facebook.com/104478864758693/photos/a.105440227995890/120773483129231> - that was time-stamped at 9:28 AM on October 14, 2020, the disclosure about the \$30,000 contribution from High View Strategies was made as early as a week prior to submitting what amounts to a blank Form 460. If this allegation is sustained, this appears to be an attempt for the subject committee to mislead Berkeley voters as to the timing of when it received astronomical (for a Rent Board race) sums of money until it is too late for them to vote on the basis of this knowledge. There may also potentially be hidden expenditures against Measure MM, based on the messaging provided on this page: <https://www.facebook.com/Committee-for-Ethical-Housing-104478864758693>.

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.

Signature  Date 10-26-2020

*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.

Clear, concise and accurate statement of the facts that constitute the violation of BERA
If additional space is needed, you may attach additional pages:

I wish to bring your attention a possible violation of a timeliness provision for BERA- and FPPC-mandated campaign disclosure. It is at this point no secret that an astronomical and completely unprecedented amount of funding has been spent by the subject party listed above on behalf of Rent Board candidates Ahmadi, Panahi, McDunn, Saenz Hood Neufeld, and Moldehauer. According to the following Facebook post that was in effect as of at least 10/23/20 (see Attachment 2), High View Strategies contributed \$30,000 to this committee. However, as recently as 10/21/20, when the subject committee's most recent Form 460 was time stamped, the committee purports to have spent \$0.00 on any Rent Board candidates. In fact, according to this Facebook post - <https://www.facebook.com/104478864758693/photos/a.105440227995890/120773483129231> - that was time-stamped at 9:28 AM on October 14, 2020, the disclosure about the \$30,000 contribution from High View Strategies was made as early as a week prior to submitting what amounts to a blank Form 460. If this allegation is sustained, this appears to be an attempt for the subject committee to mislead Berkeley voters as to the timing of when it received astronomical (for a Rent Board race) sums of money until it is too late for them to vote on the basis of this knowledge. There may also potentially be hidden expenditures against Measure MM, based on the messaging provided on this page: <https://www.facebook.com/Committee-for-Ethical-Housing-104478864758693> .



Ad paid for by Committee for Ethical Housing, supporting Ahmadi, Panahi, McDunn, Saenz Hood Neufeld and Moldenhawer for Rent Stabilization Board 2020, committee major funding provided by Highview Strategies (Sacramento, \$30,000)



Committee for Ethical Housing

Community

Send Message

Home Reviews About Photos More

Like Search ...

About See All

Create Post

1 person follows this

Photo/Video Check in Tag Friends

ITEM 6
Attachment 2

Recipient Committee
Campaign Statement
Cover Page

(Government Code Sections 84200-84216.5)

COVER PAGE

CALIFORNIA FORM 460

Page 1 of 4

For Official Use Only

Date Stamp

E-Filed
10/22/2020
17:21:27
Filing ID:
193808318

Statement covers period
from 01/01/2020
through 10/17/2020
Date of election if applicable:
(11/03/2020)

SEE INSTRUCTIONS ON REVERSE

1. Type of Recipient Committee: All Committees - Complete Parts 1, 2, 3, and 4.

- Officeholder, Candidate Controlled Committee
State Candidate Election Committee
Recall
General Purpose Committee
Sponsored
Small Contributor Committee
Political Party/Central Committee
Primarily Formed Ballot Measure Committee
Controlled
Sponsored
Primarily Formed Candidate/Officeholder Committee

2. Type of Statement:

- Preelection Statement
Semi-annual Statement
Termination Statement
Amendment
Quarterly Statement
Special Odd-Year Report
Supplemental Preelection Statement - Attach Form 495

3. Committee Information

I.D. NUMBER
1433723

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)
COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAHI, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FUNDING PROVIDED BY HIGHVIEW STRATEGIES

STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE
SACRAMENTO CA 95814 (415) 732-7700

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY STATE ZIP CODE AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS
(415) 732-7701 / CAMPAIGN@CAMPAIGNLAWYERS.COM

Treasurer(s)

NAME OF TREASURER

NICHOLAS SANDERS

MAILING ADDRESS

CITY STATE ZIP CODE AREA CODE/PHONE
SACRAMENTO CA 95814 (415) 732-7700

NAME OF ASSISTANT TREASURER, IF ANY

JAMES SUTTON

MAILING ADDRESS

CITY STATE ZIP CODE AREA CODE/PHONE
SAN FRANCISCO CA 94108 (415) 732-7700

OPTIONAL: FAX / E-MAIL ADDRESS

4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10/22/2020
Date

By JAMES R. SUTTON
Signature of Treasurer or Assistant Treasurer

Executed on
Date

By
Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor

Executed on
Date

By
Signature of Controlling Officeholder, Candidate, State Measure Proponent

Executed on
Date

By
Signature of Controlling Officeholder, Candidate, State Measure Proponent

ITEM 6 Attachment 2

Recipient Committee Campaign Statement Cover Page — Part 2

COVER PAGE - PART 2

**CALIFORNIA
FORM 460**

Page 2 of 4

5. Officeholder or Candidate Controlled Committee

NAME OF OFFICEHOLDER OR CANDIDATE

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP

Related Committees Not Included in this Statement: *List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.*

COMMITTEE NAME	I.D. NUMBER
----------------	-------------

NAME OF TREASURER	CONTROLLED COMMITTEE? <input type="checkbox"/> YES <input type="checkbox"/> NO
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COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
----------------	-------------

NAME OF TREASURER	CONTROLLED COMMITTEE? <input type="checkbox"/> YES <input type="checkbox"/> NO
-------------------	---

COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

6. Primarily Formed Ballot Measure Committee

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
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Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY
-----------------------	---------------------

7. Primarily Formed Candidate/Officeholder Committee *List names of officeholder(s) or candidate(s) for which this committee is primarily formed.*

NAME OF OFFICEHOLDER OR CANDIDATE BAHMAN AHMADI	OFFICE SOUGHT OR HELD RENT STABILIZATION BOARD	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE SOULMAZ PANAHI	OFFICE SOUGHT OR HELD RENT STABILIZATION BOARD	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE DAN MCDUNN	OFFICE SOUGHT OR HELD RENT STABILIZATION BOARD	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE WENDY SAENZ HOOD NEUFELD	OFFICE SOUGHT OR HELD RENT STABILIZATION BOARD	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE

Attach continuation sheets if necessary

ITEM 6
Attachment 2

Recipient Committee
Campaign Statement
Part 7. Primarily Formed Candidate/Officeholder Committee (continued)

CALIFORNIA
FORM **460**

Page 3 of 4

NAME OF OFFICEHOLDER OR CANDIDATE

PAWEL MOLDENHAWER

OFFICE SOUGHT OR HELD

RENT STABILIZATION BOARD: CITY OF BERKELEY

SUPPORT/OPOSE

Support

**ITEM 6
Attachment 2**

**Campaign Disclosure Statement
Summary Page**

SUMMARY PAGE

Amounts may be rounded
to whole dollars.

Statement covers period	CALIFORNIA FORM 460
from <u>01/01/2020</u>	Page <u>4</u> of <u>4</u>
through <u>10/17/2020</u>	
I.D. NUMBER 1433723	

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAHI, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT
STABILIZATION BOARD 2020, COMMITTEE MAJOR FUNDING PROVIDED BY HIGHVIEW STRATEGIES

Contributions Received

		Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	<i>Schedule A, Line 3</i>	\$ <u>0.00</u>	\$ <u>0.00</u>
2. Loans Received	<i>Schedule B, Line 3</i>	<u>0.00</u>	<u>0.00</u>
3. SUBTOTAL CASH CONTRIBUTIONS	<i>Add Lines 1 + 2</i>	\$ <u>0.00</u>	\$ <u>0.00</u>
4. Nonmonetary Contributions	<i>Schedule C, Line 3</i>	<u>0.00</u>	<u>0.00</u>
5. TOTAL CONTRIBUTIONS RECEIVED	<i>Add Lines 3 + 4</i>	\$ <u>0.00</u>	\$ <u>0.00</u>

**Calendar Year Summary for Candidates
Running in Both the State Primary and
General Elections**

	1/1 through 6/30	7/1 to Date
20. Contributions Received	\$ _____	\$ _____
21. Expenditures Made	\$ _____	\$ _____

Expenditures Made

6. Payments Made	<i>Schedule E, Line 4</i>	\$ <u>0.00</u>	\$ <u>0.00</u>
7. Loans Made	<i>Schedule H, Line 3</i>	<u>0.00</u>	<u>0.00</u>
8. SUBTOTAL CASH PAYMENTS	<i>Add Lines 6 + 7</i>	\$ <u>0.00</u>	\$ <u>0.00</u>
9. Accrued Expenses (Unpaid Bills)	<i>Schedule F, Line 3</i>	<u>0.00</u>	<u>0.00</u>
10. Nonmonetary Adjustment	<i>Schedule C, Line 3</i>	<u>0.00</u>	<u>0.00</u>
11. TOTAL EXPENDITURES MADE	<i>Add Lines 8 + 9 + 10</i>	\$ <u>0.00</u>	\$ <u>0.00</u>

**Expenditure Limit Summary for State
Candidates**

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
____/____/____	\$ _____
____/____/____	\$ _____

Current Cash Statement

12. Beginning Cash Balance	<i>Previous Summary Page, Line 16</i>	\$ <u>0.00</u>
13. Cash Receipts	<i>Column A, Line 3 above</i>	<u>0.00</u>
14. Miscellaneous Increases to Cash	<i>Schedule I, Line 4</i>	<u>0.00</u>
15. Cash Payments	<i>Column A, Line 8 above</i>	<u>0.00</u>
16. ENDING CASH BALANCE	<i>Add Lines 12 + 13 + 14, then subtract Line 15</i>	\$ <u>0.00</u>
<i>If this is a termination statement, Line 16 must be zero.</i>		
17. LOAN GUARANTEES RECEIVED	<i>Schedule B, Part 2</i>	\$ <u>0.00</u>

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

*Amounts in this section may be different from amounts reported in Column B.

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	<i>See instructions on reverse</i>	\$ <u>0.00</u>
19. Outstanding Debts	<i>Add Line 2 + Line 9 in Column B above</i>	\$ <u>0.00</u>

ITEM 6 Attachment 3

496 Independent Expenditure Report

Amounts may be rounded to whole dollars.

496 INDEPENDENT EXPENDITURE REPORT

NAME OF FILER COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAH, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FINDING PROVIDED BY HIGHVIEW STRATEGIES AREA CODE/PHONE NUMBER (415) 732-7700 STREET ADDRESS CITY STATE ZIP CODE SACRAMENTO CA 95814	Date of This Filing 10/20/2020 Report No. G20-ETH-01 <input type="checkbox"/> Amendment to Report No. _____ (explain below) No. of Pages 1	Date Stamp <div style="border: 1px solid red; padding: 5px; text-align: center; color: red;"> E-Filed 10/20/2020 16:05:07 Filing ID: 193690935 </div>	<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;"> CALIFORNIA FORM 496 </div> For Official Use Only
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1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED				NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
BAHMAN AHMADI							
OFFICE SOUGHT OR HELD	DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE
RENT STABILIZATION BOARD: CITY OF BERKELEY		X					

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
10/19/2020	POS Cumulative to date total \$5755.97	633.48
10/19/2020	PRT Cumulative to date total \$5755.97	548.53
10/19/2020	WEB Cumulative to date total \$5755.97	4,573.96

Reason for Amendment: _____

ITEM 6 Attachment 3

496 Independent Expenditure Report

Amounts may be rounded to whole dollars.

496 INDEPENDENT EXPENDITURE REPORT

NAME OF FILER COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAHI, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FINDING PROVIDED BY HIGHVIEW STRATEGIES AREA CODE/PHONE NUMBER (415) 732-7700 STREET ADDRESS CITY STATE ZIP CODE SACRAMENTO CA 95814	Date of This Filing 10/20/2020 Report No. G20-ETH-02 <input type="checkbox"/> Amendment to Report No. _____ (explain below) No. of Pages 1	Date Stamp <div style="border: 1px solid red; padding: 5px; text-align: center; color: red;"> E-Filed 10/20/2020 16:05:13 Filing ID: 193690975 </div>	<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;"> CALIFORNIA FORM 496 </div> For Official Use Only
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1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED				NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
SOULMAZ PANAHI							
OFFICE SOUGHT OR HELD	DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE
RENT STABILIZATION BOARD: CITY OF BERKELEY		X					

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
10/19/2020	POS Cumulative to date total \$5755.97	633.48
10/19/2020	PRT Cumulative to date total \$5755.97	548.53
10/19/2020	WEB Cumulative to date total \$5755.97	4,573.96

Reason for Amendment: _____

ITEM 6 Attachment 3

496 Independent Expenditure Report

Amounts may be rounded to whole dollars.

496 INDEPENDENT EXPENDITURE REPORT

NAME OF FILER COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAH, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FINDING PROVIDED BY HIGHVIEW STRATEGIES AREA CODE/PHONE NUMBER (415) 732-7700 STREET ADDRESS CITY STATE ZIP CODE SACRAMENTO CA 95814	Date of This Filing 10/20/2020 Report No. G20-ETH-03 <input type="checkbox"/> Amendment to Report No. _____ (explain below) No. of Pages 1	Date Stamp <div style="border: 2px solid red; padding: 5px; color: red;"> E-Filed 10/20/2020 16:07:01 Filing ID: 193691148 </div>	CALIFORNIA FORM 496 For Official Use Only
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1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED				NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
DAN MCDUNN							
OFFICE SOUGHT OR HELD	DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE
RENT STABILIZATION BOARD: CITY OF BERKELEY		X					

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
10/19/2020	POS Cumulative to date total \$5755.97	633.48
10/19/2020	PRT Cumulative to date total \$5755.97	548.53
10/19/2020	WEB Cumulative to date total \$5755.97	4,573.96

Reason for Amendment: _____

ITEM 6 Attachment 3

496 Independent Expenditure Report

Amounts may be rounded to whole dollars.

496 INDEPENDENT EXPENDITURE REPORT

NAME OF FILER COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAHI, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FINDING PROVIDED BY HIGHVIEW STRATEGIES AREA CODE/PHONE NUMBER (415) 732-7700 STREET ADDRESS CITY STATE ZIP CODE SACRAMENTO CA 95814	Date of This Filing 10/20/2020 Report No. G20-ETH-04 <input type="checkbox"/> Amendment to Report No. _____ (explain below) No. of Pages 1	Date Stamp <div style="border: 2px solid red; padding: 5px; text-align: center; color: red;"> E-Filed 10/20/2020 16:07:11 Filing ID: 193691288 </div>	<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;"> CALIFORNIA FORM 496 </div> For Official Use Only
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1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED				NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
WENDY SAENZ HOOD NEUFELD							
OFFICE SOUGHT OR HELD	DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE
RENT STABILIZATION BOARD: CITY OF BERKELEY		X					

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
10/19/2020	POS Cumulative to date total \$5755.97	633.48
10/19/2020	PRT Cumulative to date total \$5755.97	548.53
10/19/2020	WEB Cumulative to date total \$5755.97	4,573.96

Reason for Amendment: _____

ITEM 6 Attachment 3

496 Independent Expenditure Report

Amounts may be rounded to whole dollars.

496 INDEPENDENT EXPENDITURE REPORT

NAME OF FILER COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANABI, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FINDING PROVIDED BY HIGHVIEW STRATEGIES AREA CODE/PHONE NUMBER (415) 732-7700 STREET ADDRESS CITY STATE ZIP CODE SACRAMENTO CA 95814	Date of This Filing 10/20/2020 Report No. G20-ETH-05 <input type="checkbox"/> Amendment to Report No. _____ (explain below) No. of Pages 1	Date Stamp <div style="border: 2px solid red; padding: 5px; text-align: center; color: red;"> E-Filed 10/20/2020 16:07:19 Filing ID: 193691326 </div>	<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;"> CALIFORNIA FORM 496 </div> For Official Use Only
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1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED				NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
PAWEL MOLDENHAWER							
OFFICE SOUGHT OR HELD	DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE
RENT STABILIZATION BOARD: CITY OF BERKELEY		X					

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT
10/19/2020	POS Cumulative to date total \$5755.97	633.48
10/19/2020	WEB Cumulative to date total \$5755.97	4,573.96
10/19/2020	PRT Cumulative to date total \$5755.97	548.53

Reason for Amendment: _____

ITEM 6 Attachment 4

497 Contribution Report

Amounts may be rounded to whole dollars.

497 CONTRIBUTION REPORT

NAME OF FILER COMMITTEE FOR ETHICAL HOUSING, SUPPORTING AHMADI, PANAHI, MCDUNN, SAENZ HOOD NEUFELD AND MOLDENHAWER FOR RENT STABILIZATION BOARD 2020, COMMITTEE MAJOR FUNDING PROVIDED BY HIGHVIEW STRATEGIES AREA CODE/PHONE NUMBER: (415) 732-7700 STREET ADDRESS: CITY: SACRAMENTO STATE: CA ZIP CODE: 95814	Date of This Filing 10/26/2020 Report No. G20-ETH-06 <input type="checkbox"/> Amendment to Report No. _____ (explain below) No. of Pages 1	Date Stamp <div style="border: 2px solid red; padding: 5px; text-align: center; color: red;"> E-Filed 10/26/2020 15:09:58 Filing ID: 193916182 </div>	<div style="background-color: black; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;"> CALIFORNIA FORM 497 </div> For Official Use Only
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1. Contribution(s) Received

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR <small>(IF COMMITTEE, ALSO ENTER I.D. NUMBER)</small>	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER <small>(IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)</small>	AMOUNT RECEIVED
10/23/2020	HIGHVIEW STRATEGIES, INC. SACRAMENTO, CA 95814	<input type="checkbox"/> IND <input type="checkbox"/> COM <input checked="" type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		30,000.00 <input type="checkbox"/> Check if Loan _____% Provide interest rate
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		 <input type="checkbox"/> Check if Loan _____% Provide interest rate
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		 <input type="checkbox"/> Check if Loan _____% Provide interest rate

*Contributor Codes
 IND – Individual
 COM – Recipient Committee (other than PTY or SCC)
 OTH – Other (e.g., business entity)
 PTY – Political Party
 SCC – Small Contributor Committee

Reason for Amendment: _____

MASS MAILINGS - FCPC REGULATIONS AND CERTIFICATION

R2.12.325.1 Mass Mailings; Filing

- (a) A mass mailing means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry as defined in BMC Section 2.12.150 that has been sent within a calendar month.
- (b) Any committee, candidate, officeholder, individual or organization who
 - (1) Has local filing requirements pursuant to the BERA, as it may be amended from time to time, and
 - (2) Makes expenditures supporting or opposing one or more candidates or ballot measures, shall file three copies of each mass mailing paid for by expenditures reported therein.

R2.12.325.2 Filing of Mass Mailings - Method of Filing

Three copies of all mailings as defined in BMC Section 2.12.150 shall be filed with the City Clerk's Office no later than one day of the date the mass mailing was first placed in the U.S. mail. Filing shall be made by hand-delivery to the City Clerk's Office no later than one day after the mailing or by depositing three originals addressed to the City Clerk's Office in the U.S. mail on the same day as the first pieces are deposited in the U.S. mail.

If neither of the above conditions can be met, the three copies of the mass mailing and the certification must be sent by guaranteed overnight delivery to comply with the requirement that they be filed with the City Clerk's Office no later than one day after the date the mass mailing was first placed in the U.S. mail.

Mass mailings may be filed with the City Clerk prior to the date of the actual mailing. Each mass mailing required to be filed with the City Clerk pursuant to BMC § 2.12.325 shall be accompanied by a certification of the date the mass mailing was (or will be) deposited in the U.S. mail. The certification shall include the following information:

- (a) The name of the candidate, committee, officeholder, individual or organization with local filing requirements under the BERA responsible for the mass mailing.
- (b) The campaign filing identification number, if any.
- (c) The date that the mass mailing was (or will be) deposited in the U.S. mail.
- (d) The signature of the candidate, committee, officeholder, individual or organization with local filing requirements under the BERA responsible for the mass mailing. Where a committee or organization is responsible for the filing, the certification shall be signed by the committee or organization treasurer.

The certification may be hand-or type-written by the responsible candidate, committee, officeholder, individual or organization with local filing obligations under the BERA either directly on the mass mailing filed with the City Clerk's Office, or on a separate piece of paper if the piece of paper is attached to the mass mailing by staple. The certification shall be in a form substantially similar to the following:

(complete and submit certificate below)
MASS MAILING CERTIFICATION

I, Nicholas L. Sanders, hereby certify under penalty of perjury under the laws of the State of California that 200 or more copies of the document entitled or described as follows: 11"x6" color mailer #1

were (or will be) mailed on 10/19/2020

Filing ID Number: Pending: not yet assigned

Signed: [Signature] Date: 10/19/2020

The filing of a mass mailing in accordance with this regulation shall satisfy the requirement in Berkeley Municipal Code Section 2.12.325 that all mass mailings be sent to the Commission. Mailer sent by Committee for Ethical Housing, supporting Ahmadi, Panahi, McDunn, Saenz Hood Neufeld and Moldenhawer for Rent

**SUPPORT THE
NEW PRO-AFFORDABILITY
CANDIDATES
FOR THE BERKELEY RENT BOARD.**

**AFFORDABLE. SUSTAINABLE.
RENTAL HOUSING.**



2431 Mercantile Dr., Suite A
Rancho Cordova, CA 95742



**PAWEL
MOLDENHAWER**



**WENDY SAENZ
HOOD NEUFELD**



**DAN
MCDUNN**



**SOULMAZ
PANAHI**



**BAHMAN
AHMADI**

VOTE NOVEMBER 3, 2020

NOTICE TO VOTERS

(Required by City of Berkeley)

This mailing is not authorized or approved by any City of Berkeley election official, candidate for elective office or campaign committee.

