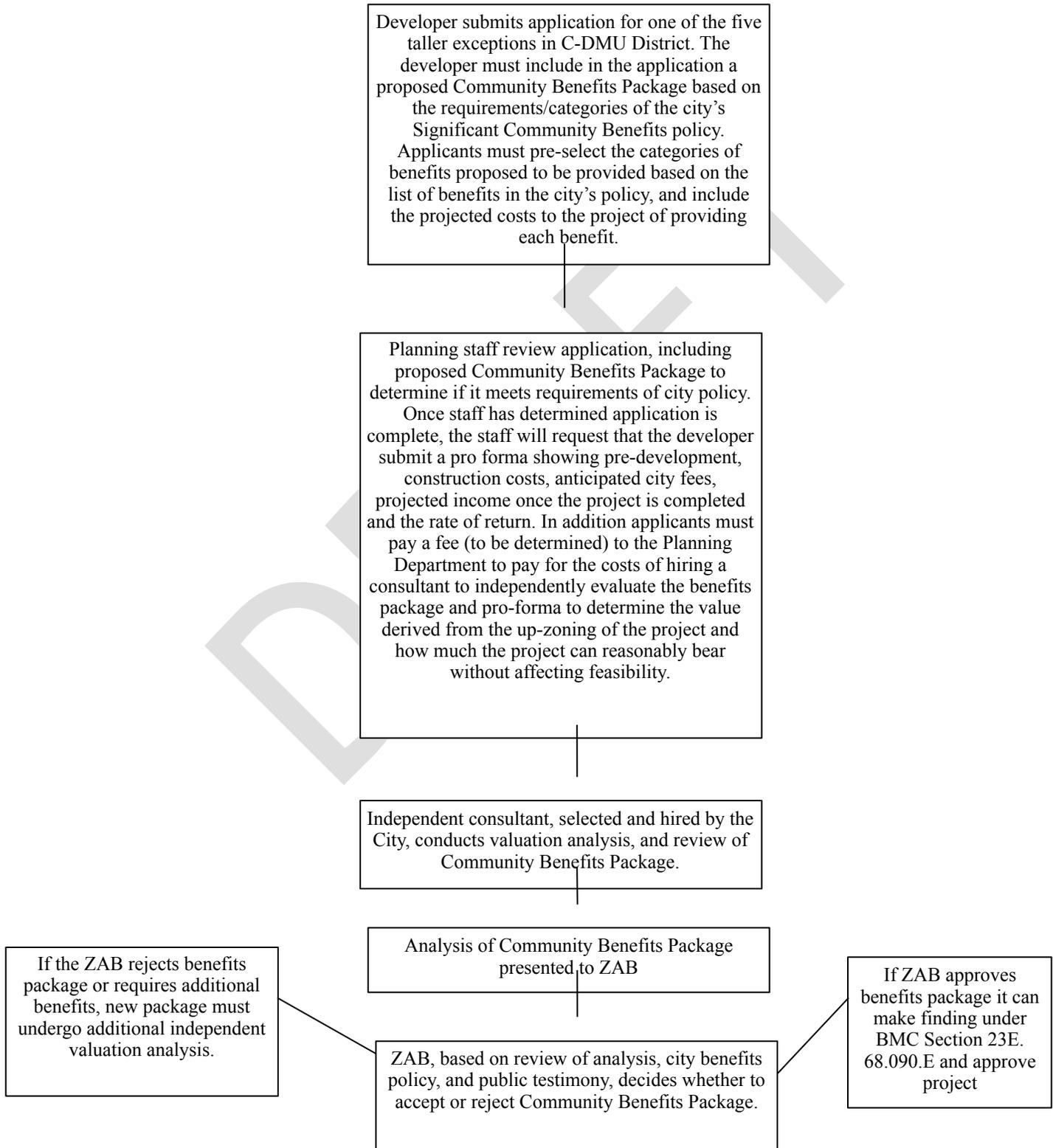


Proposed Process for Determining “Significant Community Benefits”



PROPOSED FRAMEWORK FOR MEETING “SIGNIFICANT COMMUNITY BENEFITS” REQUIREMENT (Municipal Code Section 23E.68.090.E) FOR DOWNTOWN TALL BUILDINGS

The 2012 Downtown Area Plan and Berkeley Municipal Code Chapter 23E.68 (Commercial Downtown Mixed-Use District) permit five buildings of exceptional height (above 75 ft. height limit) in the Downtown area. Three residential buildings are permitted up to 180 feet, with one being a hotel-conference center. And two residential buildings are allowed up to 120 feet in height. In order for the City to approve a project to exceed the 75 foot height limit in the Downtown, the City must find that the project provides “*significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required of the City.*”

The Downtown Area Plan, Policy LU-1.5 states that “All new buildings shall deliver significant community benefits many of which should be **in proportion to building height**”.