It is paid for by the

Committee for Ethical Housing, supporting Ahmadi, Panahi, McDunn, Saenz Hood Neufeld and Moldenhawer for Rent Stabilization Board 2020, committee major funding provided by Highview Strategies
1121 L Street, Suite 105, Sacramento CA

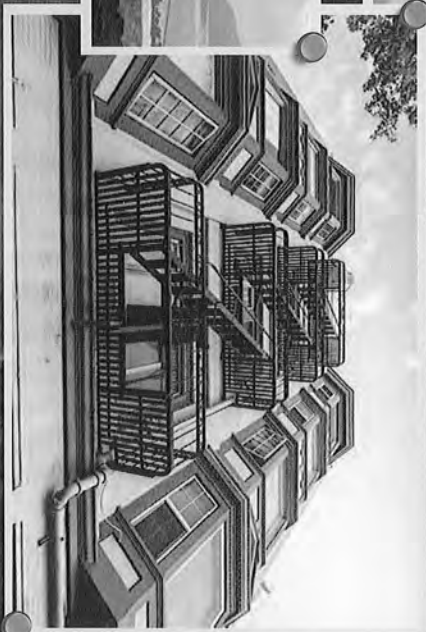
PERMIT TO
STAGI
US
AD
SI

OUR HOUSING PROBLEM HAS BECOME A HOUSING EMERGENCY.

We need a rent board that balances sustainable housing with affordability. We need real solutions and we need them now.

WE NEED HOUSING ADVOCATES WHO WILL:

- ✔ Prioritize affordable housing supply to rein in rent prices.
- ✔ Incentivize owners to bring existing units to market and maintain our neighborhood culture.
- ✔ Ensure tenant rights are protected.
- ✔ Hold the Rent Board accountable to the people.



Ad paid for by Committee for Ethical Housing, supporting Ahmadi, Panahi, McDunn, Saenz Hood Neufeld and Moldenhawer for Rent Stabilization Board 2020, committee major funding provided by Highview Strategies (Sacramento, \$30,000)
 This advertisement was not authorized by a candidate or a committee controlled by a

candidate



Fair Campaign Practices Commission

Date: November 12, 2020

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by Re-Elect Mayor Jesse Arreguin 2020.

On October 15, 2020, Commission staff received the attached complaint alleging that campaign advertisements circulated by the campaign committee Re-Elect Mayor Jesse Arreguin 2020 (the “Committee”) failed to include the required disclosure language identifying the top funding sources for the committee on multiple campaign communications. The complaint includes images of internet advertisements, mailers and emails circulated by the Committee.

Section 2.12.335 of the Berkeley Election Reform Act (“BERA”) (BMC Chapter 2.12) provides that:

- A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase “Major Funding Provided By” immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. . . .
- B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, “campaign communication” means any of the following items:
 1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
 2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;
 3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

November 12, 2020

Page 2 Re: Re-Elect Mayor Jesse Arreguin 2020.

BERA defines a “contribution” to include loans as well as “a candidate’s own money or property used on behalf of his or her candidacy.” (BMC § 2.12.200.)

According to the Committee’s campaign statement (Form 460) covering the period from September 20, 2020 to October 17, 2020, Mayor Jesse Arreguin has contributed \$15,010 to his own campaign. It therefore appears that one or more of the advertisements which are the subject of this complaint may have failed to include an appropriate disclaimer. However, staff will need to verify the actual language used on the subject advertisements and review campaign disclosures to determine the extent of the Committee’s obligations for disclosing contributions received and to identify the precise language required for the disclaimer. Staff will also need to verify the number of advertisements published or circulated which may have failed to include language required by BERA.

Under the Commission’s Procedures, at this stage, the Commission may (1) direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (2) dismiss the complaint; or (c) find probable cause to believe BERA has been violated. (FCPC Procedures Section V.B.2.) Staff recommends the Commission direct the Secretary to investigate the complaint further and return at a future meeting with a subsequent report. Staff believes, based upon initial review, that the evidence provided in the complaint is sufficient such that the complaint should not be dismissed, but is insufficient to support a finding of probable cause of a violation at this stage.

Attachments:

1. Complaint of Jeffrey Davidson and attachments
2. Excerpts from Re-Elect Mayor Arreguin Jesse 2020 Campaign Statement (Form 460) (9/20/20 – 10/17/20)



Fair Campaign Practices Commission

Complaint of Noncompliance
Berkeley Election Reform Act ("BERA")*

Full Name: _____

Date: _____

Address: _____

E-mail (optional but suggested): _____

Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA:

Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If additional space is needed, you may attach additional pages:

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.

Signature  Date _____

*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.

ITEM 9

Active

Attachment 1



Started running on Oct 12, 2020

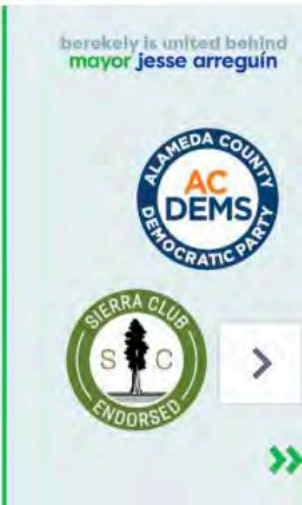
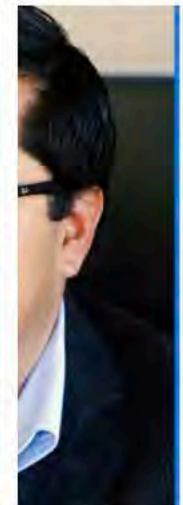
ID: 2821751901369494



Berkeley Mayor Jesse Arreguin

Sponsored • Paid for by RE-ELECT MAYOR JESSE ARREGUIN 2020

Berkeley is uniting to re-elect Mayor Jesse Arreguin so he can keep leading Berkeley through challenging times.



Re-Elect Mayor Jess...

[Learn More](#)

Re-Elect Mayor Jess...

[Learn More](#)

Vote by Nov. 3!

Vote by Nov. 3!



Berkeley Mayor Jesse Arreguin

Sponsored • Paid for by RE-ELECT MAYOR JESSE ARREGUIN 2020

Attachment 1

Sierra Club endorses Mayor Jesse Arreguin. He's bringing a Green New Deal to Berkeley & making us fossil fuel free by 2030.

Mayor Arreguin's model environmental leadership is making a difference:

- Mayor Arreguin helped Berkeley gain access to 100% renewable power.
- Under his leadership, Berkeley is phasing out single-use disposable foodware in restaurants and natural gas in new buildings, with both policies becoming national models.
- The Mayor helped Berkeley make our largest ever investment in wildfire prevention.

endorsed by:



JESSE.VOTE

Re-Elect Mayor Jesse Arreguin
Vote By Nov 3!

[Learn More](#)

 Active

Started running on Oct 12, 2020

ID: 456111348705813



Berkeley Mayor Jesse Arreguin

Sponsored • Paid for by RE-ELECT MAYOR JESSE ARREGUIN 2020

To my fellow Berkeleyans,

In 2016, you entrusted me to be Mayor of this exceptional city. It's an honor to lead a community that always stands for democracy, equity, and justice.

When I took office, we couldn't have imagined the challenges we would face. From the pandemic, to white supremacists marching in our streets, to rapidly accelerating climate change and devastating wildfires and air quality. And we couldn't have foreseen this new opportunity we would have to finally move our city, state, and nation forward in the march toward true racial justice and equality.

2020 is a time of urgency, and we've got no time to wait. In the absence of federal leadership, it's more critical than ever for cities like Berkeley to step up and take the lead. Please read my personal message about the bold action we are taking to address the biggest challenges of our time.

And please feel free to email me about anything at jesse@jesse.vote.

Please continue to stay safe out there.

Jesse



Read the Mayor's...

[Learn More](#)


Vote By Nov 3!



Read the Mayor's...

[Learn More](#)

Vote by Nov. 3!

500 Shattuck Avenue
Berkeley CA 94707


PSRT STD
US POSTAGE
PAID
Pacific Print
Resources

WE ALL SUPPORT COUNCILMEMBER AND VICE MAYOR
Sophie Hahn FOR RE-ELECTION!



Tony Thurmond
State Superintendent
of Public Instruction

Betty Yee
State Controller

Fiona Ma
State Treasurer

Keith Carson
County Supervisor

L. Karen Monroe
County Superintendent
of Schools



Jesse Arreguin
Berkeley Mayor

Shirley Dean
Former Berkeley
Mayor

Judy Appel
School Board President

Paola Laverde
Rent Board
President

Lateefah Simon
BART Board President



Chez Panisse Owner
and Edible Schoolyard
Founder Alice Waters
State Superintendent of
Public Instruction Delaine
Eastin (Ret.)
Councilmember Susan Wengraf
Councilmember Kate Harrison
Councilmember Ben Bartlett
Councilmember Rigel Robinson
Councilmember
Gordon Wozniak (Ret.)
School Board Vice President
Ty Alper
School Board Member
Ka'Dijah Brown
School Board Member
Julie Sinai
Library Trustees President
John Selawsky
Library Trustee
Diane Davenport
Rent Board Vice Chair Leah
Simon-Weisberg

Rent Board Commissioner
Igor Tregub
Rent Board Commissioner
Soli Alpert
Rent Board Commissioner
James Chang
Rent Board Commissioner
Maria Poblet
East Bay Municipal Utility
District Director Andy Katz
BART Director Rebecca
Saltzman
Peralta Community College
Trustee Karen Weinstein
Peralta Community College
Trustee Nicky Gonzalez Yuen
Oakland Mayor Libby Schaaf
Oakland Councilmember
Dan Kalb
Albany Mayor Nick Pilch
Albany Vice Mayor
Peggy McQuaid
El Cerrito Mayor Gabriel Quinto

Soiano Business
Improvement District
Chair Kate Campbell King
Zoning Board Chair
Shoshana O'Keefe
Planning Commission
Vice Chair Mary Kay Lacey
Housing Advisory
Commission Chair
Xavier Johnson
Parks & Waterfront Commission
Chair Jim McGrath
Parks & Waterfront
Commissioner Brennen Cox
Police Review Commission
Chair Kitty Calavita
Commission on the
Status of Women Chair
Jennifer Shanoski
Landmarks Preservation
Commission Chair
Christopher Adams
Civic Arts Commission
Chair Lisa Bullwinkel
Human Welfare & Community
Action Commission Chair
Samuel Cohn
Zero Waste Commission Vice
Chair Chrise de Tournay
Planning Commissioner
Ben Beach

[PARTIAL LIST]

re-elect
**mayor
jesse
arreguín**
leading
berkeley
forward »»



Mayor Jesse Arreguín's leadership during these unprecedented times has earned him support from:



Governor
Gavin Newsom



Former U.S. Labor
Secretary Robert Reich



Assemblymember
Buffy Wicks



Berkeley Firefighters
Association

We all support mayor jesse arreguín FOR RE-ELECTION!



Betty Yee
State Controller



Tony Thurmond
State Superintendent
of Public Instruction



Fiona Ma
State Treasurer



Malia Cohen
State Board of
Equalization Chair



Buffy Wicks
Assemblymember



Keith Carson
County Supervisor



Nancy O'Malley
District Attorney



Sophie Hahn
Vice Mayor



Ben Bartlett
Councilmember



Kate Harrison
Councilmember



Susan Wengraf
Councilmember



Rigel Robinson
Councilmember



Lori Droste
Councilmember



Tom Bates
Former Mayor



Judy Appel
School Board President



Ka'Dijah Brown
School Board Member



Beatriz
Leyva-Cutler
School Board Member



James Chang
Rent Board Commissioner





"The city of Berkeley has long been at the forefront of progressive leadership, and today, Mayor Jesse Arreguín is leading Berkeley forward, standing up to Donald Trump, and delivering real results."

— Governor Gavin Newsom



"Berkeley is in excellent hands with Mayor Jesse Arreguín at the helm. He has been a true champion for working families."

— Former U.S. Labor Secretary Robert Reich



please stay safe  

Wear a mask, wash your hands, and socially distance.

For COVID resources, visit:

www.cityofberkeley.info/covid-19

By November 3, Re-Elect Mayor Jesse Arreguín!

www.jesse.vote  

Paid for by Re-Elect Mayor Jesse Arreguín 2020, FPPC ID # 1409567





Jeffrey Davidson <jeffdavidson53@gmail.com>

Fwd: Setting the Record Straight

1 message

Leighton Woodhouse <lwoodhouse@gmail.com>
To: jeff@wayneformayor.com

Wed, Oct 14, 2020 at 3:24 AM

----- Forwarded message -----

From: **Mayor Jesse Arreguin** <jesse@jesse.vote>
Date: Wed, Sep 30, 2020 at 10:08 AM
Subject: Setting the Record Straight
To: Leighton Woodhouse <lwoodhouse@gmail.com>



Leighton —

This weekend, many voters in Berkeley received a misleading hit piece against me from my opponent, Wayne Hsiung. I wanted to write to set the record straight, and hope you can share this information with anyone you know who might be questioning the claims made by Wayne's campaign.

On Money in Politics: While Wayne is taking public financing - a system I helped create - the majority of his donors are from [outside of Berkeley](#). According to *Berkeleyside*, only 25% of his donors are Berkeley residents. The bulk of our donors are Berkeley residents, in addition to donations from labor unions representing trades people, nurses, and working families. Our campaign is endorsed by nearly every elected official and organization in the area, including 7 of the 8 City Councilpeople. I believe this shows the breadth of our support and an affirmation of the work we've done to build consensus in Berkeley.

On Wildfires and Climate Change: The plan Wayne references in his mailer is the 2006 ballot measure, Measure G, approved by over 80% of Berkeley voters. Since that time, the climate crisis has worsened dramatically. In 2018, I voted to declare a Climate Emergency, and set a goal to achieve carbon neutrality in Berkeley by 2030. Under my leadership, Berkeley is advancing a Green New Deal:

- Berkeley became the first city in the country to phase out throw-away plastics and ban natural gas in new buildings. Both policies have become national models.
- The City continues to prioritize electric vehicles, public transit, biking, and walking.
- As a board member for East Bay Community Energy, I helped our community gain access to 100% renewable power at affordable prices.
- I also led efforts to allocate over \$1 million towards wildfire mitigation, including reducing hazardous fire fuels, vegetation management, clearing paths, and emergency preparedness. This is the largest investment in wildfire prevention our city has ever made.

I'm honored to be the only candidate for Mayor endorsed by Sierra Club and the League of Conservation Voters of the East Bay.

Additionally, Wayne's promise to achieve carbon neutrality by 2025 is unrealistic and is based on his other promise to implement a \$2.5 billion wealth tax. He has provided no explanation for the \$2.5 billion number, or how this tax can be implemented legally or practically.

Police Reform: Contrary to what Wayne claims, I voted to let an 8-person team of Berkeley Police officers, as well as our Firefighters, attend a disaster preparedness and emergency response training, which trains first responders in how to address active shooter incidents and bomb threats, and how to respond to natural disasters such as wildfire and earthquake threats. Don't we want our first responders to be prepared?

My administration is also leading Berkeley's efforts to reimagine public safety and reduce the size of our Police Department budget. I recently voted to strengthen our Police Use of Force Policy to ban the types of control hold that killed George Floyd, and require more public reporting of any police use of force. I'm also currently leading a community process to address racial disparities in police stops. Lastly, I wrote Measure II on the November ballot to create an independent civilian Police Accountability Board.

Homelessness: The proposal Wayne references was intended to prevent objects from blocking access to BART station entrances and other public sidewalks. I crafted a sidewalk policy which allows the unhoused to sleep on sidewalks, but ensures that their objects do not block the sidewalk, to allow safe passage for people in wheelchairs, strollers, and pedestrians. I strongly oppose the "criminalization" of those experiencing homelessness and I'm proud of my administration's bold leadership on homelessness:

- Under my leadership, Berkeley has doubled the number of emergency shelter beds in our city.

- We expanded emergency housing assistance and rent subsidies to keep people on the verge of homelessness from losing their homes.
- I led the creation of the STAIR Center, the East Bay's first low-barrier 24-hour-a-day shelter, which provides job assistance, mental health, and substance abuse treatments, and has moved more than 250 people from the streets to permanent housing.
- I wrote and passed Measure P in 2018, generating millions of dollars for rent subsidies, shelter expansion, street health services, and mental health outreach.
- We have allocated millions for one-time housing retention grants, legal representation, and flexible housing funds to help people avoid homelessness.

I am proud of my record as Mayor over the past four years and humbly ask for your support and your vote for a second term. Please forward this on to your Berkeley friends and neighbors to help set the record straight.

And anyone can reach out to me at any time at jesse@jesse.vote.

Thanks for reading.

Jesse

donate

jesse.vote



Paid for by Re-Elect Mayor Jesse Arreguín 2020, FPPC ID # 1409567

This email was sent to lwoodhouse@gmail.com.
Hate to lose you, but you can unsubscribe by [clicking here](#).

Created with [NationBuilder](#), software for leaders.



Jeffrey Davidson <jeffdavidson53@gmail.com>

Fwd: Share the Facts About Wayne Hsiung

1 message

Leighton Woodhouse <lwoodhouse@gmail.com>
To: jeff@wayneformayor.com

Wed, Oct 14, 2020 at 3:24 AM

----- Forwarded message -----

From: **Mayor Jesse Arreguin** <jesse@jesse.vote>
Date: Mon, Oct 12, 2020 at 12:44 PM
Subject: Share the Facts About Wayne Hsiung
To: Leighton Woodhouse <lwoodhouse@gmail.com>



Leighton —

Last week, *Berkeleyside* published an in-depth story about my opponent, Wayne Hsiung.

Wayne is running a deceptive campaign and not being truthful about his past, his record, or his true agenda. I encourage every Berkeley voter to read the *Berkeleyside* story before you vote.

[You can see the article here.](#)

Please share it with everyone you know in Berkeley.

Thanks so much for your support.

Jesse

donate

jesse.vote



Paid for by Re-Elect Mayor Jesse Arreguín 2020, FPPC ID # 1409567

This email was sent to lwoodhouse@gmail.com.
Hate to lose you, but you can unsubscribe by [clicking here](#).

Created with [NationBuilder](#), software for leaders.



Jeffrey Davidson <jeffdavidson53@gmail.com>

Fwd: We are under attack

1 message

Leighton Woodhouse <lwoodhouse@gmail.com>
To: jeff@wayneformayor.com

Wed, Oct 14, 2020 at 3:24 AM

----- Forwarded message -----

From: **Mayor Jesse Arreguin** <jesse@jesse.vote>
Date: Sun, Sep 27, 2020 at 2:47 PM
Subject: We are under attack
To: Leighton Woodhouse <lwoodhouse@gmail.com>



Leighton —

Many Berkeley voters opened their doors this weekend to find a doorhanger from my opponent Wayne Hsiung full of falsehoods against me.



Wayne Hsiung is running for Mayor full-time. And he has knocked on thousands of doors (our campaign is taking the safe approach, doing lit drops without door knocking).

While Wayne doesn't have a record of leadership in Berkeley, he does have the time to campaign full-time that I don't have because I am focused on tackling the many crises facing us at City Hall.

We can't get complacent. I need your support over these final 37 days before Election Day.

Please click here to donate up to \$250 right now to help us get our message out. If you've already maxed out, thank you! Please know that spouses and family members can also donate.

We are also calling and texting voters throughout Berkeley (you can do it from the comfort of your own home) and we are safely dropping literature on neighbors' doors (without knocking).

Please click here to sign up to volunteer and a member of my campaign team will get right back to you to plug you into our voter outreach program.

Thanks so much for your support and for helping us finish strong. Let's go win!

Jesse

donate

[jesse.vote](#)



Paid for by Re-Elect Mayor Jesse Arreguin 2020, FPPC ID # 1409567

This email was sent to lwoodhouse@gmail.com.
Hate to lose you, but you can unsubscribe by [clicking here](#).

Created with [NationBuilder](#), software for leaders.

ITEM 9 Attachment 2

Schedule A (Continuation Sheet) Monetary Contributions Received

SCHEDULE A (CONT.)

Amounts may be rounded
to whole dollars.