This policy guidance suggests that the “significant community benefits” provided by the five taller exceptions should provide be “significant” in value and must exceed the baseline requirements that all Downtown projects must meet in the Berkeley Municipal Code. In addition, the benefits should be proportional to value of the additional building height granted.

“Community benefits” for purposes of this policy means:

A community benefit is defined as a tangible contribution to the broader community, either physically constructed in the project or a monetary contribution to the city, made by an applicant in exchange for an exception to zoning standards (i.e. additional height) and beyond the established requirements of the municipal code, which does not directly benefit the project or occupants of the project, but rather the entire community. The value of the community benefit will be determined based on a portion of the increased value of the zoning exception provided to the applicant.

In order to determine whether the community benefits chosen by the project are in fact “significant” in value and proportional to the value of the additional height requested, the City must based on an applicant’s pro forma determine (considering construction costs, existing fee, land value, and factoring in a reasonable rate of return for the project) what additional monetary value the up-zoning provides the project and based on that how much benefits the project can reasonably bear.

This framework for significant community benefits would require applicants to meet two mandatory categories (“Affordable Housing” and “Labor Requirements”) and meet at least one additional benefits category, or more, depending on the total value determined by the City for what the project can reasonably bear and whether there is additional value that the City can reasonably recapture after considering the cost of the other benefit categories.

VALUATION

In order for staff and the ZAB to evaluate the community benefits package selected by the applicant (Affordable Housing and Labor Requirements+ one or more benefit categories), the applicant must provide a pro forma showing pre-development and hard costs as well as the projected rate of return the project would generate, and expected ongoing income sources once the project is completed, including the rents/sales prices expected to be generated at the floors above 75 feet.

In addition the applicant should attempt to cost out the economic impact of their benefits package in order for the city to independently evaluate whether the benefits package is “proportional” to the value of the additional height (as the Downtown Plan requires), and whether the project can achieve a reasonable amount of profit while providing the significant community benefits proposed.

This financial information will be independently reviewed by a consultant selected by the City and paid for by the applicant. The findings of the independent economic analysis will be presented to the ZAB.

The valuation model should reflect growth trends in rental income in determining the dollar range of benefits the city could reasonably request. **The total value of benefits must equal or exceed the highest reasonable amount the project can support.**

MANDATORY CATEGORIES OF SIGNIFICANT COMMUNITY BENEFITS

Under this proposed framework, applicants for the five buildings exceeding 75 feet in height in the Commercial Downtown Mixed-Use (C-DMU) Zoning District would be required to automatically fulfill two Significant Benefit categories: Affordable Housing beyond what is already required by the Berkeley Municipal Code (BMC), and Labor Requirements.

Additional Affordable Housing - Mandatory

Applicants would be required in each tall building to **set aside an additional 10% of units in the project as affordable to households earning up to 80% of the Area Median Income (AMI) for rental projects.** The units would be required to be **built on-site** and rented to qualifying low-income households for the life of the building, enforced through conditions of approval and a regulatory agreement between the developer and the city, setting forth which units are designated below-market-rate, the requirement that the units be equitably distributed throughout the building and be of similar finishing and materials as other units, setting forth the rents of the units, requirements for reporting incomes, monitoring and penalties for non-compliance.

If the applicant elects to set aside below-market-rate units in the project to satisfy the Affordable Housing Mitigation Fee Ordinance (at roughly 10% of the base project units), then factoring in the additional 10% on-site “significant community benefits” requirement

would result in a cumulative affordable housing requirement of 20% for the project. This is roughly proportional to the old Inclusionary Zoning requirement.¹

This affordable housing requirement of 20% on-site has been tested in Berkeley's real estate market, since it basically matches the Inclusionary Ordinance which was enforced for 20 years, during which time numerous projects achieved feasibility and were constructed.