Statement covers period	CALIFORNIA FORM 460
from <u>09/20/2020</u>	Page <u>5</u> of <u>58</u>
through <u>10/17/2020</u>	

NAME OF FILER Re-Elect Mayor Jesse Arreguin 2020	I.D. NUMBER 1409567
---	----------------------------

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
09/23/2020	Humberto Arreguin Daly City, CA 94015	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Equipment Technician III Specialized Equipment San Francisco State University	50.00	100.00	G2020 \$100.00
10/06/2020	Jesse Arreguin Berkeley, CA 94709 Berkeley Times - Advertisement	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Mayor City Of Berkeley, CA	260.00	14,760.00	G2020 \$15,010.00
10/15/2020	Jesse Arreguin Berkeley, CA 94709	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Mayor City Of Berkeley, CA	1,500.00	14,760.00	G2020 \$15,010.00
09/30/2020	Aref Aziz Sacramento, CA 95814	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Marketing and Communications Consultant Statehouse Media	100.00	100.00	G2020 \$100.00
10/04/2020	Michael Baker Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Retired N/A	250.00	250.00	G2020 \$250.00
SUBTOTAL \$				2,160.00		

*Contributor Codes
 IND – Individual
 COM – Recipient Committee
 (other than PTY or SCC)
 OTH – Other (e.g., business entity)
 PTY – Political Party
 SCC – Small Contributor Committee

**ITEM 9
Attachment 2**

**Schedule B – Part 1
Loans Received**

Amounts may be rounded
to whole dollars.

Statement covers period	CALIFORNIA FORM 460
from <u>09/20/2020</u>	Page <u>35</u> of <u>58</u>
through <u>10/17/2020</u>	
I.D. NUMBER <u>1409567</u>	

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Re-Elect Mayor Jesse Arreguin 2020

FULL NAME, STREET ADDRESS AND ZIP CODE OF LENDER (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Jesse Arreguin Berkeley, CA 94709 This is a Loan † <input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Mayor City Of Berkeley, CA	\$ <u>10,000.00</u>	\$ <u>0.00</u>	<input type="checkbox"/> PAID \$ <u>0.00</u> <input type="checkbox"/> FORGIVEN \$ <u>0.00</u>	\$ <u>10,000.00</u> DATE DUE	<u>0.00</u> % RATE \$ <u>0.00</u>	\$ <u>10,000.00</u> <u>08/11/2020</u> DATE INCURRED	CALENDAR YEAR \$ <u>14,760.00</u> PER ELECTION** \$ <u>G2020 15,010.00</u>
Jesse Arreguin Berkeley, CA 94709 † <input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Mayor City Of Berkeley, CA	\$ <u>0.00</u>	\$ <u>3,000.00</u>	<input type="checkbox"/> PAID \$ <u>0.00</u> <input type="checkbox"/> FORGIVEN \$ <u>0.00</u>	\$ <u>3,000.00</u> DATE DUE	<u>0.00</u> % RATE \$ <u>0.00</u>	\$ <u>3,000.00</u> <u>09/29/2020</u> DATE INCURRED	CALENDAR YEAR \$ <u>14,760.00</u> PER ELECTION** \$ <u>G2020 15,010.00</u>
 † <input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$ _____	\$ _____	<input type="checkbox"/> PAID \$ _____ <input type="checkbox"/> FORGIVEN \$ _____	\$ _____ DATE DUE	_____% RATE \$ _____	\$ _____ DATE INCURRED	CALENDAR YEAR \$ _____ PER ELECTION** \$ _____
SUBTOTALS \$		\$ <u>3,000.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>13,000.00</u>	\$ <u>0.00</u>		

Schedule B Summary

(Enter (e) on
Schedule E, Line 3)

- Loans received this period \$ 3,000.00
(Total Column (b) plus unitemized loans of less than \$100.)
- Loans paid or forgiven this period \$ 0.00
(Total Column (c) plus loans under \$100 paid or forgiven.)
(Include loans paid by a third party that are also itemized on Schedule A.)
- Net change this period. (**Subtract** Line 2 from Line 1.) **NET \$** 3,000.00
Enter the net here and on the Summary Page, Column A, Line 2.
(May be a negative number)

†Contributor Codes
IND – Individual
COM – Recipient Committee
(other than PTY or SCC)
OTH – Other (e.g., business entity)
PTY – Political Party
SCC – Small Contributor Committee

*Amounts forgiven or paid by another party also must be reported on Schedule A.
** If required.



Fair Campaign Practices Commission

Date: November 12, 2020

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by ReElect Cheryl Davila for Berkeley City Council 2020.

On October 21, 2020, Commission staff received the attached complaint alleging that the campaign committee ReElect Cheryl Davila for Berkeley City Council 2020 is responsible for a number of campaign-related images spray-painted onto City sidewalks. (Attachment 1.)

Staff have reviewed the allegations and supporting evidence. There is no provision in the Berkeley Election Reform Act (“BERA”) (BMC Chapter 2.12) which addresses the permissibility of spray-painting campaign signs or other imagery onto City sidewalks.

Additionally, while the spray-painted signs do not contain any disclaimer providing information about the source of the “signs,” staff do not interpret the advertisement disclaimer provisions of BERA as applying to such images. Section 2.12.335 of BERA provides that:

A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase “Major Funding Provided By” immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. . . .

Section 2.12.335 defines the “campaign communications” to which these requirements apply to mean:

1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;
3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

November 12, 2020

Page 2 Re: ReElect Cheryl Davila for Berkeley City Council 2020

(BMC § 2.12.335.B.)

BERA expressly exempts the following communications from the disclaimer requirements in Section 2.12.335:

small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

(BMC § 2.12.335.C.)

Although spray-painted sidewalk images which are the subject of this complaint are not referenced in BERA, staff believes that these types of images more closely fall under the list of communications exempt from the definition of “campaign communications” for the sake of the disclaimer requirements. These spray-painted signs do not resemble campaign literature, paid advertisements taken out in newspapers, magazines or on the internet, or emails or telephone calls. (See BMC § 2.12.335.B.) Rather, they are more properly categorized along with “yard or street signs, billboards, supergraphic signs, skywriting, and similar items” or “other items on which the [disclaimer] cannot be reasonably printed or displayed in an easily legible typeface.” (BMC § 2.12.335.C.) Staff therefore concludes that the campaign communication disclaimer requirements of Section 2.12.335 do not apply to these advertisements.

While staff has been unable to identify any additional provision of BERA which may apply to these spray-painted signs, staff believes the images may implicate the Berkeley Sign Ordinance (BMC Title 20), a provision of the Berkeley Municipal Code over which the Fair Campaign Practices Commission does not have jurisdiction.

These painted campaign messages likely meet the Sign Ordinance’s broad definition of “signs”: “Any words, lettering . . . by which anything is made known . . . including all parts, portions, units and materials composing the same.” (BMC § 20.08.220.) The Sign Ordinance generally prohibits placing signs on City sidewalks. (BMC § 20.16.010.A [“No sign . . . shall be . . . printed, stamped, stuck or otherwise affixed to or placed upon any public sidewalk, crosswalk, median strip, curb . . .”].) While the sign code makes an exception for political signs, those signs must be “[t]emporary signs . . . in the form of posters, placards, cards, stickers, or flyers . . . that are affixed to City-owned utility poles and lampposts.” (BMC § 20.16.010.A.3.) It therefore appears that the spray-painted campaign signs may constitute impermissible signage on a City sidewalk. An unlawful sign is considered a public nuisance and subject to the City’s abatement procedures under BMC Chapter 1.24. (BMC § 20.68.030.)

Under the Commission’s Procedures, at this stage, the Commission may (1) direct the Secretary to investigate the complaint, to the extent the Secretary has not already done

November 12, 2020

Page 3 Re: ReElect Cheryl Davila for Berkeley City Council 2020

so; (2) dismiss the complaint; or (c) find probable cause to believe BERA has been violated. (FCPC Procedures Section V.B.2.)

As noted above, staff concludes that the complaint does not allege facts which would constitute a violation of BERA. However, staff believes other provisions of City law – specifically the City’s rules governing signage – may be implicated by these spray-painted signs. Staff therefore recommends the Commission dismiss this complaint and direct staff to refer this matter to the office of the City Manager for review and to evaluate whether remedial steps should be taken to remove any unlawfully spray painted images from City sidewalks.

Attachments:

1. Complaint of Laurin Vincent and attachments

Harvey, Samuel

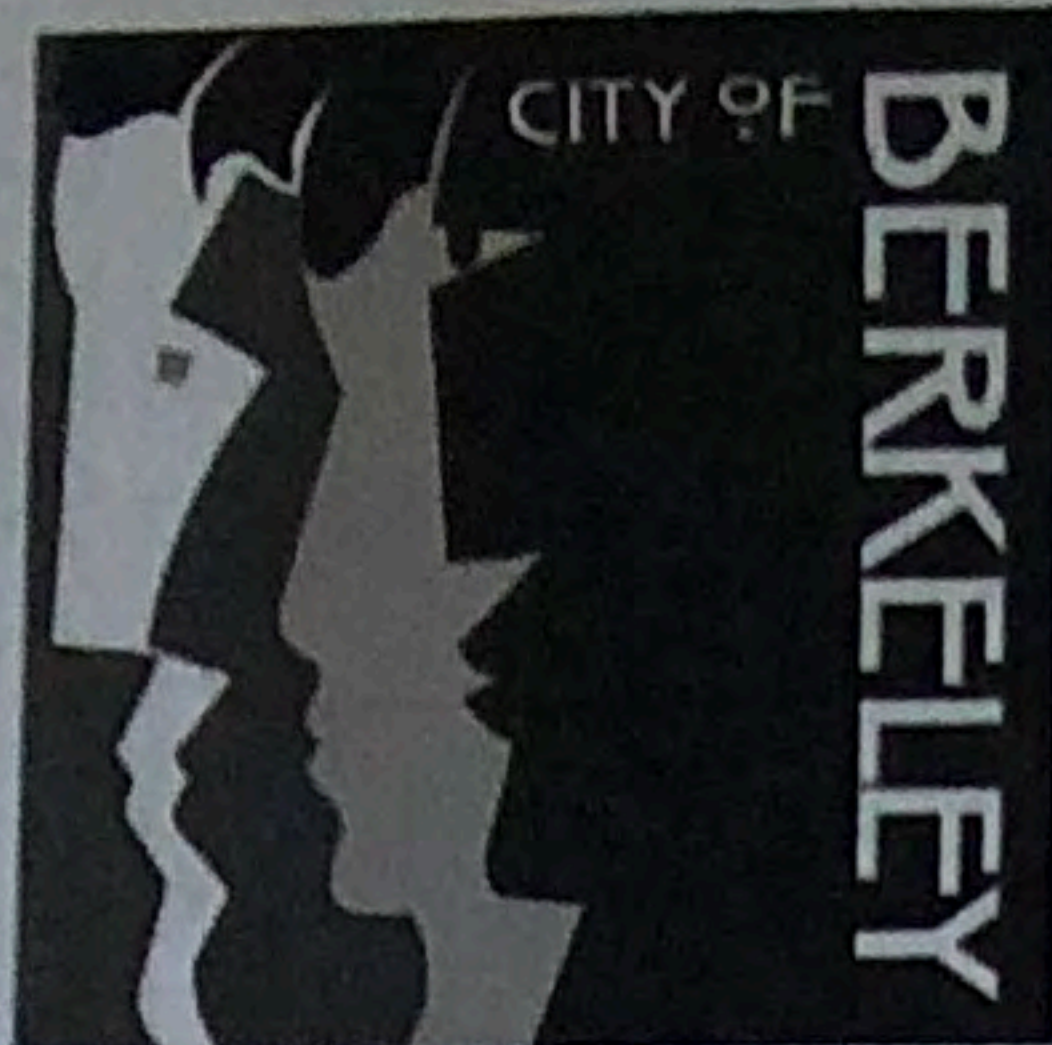
From: Laurin Vincent <laurinvincent02@gmail.com>
Sent: Wednesday, October 21, 2020 12:30 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Campaign Complaint of Noncompliance
Attachments: Complaint of non-compliance.JPG

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Please find attached formal campaign non-compliance complaint and evidence below. This is painted (not chalk) on the public sidewalks.

Best,
Laurin Vincent





Fair Campaign Practices Commission

Complaint of Noncompliance Berkeley Election Reform Act ("BERA")*

Full Name: Laurin Vincent
Date: 10/21/2020
Address: [REDACTED]
E-mail (optional but suggested): laurinvincent02@gmail.com
Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA:
Cheryl Davila campaign has painted on the public sidewalks in west berkeley (in my neighborhood) - ~~directly on the street.~~
It is not chalk!

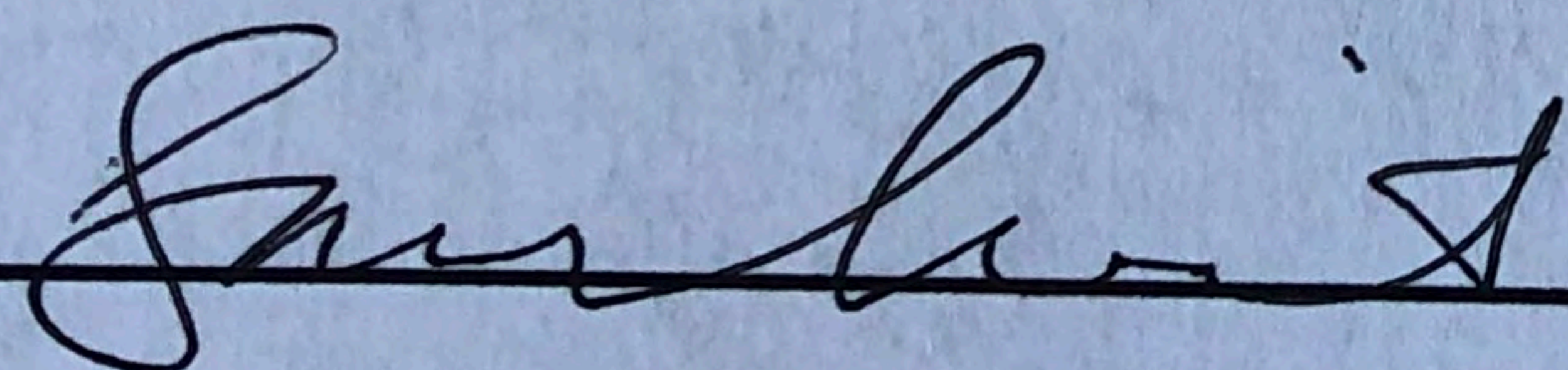
Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If additional space is needed, you may attach additional pages:

There are painted signs to vote for Davila on the sidewalks in my neighborhood (around Strawberry creek park) and all the various side streets.

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.

Signature  Date 10/21/2020

*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission.*



Fair Campaign Practices Commission

Date: November 13, 2020

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by Rent Stabilization Board candidates Leah Simon-Weisberg, Mari Mendonica, Andy Kelley, Dominique Walker, and Xavier Johnson.

On October 20, 2020, Commission staff received the attached complaint alleging that campaign advertisements promoting the candidacies of five candidates for Berkeley Rent Stabilization Board have failed to include the required disclaimer identifying the major funding source behind one of the campaign committees. The five Rent Board candidates are Leah Simon-Weisberg, Mari Mendonica, Andy Kelley, Dominique Walker, and Xavier Johnson.

The complaint alleges that the committee for candidate Simon-Weisberg has received a contribution over \$250 in the form of contribution(s) from the candidate to her own campaign, which the committees failed to disclose in their advertisement disclaimers.

The advertisements in question are joint advertisements supporting multiple candidates. Although the disclaimer on the advertisements is only allegedly inaccurate with regards to one of the above candidates, all five candidate committee could be liable under the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12). This is because all five candidates have allegedly paid for advertisements containing insufficient disclaimers.

The complaint includes screenshots from the candidates’ website and an online advertisement. While each of these advertisements contain a disclaimer listing the candidates’ committees, the disclaimer does not list major funders for any of the committees. The complaint also provides excerpts from candidate Leah-Simon Weisberg’s campaign statements showing a cumulative total of \$900 in loans from the candidate as of September 19, 2020. (Attachment 1.)

Section 2.12.335 of BERA provides that:

- A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase “Major Funding Provided By” immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. . . .

November 13, 2020

Page 2 Re: Simon-Weisberg et al.

B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, "campaign communication" means any of the following items:

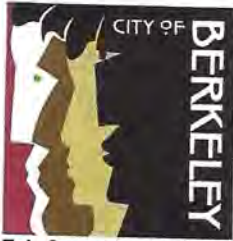
1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;
3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

It appears that the advertisements which are the subject of this complaint may have failed to include an appropriate disclaimer by failing to include the major donor information for Leah Simon-Weisberg for Rent Board 2020 required by section 2.12.335. However, staff will need to investigate to verify the disclaimer language used by the committees and determine whether the Simon-Weisberg campaign or any of the other committees was required to include major donor information in their disclaimer.

Under the Commission's Procedures, at this stage, the Commission may (1) direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (2) dismiss the complaint; or (c) find probable cause to believe BERA has been violated. (FCPC Procedures Section V.B.2.) Staff recommends the Commission direct the Secretary to investigate the complaint further and return at a future meeting with a subsequent report. Staff believes, based upon initial review, that the evidence provided in the complaint is sufficient such that the complaint should not be dismissed, but is insufficient to support a finding of probable cause of a violation at this stage.

Attachments:

1. Complaint of Sandra Clement



Fair Campaign Practices Commission

Complaint of Noncompliance Berkeley Election Reform Act ("BERA")*

Full Name: Sandra Clement
Date: October 12, 2020
Address: [REDACTED]
E-mail (optional but suggested): _____
Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA:
Leah Simon-Weisberg for Rent Board 2020

Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If additional space is needed, you may attach additional pages:

The candidate-controlled committee has failed to publicly disclose on the www.berkeleyrentboard.org website a major contribution made in the form of a loan to the candidate from herself. Public campaign filing for the periods of January 1, 2020 to June 30, 2020 and July 1, 2020 to September 19, 2020 notes loans received in the amount to date of \$900. Section 2.12.335 of BERA requires "disclosure on campaign communications of certain contributions and loans." As of October 11, 2020 there is no disclosure listed on the website. (see attached reference material)

The committee also failed to make a similar public disclosure on an ad published on Berkeleyside.com. As of October 11, 2020 there is no disclosure listed on the ad. (see attached reference material)

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.

Signature Sandra Lee Clement Date 10-12-2020

*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.

Who We Are

What We Support

Tenant Resources



Endorsements

Donate

Right to Housing Slate **for Rent Board**

Leah Simon-Weisberg | Mari Mendonca | Andy Kelley | D

Meet the Sl

Who We Are

What We Support

Tenant Resources



Endorsements

Donate



Leah Simon-Weisberg
Vice Chair, Berkeley Rent Board

[View details ▶](#)

Mari Mendonca
Berkeley Rent Stabilization I
Commissioner

[View details ▶](#)



Who We Are

What We Support

Tenant Resources



Endorsements

Donate

Dominique Walker
Co-Founder Moms4housing

View details ▶

Xavier Johnson
Tenants' Rights Advocat

View details ▶

VOTE NOVEMBER

©2020. Paid for by Leah Simon-Weisberg for Rent Board 2020 FPPC # 1385855; Mari Mendonca for Rent Board 2020 FPPC# 1429074; Andy Kelley for Rent Board 2020 FPPC # 1429628; Walker for Rent Board 2020 FPPC # 1431143; Xavier Johnson for Rent Board 2020 FPPC # 1428113.

LEAH SIMON-WEISBERG

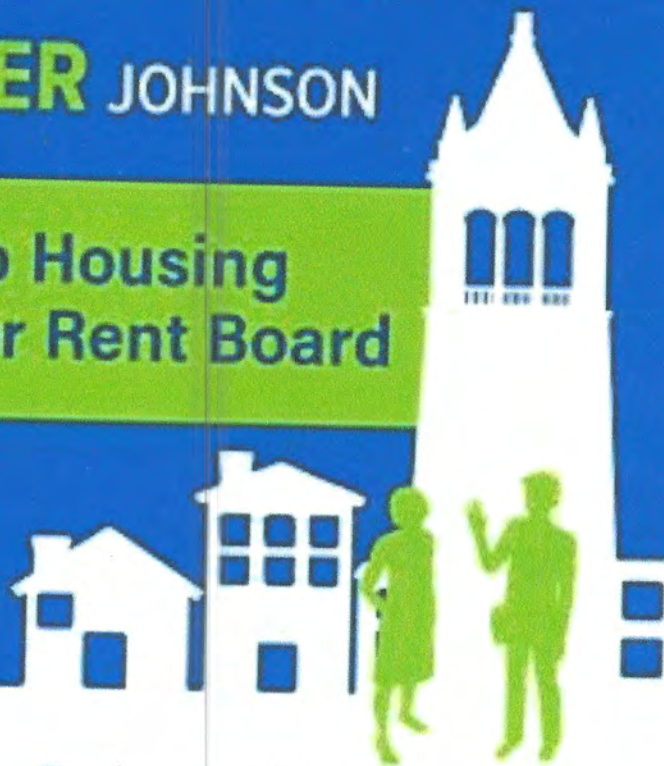
MARI MENDONCA

ANDY KELLEY

DOMINIQUE WALKER

XAVIER JOHNSON

Right to Housing
Slate for Rent Board



_____ Endorsed by: _____

Alameda Labor Council

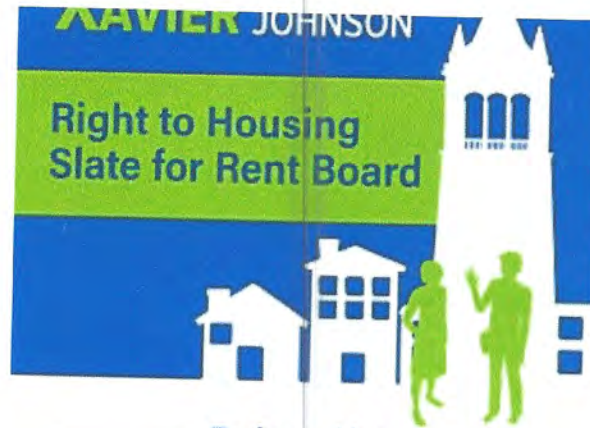
**Wellstone Democratic
Renewal Club**

Berkeley Tenants Union

Paid for by Leah Simon-Weisberg for Rent Board 2020 FPPC #1385855;
Mari Mendonca for Rent Board 2020 FPPC #1429074; Andy Kelley for
Rent Board 2020 FPPC #1429628; Walker for Rent Board 2020
FPPC #1431143 ; Xavier Johnson for Rent Board 2020 FPPC #1428113.

10/11/2020

Berkeley Election 2020 voting news and information — Berkeleyside



Endorsed by:

Alameda Labor Council

**Wellstone Democratic
Renewal Club**

Berkeley Tenants Union

Paid for by Leah Simon-Weisberg for Rent Board 2020 FPPC #1385855;
 Man Mendonca for Rent Board 2020 FPPC #1429074; Andy Kelley for
 Rent Board 2020 FPPC #1429628; Walker for Rent Board 2020
 FPPC #1431143 ; Xavier Johnson for Rent Board 2020 FPPC #1428113.

Campaign Disclosure Statement Summary Page

Amounts may be rounded to whole dollars.

SEE INSTRUCTIONS ON REVERSE
 NAME OF FILER

Leah Simon-Weisberg for Rent Board 2020

I.D. NUMBER
 1385855

Contributions Received

	Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	Schedule A, Line 3 \$ 0.00	\$ 0.00
2. Loans Received	Schedule B, Line 3 \$ 800.00	\$ 900.00
3. SUBTOTAL CASH CONTRIBUTIONS	Add Lines 1 + 2 \$ 800.00	\$ 900.00
4. Nonmonetary Contributions	Schedule C, Line 3 \$ 0.00	\$ 0.00
5. TOTAL CONTRIBUTIONS RECEIVED	Add Lines 3 + 4 \$ 800.00	\$ 900.00

Expenditures Made

6. Payments Made	Schedule E, Line 4 \$ 706.67	\$ 706.67
7. Loans Made	Schedule H, Line 3 \$ 0.00	\$ 0.00
8. SUBTOTAL CASH PAYMENTS	Add Lines 6 + 7 \$ 706.67	\$ 706.67
9. Accrued Expenses (Unpaid Bills)	Schedule F, Line 3 \$ 0.00	\$ 0.00
10. Nonmonetary Adjustment	Schedule C, Line 3 \$ 0.00	\$ 0.00
11. TOTAL EXPENDITURES MADE	Add Lines 8 + 9 + 10 \$ 706.67	\$ 706.67

Current Cash Statement

12. Beginning Cash Balance	Previous Summary Page, Line 16 \$ 2,936.16
13. Cash Receipts	Column A, Line 3 above \$ 800.00
14. Miscellaneous Increases to Cash	Schedule I, Line 4 \$ 0.00
15. Cash Payments	Column A, Line 8 above \$ 706.67
16. ENDING CASH BALANCE	Add Lines 12 + 13 + 14, then subtract Line 15 \$ 3,029.49

If this is a termination statement, Line 16 must be zero.

LOAN GUARANTEES RECEIVED

17. LOAN GUARANTEES RECEIVED	Schedule B, Part 2 \$ 0.00
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Cash Equivalents and Outstanding Debts

18. Cash Equivalents	See instructions on reverse \$ 0.00
19. Outstanding Debts	Add Line 2 + Line 9 in Column B above \$ 900.00

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

1/1 through 6/30 7/1 to Date

20. Contributions Received	\$	\$
21. Expenditures Made	\$	\$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made* (if Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
/ /	\$
/ /	\$

*Amounts in this section may be different from amounts reported in Column B.

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

**Schedule B - Part 1
Loans Received**

Amounts may be rounded to whole dollars.

SEE INSTRUCTIONS ON REVERSE
NAME OF FILER

Statement covers period from 01/01/2020 through 06/30/2020

Leah Simon-Weisberg for Rent Board 2020	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Leah Simon-Weisberg Berkeley, CA 94703 <input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	lawyer Eviction Defense Collaborative	\$ 100.00	\$ 0.00	<input type="checkbox"/> PAID \$ 0.00 <input type="checkbox"/> FORGIVEN \$ 0.00	\$ 100.00	0 %	\$ 100.00	CALENDAR YEAR \$ 800.00 PER ELECTION** \$ 2020 900.00
Leah Simon-Weisberg Berkeley, CA 94703 <input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	lawyer Eviction Defense Collaborative	\$ 0.00	\$ 250.00	<input type="checkbox"/> PAID \$ 0.00 <input type="checkbox"/> FORGIVEN \$ 0.00	\$ 250.00	0 %	\$ 250.00	CALENDAR YEAR \$ 800.00 PER ELECTION** \$ 2020 900.00
Leah Simon-Weisberg Berkeley, CA 94703 <input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	lawyer Eviction Defense Collaborative	\$ 0.00	\$ 300.00	<input type="checkbox"/> PAID \$ 0.00 <input type="checkbox"/> FORGIVEN \$ 0.00	\$ 300.00	0 %	\$ 300.00	CALENDAR YEAR \$ 800.00 PER ELECTION** \$ 2020 900.00

SUBTOTALS \$ 550.00 \$ 0.00 \$ 0.00 \$ 650.00 \$ 0.00

Schedule B Summary

- Loans received this period (Total Column (b) plus unitemized loans of less than \$100.) \$ 800.00
- Loans paid or forgiven this period (Total Column (c) plus loans under \$100 paid or forgiven.) (Include loans paid by a third party that are also itemized on Schedule A.) \$ 0.00
- Net change this period. (Subtract Line 2 from Line 1.) Enter the net here and on the Summary Page, Column A, Line 2. **NET \$ 800.00** (May be a negative number)

†Contributor Codes
 IND - Individual
 COM - Recipient Committee (other than PTY or SCC)
 OTH - Other (e.g., business entity)
 PTY - Political Party
 SCC - Small Contributor Committee

*Amounts forgiven or paid by another party also must be reported on Schedule A.
 ** If required.

Campaign Disclosure Statement Summary Page

Amounts may be rounded
to whole dollars.

Statement covers period

from 07/01/2020 through 09/19/2020

SEE INSTRUCTIONS ON REVERSE
NAME OF FILER

Page 3 of 13

Leah Simon-Weisberg for Rent Board 2020

I.D. NUMBER
1385855

Contributions Received

	Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	Schedule A, Line 3 \$ 3,611.00	\$ 3,611.00
2. Loans Received	Schedule B, Line 3 0.00	900.00
3. SUBTOTAL CASH CONTRIBUTIONS	Add Lines 1 + 2 \$ 3,611.00	\$ 4,511.00
4. Nonmonetary Contributions	Schedule C, Line 3 0.00	0.00
5. TOTAL CONTRIBUTIONS RECEIVED	Add Lines 3 + 4 \$ 3,611.00	\$ 4,511.00

Expenditures Made

6. Payments Made	Schedule E, Line 4 \$ 524.71	\$ 1,231.38
7. Loans Made	Schedule H, Line 3 0.00	0.00
8. SUBTOTAL CASH PAYMENTS	Add Lines 6 + 7 \$ 524.71	\$ 1,231.38
9. Accrued Expenses (Unpaid Bills)	Schedule F, Line 3 0.00	0.00
10. Nonmonetary Adjustment	Schedule C, Line 3 0.00	0.00
11. TOTAL EXPENDITURES MADE	Add Lines 8 + 9 + 10 \$ 524.71	\$ 1,231.38

Current Cash Statement

12. Beginning Cash Balance	Previous Summary Page, Line 16 \$ 3,029.49
13. Cash Receipts	Column A, Line 3 above 3,611.00
14. Miscellaneous Increases to Cash	Schedule I, Line 4 0.00
15. Cash Payments	Column A, Line 8 above 524.71
16. ENDING CASH BALANCE	Add Lines 12 + 13 + 14, then subtract Line 15 \$ 6,115.78

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED

Schedule B, Part 2	\$ 0.00
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Cash Equivalents and Outstanding Debts

18. Cash Equivalents	See instructions on reverse \$ 0.00
19. Outstanding Debts	Add Line 2 + Line 9 in Column B above \$ 900.00

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

20. Contributions Received	\$ _____	1/1 through 6/30	7/1 to Date
21. Expenditures Made	\$ _____		

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*

(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
____/____/____	\$ _____
____/____/____	\$ _____

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

*Amounts in this section may be different from amounts reported in Column B.

**Schedule B – Part 1
Loans Received**

Amounts may be rounded to whole dollars.

SEE INSTRUCTIONS ON REVERSE
NAME OF FILER

Page 10 of 13
I.D. NUMBER 1385855

Statement covers period from 07/01/2020 through 09/19/2020		(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
<input checked="" type="checkbox"/> IND	Leah Simon-Weisberg Berkeley, CA 94703	\$ 100.00	\$ 0.00	\$ 0.00	\$ 100.00	0 %	\$ 100.00	\$ 800.00
<input type="checkbox"/> COM								
<input type="checkbox"/> OTH								
<input type="checkbox"/> PTY								
<input type="checkbox"/> SCC								
<input checked="" type="checkbox"/> IND	Leah Simon-Weisberg Berkeley, CA 94703	\$ 250.00	\$ 0.00	\$ 0.00	\$ 250.00	0 %	\$ 250.00	\$ 800.00
<input type="checkbox"/> COM								
<input type="checkbox"/> OTH								
<input type="checkbox"/> PTY								
<input type="checkbox"/> SCC								
<input checked="" type="checkbox"/> IND	Leah Simon-Weisberg Berkeley, CA 94703	\$ 300.00	\$ 0.00	\$ 0.00	\$ 300.00	0 %	\$ 300.00	\$ 800.00
<input type="checkbox"/> COM								
<input type="checkbox"/> OTH								
<input type="checkbox"/> PTY								
<input type="checkbox"/> SCC								
SUBTOTALS \$		0.00 \$	0.00 \$	0.00 \$	650.00 \$	0.00		

Schedule B Summary

- Loans received this period (Total Column (b) plus unitemized loans of less than \$100.) \$ 0.00
- Loans paid or forgiven this period (Total Column (c) plus loans under \$100 paid or forgiven.) (Include loans paid by a third party that are also itemized on Schedule A.) \$ 0.00
- Net change this period. (Subtract Line 2 from Line 1.) Enter the net here and on the Summary Page, Column A, Line 2. **NET \$** 0.00

†Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other (e.g., business entity)
PTY – Political Party
SCC – Small Contributor Committee

*Amounts forgiven or paid by another party also must be reported on Schedule A.
** If required.

Schedule B - Part 1 (Continuation Sheet) Loans Received

Amounts may be rounded to whole dollars.

SEE INSTRUCTIONS ON REVERSE
NAME OF FILER

Statement covers period
from 07/01/2020
through 09/19/2020

Page 11 of 13

Leah Simon-Weisberg for Rent Board 2020

I.D. NUMBER
1385855

FULL NAME, STREET ADDRESS AND ZIP CODE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD *	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE			
									CALENDAR YEAR	PERELECTION **	CALENDAR YEAR
Leah Simon-Weisberg Berkeley, CA 94703	Lawyer Eviction Defense Collaborative	\$ 250.00	\$ 0.00	<input type="checkbox"/> PAID \$ 0.00 <input type="checkbox"/> FORGIVEN	\$ 250.00	0 % RATE	\$ 250.00 06/19/2020 DATE INCURRED	\$ 800.00 PERELECTION ** \$ 900.00			
<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$	\$	<input type="checkbox"/> PAID \$ <input type="checkbox"/> FORGIVEN	\$	% RATE	\$ DATE INCURRED	\$ PERELECTION ** \$			
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$	\$	<input type="checkbox"/> PAID \$ <input type="checkbox"/> FORGIVEN	\$	% RATE	\$ DATE INCURRED	\$ PERELECTION ** \$			
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$	\$	<input type="checkbox"/> PAID \$ <input type="checkbox"/> FORGIVEN	\$	% RATE	\$ DATE INCURRED	\$ PERELECTION ** \$			
SUBTOTALS \$								0.00 \$	250.00 \$	0.00	

†Contributor Codes
IND - Individual
COM - Recipient Committee
(other than PTY or SCC)
OTH - Other (e.g., business entity)
PTY - Political Party
SCC - Small Contributor Committee

*Amounts forgiven or paid by another party also must be reported on Schedule A.
** If required.



Fair Campaign Practices Commission

Date: November 13, 2020

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by Wayne Hsiung for Mayor 2020 and Compassionate Bay

On October 15, 2020, Commission staff received the attached complaint alleging that the campaign committee Wayne Hsiung for Mayor 2020 and an organization called Compassionate Bay have violated the Berkeley Election Reform Act (“BERA”) (BMC Ch. 2.12). The complaint alleges that two campaign advertisements have failed to include the disclaimer required by Berkeley Municipal Code (“BMC”) section 2.12.335. Additionally the complaint indicates that Compassionate Bay may have failed to register as a campaign committee and file applicable disclosures.

The complaint includes an image of a flyer supporting the candidacy of Wayne Hsiung and a door hanger titled “Compassionate Bay Voter Guide.” The flyer appears to be an advertisement distributed by Wayne Hsiung for Mayor 2020. The door hanger appears to be distributed by the organization Compassionate Bay and does not appear to be affiliated with Wayne Hsiung for Mayor 2020.

Section 2.12.335 of BERA provides that:

- A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase “Major Funding Provided By” immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. . . .
- B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, “campaign communication” means any of the following items:
 1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
 2. Paid advertisements, including but not limited to advertisements in

November 13, 2020

Page 2 Re: Wayne Hsiung for Mayor 2020 – Compassionate Bay

newspapers, magazines, and on the Internet;

3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

One or more of the advertisements which are the subject of this complaint may have failed to include a disclaimer required by section 2.12.335. However, staff will need to investigate to determine the source of the subject advertisements and to verify the required disclaimers, if any.

As the complaint notes, the entity Compassionate Bay may have qualified as an independent committee (see BMC § 2.12.140) or as a slate mailer organization (see BMC § 2.12.272). Staff will need to review Compassionate Bay's activity and any campaign reports to determine whether the entity has properly registered and reported its campaign activities.

Under the Commission's Procedures, at this stage, the Commission may (1) direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (2) dismiss the complaint; or (c) find probable cause to believe BERA has been violated. (FCPC Procedures Section V.B.2.) Staff recommends the Commission direct the Secretary to investigate the complaint further and return at a future meeting with a subsequent report. Staff believes, based upon initial review, that the evidence provided in the complaint is sufficient such that the complaint should not be dismissed, but is insufficient to support a finding of probable cause of a violation at this stage.

Attachments:

1. Complaint of Jacquelyn McCormick and attachments



Fair Campaign Practices Commission

Complaint of Noncompliance Berkeley Election Reform Act ("BERA")*

Full Name: Jacquelyn McCormick
Date: October 15, 2020
Address: [REDACTED]
E-mail (optional but suggested): robleroad@gmail.com
Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA:
Wayne Hsuing for Mayor 2020
Compassionate Bay Voter Guide 2020


Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If additional space is needed, you may attach additional pages:

I wish to bring to the attention of the FCPC several apparent violations of BERA. The first concerns use of campaign literature and doorhangers disseminated by or on behalf of Wayne Hsuing, a candidate for Berkeley Mayor in the November 2020 election. As the attached documentation demonstrates, none of these contain the kind of disclosure required under BMC 2.12.335.A. Further the propagation of these door hangers and other campaign literature makes it highly likely that the threshold enumerated in BMC 2.12.335.B(1) ("One thousand or more substantially similar pieces of campaign literature, including, but not limited to, flyers, pamphlets, and door hangers") is exceeded. The second concerns several apparent violations associated with the "Compassionate Bay Voter Guide 2020". The same lack of disclosure enumerated above applies here, and there are other violations. On the face, this appears to be either a SMO or IE. However, neither Netfile nor state filing reports show any evidence of either type of committee being formed, and no campaign reports required under BMC 2.12.272 are evident. Further, if an SMO, no disclosure of payments by candidates of their likeness on the state mailer is evident, nor is there a required asterisk denoting that endorsed candidates were not asked to pay for the doorhanger. If an IE, no BERA or FPPC-required disclaimer exists on the card as to the name of the committee or who/what are the major funders.

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.

Signature  Date 10-15-2020

*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.

COMPASSIONATE
BAY
VOTER GUIDE 2020

Please vote via mail (see the back of this guide),
or in person on November 3, 2020.

Mayor of Berkeley
Wayne Hsiung



Berkeley
City Council District 2
Cheryl Davila



Berkeley
City Council District 3
Ben Bartlett



Berkeley
City Council District 5
Paul Darwin Picklesimer





WAYNE HSIUNG

for mayor



Housing For Everyone

We'll fight to transform under-utilized corporate property into thousands of units of affordable housing.

Green New Deal

We'll divest city funds from climate-destroying industries and build a carbon neutral Green District -- then expand it to the rest of the city

Police Reform

We'll end police militarization and transform Berkeley Police Department into a Public Safety Force to strengthen our community.

Funded By Small Donors

We've rejected corporate PAC money and only accepts contributions from individuals up to \$50.

wayneformayor.com





Fair Campaign Practices Commission

Date: November 12, 2020
To: Fair Campaign Practices Commission
From: Samuel Harvey, Secretary
Subject: Enforcement referrals from the City Clerk

The office of the City Clerk has referred the following items to the Commission for review and potential enforcement action:

Case No. 1: Andrew for Berkeley Council 2020 (ID # 1426039)

Case No. 2: Wayne Hsiung for Mayor 2020 (ID # 1425923)

As the attached report from the City Clerk indicates, both campaigns have participated in the City's Public Financing Program and received matching funds for eligible contributions. However, both campaigns returned one or more eligible contributions to their contributors. The City Clerk asserts, and Commission staff agree, that the matching funds given to these committees for the returned contributions must be remitted to the City's Fair Elections Fund.

Staff recommends the Commission direct the Secretary to initiate an enforcement investigation of both referrals and return at a future meeting with a subsequent report. The Commission should vote separately on each of these referrals.

Attachments:

1. City Clerk Staff Referral Report



City Clerk Department

November 12, 2020

To: Sam Harvey, Secretary, Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Referral of Returned Contributions by Public Finance Program
Participants After Receiving Matching Public Funds

The City Clerk Department is referring two potential BERA violations to the Fair Campaign Practices Commission for consideration and appropriate enforcement action.

In these cases, candidates participating in the City's Public Financing Program requested and received matching public funds for an eligible contribution, and subsequently returned the original contribution to the contributor without refunding the matching public funds to the City of Berkeley. Details of each case are outlined below.

Case No. 1: Andrew for Berkeley Council 2020, Campaign ID #1426039

- On July 21, 2020, a request for matching funds was submitted to the City Clerk Department, including a contribution received on July 14, 2020 from Peter Ross in the amount of \$50.
- Staff reviewed the submission, confirmed eligibility for matching public funds, and disbursed \$300 in matching public funds for the above-named contribution.
- On September 25, 2020, a Pre-Election Campaign Statement (Form 460) was filed with the City Clerk Department, showing that the contribution from Peter Ross was returned to the contributor on August 5, 2020.

Once a contribution has been returned, it is no longer eligible to receive matching public funds. Therefore, the \$300 in public funds must be returned to the Fair Elections Fund. To date, the City Clerk Department has not received the return.

Case No. 2: Wayne Hsiung for Mayor 2020, Campaign ID #1425923

- On August 21, 2020, a request for matching funds was submitted to the City Clerk Department, including a contribution received on July 1, 2020 from Suki Shephard in the amount of \$50; and
- On September 16, 2020, a request for matching funds was submitted to the City Clerk Department, including a contribution received August 21, 2020 from Belinda Sifford in the amount of \$50.
- Staff reviewed the submissions, confirmed eligibility for matching public funds, and disbursed \$300 in matching public funds for each of the above-named contributions, for a total of \$600.
- On October 22, 2020, a Pre-Election Campaign Statement (Form 460) was filed with the City Clerk Department, showing that the contribution from Suki Shephard was returned to the contributor on September 24, 2020; and the contribution from Belinda Sifford was returned October 11, 2020.