Ownership (condominium) projects would be required to comply with the Inclusionary Zoning requirements for condominiums or pay an in-lieu fee as permitted by existing law (62.5% of the difference between the market price and the inclusionary sales price). **In addition, condominium projects above 75 feet in height Downtown would be required to pay an additional in-lieu fee, at a rate to be determined by the City.**

Labor Requirements: Project Labor Agreement with Local Hire Requirement - Mandatory

Applicants would also be required for each project to fulfill the "Labor Requirements" category, which would be satisfied by voluntarily entering into a Project Labor Agreement. In addition, applicants would be required to sign an agreement stating that no less than 50% of the project's construction workers be Berkeley or Green Corridor/ Alameda County residents, with priority in that order. Berkeley residents would be hired first, and if a sufficient number of Berkeley residents is not available, then the applicant can hire residents of the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro) or residents of other Alameda County communities to fulfill the local hire requirement. Staff will develop monitoring and enforcement measures. In developing an enforcement process for labor requirements, staff should investigate the monitoring and enforcement language adopted by UC Berkeley for its University Village project in Albany as well as the City of Berkeley's Community Workforce Agreement.

BENEFITS APPLICANTS CAN CHOOSE TO SATISFY REQUIREMENT OF PROVIDING ONE OR MORE ADDITIONAL BENEFITS

In addition to the two mandatory "significant community benefits" categories, applicants must meet a minimum of one additional benefit category by choosing from the menu of benefit options below.

Additional funding for SOSIP or Construction of SOSIP or similar/updated projects approved by the City

Applicants can satisfy one of the three required community benefits categories by meeting one of the open space options:

1. Make a contribution to the Streets and Open Space Improvement Plan (SOSIP) Fund that significantly exceeds the amount already required to be paid in Open

¹ Inclusionary Ordinance (BMC Section 23C.12.060.C) requires that 20% of the units be rented to households at 81% of the Area Median Income (AMI). However half of the inclusionary units must be rented to households at 50% AMI "provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program."

Space fees. The fees must be spent towards SOSIP projects within 5 years of the contribution.

2. Applicants may chose to construct projects beyond the perimeter of the property or in the greater Downtown area to implement the SOSIP Plan or one or more similar projects approved by the City.
3. Applicants may also choose to make a contribution to the City to finance improvements to Civic Center Park.

Public Restrooms

Applicants can construct public restrooms in their project on the ground floor level in a location accessible to any member of the public, and agree to ongoing maintenance. The restrooms must be disabled accessible and include a changing station for parents.

As an alternative applicants may provide a financial contribution to the City to subsidize the cost of building new public restrooms in the Downtown area. Restrooms need to be built within 5 years.

Higher Green Building Standards

Projects constructed to State-of-the-art sustainable building practices, including but not limited to Zero Net Energy, LEED Platinum, and/or other markers of the most progressive sustainable building practices available, to establish and demonstrate the lowest environmental impact that is feasible for buildings

Arts Incubation

Construct in the project itself or at an off-site location in the Downtown area, gallery, arts and/or performance space for local visual and performing arts organizations, to be managed by a qualified arts organization, or movie theaters. In order to ensure long term access to gallery, arts, and/or performance space or movie theaters, the City shall include specific requirements in the Conditions of Approval on the amount of square feet of such space, and the designated uses of the space, as well as a requirement for arts space that it be managed by one or a consortium of qualified arts organization(s) to be selected by the applicant with input from the city's Civic Arts Coordinator. To enforce arts space requirements the applicant shall record a Notice of Limitation that the arts space is governed by the conditions of the use permit. The city should examine the conditions for arts/cultural space for the 2041-2067 Center Street "Seagate" project in crafting conditions to enforce this community benefit requirement.

As an alternative to constructing physical space for visual/performing arts in the project, the applicant can make a contribution to the city's Cultural Arts Fund, to provide additional arts grants for new local arts organizations, or funding for local live entertainment and community based performing arts organizations.

Restoring Historic Civic Center Buildings

Applicants can elect to make contributions to the City to finance the seismic retrofitting and restoration of historic buildings in the Civic Center District Overlay, including Old City Hall and the Veterans Memorial Building.

Site-Specific and/or On-Site Benefits

Due to the uniqueness of each site, there may be special Significant Benefits that are compelling at one or another site. Applicants can choose to develop and provide such benefits directly (such as free and publicly accessible meeting or conference space).

Tenant Relocation/Mitigating Displacement

Projects can also elect to provide funding to assist in relocation of displaced businesses, or dedicating space in the building to displaced businesses at same rent that was previously paid or a comparable rate.