Once a contribution has been returned, it is no longer eligible to receive matching public funds. Therefore, the \$600 in public funds for the above-named contributions must be returned to the Fair Elections Fund. To date, the City Clerk Department has not received the return.

If you have any questions regarding the above referenced campaign finance transactions, please contact me or my staff directly.



Open Government Commission

Date: November 13, 2020
To: Open Government Commission
From: Samuel Harvey, Secretary
Subject: Non-filing by quarterly lobbyist filers

The office of the City Clerk has referred to the Commission the attached report identifying fourteen registered City lobbyists who have failed to file their required quarterly lobbying reports for the reporting period covering July 1 – September 30, 2020. As the attached report notes, notices were sent to these fourteen non-filers on November 12, 2020. Additionally, two of the fourteen lobbyists have failed to file the required disclosures for the previous reporting period (April 1 – June 30, 2020).

Section 2.09.140 of the City's Lobbyist Registration Act (BMC Ch. 2.09) requires registered local governmental lobbyists to file quarterly reports disclosing their lobbying activities. Under section 2.09.240, the Commission is empowered to adopt rules, procedures and regulations to enforce the Lobbying Registration Act.

Based on the report provided by the City Clerk, the Commission Secretary believes the failure to file quarterly reports constitutes a violation of the Lobbyist Registration Act. Notably, this is the Commission's first enforcement matter brought under the Lobbyist Registration Act. Presently, the Commission has not promulgated regulations or adopted procedures to direct the enforcement of the act. The legal authority governing this process is therefore limited to Article 6 of Chapter 2.09 of the Lobbyist Registration Act (BMC §§ 2.09.240 through 2.09.330). (Attachment 2.)

Staff recommends that the Commission take the following actions:

1. Make a finding that failure to file a quarterly disclosure report constitutes a violation of the Lobbyist Registration Act;
2. Direct the Commission secretary to initiate an investigation into the fourteen non-filers identified in the City Clerk's report and return at a future meeting with a report recommending further action; and
3. Discuss possible next steps for the creation of rules, procedures and regulations to guide the Lobbyist Registration Act enforcement process.

October 9, 2020

Page 2 City Clerk enforcement referrals

Attachments:

1. City Clerk Staff Referral
2. Lobbyist Registration Act, Article 6 – Enforcement (BMC §§ 2.09.240 through 2.09.330)



City Clerk Department

November 12, 2020

To: Sam Harvey, Secretary, Open Government Commission
From: Mark Numainville, City Clerk
Subject: Referral of Non-Filing by Quarterly Lobbyist Filers

The Lobbyist Registration Act requires certain local government lobbyists to file quarterly disclosures of lobbying activity with the City Clerk Department.

Notice of the filing requirement for the reporting period of July 1-September 30, 2020 (due by October 31, 2020) was sent to quarterly lobbyist filers by the City Clerk Department on October 15, 2020. A Notice of Non-Filing was sent on November 12, 2020. The following fourteen lobbyists have not filed for this reporting period:

Lobbyist Filer	Employer
Thomas Alexander	Fred Finch Youth Center
John Caner	Downtown Berkeley Association
Patrick Dooley	The Shotgun Players
Fernando Echeverria	East Bay Community Law Center
Carl Knecht	Resources for Community Development
Elizabeth Lisle	The Shotgun Players
Michelle Martinea	Modus, LLC
Francis McIlveen	Northern California Land Trust
Daniel Nevers	Berkeley Art Center
Cherilyn Parsons	Foundation for the Future of Literature and Literacy
Zoe Polk	East Bay Community Law Center
Jassmin Poyaoan	East Bay Community Law Center
Kiran Shenoy	Bridge Association of Realtors
Ariel Strauss	Greenfire Law P.C.

Additionally, two of the individuals noted above failed to file disclosures for the previous reporting period of April 1-June 30, 2020 (Thomas Alexander and Carl Knecht).

My office recommends referral of these matters to the Open Government Commission for consideration of: 1) Whether or not the failure to file quarterly disclosure reports is a violation of the Lobbyist Registration Act; and 2) Appropriate enforcement action as determined by the Commission.

2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.

3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months. (Ord. 7629-NS § 1 (part), 2018)

Article 6. Enforcement

Section 2.09.240 Rules and regulations.

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.250 Complaint, investigative procedures, and probable cause.

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.260 Notice and hearing on violations.

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.270 Violations – commission action.

If the Open Government Commission finds a violation of this Act, the Open Government Commission may: (1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1). (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.280 Civil actions.

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.290 Civil penalties.

A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.

C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or procedures. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.300 Criminal violation.

- A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.
- B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.
- C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.310 Joint and several liability.

- A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.
- B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.
- C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150 the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.320 Effective date.

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible. (Ord. 7629-NS § 1 (part), 2018)

Section 2.09.330 Severability.

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances. (Ord. 7629-NS § 1 (part), 2018)



Open Government Commission

Date: November 17, 2020
To: Open Government Commission
From: Sam Harvey, Secretary
Subject: Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings

INTRODUCTION

This report is presented to the Commission as part of its process for considering complaints pursuant to the Open Government Ordinance (“OGO”), BMC Section 2.06.190.A.1, which provides in relevant part:

The Open Government Commission shall:

- a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint . . .

Separate from its process for considering complaints, the Commission may “propose additional legislation or procedures that it deems advisable to ensure the City’s compliance with this Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.” (BMC § 2.06.190.A.2.)

November 17, 2020

Page 2 Re: Schwartz Complaint

BACKGROUND

On June 16, 2020, Complainants Martin and Olga Schwartz (“Complainants”) submitted a Complaint of Noncompliance (“Complaint”) under the OGO to the Commission Secretary. The Complaint and accompanying appendices are attached to this report as Attachment 1.

The Complaint alleges “procedural violations and/or unfair practices” during the Zoning Adjustments Board (“ZAB”) proceedings regarding a project at 2650 Telegraph Avenue (the “Project”). While the Complaint does not identify specific provisions of the OGO which it alleges have been violated, the Complaint alleges the following:

1. Omission from the ZAB packet and supplemental materials of correspondence submitted to the ZAB by members of the public.

The Complaint alleges that Complainants submitted a letter to ZAB on December 14, 2019 which was not included on the City’s webpage for the Project. The Complaint also alleges that numerous members of the public submitted correspondence to the ZAB prior to the hearing on March 12, 2020 requesting that the hearing be conducted via videoconference or postponed in light of the coronavirus pandemic, and that these letters were omitted from published ZAB materials. The Complaint alleges that the ZAB has systematically refrained from posting correspondence submitted in opposition to the Project.

2. Failure by the ZAB to include in the Notice of Decision (“NOD”) items previously approved by the ZAB.

The Complaint alleges that two items related to the Project which were approved by the ZAB at its March 12, 2020 hearing were omitted or insufficiently included in the NOD. Specifically, the Complaint alleges that an item recommending consultation with an engineer regarding a soundless gate system was not included in the NOD, and that a recommendation to replace a community garden/dog walk with trees is insufficiently discussed in the NOD.

3. Exclusion from the NOD of items agreed upon by the applicant, developer and neighbors of the Project.

The Complaint alleges that neighbors of the project and the applicant/developer reached agreement regarding an on-site manager and regulations for the use of open space. The Complaint alleges the applicant “attempted to back out” of this agreement at the March 12, 2020 meeting and “feels not obligated to implement these items.”

The Complaint also requests that “potential conflicts of interest” be reviewed and that “persons having such conflicts of interest be excluded from serving on ZAB or as planners.” The Complaint does not identify any specific “potential conflicts of interest.”

November 17, 2020

Page 3 Re: Schwartz Complaint

In the absence of any allegations of specific conflicts or identification of ZAB members who may have participated in a decision in which they had a conflict, staff have not been able to investigate any potential conflicts of interest.

Staff have determined that the allegations contained in the Complaint do not amount to violations of the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration. (See Attachment 2.) At its September 17, 2020 meeting, the Commission directed staff to perform a factual evaluation of the claims and return with a report to enable OGC to determine whether a proposal should be submitted to the City Council regarding possible changes to board/commission procedures or other City policies to address the concerns expressed in the Complaint.

EVALUATION OF ALLEGATIONS

1. Omission of communications from the public

The Complaint asserts that certain communications from the public were omitted from ZAB materials related to the project. Specifically, the complaint asserts that a letter complainants submitted to ZAB on December 14, 2019 was omitted from the ZAB webpage for the project as were multiple additional letters sent to ZAB requesting that a hearing be conducted via videoconference in light of concerns about the spread of COVID-19. Staff has confirmed that the December 14, 2019 letter has not been posted onto the ZAB webpage for the project.¹ In practice, it appears that many or most communications to ZAB regarding a project are published to the project's webpage. However, as staff's report of September 17, 2020 notes, failure to include the complainant's communication on the project webpage does not constitute a violation of any provision of law over which the Commission has jurisdiction. The Commission may wish to review and consider amendments to City policies if it believes that communications submitted to ZAB regarding a project should be required to be published as part of the online record for that project.

2. Failure to include previously agreed upon items in the NOD

The complaint alleges that the following two items were agreed to by the ZAB but omitted from the NOD:

- a. Replacing a community garden/dogwalk on the west side of the project with mature trees
- b. Consulting an engineer regarding a soundless gate system.

These two concerns were raised by Complainants in an appeal of the ZAB approval which was considered by the City Council. As the City Manager's report regarding that

¹ See Planning and Development webpage for 2650 Telegraph Ave project:
https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2650_Telegraph.aspx

November 17, 2020

Page 4 Re: Schwartz Complaint

appeal (see attachment 3) notes, ZAB included the following condition for approval to the Use Permit:

Mature trees planned for installation at the western property line, the species of which are to be mutually agreeable with the applicant and immediate neighbors to the west.

The soundless gate concern appears to be focused on whether the building will include an alarm at the garage gate to warn pedestrians of cars moving out of the garage. The City Manager's report indicates that ZAB consulted with the City's Traffic Engineer regarding the need for an alarm associated with the building's garage gate. The engineer determined that, given the design of the project, such an alarm is required by law. (See Attachment 3.)

Based upon review of the administrative record of the Project and the City Manager's report, staff believes there is insufficient evidence to conclude that ZAB's decision to approve the Project omitted previously agreed upon items. Moreover, absent a showing of procedural misconduct, staff believes that concerns about the substantive determinations of a City body such as ZAB may lie outside of the Open Government Commission's purview.

3. Exclusion from the NOD of items agreed upon by the applicant/developer and neighbors of the Project.

The complaint asserts that the applicant/developer agreed to certain items in discussions with neighbors of the project but "attempted to back out of this agreement during the ZAB hearing." These items include:

- a. On-site manager
- b. "regulations for the use of open space"

The Complaint includes a letter from the project applicant/developer which asserts that "the project's lease agreement and community policies will include quiet hours, time restriction for roof deck use, and contact information will be posted for an on-site building manager who can address noise complaints." Staff's review of the record confirms that these items were not included in the final determination by the ZAB. This conclusion is supported by the City Manager's report as well. That report notes that public comment regarding these items was heard by the Design Review Committee ("DRC") and ZAB, but that neither the DRC nor ZAB discussed or adopted these provisions. Staff believes that both the DRC and ZAB acted within their discretion in deciding whether to consider or adopt these provisions and that failure to do so does not reflect a violation of any applicable rule or law.

November 17, 2020

Page 5 Re: Schwartz Complaint

RECOMMENDATION

Staff believes that the first prong of the complaint (Omission of communications from the public from the Project website) is an area the Commission may wish to discuss and direct the Commission secretary to return with proposed changes to City policy regarding the inclusion of public comment with the ZAB administrative record available on a project's ZAB webpage. Regarding the second and third prongs of the Complaint, staff does not see a clear avenue for the Commission to recommend changes to City policy. Rather, staff believes these two prongs are best characterized as disagreements over the merit of ZAB's substantive determinations.

Attachments:

1. Complaint
2. Staff Report (Sep. 17, 2020)
3. Excerpt from City Manager's report to Council regarding ZAB decision appeal (June 16, 2020)

OGC _ Schwartz complaint 6.5.2020

To: Open Government Commission

Re: Procedural violations/unfair practices in creating the Notice of Approval for the construction project at 2650 Telegraph Ave.

From: Martin and Olga Schwartz , 2405 Derby Street, Berkeley, CA 94705 (neighbor immediately west of 2650 Telegraph)

We would like to attract your attention to procedural violations and/or unfair practices in the creation of a Notice of Approval for the construction project 2650 Telegraph.

A. The omission of significant letters from the neighbors into the ZAB packet or supplemental materials.

On December 14, Martin Schwartz and myself wrote a letter to ZAB, sent to planner Ashley James. None of the materials on the project website have this letter included, but the letters from Berkeley citizens who live far away from the project who wrote in support of it are posted. The email communication and our letter is in **Appendix A**.

(https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2650_Telegraph.aspx)

Second, in advance of the in-person ZAB public hearing on March 12, in the midst of pandemics several neighbors wrote letters asking for the meeting to be conducted by ZOOM or postponed. These letters are also omitted in the project materials, while the letters urging ZAB to hold the meeting are posted.

It seems that there is systematically selective postings of materials favorable to the project.

B. Omission to include two ZAB-approved items: replacement of the “community garden”= dog run by mature trees, and soundless garage gates, in the NOD from April 14 (Appendix G)

Both replacement of a community garden with trees and soundless gates are of major importance in mitigation of the impact of the project on the neighbors. They were discussed in detail during ZAB meeting on March 12; ZAB recommended replacement of community garden/dogwalk with trees, and consultation with DRC about what type of trees will be used. ZAB also recommended consulting an engineer for a soundless garage gate system. However, in the NOD, the formulation of first item is changed to “planting the trees on western border”, while the dog walk is still in the plans; garage gates are omitted altogether. Please see **Appendix B** for details.

C. Other Items excluded from ZAB discussion and NOD

These include omission of agreed-upon on-site manager and regulations for the use of open space. The applicant and developer agreed to implement these items in discussions with the neighbors, but attempted to back out of this agreement during the ZAB hearing on March 12. Attempts of the neighbors to attract attention to these two items were dodged. Thereby, the applicant feels not obligated to implement these items. Please see **Appendix C** for details.

OGC _ Schwartz complaint 6.5.2020

These omissions are a detriment to the neighbors but benefit the applicant/ developer.

In order for the City's decisions to be impartial, we are requesting the Open Government Commission to look into the procedural violations/ unfair practices issue. We are also asking that potential conflicts of interests be vented and persons having such conflicts of interest be excluded from serving on ZAB or as planners .

Enclosed:

1. Cover Letter and OGC complaint form
2. Appendix A. Schwartz letter to ZAB from Dec 14.
3. Appendix B. ZAB-approved items omitted to be included in the NOD (replacement of community garden with mature trees; soundless garage gates).
4. Appendix C. Items excluded from ZAB discussion (manager and open space management; temporary construction fence)
5. Appendix D. DRC comments to ZAB (manager and open space management)
6. Appendix E. Supplemental Items Round 2 (manager and open space management)
7. Appendix F. Architect's response to manager and open space concerns
8. Appendix G. Notice of Decision on 2650 Telegraph.



Open Government Commission

Complaint of Noncompliance

Open Government Ordinance (“OGO”), the Brown Act, the Public Records Act, and the Lobbyist Registration Act

Name: Olga Louchakova-Schwartz and Martin Schwartz

Date: June 5, 2020

Mailing Address/

Contact Info: 2405 Derby Street, Berkeley, CA 94705

Identify the area of noncompliance (check all that apply):

OGO Brown Act Public Records Act Lobbyist Registration Act

Describe the act(s) of noncompliance. (Attach additional page if more space is needed.)

ZAB NOD for 2650 Telegraph avenue project, user permit #ZP2019-0070 has been issued with several areas of diversion from ZAB decision, as documented in ZAB meeting minutes from March 12. In addition, the ZAB limited the input omitted from discussion several items which were already agreed upon by the applicant and the neighbors. The manner of hearings, process of decision issuance, and accuracy of documentation are of concern . See attachments.

List the date(s) on which the noncompliance occurred.

March 12 2020 (date of ZAB hearing), April 14 2020 (Date of NOD issuance)

Describe any steps taken to address the noncompliance directly with City of Berkeley staff and/or elected official, including the name of any staff person involved, if known.

Olga Louchakova-Schwartz made an attempt to address the omitted or misstated items in the NOD with the planner, Ashley James. Ms. James responses missed to address the issues. Please see the copies of emails in the attached. Then, Schwartz submitted an appeal to the City Council. The date of the appeal hearing is scheduled for June 16, 2020.

Documents:

Attach any written requests or complaints submitted to the City and any responses received. You should also attach any additional information that you believe will assist the Commission and staff in reviewing your complaint.

Use this “Complaint of Noncompliance” form if you would like the Open Government Commission to review your complaint and possibly forward their recommendation(s) to the City Council. Filing a Complaint with the Open Government Commission does not constitute a demand to cure or correct under California Government Code § 54960.1.



Olga Louchakova-Schwartz <olouchakova@gmail.com>

RE: 2650 Telegraph avenue project: a letter from Olga and Martin Schwartz, 2405 Derby

1 message

James, Ashley <AJames@cityofberkeley.info>
To: Olga Louchakova-Schwartz <olouchakova@gmail.com>

Tue, Dec 17, 2019 at 4:36 PM

Thank you, Olga this has been received.

From: Olga Louchakova-Schwartz [mailto:olouchakova@gmail.com]
Sent: Saturday, December 14, 2019 5:22 PM
To: James, Ashley <AJames@cityofberkeley.info>
Subject: 2650 Telegraph avenue project: a letter from Olga and Martin Schwartz, 2405 Derby

Dear Ms. James,

My husband and I live at 2405 Derby Street, immediately west of the proposed construction on 2650 Telegraph. I am writing to inform you about the specific ways in which our lives will be degraded by this project. We are very scared of this, and hope you can help us to avoid it.

We are two retired professors, and we are not "sitting on a pile of money", as one of the members of ZAB referred to our age group. I am an immigrant who came to this country midlife with \$50, and did not have a chance to earn retirement. My husband is a researcher in the humanities who was focused on producing intellectual and not monetary values, and we live solely off his fairly modest UC retirement money. Both of us need to stay within walking distance of the University libraries in order to continue research we are committed to doing. My husband is a disabled with advanced arthritis, and doesn't have permission to drive. So, we need to remain in our present home. Even if we had to go through what for us would be a horribly upsetting event of having to find a home elsewhere, at the moment, due to the planned construction at 2650 Telegraph, our property has lost its sales value by \$390,000 (see attached evaluation), thus effectively depriving us of the possibility to move somewhere else. Over the next ten years, our loss of sales and appreciation will be \$ 1,017,512.

At hand is a construction of a monolithic mountain-like commercial-residential building 12 feet (size of regulation?) from the eastern wall of our home, and adding 100+ people squeezed into the space between us and the already busy Telegraph Avenue. We do not think that the density bonus request is applicable to the lots like this one, because the commercial buildings and the student apartments between Telegraph and Carlton already provide enough of such density: we have to make frequent calls to police to remove vehicles blocking our driveway; we constantly have delivery trucks and uber vehicles parked near our house, we have noise after midnight, etc. In the proposed form, the project will not just deteriorate the quality of our lives, but the stress of it may as well turn fatal for us. This is not an exaggeration, but a realistic and quite a somber assessment of the situation.

Palliative solutions, such as landscaping etc., will not prevent this. We are requesting a solution which makes the situation livable for us. Specifically, we are requesting to reduce the scale of the project to a three story building, which will be one floor above the highest houses in our block and down the street. This, of course, will reduce the income the applicant plans to obtain from his luxury project, and will change the character of the project. However, this will need many needs of the city, including low income housing, animating downtown Berkeley, sustaining the historical character of the neighborhood, keeping down the traffic, etc. This will also address the concerns of neighborhood businesses regarding solar panels, shade etc. We earnestly look to ZAB to consider our request favorably.

Sincerely, and with much hope

Olga Louchakova-Schwartz (and Martin Schwartz)

P.S.

The 18 months of construction (the time estimated by the architect, Mr. Trachtenberg, in conversation with my husband) would bring intolerable noise, cutting into our sleep and making work and just being at home difficult for us. We were particularly alarmed by ZAB member Patrick Sheehan's report that on Mr. Trachtenberg's other project, construction workers would turn up at 5:30 AM and talk loudly, etc. before they get to work, in theory at 8:30.AM. The construction would also fill the air with particles, some toxic (my husband has a respiratory problem as it is) for that long time. Scaling down the project will help these concerns as well.

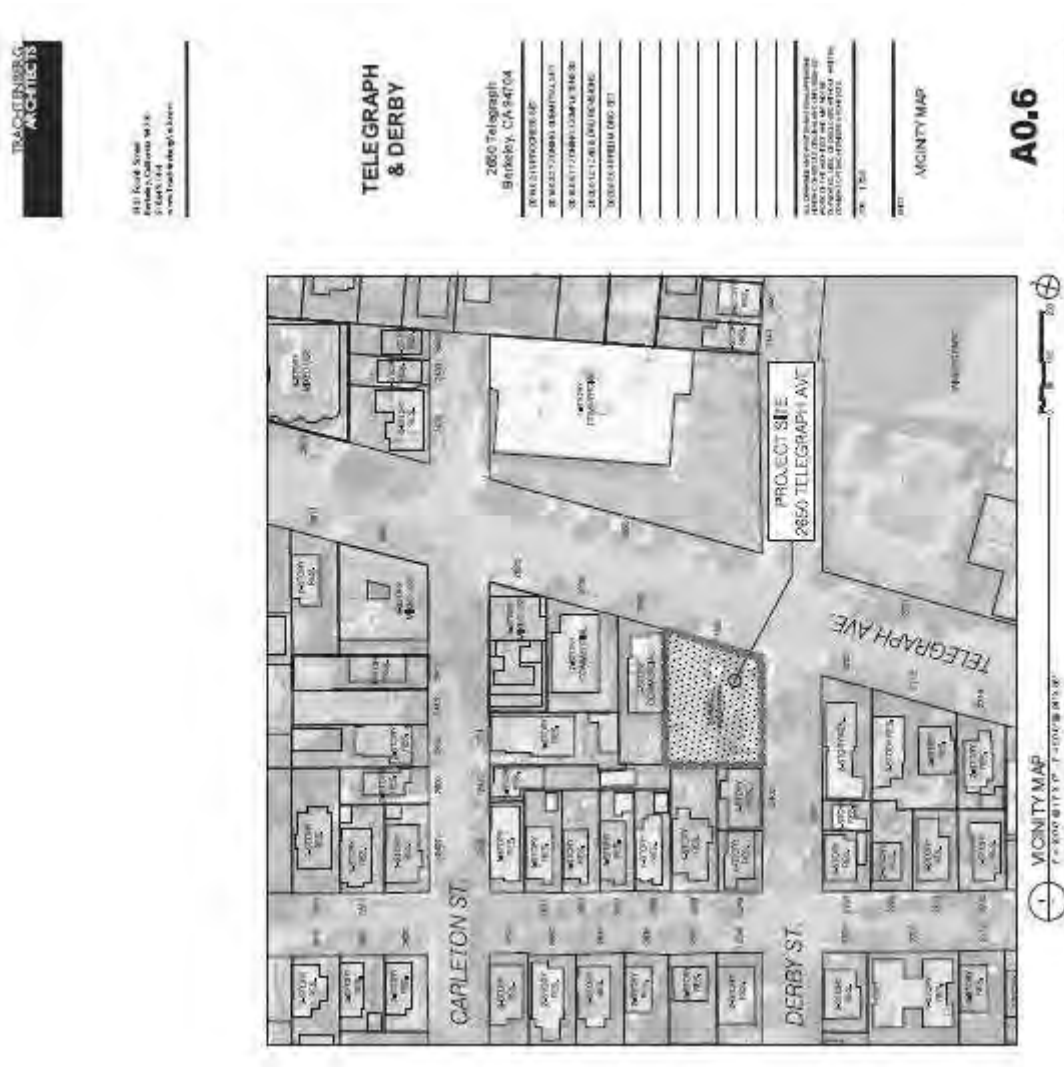
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Appendix B.

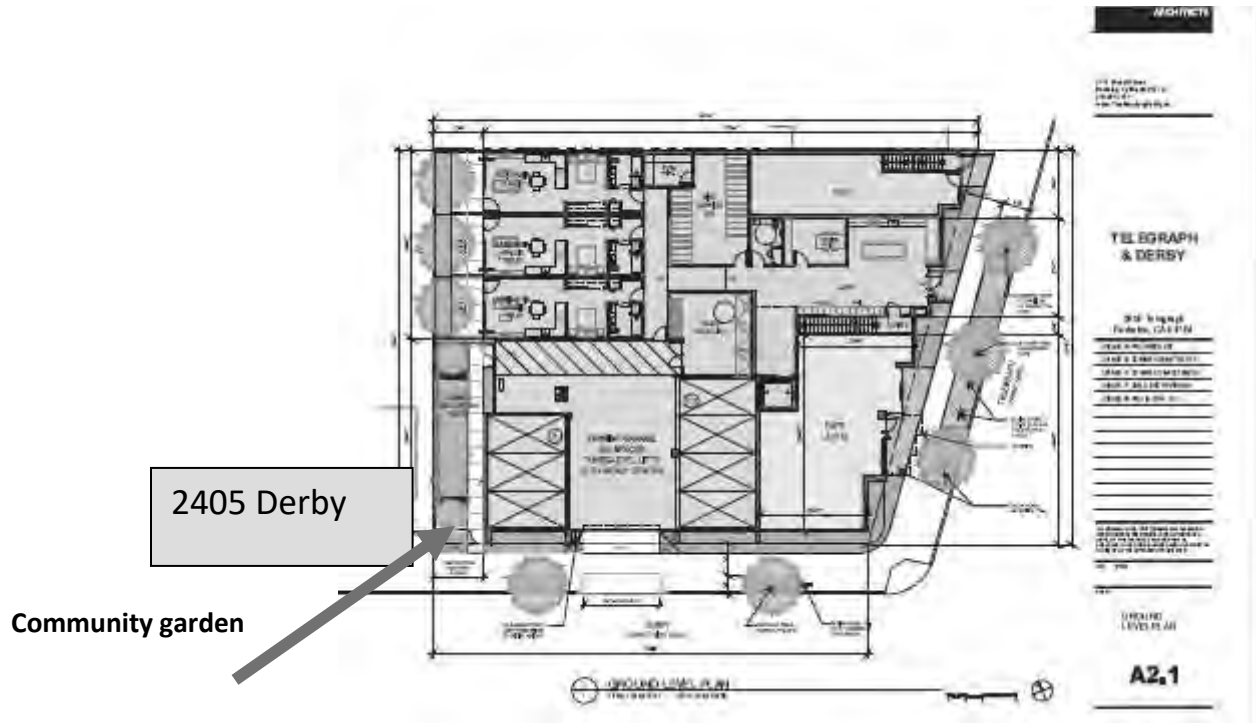
ZAB Decisions Omitted in the NOD: B.01. Replacement of Dog Walk by Trees, and B.02. Soundless Garage Gates

B.01. Decision to replace the “Community Garden” (a.k.a. Dog Walk) by mature trees planted along the western boundary of the project

Neighborhood context: The western boundary of the 2650 Telegraph site is next to two residences, 2405 Derby St., and 2643 Dana Street. See A0.6 excerpt from ZAB NOD, Project Plan, below.



The windows of the study and bedroom walls of Schwartz residence at 2405 Derby are right next to the construction site. The adjacent area of construction next to the 2405 Derby would have "Common Area Garden" (a.k.a. Dog Walk on L1.1, below).



Denise :

- OK, there is no right or wrong with it. I am going to say, if it is not on the plan, put it on the plan.

Transcription 2:41:42, 2: 43:34

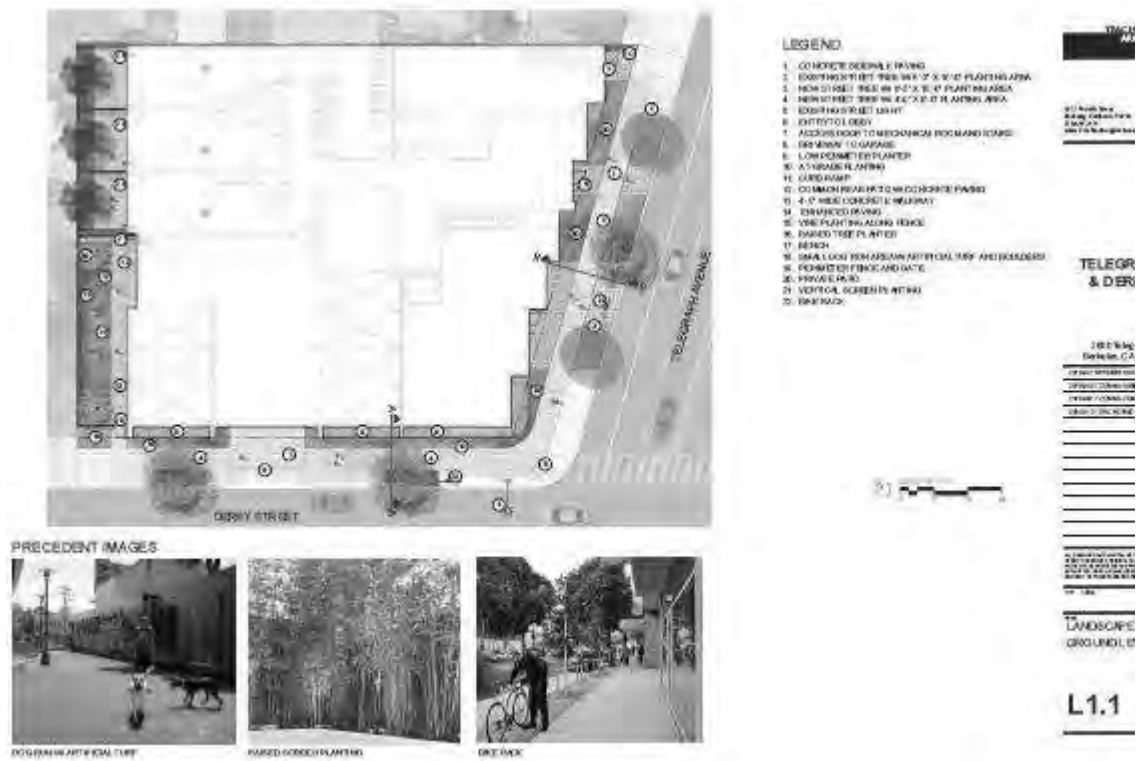
Teresa Clark

- but I think with some mature trees, trees which will grow larger, it's gonna reduce the impact on Martin;s house. Well this is the house which is.. if you look at A0.7A, you can see it really well in a perspective view, if you look at the back section going back to the inner part of the lot, ...

Teresa Clark

- I would like us to consider the fence either separately. I would like us to see if you are friendly to amending it slightly... I think what I would like to see us to recommend the design review to select the trees which would be against Martin Schwartz's property, which is kind of adjacent to Martin Schwartz, where the Dog Run was, and now you have trees, you know, where the dog run used to be. I would like us to have the design review look at that. Because you know with some mature trees there, trees where the dog run used to be, you know trees which will grow larger, this is going to reduce the impact on Martin Schwartz' house. If you look at A0.7A, you can see it really well in a perspective view. And I think, if you look at the section going from the street back to the inner part of the lot...

Despite this, the "Conditions and Findings" of the NOD does not include the requirement of replacing the community garden/dogwalk by mature trees, it states only "mature trees along the western property line". As result, the dog walk/community garden remains in the plans (see below). When we attempted to resolve the issue with the planner, she denied these facts. See below email exchange with the planner Ashley James.



Emails with the planner Ashley James

Fri, May 1,
9:26 AM

James, Ashley
to me

Olga -

Shannon followed up with Igor yesterday regarding this appeal, and communicated that a thorough response to your appeal letter will be provided in the staff report for the City Council.

Please note that a building manager was not requested as a COA by the ZAB. The dogwalk is not part of the project; it was an error included in an earlier plan set. Neither staff nor the ZAB committed to a noiseless system at the garage entrance/exit, that safety issue is a matter for the traffic engineer.

I'm happy to answer any other questions regarding this project.

From: Olga Louchakova-Schwartz <olouchakova@gmail.com>
Sent: Friday, May 1, 2020 9:17 AM

To: James, Ashley <AJames@cityofberkeley.info>

Subject: Re: APPEAL LETTER RECEIVED - 2650 Telegraph ZP 2019-0070

I included in the appeal several items which were approved in the ZAB meeting but are missing in the NOD.

Shall we leave this for the hearing, or can corrections be made prior to hearing? See another email thread regarding this, from Igor to Shannon.

Olga

B.02. Soundless Garage Gates

Soundless garage gates were recommended for the ZAB discussion by the DRC. The following slide shows the proximity between 2405 Derby and the garage gates – the distance equals approx. length of one car spot, therefore, the soundless system is very important to mitigate the impact of the project on 2405 Derby.



Transcript, 22:22:38

Denise Pinkston

- ... the garage door condition regarding noise, I already saw, in the staff report conditions. No? ...

Shannon (Staff)

- This will be reviewed by the city engineer, not to have any noise or light at the exit of the garage
- Denise**
- That's what I meant. Thank you.

This condition is omitted in the "Conditions and Findings" section of the NOD, and the request for sound engineer consultation is nowhere else in the records. But, if this is an issue which has to be addressed by the traffic engineer, it has to be made a condition of approval; otherwise, it will be simply omitted to from being addressed.

Appendix C.

Omitted in ZAB Discussion: On-site 24/7 manager and the Open Space Management

The open space of 2650 Telegraph consists of an elevated 2nd floor patio and 7 private patios which will be right above the residences to the west (see below). Two neighbor groups independently requested that there be a 24/7 on-site manager who can be reached in case of excessive noise or other problems.

In communications with the neighbors, the applicant agreed on this condition. DRC directly recommended that the matters of management will be discussed at ZAB hearing (See **Appendix D**). However, during ZAB meeting, the developer attempted to back out of these agreements. Despite the neighbor's attempts to bring the management question back into discussion, the question was dodged at the ZAB March 12 meeting. The item (24/7 on-site manager, signs with the rules of use of the open space, limitations on the number of people, etc.) needed to be included in the conditions of approval of NOD because without it, the agreement doesn't have binding power.

Please see below the transcript from ZAB meeting of March 12, email exchange showing that the manager appointment was agreed upon; and the letter exchange between applicant and the neighbors, in which the applicant complies with the condition – attached **Appendix D**.



Transcript, 2:15:59

Jeff Kazowitz, neighbor

- In terms of noise, we are pleased to see that there will be on-site building manager whom we can contact if there is an excessive noise; we also proposed that there will be signage limiting the number of people on terraces [also advised by DRC], so that if there are neighbor complaints about noise, those kinds of gatherings will be stopped and prohibited.

Email
jeff kasowitz
to me, Martin

10:54 AM (10
hours ago)

Hi Olga - Sorry didn't see this second email earlier. I'm not sure where it is written, but **the architect and developer proactively stated that there would be a 24/7 dedicated on-site manager.**

On Tue, Jun 2, 2020 at 2:12 PM olgalouchakova <olouchakova@gmail.com> wrote:

Sorry, one more question: do you know was there anything on the manager in the materials submitted? On the video, you mentioned it was discussed with Trachtenberg, and he agreed on having the manager.

Olga

Quote from Appendix F.

Architects response, page 3 of 4.

“Regarding noise, the project’s lease agreements and community policies will include quiet hours, time restrictions for roof deck use, and contact information will be posted for an on-site building manager who can address noise complaints.”

DRC SUMMARY – February 20, 2020

2650 TELEGRAPH AVENUE [at Derby] (DRCP2019-0004): Preliminary Design Review to 1) demolish one existing commercial building; and 2) construct one, five-story, 34,249 square foot mixed-use building with 45 units (including 4 Very Low-Income units), 1,290 square feet of commercial space, 4,051 square feet of usable open space, as well as 50 long-term bicycle parking spaces and 20 vehicular parking spaces at the ground level.

Preliminary Design Review received a favorable recommendation to ZAB with the following direction for Final Design Review (FDR): MOTION (Clarke, Kahn) VOTE (6-0-0-0)

Conditions:

- *Show sections through the podium open space at ZAB and continue to review at FDR. Section shall include adjacent houses, including window locations. Railing design may need modified at FDR.*
- *Review steel eave detail at FDR to make sure that it is the best proportions for the building design.*

Design Recommendations:

- *Lowered height in combination with open space location is appropriate.*
- *Consider zinc panels in other locations around the whole building, such as the south elevation.*
- *Recommend grouping operable windows in the bays and over planters. Stack vertically if possible.*
- *Recommend that mature trees be planted on west property line.*
- *Recommend window boxes with reservoirs.*
- *Recommend no plastic plants in window boxes.*

Recommendations for ZAB Discussion:

- *Recommend discussing potential solar equipment relocation and skylights with neighbors to the north.*
- *ZAB should discuss conditions for the common open space areas, including quiet hours and management requirements.*
- *Recommend that ZAB discuss whether the garage should be restricted there is no buzzer.*
- *ZAB should discuss conditions appropriate for the dog run.*
- *Recommend that the applicant discuss the fence height with nearby and adjacent neighbors.*

James, Ashley

From: jeff kasowitz <jkasowitz@gmail.com>
Sent: Tuesday, March 10, 2020 1:54 PM
To: David Trachtenberg
Cc: James, Ashley; Kathy Curran; adina; Philip Miller; David Miller
Subject: Re: Summary of last night's conversation points (2650 Telegraph project)

Follow Up Flag: Follow up
Flag Status: Flagged

David,

Thanks for the follow up clarifying questions regarding the patios. Here is our response:

We are asking for glass walls around all common areas that are not private patios. We are not asking for glass walls surrounding the two private patios on the fourth floor. If the developer prefers to also add glass walls to the private patios for consistency reasons, however, we would welcome that approach.

Yes, we are asking that glass walls be installed above the opaque wall surrounding the fifth floor common terrace to dampen noise from group gatherings. We request that the glass extend to eight feet above the common-area ground level.

Please also note that at our recent meeting, during the discussion of trees along the back of the building, Phil Miller forgot to mention his request that there also be a tree planted along the north boundary of the lot, near the west boundary, to provide some privacy to the homes on Dana Street northwest of the building. The type of tree can be the same as the trees along the west boundary.

Thank you

On Wed, Mar 4, 2020 at 4:04 PM David Trachtenberg <david@trachtenbergarch.com> wrote:
Jeff et al,

Thank you for taking the time to meet with me last night and for the excellent summary notes. our landscape architect is now assembling a menu of possible trees for your consideration which I expect to be able to get to you by tomorrow.

You wrote:

Walls surrounding patios: For any of the building's public gathering spaces, we request installation of glass screens surrounding the patios, in addition to a 42" opaque wall and 12" planters around all patios of the building. These measures are needed in order to provide privacy and mitigate against unwanted noise.

I am not clear about what exactly it is that you are requesting. If I understand correctly, you are requesting the addition of glass walls around the fifth floor "public gather spaces" or common area terrace only. You are not requesting that the private patios off of the two fourth floor units have glass surrounds. Is that correct?

Also, our plans already show 42" tall opaque guardrails at all terraces and 36" wide by 42" tall planters at the entire perimeter of both the fourth and the fifth-floor terraces which serves to keep people from getting close to the railing and thus makes it impossible for a person to look directly down into the adjacent rear yards. (We'll be providing you with a drawing showing that relationship by tomorrow). My question is - are you requesting that we install glass above the opaque 42" railing on the fifth floor common terrace and if so to what height?

Thank you,

David Trachtenberg | Principal
TRACHTENBERG ARCHITECTS
2421 Fourth Street Berkeley, CA 94710
510 649 1414 x112
TrachtenbergArch.com

On Wed, Mar 4, 2020 at 9:20 AM jeff kasowitz <jkasowitz@gmail.com> wrote:
Dear David, Ashley and Zoning Adjustment Board Members,

We (a group of residents living adjacent to 2650 Telegraph Ave) had a constructive meeting with David Trachtenberg yesterday and talked through the following items related to the 2650 Telegraph project. We request that these items inform the decision making process for next week's ZAB meeting and be adopted. In one case, we ask for some follow up information from DRC.

- **Landscape Plan:** Regarding the trees to be planted along the West side of the property, please have the landscape architect send us examples of several potential species (both deciduous and evergreen) that can help us achieve screening for privacy as well as property beautification.
- **Dog Run:** We ask that there not be a dog run included in this project. It will be disruptive for us as neighbors, creating additional unwanted noise and odors. This does not seem an essential element of this project. Instead, we would like to see additional mature trees (see landscape plan above) planted where this space is.
- **Fencing:** On the West side of property, we would like an 8' fence constructed to provide additional privacy for the adjacent neighbors. We are comfortable with a corrugated steel material that David Trachtenberg recommended last night.
- **Walls surrounding patios:** For any of the building's public gathering spaces, we request installation of glass screens surrounding the patios, in addition to a 42" opaque wall and 12" planters around all patios of the building. These measures are needed in order to provide privacy and mitigate against unwanted noise.
- **Noise:** In addition to having an onsite building manager who can be contacted in cases of excessive noise, we propose that signage be placed on all terraces that limits the maximum number of people allowed on a terrace at one time to 15. In addition, we propose signage stating that if complaints of excessive noise be made by neighbors, that future gatherings will be prohibited.
- **Lighting:** On outdoor terraces, lighting should be shielded and facing down. We propose that the only lighting included be step lighting (walkway only) installed above finished floors. Lighting should face eastward away from from neighbors to the West. Exterior lighting along Western exit path to be set at 7' max (below 8' fencing). Ground level lighting for three apartments should be pointed down and be installed below 7'.
- **Garage Door:** We propose that the garage door not include any light or sound signal when opening and closing.