Homeless Services/Supportive Social Services.

Applicants can also elect to make a contribution to the City to fund additional homeless services, or services for youth or low-income populations. As an alternative, applicants can provide facilities on site or in the immediate Downtown area to serve these populations, subject to input from the City and community members who work with these populations. Such services could include a homeless service facilities (drop in center/homeless services center, health clinic, child care center, youth counseling center).

Additional Affordable Housing

Projects can elect to provide an even greater number of affordable units, beyond the mandatory 10% on-site “significant community benefits” requirement, to be affordable to households earning no more than 80% of the Area Median Income (AMI). In addition projects can agree to rent additional below-market-rate units at a deeper affordability level (e.g. 60% AMI, 50% AMI).

METHOD OF DELIVERY

As described in the section on “Benefit Categories”, the benefits could be built on-site or fees could be paid to the city, depending on which benefit categories the applicant chooses.

ENFORCEMENT

All significant community benefits agreed to by the applicant and approved by the City will be included as Conditions of Approval. Affordable Housing requirements will be enforced through a separate regulatory agreement. Other requirements such as payment of additional fees or financial contributions to the City would be due prior to the issuance of a Certificate of Occupancy. Some requirements such as constructing cultural/arts space on-site would be enforced through the recording of a Notice of Limitation to comply with the conditions on building, maintaining and using the arts space for visual/performing art/or movie theater space. These legal documents could be enforced through litigation by the City if the owner fails to comply with the conditions, or evicts the arts/movie theater uses and reverts the space to another use.

Any project that fails to meet the Conditions of Approval could be subject to revocation of their permit, and substantial monetary penalties.

Jacob, Melinda

Subject: FW: Please help us get city staff to follow the law

From: Allen, Shannon
Sent: Wednesday, May 13, 2015 9:17 AM
To: 'Tree Fitzpatrick'
Cc: Powell, Greg; Jesse Arreguin; Johnson, Carol
Subject: RE: Please help us get city staff to follow the law

Mr. Fitzpatrick-

As I assume you are aware, the 2211 Harold Way project is moving on three tracks: The Community Benefits piece is currently before the City Council, the design and Structural Alteration Permit is currently before the Landmark Preservation Commission (LPC), and the Final Environmental Impact Report is before the Zoning Adjustments Board (ZAB). I am responding in my role as Co-Secretary of the ZAB (Greg Powell is my Co-Secretary).

It is our intent to forward all correspondence to the ZAB in a meaningful and timely manner. If correspondence is received while we are drafting a staff report, that correspondence will be summarized and included as an attachment to the staff report. If correspondence is received after a staff report is finalized but not circulated, it will still be included as an attachment to the staff report but at the hearing staff will bring this to the ZAB's attention. Under these two circumstances, correspondence is distributed to ZAB members (and posted on the City's website) as part of their meeting packet, which contains the agenda, staff reports and attachments, plan sets, and other non-project related correspondence.

If correspondence is received after the ZAB packet is distributed, the first Supplemental Communication is available by 5:00 p.m. on Tuesday the week of the meeting and the second Supplemental Communication is available that Thursday at noon. This is posted on the City's website and a link to that posting is emailed to ZAB members Please see the more detailed description of this process included on the last page of the ZAB Agenda..

Please note that the City of Berkeley Planning and Development Department has a webpage devoted to the 2211 Harold Way Mixed-Use project. ZAB packets and supplemental communication are included on this page, as are LPC and DRC packets and supplemental communications.

http://www.ci.berkeley.ca.us/Planning_and_Development/Zoning_Adjustment_Board/2211_Harold.aspx

Sincerely,

Shannon Allen, AICP
Principal Planner, Land Use Planning Division
Planning and Development Department
City of Berkeley
2120 Milvia Street
Berkeley, CA 94704
(510) 981-7430

From: Tree Fitzpatrick [<mailto:tree.fitzpatrick@gmail.com>]
Sent: Tuesday, May 12, 2015 6:21 PM
To: Jesse Arreguin

Cc: Zoning Adjustments Board (ZAB); Wengraf, Susan; Anderson, Maxwell; Droste, Lori; Capitelli, Laurie; Moore, Darryl; Maio, Linda; City Clerk; Powell, Greg; Allen, Shannon

Subject: Please help us get city staff to follow the law

I am writing to you, Mr. Arrequin, as my city council member. I am copying the rest of council and city staff because I don't city staff is not following the law. Sustainable Berkeley Coalition has all members copy the coalition when any of us sends emails to city staff, ZAB, DRC, LPC and the city council. We never see our emails posted in the public record and believe they are not being forwarded as required by law.