We request that approved changes to the current plan based on these items discussed last night be formally incorporated into the plans before the plans are approved.

Thank you,
Jeff Kasowitz and Rabbi Adina Allen (2643 Dana St.)
David and Tayanah Miller / Philip and Marianne Miller (2639 Dana St.)
Kathy Curran (2410 Carleton St.)



James, Ashley

From: Hussein Saffouri <Hussein@ramseylawgroup.com>
Sent: Tuesday, March 10, 2020 6:10 PM
To: James, Ashley
Subject: 2650 Telegraph ZP2019-0070

Hi Ashley, in the interest of time, I am sending you my clients' current concerns and requests in the form of the bullet points below:

Parking concerns

- The applicant's traffic study's conclusion that the reduced number of parking spots available will not have a detrimental impact on the neighborhood is based on the untested and circular assumption that the mere fact the building offers fewer parking spaces will result in a reduced vehicle ownership rate for the project trips. The traffic study cites no concrete data to support this assumption. It is merely wishful (not to say and self-serving) thinking. If the assumption is false (which, given the lack of data to support it suggests that it is at least as equally possibly true as it is false) then the actual vehicle ownership data cited in the study supports the notion that the reduced number of parking spots will be detrimental to the neighborhood. The City should require the applicant to explore a way to add more parking spaces. Furthermore, to minimize the parking burden on the neighborhood in the future, and (assuming the parking study is correct) continue to disincentivize ownership of vehicles by residents of the building the City should impose as a condition that the exclusion from RPP will extend to purchasers or residents of units in the building even after they are re-sold by the original owners (i.e. not only to the original purchasers of the new units).
- The addition of the Café, and the likely number of residents without in-building parking spots, will result in more difficult parking for the patients of Aloha Dentistry and Berkeley Pediatrics, next door at 2640 Telegraph, harming their business and detrimentally impacting the wellbeing of the special needs patients those practices serve. We request that the City designate two parking spots on Telegraph, in front of 2640 Telegraph as short term paid parking spots (20 to 30 minutes max.) and designate one spot for patient drop-off only during business hours.

Aloha Dentistry/Berkeley Pediatrics Solar Panels

- Notwithstanding that the California Solar Shade Act does not regulate the development rights of neighboring property, the City has the power under BMC sec. 23B.32.040 to conditions requiring the developer to take steps to avoid the significant detriment to Aloha Dentistry and Berkeley Pediatrics which will result from the loss of use of their solar panels due to the anticipated shading of those panels by the proposed building. The loss of use of those panels will be detrimental, and economically injurious, to these businesses. The City can impose a condition requiring the applicant to relocate the solar panels to the new building to ensure that they remain viable to avoid such detriment under BMC sec. 23B.32.040. This is also the City's policy to promote the use of solar panels and other green energy production.

Aloha Dentistry/Berkeley Pediatrics Signage

The north wall of the new building will obscure these businesses' signage along Telegraph. The businesses request approval of new signage along Telegraph that can extend perpendicular to the building façade along Telegraph Avenue.

Privacy Concerns

- The type and size of plantings along the patios should be specified to ensure privacy. The thickness of the plantings along the railings of the patios should be clearly specified to keep users at least three feet back from the edge to eliminate line of sight visibility into the single family homes directly to the West. Furthermore, the glass rails should be raised so that the top of the rails is at six feet from the ground level of the patios to provide sound proofing to the residences below (alternatively the plantings along the railings should consist of six foot tall hedges to provide some degree of sound proofing).
- The garage door should not have an audible buzzer.

Building Height

- The ground floor height should be reduced by an additional two feet to further lower the building and minimize its shading and bulk impacts. The proposed 12 ft. ceilings for the commercial space do not match any other neighboring buildings and are unnecessary. Although the shadow study shows that shadowing will not occur all of the time, the shadow impacts are significant and should be minimized.

Building Rules and Manager

- The conditions of approval should specify the rules which the building must adopt with respect to limiting the hours when the patios may be used, the number of users of the patios, and the permitted uses of the patios, to ensure the privacy of the single family homes below and directly to the West by preventing the patios from turning into outdoor party pads. Additionally, the conditions of approval should require that the building must have a full time on site manager able to enforce these rules.

Construction

- In addition to the notices already required in the proposed conditions, the developer should be required to give Aloha Dentistry and Berkeley Orthodontics at least 48 hours advance notice prior to any construction activity anticipated to result in loud noises so that they can appropriately schedule their special needs patients who are sensitive to noise.
- The construction site should be surrounded by fence a minimum of 8 ft. tall.

I look forward to discussing these matters with you tomorrow.

Regards, Hussein.

HUSSEIN SAFFOURI
Attorney
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(925) 284-2002 Direct
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Ramsey Law Group, a professional corporation
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The foregoing applies even if this notice is embedded in a message that is forwarded or attached.



Telegraph Business Improvement District

2437 Durant Avenue #206, Berkeley, CA 94704

510-486-2366

alex@telegraphberkeley.org

March 11, 2020

City of Berkeley
Zoning Adjustments Board
Land Use Planning Division
2120 Milvia Street, 2nd Floor
Berkeley, CA 94704

Re: Item #4 - proposed development at 2650 Telegraph Avenue

Dear Zoning Adjustment Board members:

On behalf of the Telegraph Business Improvement District, I write to urge your support for moving the proposed development at 2650 Telegraph Avenue forward. The project will bring productive use to an underutilized site, significantly advancing our community and economic development goals.

Our many stakeholders strongly support the addition of new residential units and retail space which will help activate the southern portion of our district. On March 3, 2020 the development team presented a project overview to our board of directors including their most recent designs. We appreciate their honest efforts to engage with us on our priority issues and honor our feedback.

The TBID is excited to see this move forward and we will continue to partner with the City, community and the development team throughout the process to ensure the project's successful completion. We ask that you approve this item and thank you for your commitment to promoting greater equity, inclusion, and sustainability in Berkeley and the Telegraph district.

Sincerely,

Alex Knox
Executive Director



MINUTES

Meeting of the Board of Directors

Telegraph Business Improvement District

Tuesday, March 3rd, 2019, 8:00 AM- 9:30 AM

California Room, Graduate Hotel 2600 Durant Ave. Berkeley, CA 94704

Attendance: Kevin Gordon, Craig Becker, Steve Ruegg, Bonnie Gold, Ali Eslami, Eleanor Hollander, Jen Loy, Ito Ripstein, Doris Moskowitz, Christine McDermott, Swami Prasannatmananda

Absent: Heidi Scribner

Staff: Jeff Gilbert, Emily Szczech

Guest: David Trachtenberg, John Caner, Eric Tam, Rachel Vranizan

1. **Call to order**
2. **Public Comment**
 - a. John Caner: Excited to learn more about the new TBID ED candidate, Alex Knox.
3. **Approve Minutes**
 - a. Bonnie firsts, Swami seconds
4. **Event and Program Manager Report (Emily)**
 - a. Sunday Streets
 - i. In process of writing the permit
 - ii. DBA and NSA are not doing the event again this year
 - iii. Working on securing attractions, 510 skateboarding is doing it this year!
 - b. Marketing
 - i. Postcards! For targeting visitors and students
 - ii. Website updates, adding in a resident's page
 - c. Preparing for the new ED
 - i. Reviewing projects and adding in updates, compiling notes from meetings, preparing for suggested meet and greets
 - d. Portland Loo
 - i. Planning site visit to begin the project plan to submit to Portland Loo
 - ii. Progress report for the Chancellors grant is almost done
5. **Ambassador Report (Jeff)**
 - a. Alejandro is getting housing at YMCA!
 - b. We've met with the new area coordinator for BPD, Jessica Perry
 - i. She's been working in Berkeley for about a year and is very excited about the opportunity
 - ii. Her background is in community policing
 - c. Weekly meetings with Steve Ruegg to stay up to date about the district
 - d. Met with Sargent for DTF
 - i. Bike force is a potential
 - e. It's getting warmer so we're beginning to water plants and work on more water washing efforts
6. **Development Presentation for 2650 Telegraph Ave. (David)**
 - a. This development is happening at the old Bacheesos site
 - b. Market rate units with roughly 45 units that are studios and one bedrooms
 - c. Development team has made their rounds with neighbors, appropriate associations, and businesses
 - d. There aren't any available parking spaces in the unit, but residents in these units aren't allowed to get parking permits through the city. Units will attract people without cars

- e. Trash is a major problem in the area, discussion on if they will have a trash room in the downstairs café
 - i. It is up to the tenants to figure out the trash and not yet decided
 - ii. Very important to the board that this is addressed and to avoid more trashcans sitting on the sidewalk 24/7

7. **Introduction (Alex Knox)**

- a. **Alex is the Executive Director candidate that the TBID Executive committee has decided to move forward with**
- b. Alex: Very excited to be here!
 - i. Passionate public servant with a background in public service, even growing up his family members were all public servants
 - ii. Last position was Chief of Staff at the City of Richmond for the Mayor
 - iii. His realm is in on the ground problem solving everyday
 - iv. Very excited to work for this district in particular
 - 1. Thrives with high pressure situations and used to responding to issues with a high sense of urgency
 - v. Involved in many initiatives on marketing, transportation, clean and safe

8. **Questions for Alex Knox**

- a. What do you think will be the most crucial challenge for you?
 - i. Learning curve will be the knowledge of what the heart and soul of the area is. Currently know a fair amount about the area, being a Bay Area resident, but not the same sense as a Telegraph community member
- b. How would you handle someone that is distressed because of how a situation is unfolding?
 - i. I'm diplomatic and spend a fair amount of time weighing options and thinking a lot about all potential pitfalls and how to avoid any issues.
 - ii. Would make sure the individual is happy and put a lot of work and effort ahead of time in hope that everyone is well represented and content with the outcome.
- c. What in particular drew you to this position, to this district?
 - i. There's an exciting amount of activity and growth in the area. The area is also going in the right direction and has changed for the better in the past years, since my college days when I was frequenting the area on a much more regular basis.
 - 1. With that being said, the area is still one of the many epicenters for the homelessness crisis. I anticipate this to be something that I focus on and spend a lot of time on.
- d. What are you most excited about?
 - i. Honing in on the identity and iconic image of the district, and presenting the district in an exciting, new way.
- e. **Kevin Gordon makes the motion to make an offer to Alex Knox to be the Executive Director of the TBID position with a total compensation of \$90,000 per year, without the option to increase in July 2020.**
 - i. Ito made a motion to approve Kevin Gordon, Doris seconded the motion. Kevin Gordon called for a vote; the vote was unanimous.
- f. **Ito made a motion to continue Emily's compensation by \$1,000 per month commencing May 1, 2020 (following the temporary \$1,000 per month approved thru April 2020) and to allow an annual increase in line with the board approved assessment increase for the 2020-2021 fiscal year.**
 - i. Craig seconded the motion. Kevin Gordon called for a vote; the vote was unanimous.

9. **Adjourn**



Telegraph Business Improvement District

2437 Durant Avenue #206, Berkeley, CA 94704

510-486-2366

alex@telegraphberkeley.org

March 11, 2020

City of Berkeley
Zoning Adjustments Board
Land Use Planning Division
2120 Milvia Street, 2nd Floor
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Re: Item #4 - proposed development at 2650 Telegraph Avenue

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The TBID is excited to see this move forward and we will continue to partner with the City, community and the development team throughout the process to ensure the project's successful completion. We ask that you approve this item and thank you for your commitment to promoting greater equity, inclusion, and sustainability in Berkeley and the Telegraph district.

Sincerely,

Alex Knox
Executive Director

TRACHTENBERG ARCHITECTS
2421 Fourth Street Berkeley, CA 94710
phone: 510.649.1414
www.TrachtenbergArch.com

Hussein Saffouri, Attorney
Ramsey Law Group
3736 Mt. Diablo Blvd., Suite 300
Lafayette, CA 94549

February 27, 2020

RE: Design Review #DRCP 2019-0004; 2650 Telegraph Avenue

Dear Mr Saffouri,

Thank you for forwarding the letter dated February 20, 2020, written on behalf of Martin and Olga Schwartz in response to our proposed project at 2650 Telegraph. Please see below for our responses (in blue) to each of the concerns raised in the aforementioned letter.

1. Height Reduction: The building is excessively tall causing unnecessary shading of neighboring properties, blocking their access to light, rendering useless their installed solar panels. The proposed five story building is also entirely out of character for the neighborhood. The preferred solution is to require a redesign of the building limiting it to four floors. The dramatic shading that the current design will cause is sufficiently detrimental to the health, comfort and general welfare of the neighborhood as to justify denying the project even though it qualifies under the Density Bonus Ordinance. The total number of units should be reduced to limit the Project to four stories.

We do not agree that the building is excessive in height. The project meets the both Berkeley's and the State of California's housing goals and codes and is similar in height to all other recently built and approved new multi-family projects along Telegraph Avenue and other higher density corridors around the City. Via the California State Density Bonus, the project is granted a by-right approval to provide the 45 units of housing in Berkeley which is proposed.

The building has been designed to minimize shade impacts as much as reasonably possible without sacrificing project viability. Building volume was removed from the north and west ends of the projects to reduce the depth of shadows cast on neighboring properties. The massing also creates a visual transition from the high-density nature of the Telegraph corridor to the lower-density character of residential neighborhoods to the west. Furthermore, following feedback which we received from neighbors, we have voluntarily agreed to reduce the building height from 59'-6" as originally proposed down to 55'-6" as presented at last week's Design Review Committee hearing. A building height of 60' is permitted by code so our proposed building is 4'-6" lower than what is allowable.

At a minimum, and in the alternative, the Project should be designed to reduce its height by limiting ceiling heights to the required minimums. The Project is currently designed to feature an excessively tall commercial retail first floor, and residential units that are also slightly taller than necessary.

We have voluntarily reduced the ground floor ceiling from 16'-0" down to 12'-0". We have achieved this by placing the parking machines in below grade pits (at considerable extra cost to the owner). Code minimum ceiling heights in dwelling units is 8'-0". In consideration of the mechanical, plumbing, fire safety and electrical systems, that will be in the floor/ceiling assemblies, the finish ceiling heights will range inside the units. The finish ceiling heights of the four residential floors will range from code minimum 8'-0" ceilings to 8'-6".

The project seeks a Density Bonus waiver to achieve a height of 55'6", close the maximum height permitted pursuant to such a waiver. (See BMC § 23C.14.060.) The height serves to accommodate a proposed commercial retail-use first floor with ceiling heights of 15'6". This height is unnecessary and far exceeds the minimum required for commercial premises. It is not necessary to build the proposed number of total units or the proposed low income units. The first color should be redesigned to the standard minimum permitted. Additionally, ceiling heights throughout the building exceed the required minimums, though more modestly. Those heights should also be reduced to the required minimums for residential units.

See comments above regarding building heights and ceiling heights.

With respect to the total number of units, the zoning of this site allows for and encourages precisely the kind of density which we have proposed. The project's developer is required by law to provide the number of low-income units which we have proposed in this project. That number is not negotiable.

In addition to the shading impact on all adjacent neighbors, the Project will have an additional detrimental impact on the dental practices directly to the North. As designed, the Project will block ambient light into their building, which is necessary to their practices and to the wellbeing of their patients. It will also block the light from reaching the solar panels installed on their building, making them useless, and increasing their electrical expenses. Even with a height reduction, an impact will remain. The best solution is to reduce the scope of the Project to eliminate this negative impact. Alternatively, the Applicant should pay to relocate the panels to retain their functionality and compensate the dental practices for their increased utility bills resulting from the construction of the Project.

We reached out to Senior Planner, Greg Powell, about the solar panel issue and his response is quoted below:

Local agencies are largely precluded from regulating new solar facilities. The applicable state law is the California's Solar Shade Act (AB 2331, 1978), which provides protection to solar energy system owners from shading caused by landscaping on adjacent properties. The law seeks to prevent a property owner from allowing trees or shrubs to shade an existing solar energy system installed on a neighboring property, provided the shading trees or shrubs were planted after the solar collecting device was installed. The law does not eliminate or limit the development rights of a neighboring property.

2. Noise Mitigation and Privacy: As currently designed, the Project includes open patios which look down into neighboring properties to the West, such as the Schwartz's home. These will cause a loss of privacy, and noise and light pollution generated by persons socializing in the elevated open spaces.

To mitigate the noise pollution, light pollution and loss of privacy that will result from the elevated patios looking down into neighboring properties, the project should be redesigned so that the patios face east toward Telegraph Avenue.

Alternatively, and at a minimum all patios and other open spaces should be enclosed by glass enclosures at least 8 ft. tall (but may remain open to the sky). Additionally, the Project's CC&Rs should: 1) incorporate decibel limits consistent with or stricter than the applicable noise ordinance; 2) limit the hours during which patios may be used; and 3) limit the total number of persons allowed on patios at any one time. Signs must be posted prominently stating the noise limits, hours of use, maximum limit of persons, and the penalties for violations.

Measures have been integrated into the design to mitigate privacy impacts on the neighbors: roof top open spaces have tall landscaping at their perimeters to create a visual buffer, trees are planted

at the ground floor unit patios as a screen, and units will be constructed with shades installed. We will install uniform blinds and shades in all units). Regarding noise, the project's lease agreements and community policies will include quiet hours, time restrictions for roof deck use, and contact information will be posted for an on-site building manager who can address noise complaints.

3. Parking: The requested reduction in minimum parking spaces provided should be denied as detrimental to the wellbeing of the neighborhood.

Parking is already inadequate and difficult on the permitted residential streets to the West of the Project. The lack of parking in the building will lead to excessive street parking unsupported by the current parking availability.

As a result, at a minimum, the Project must be subject to a condition that residents of the Project, in perpetuity, may not obtain parking permits (in either the "J" zone street or the "B" zone). Moreover, while such a condition might mitigate the impacts on the permitted streets, it will do little if anything to mitigate the impact of the additional cars on the metered parking on Telegraph. That will deprive the businesses along Telegraph of vital, but limited, parking spaces for their clients, customers and patients. The preferred solution, therefore, is to deny the request for a reduction in the number of off street parking spaces because it will be detrimental to the comfort and general welfare of the neighborhood.

Indeed, the neighboring dental practices obtained approval from the City of Berkeley a few years ago, based on a determination by the City that there was adequate parking and appropriate traffic flow for their businesses. The proposed Project will upend those determinations. It will leave them with inadequate parking and excessive traffic, which will negatively impact their businesses. The City, however, is doing nothing to address the inadequacy of the infrastructure to support the proposed building, which is out of scale for the location where it is being proposed. The Project must be scaled back to reduce its negative impacts.

As a matter of policy the City of Berkeley does not issue residential parking permits to occupants of newly constructed apartment buildings. The building will provide 20 garaged parking space for the 45 apartment units. Parking spaces are "unbundled", meaning that a parking space is charged separately from rent. Prospective tenants are smart shoppers. If ownership of a car is essential for a given tenant then that tenant will necessarily select an apartment building where they can park their car. We anticipate some residents will be employees, undergraduate and graduate students of UC Berkeley, who will likely not own cars. Furthermore, given the proximity to UCB, BART and the Rapid Bus line it is our belief that this is an ideal car free location for the ± 25 apartments which will not have an on-site parking space.

Moreover, analysis by our traffic consultant determined that "the project residents are likely to have a lower automobile ownership than the surrounding areas due to the limited on-site parking supply and the on-street parking restrictions in the surrounding areas (meters along Telegraph Avenue and RPP along residential streets) which make long-term daytime parking infeasible for most project residents."

Finally, any difficulty Aloha Dental patients have in parking may be due to the developer of the Aloha Dental building requesting a parking reduction for their new building that resulted in no off-street parking being provided for the their patients. That decision should not preclude the current project from making similar design choices.

4. Parking Garage Door: The proposed garage door is located approximately 3 yards from the Schwartz's driveway and just 4 yards from the windows of their living room and study. This will result in unacceptable noise at all hours from entering and exiting vehicles and the operation of the door itself.

My clients request that the Project be redesigned to move the gate either onto Telegraph, or, instead towards Telegraph to the corner of Derby, and further away from where it will impact their quiet and privacy. The door must also operate noise free, with no audible alarms or the like.

The garage door is located 35'-9" from the adjacent property line and approximately 40' away from the Schwartz' home. While it is impossible to have a garage door that produces no noise, the garage doors that we specify are quiet. In terms of decibels, they are approximately as loud as an audible conversation.

5. Construction Hours, Safety, Noise and Dust: Aloha Pediatric Dentistry and Berkeley Orthodontics are among few pediatric dental practices which treat children with special needs. These children are sensitive to loud noises and vibrations. The practices accommodate their special needs patients by blocking their schedules to allow them to be at the practice when there are no other sounds/vibrations/etc. to allow them to feel safe during dental treatment.

It is critical that the hours of construction be limited to allow these dental practices reasonable hours to continue to provide for their special needs patients without being exposed to noise and vibrations from construction activities. Strict decibel limits should be imposed including during business hours, and a protocol for dust and particulate mitigation imposed. Additionally, for the benefit of children and parents walking to Willard School, as well as the patients of the dental practices, requirements must be imposed to ensure the sidewalks remain useable and safe, and access to the dental practices remains safe and unimpeded.