Citizens should not have to file a law suit to get their public servants to obey the law. When the city staff has a wide open door to lobbyists and fails to forward and public emails from the public, I believe they are breaking the law.

The Sustainable Berkeley Coalition has been alerting members of the community

that their communications to the Zoning Adjustment Board and other boards and commissions are not being forwarded to the city board and commission members as required by the city and outlined in the online directions to the community. The Sustainable Berkeley Coalition has recommended to the community to copy sustainableberkeleycoalition@gmail.com so the the city online websites can be checked for confirmation.

The city staff has ZERO authority to decide not to forward our mail to ZAB, LPC or DRC or any other board or commission citizens might wish to communicate with via email or U.S. mail. All staff can do is forward ALL mail received from Citizens. The Brown Act definitely mandates that the city employees honor the rights of citizens. The Brown Act and Ca Supreme Court decisions about the Brown Act repeatedly have affirmed that citizens have a right to complete transparency and an absolute right to communicate with its city servants.

You are reminded as per the city statement under the ZAB website <http://www.ci.berkeley.ca.us/zoningadjustmentsboard/> that it is your responsibility to relay all communications from the public. The forwarded email is not posted as communication from the public.

The Secretary of the commission is responsible for relaying all communications from the public to the members of the commission. The Secretary's contact information is listed below.

Please note we copy Sustainable Berkeley Coalition (SBC) so we know what got sent and we know how the city staff fails to forward emails to the proper parties and fails to publish the emails into the public record.

I note that many members of SBC sent letters to the BSD board. I am happy to report that the school board published our letters. Why doesn't the council and planning staff publish our emails and forward them to individual board and commission members?

Sincerely

,
[Tree Fitzpatrick](#)
, JD, MS

Jacob, Melinda

Subject: FW: 2211 Harold Way

From: Allen, Shannon
Sent: Wednesday, May 13, 2015 9:20 AM
To: 'Sustainable Berkeley Coalition'
Cc: Powell, Greg; Johnson, Carol
Subject: RE: 2211 Harold Way

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Principal Planner, Land Use Planning Division
Planning and Development Department
City of Berkeley
2120 Milvia Street
Berkeley, CA 94704
(510) 981-7430

From: Sustainable Berkeley Coalition [<mailto:sustainableberkeleycoalition@gmail.com>]
Sent: Tuesday, May 12, 2015 1:00 PM
To: Zoning Adjustments Board (ZAB); Powell, Greg; Allen, Shannon
Cc: sustainableberkeleycoalition@gmail.com
Subject: Fwd: 2211 Harold Way

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Contact:

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Land Use Planning
(510) 981-7410
E-mail: ZAB@CityofBerkeley.info

Mailing Address:

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

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

From: **Ellen Strong** <honetzy1@gmail.com>

Date: Mon, May 11, 2015 at 8:32 AM

Subject: 2211 Harold Way

To: ZAB@cityofberkeley.info

Cc: sustainableberkeleycoalition@gmail.com

As a Berkeley resident, I am very concerned. The 2211 Harold Way Final EIR is critically deficient in addressing the health safety and welfare of Berkeley High School Students. Berkeley High School is Berkeley's only high school serving over 3000 students from across all of Berkeley. The 2211 Harold Way project is only 400 feet from Berkeley High School and in the school zone. All impacts on Berkeley High School must be specifically addressed and mitigated in consultation with Berkeley High School including, but not limited to the BHS Safety Committee and Facilities and Operations before the Final EIR is certified and the project approved.

Ellen Strong

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Please help us get city staff to follow the law

From: Tree Fitzpatrick [<mailto:tree.fitzpatrick@gmail.com>]

Sent: Wednesday, May 13, 2015 7:26 AM

To: Jesse Arreguin

Cc: Zoning Adjustments Board (ZAB); Wengraf, Susan; Anderson, Maxwell; Droste, Lori; Capitelli, Laurie; Moore, Darryl; Maio, Linda; City Clerk; Powell, Greg; Allen, Shannon

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Since my email was blocked, which I suspect is illegal -- citizens have a right to communicate with public servants -- I am resending my last email to council and ZAB
. The City of Berkeley cannot block communication from citizens.

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