Berkeley's standard Use Permit Conditions say that construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

6. General: Lighting on the Project should be designed so as to minimize light pollution and ensure they do not shine onto neighboring properties. Landscaping should include solid fencing and mature trees to the West and North to provide privacy, noise and light screening.

Lights specified throughout the project will comply with Title 24 requirements to reduce lighting impacts on neighbors and the environment at night.

If you have any questions or comments, please feel free to contact me using the information below.

Sincerely,



David Trachtenberg, Principal
TRACHTENBERG ARCHITECTS

Cc: Michael Orwitz, Developer/Owner
Ashley James, Planner, City of Berkeley



Open Government Commission

Date: September 17, 2020

To: Open Government Commission

From: Sam Harvey, Secretary / Deputy City Attorney

Subject: Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings

INTRODUCTION

This report is presented to the Open Government Commission as part of its process for considering complaints pursuant to the Open Government Ordinance (“OGO”), BMC Section 2.06.190.A.1, which provides in relevant part:

The Open Government Commission shall:

- a) hear complaints by any person concerning alleged non-compliance with this Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act, by the City or any of its legislative bodies, elected or appointed officials, officers or employees;
- b) consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;
- c) seek advice from the City Attorney concerning those complaints;
- d) advise the City Council of its opinion, conclusion or recommendation as to any complaint . . .

BACKGROUND

On June 16, 2020, Complainants Martin and Olga Schwartz (“Complainants”) submitted a Complaint of Noncompliance (“Complaint”) under the OGO to the Commission Secretary. The Complaint and accompanying appendices are attached to this report as Attachment 1.

The Complaint alleges “procedural violations and/or unfair practices” during the ZAB’s proceedings regarding a project at 2650 Telegraph Avenue (the “Project”). While the

September 17, 2020
Page 2 Re: Schwartz Complaint

Complaint does not identify specific provisions of the OGO which it alleges have been violated, the Complaint alleges the following:

1. Omission from the ZAB packet and supplemental materials of correspondence submitted to the ZAB by members of the public.

The Complaint alleges that Complainants submitted a letter to ZAB on December 14, 2019 which was not included on the City's webpage for the Project. The Complaint also alleges that numerous members of the public submitted correspondence to the ZAB prior to the hearing on March 12, 2020 requesting that the hearing be conducted via videoconference or postponed in light of the coronavirus pandemic, and that these letters were omitted from published ZAB materials. The Complaint alleges that the ZAB has systematically refrained from posting correspondence submitted in opposition to the Project.

2. Failure by the ZAB to include in the Notice of Decision ("NOD") items previously approved by the ZAB.

The Complaint alleges that two items related to the Project which were approved by the ZAB at its March 12, 2020 hearing were omitted or insufficiently included in the NOD. Specifically, the Complaint alleges that an item recommending consultation with an engineer regarding a soundless gate system was not included in the NOD, and that a recommendation to replace a community garden/dog walk with trees is insufficiently discussed in the NOD.

3. Exclusion from the NOD of items agreed upon by the applicant, developer and neighbors of the Project.

The Complaint alleges that neighbors of the project and the applicant and developer reached agreement regarding an on-site manager and regulations for the use of open space. The Complaint alleges the applicant "attempted to back out" of this agreement at the March 12, 2020 meeting and "feels not obligated to implement these items."

The Complaint also requests that "potential conflicts of interest" be reviewed and that "persons having such conflicts of interest be excluded from serving on ZAB or as planners." The Complaint does not identify any specific "potential conflicts of interest." In the absence of any allegations of specific conflicts or identification of ZAB members who may have participated in a decision in which they had a conflict, staff has not been able to investigate any potential conflicts of interest.

September 17, 2020
Page 3 Re: Schwartz Complaint

ANALYSIS

The Commission Secretary has analyzed these allegations against the provisions of the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act.¹

Open Government Ordinance

Staff has determined that none of the actions or omissions alleged in the Complaint violate any provision of the Open Government Ordinance (“OGO”). The OGO does not contain any provisions which govern the inclusion of supplemental materials or correspondence in the ZAB agenda packet or materials posted on the ZAB webpage. While the OGO contains a provision requiring that communications sent to the City Council must be made available on the City’s website, no similar provision exists that would apply to ZAB.² Additionally, the OGO does not contain provisions governing alleged failure to include agreed-upon elements of the Project in the Notice of Decision.

The Brown Act

The Brown Act provides that, upon request, agendas and other documents distributed to members of a legislative body in connection with any matter subject to discussion at a meeting must be made available to the public pursuant to the Public Records Act (Cal. Gov. Code § 6250 et seq.). (Cal. Gov. Code § 54957.5(b).)

Additionally, any document related to an agenda item that is distributed to a legislative body less than 72 hours before a meeting must be made available for public inspection at a designated public office or other location. (Cal. Gov. Code § 54957.5(b).) The address of this location must be indicated on the meeting agenda. (Cal. Gov. Code § 54957.5(b)(2).) The document may be posted online, though this is not required. (Cal. Gov. Code § 54957.5(b)(2).)

ZAB agendas contain the following notification:

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 the Permit Service Center, Planning and Development Department located at 1947 Center Street, Berkeley, during regular business hours.

¹ The Complaint does not allege any activity which implicates that Lobbyist Registration Act. As a result, no discussion of the Lobbying Registration Act is included in this report.

² BMC § 2.06.180: “All documents submitted to the City Council, including but not limited to, the Agenda and Agenda Packet, communications, and any documents submitted at a meeting of that body, shall be available through the City’s website no later than the close of business the following business day after the meeting for which the documents were submitted.”

September 17, 2020
Page 4 Re: Schwartz Complaint

The Complaint alleges that communications were submitted to the ZAB on December 14, 2019 and prior to the March 12, 2020 hearing which were omitted from the online record for the Project. The communications submitted on December 14, 2020 are public records and must be made available upon request. Additionally, the March 12, 2020 communications also must be made available upon request and, because they were submitted within 72 hours of the relevant meeting, must be made available for inspection at a City office or other location pursuant to Cal. Gov. Code § 54957.5(b). The ZAB agenda notification indicates that these records should be made available at 1947 Center Street in Berkeley. The Brown Act does not require that these communications be posted online on the webpage for the Project. The Complaint therefore does not allege facts which would amount to a Brown Act violation.

Additionally, the Complaint's allegations that the NOD does not accurately reflect prior decisions and agreements made by the ZAB do not implicate the provisions of the Brown Act.

Public Records Act

As noted above, any communications submitted to the ZAB in connection with an item on a Commission meeting agenda are disclosable records under the California Public Records Act (Cal. Gov. Code § 6250.) Moreover, any communication submitted to ZAB by the public, regardless of its relevance to a ZAB meeting, would be a disclosable public record, assuming that record does not fall into a number of exceptions under the Public Records Act. (Cal. Gov. Code § 6253(b).)³ However, the Public Records Act does not contain any provision which would require these communications to be posted on the ZAB webpage. Additionally, the Public Records Act does not contain any provision that would govern the final determinations reached in the NOD or whether the NOD is an accurate reflection of the conclusions reached by the ZAB.

RECOMMENDATION

Staff recommends that the Commission take no further action on this Complaint based upon a finding that the Complaint does not allege actions that would constitute a violation of a provision of law over which the Commission has jurisdiction.

Attachments:

1. Complaint and appendices

³ Cal. Gov. Code § 6253(b): "Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."



Office of the City Manager

PUBLIC HEARING

June 16, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning & Development Department

Subject: ZAB Appeal: 2650 Telegraph Avenue, Use Permit #ZP2019-0070

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2019-0070 to demolish an existing commercial building and construct a five-story, 34,249 square foot mixed-use building with 45 residential units (including four Very Low-Income units), 1,290 square feet of commercial space, 4,051 square feet of usable open space, 50 bicycle parking spaces and 20 vehicular parking spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On April 18, 2019, David Trachtenberg Architects submitted an application for Use Permit #ZP2019-0070, to demolish an existing commercial building and construct a five-story, 34,249 square-foot mixed-use building with 45 residential units (including four Very Low-Income units), including 1,290 square feet of commercial space, 4,051 square feet of usable open space, 50 bicycle parking spaces, and 20 vehicular parking spaces at the ground level, including a request for a density bonus and waivers and concessions under the State Density Bonus Law (DBL).¹

On September 20, 2019, after two rounds of comments from staff, the application was deemed complete.

On November 7, 2019, the Landmarks Preservation Commission (LPC) held a public hearing for the demolition of the existing commercial building located on the project site and continued the item to December 5, 2019. At the December 5, 2019 hearing, the LPC took no action to initiate a Landmark or Structure-of-Merit designation, and chose not to provide ZAB comments on the application.

¹ Government Code section 65915 *et seq.*

ZAB Appeal: 2650 Telegraph Avenue
Use Permit #ZP2019-0070

On December 12, 2019 the ZAB held a Preview for the project and provided general comments to the applicant.

On December 19, 2019, the Design Review Committee (DRC) held a Preview for the project and provided comments to the applicant. In response to DRC comments, the applicant revised the building design and presented the revisions to the DRC at its Preliminary Design Review (PDR) meeting on February 20, 2020. At that meeting, the DRC completed the PDR and forwarded a favorable recommendation for the project to the ZAB, with conditions and recommendations for Final Design Review (FDR) related to screening for adjacent neighbors at balconies and yards. The DRC, responding to zoning-related comments heard during the public comments portion of the agenda, also forwarded recommendations for discussion to the ZAB.

On March 12, 2020, the ZAB conducted a public hearing for the Use Permit application. After considering the staff report and administrative record, and hearing public comments and holding discussion, the ZAB added Condition #48 related to solar access at the neighboring commercial property to the north and approved the Use Permit by a vote of 7-0-1-0 (Yes: Clark, Kahn, Kim, O'Keefe, Pinkston, Sheahan, Tregub; No: None; Abstain: Lewis; Absent: None).

On April 14, 2020, staff issued the ZAB Notice of Decision. On April 28, 2020, Olga Louchakova-Schwartz, a neighbor residing at 2405 Derby Street immediately west of the project site, filed an appeal of the ZAB decision with the City Clerk. The appeal was signed by an additional 11 neighbors, two of whom are located within 300 feet of the project site. On June 4, 2020, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

BACKGROUND

The site is located in the General Commercial (C-1) zoning district at the southern portion of the Telegraph Avenue commercial corridor, two blocks south of the 'core' Telegraph commercial area (C-T Zoning District: Bancroft Way to Parker Street). The site is located one block south of Carleton Street, where two four-story mixed-use buildings have been recently developed on the west side of Telegraph Avenue. The site is located three blocks north of Oregon Street, where two six-story medical office buildings are located on both sides of Telegraph Avenue. To the north, east and south of the project site along Telegraph Avenue are one- to four-story commercial and mixed-uses, including medical offices, retail shops, quick service restaurants, personal and household services, and auto repair, as well as Willard Park. To the west of the project site are low-rise residential uses consisting mainly of one-to two-story buildings with a mix of single- and multi-family dwellings.

The applicant is seeking approval pursuant to State DBL. According to the base density calculation (34 units with an average size of 703 sq. ft.) and the amount of and type of affordable units included in the project (four units at the Very Low Income level), the developer is entitled to a bonus of 12 units, as well as waivers for height, floor area ratio (FAR), and parking to accommodate the inclusion of the bonus units. A concession necessary for financial feasibility of the project to provide the affordable units was also granted under the DBL, allowing the project to provide less than the minimum amount of usable open space (see Attachment 3, ZAB Hearing Staff Report and Project Plans for details). The project is also subject to the State Housing Accountability Act (HAA). Pursuant to the HAA, the ZAB could not deny the project or approve it at a reduced density unless findings for “specific, adverse impact” could be made.²

At the December 12, 2019 ZAB preview and the December 19, 2019 DRC preview, neighbors voiced concerns about impacts to adjacent properties. Concerns regarding the proposed project’s impact to the adjacent commercial building to the north at 2640 Telegraph included reduced efficacy of existing rooftop solar panels, increased shading of south-facing windows, and reduced visibility of signage on the south-facing façade. Concerns regarding the proposed project’s impact to the adjacent residences to the west included increased shading of east-facing windows during the morning hours, noise and privacy concerns related to the garage entrance on Derby Street, and the private patios and usable open space located on the west façade of the building. Concerns regarding the proposed project’s impacts to the surrounding neighborhood included spillover parking demand related to the State DBL-allowed waiver to the minimum parking requirement, light pollution, and construction-related health and safety impacts.

In response to concerns raised, the DRC recommended lowering the height of the building and planting mature trees at the west property line. The DRC forwarded recommendations for ZAB discussion that included working with the property owner at 2640 Telegraph to potentially relocate existing solar panels and add skylights to the building, possible conditions for usable open space areas (quiet hours and management), possible conditions on noise generated by the garage door and the dog run, and reconsideration of the fence height at the west property line.

The applicant then revised the plans to: 1) reduce the building height by 4’-0”, from 59’-6” to 55’-6” by lowering the height of the ground floor by 4’-0”, from 20’-6” to 16’-6”, and by excavating below existing grade within portions of the garage; and 2) correctly

² Housing Accountability Act, California Government Code Section 65589.5(j). The HAA requires that findings for “specific, adverse impact” must be made to deny or approve with reduced density a project that is compliant with applicable, objective general plan and zoning standards. As used in Section 65589.5(j), a “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” An award of a density bonus does not remove a project for the scope of the HAA.

labelling green space located at the ground floor near the west property line as a common area/garden rather than a dog run (see Attachment 3, Project Plans, Sheet A2.1).

At its March 12, 2020 hearing, the ZAB addressed neighbor concerns related to noise, privacy, and access to sunlight, by negotiating adjustments to the allowed construction hours and the building design to the portions of the building closest to the western neighboring properties. Specifically, the ZAB modified Condition of Approval #30 (construction to begin at 8:00 AM rather than 7:00 AM), and added Condition of Approval #11 to the Use Permit. They read as follows:

30. *Construction Hours.* *Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.*

11. *Final Design Review.* *The Project requires approval of a Final Design Review application by the Design Review Committee. At Final Design Review, the applicant shall present plans indicating the following:*

- Installation of walls surrounding each private patio on the fourth floor and the commonly-accessible usable open space on the fifth floor up to 54" in height. The top 12" may consist of translucent glass or stucco at the discretion of the applicant.*
- Installation of a fence along the western property line only that extends up to 8' in height.*
- Mature trees planned for installation at the western property line, the species of which are to be mutually agreeable with the applicant and immediate neighbors to the west.*

Another concern expressed during both the project preview hearing on December 12, 2019, and the public hearing on March 12, 2020 related to potential shadow impacts to the rooftop solar panels on the adjacent commercial structure to the north of the project site (2640 Telegraph). The applicable state law regarding this issue is the California Solar Shade Act (AB 2331, 1978), which provides protection to solar energy system owners from shading caused by landscaping on adjacent properties. The law seeks to prevent a property owner from allowing trees or shrubs to shade an existing solar energy system installed on a neighboring property, provided the shading trees or shrubs were planted after the solar collecting device was installed. The law does not eliminate or limit the development rights of a neighboring property. Therefore, under the HAA and the Density Bonus Law, the City may not limit the development of the subject property to protect the existing solar facility on the adjacent commercial building to the north. ZAB members, aware of the fact that local agencies such as the City of Berkeley are largely precluded from regulating new solar facilities, added Condition of Approval #48. This Condition of Approval recommends that the applicant work with the commercial property owner at 2640 Telegraph as follows:

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 Use Permit #ZP2019-0070

48. Voluntary Solar Access Agreement. *The applicant is strongly encouraged to consult with the property owners at 2640 Telegraph Avenue in an effort to find a mutually agreeable solution that mitigates the impact of the subject building on the productivity of the existing solar panels located at 2640 Telegraph Avenue.*

The ZAB found that the project satisfied the findings for approval of a Use Permit and approved the demolition of the existing commercial building and construction of the new five-story mixed-use building.

Staff did not receive any further communications or concerns about the ZAB's March 12, 2020 approval of the Use Permit. The Notice of Decision of the ZAB's action was delayed when the City's Health Officer ordered residents to shelter in place and City offices were closed. The Planning Department issued pending permit decisions in mid-April when safe and adequate remote noticing and appeal procedures were in place. The neighbor to the immediate west, Olga Louchakova-Schwartz, filed a timely appeal.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all state and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter (Attachment #2: Appeal Letter) for the full text.

Issue #1: Items recommended by the DRC on February 20, 2020 and approved by ZAB on March 12, 2020: The appellant contends that four conditions of approval were recommended by the DRC and approved by the ZAB, but are not included in the NOD. They are:

1. Prohibiting fire pits on any private or shared patio
2. Requiring an on-site building manager
3. Removing the proposed dog walk located on the ground level at the west portion of the site
4. Prohibiting a buzzer on the building's parking garage

Regarding items #1 and 2, the appellant contends that staff omitted these conditions of approval from the NOD. Regarding item #3, the appellant cited the ZAB Preview staff report. Regarding item #4, the appellant cited the traffic impact analysis, which states that the project would generate 220 auto trips per day, and indicated that the project's garage door would be located approximately 30 feet from the bedroom at 2405 Derby Street, and

100 feet from the residential buildings across Derby Street. For these reasons, a garage door buzzer would be disruptive to the wellbeing of nearby residents.

Response: Regarding items #1-2, the captioner's record shows that the DRC and the ZAB heard public comment requesting such Conditions of Approval and did not discuss or decide to impose such conditions of approval. Regarding item #3, the dog walk was included on an earlier set of plans but is not proposed in the project approved by the ZAB on March 12, 2020 (see Attachment 3, Project Plans, Sheet A2.1).

Regarding item #4, the ZAB deferred to the expertise of the City's Traffic Engineer, who reviewed the Site Plan and determined at the Interdepartmental Roundtable meeting held on October 9, 2019 that the project's clearance area from the right-of-way on Derby to the garage door does not meet the minimum City standard for pedestrian sight lines (5' by 5'), and therefore requires a garage alarm (or audible walk indication) to ensure pedestrian safety. An alarm is one of several safety measures required by the California Manual on Uniform Traffic Control Devices (CA MUTCD) and the provisions of the Americans with Disabilities Act (ADA). The CA MUTCD establishes the minimum noise level of the audible walk indication for pedestrian signals at 5 dBA above the ambient noise level. This is the noise level threshold that would be set for the pedestrian signal within the 10-foot audible range approaching the driveway. The City's Traffic Engineer estimates that the signal per vehicle is less than a minute and the peak hour exiting vehicle trips based on the Transportation Assessment is 12. Therefore, the maximum hourly sounding would be 12 minutes in the peak (morning) hour.

Issue #2: The project exceeds the allowable density pursuant to the subject parcel's land use designation, inclusive of the Density Bonus, which would negatively impact public health: The appellant contends that based on the number of dwellings and unit types, 81 people would reside at the subject property, while the Avenue Commercial land use designation recommends a maximum of 43 people, inclusive of the 35% density bonus. In addition, the appellant asserts that population density is a leading factor in the spread of COVID-19, and as such, the project would be detrimental to public health.

Response: Under the City's density bonus procedures, the project's "base project" is 34 units. The "base project" is the project that could be built on the site allowed pursuant to the density and development standards of the General Commercial (C-1) Zoning District, without any Use Permits to expand the building envelope or waive development standards. The project qualifies

COMMUNICATIONS

Harvey, Samuel

From: Cordell Hindler <cordellhindler@ymail.com>
Sent: Wednesday, November 4, 2020 5:45 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Council Meeting Procedures

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

hello Sam, i have the Meeting Procedures for the city of Richmond ca.

The City of Richmond encourages community participation at its City Council meetings and has established procedures that are intended to accommodate public input in a timely and time-sensitive way. As a courtesy to all members of the public who wish to participate in City Council meetings, please observe the following procedures:

PUBLIC COMMENT ON AGENDA ITEMS: Anyone who desires to address the City Council on items appearing on the agenda must complete and file a pink speaker's card with the City Clerk prior to the City Council's consideration of the item. Once the City Clerk has announced the item, no person shall be permitted to speak on the item other than those persons who have submitted their names to the City Clerk. Your name will be called when the item is announced for discussion.

Each speaker will be allowed up to TWO (2) MINUTES to address the City Council on NONPUBLIC HEARING items listed on the agenda. Speakers are allowed up to THREE (3) minutes on PUBLIC HEARING items.

CONSENT CALENDAR: Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the audience or the City Council. A member of the audience requesting to remove an item from the consent calendar that is sponsored by City staff must first complete a speaker's card and discuss the item with a City staff person who has knowledge of the subject material prior to filing the card with the City Clerk and prior to the City Council's consideration of Agenda Review.

Councilmembers who request to remove an item from the consent calendar must do so during Agenda Review. An item removed from the Consent Calendar may be placed anywhere on the agenda following the City Council's agenda review.

CONDUCT AT MEETINGS: Richmond City Council meetings are limited public forums during

Sincerely
Cordell