



Internal

URGENT ITEM AGENDA MATERIAL

Government Code Section 54954.2(b)
Rules of Procedure Chapter III.C.5

THIS ITEM IS NOT YET AGENDIZED AND MAY OR MAY NOT BE ACCEPTED FOR THE AGENDA AS A LATE ITEM, SUBJECT TO THE CITY COUNCIL'S DISCRETION ACCORDING TO BROWN ACT RULES

Meeting Date: March 21, 2023

Item Description: Authorizing the City Attorney to Submit a Letter in Support of the UC Regents Petition for Review in *Make UC a Good Neighbor v. Regents of University of California*

This item is submitted pursuant to the provision checked below:

Emergency Situation (54954.2(b)(1) - majority vote required)
Determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

Immediate Action Required (54954.2(b)(2) - two-thirds vote required)
There is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda for this meeting being posted.

Once the item is added to the agenda (Consent or Action) it must be passed by the standard required vote threshold (majority, two-thirds, or 7/9).

Facts supporting the addition of the item to the agenda under Section 54954.2(b) and Chapter III.C.5 of the Rules of Procedure:

There is a need to take immediate action and the need for action came to the attention of the City Council after the agenda for this meeting was posted.

The Regents of the University of California have a statutory deadline to submit a petition for review with the California Supreme Court in the case *Make UC a Good Neighbor v. Regents* in order to appeal for reconsideration in this case. This deadline will occur while the Council is on its Spring Recess. If the Council wishes to authorize the City Attorney to submit a letter supporting UC's petition, then it must take action tonight to add this item to the agenda and give that authority.



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CONSENT CALENDAR

March 21, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin (author); Councilmember Rigel Robinson (co-author)

Subject: Authorizing the City Attorney to Submit a Letter in Support of the UC Regents Petition for Review in *Make UC a Good Neighbor v. Regents of University of California*

RECOMMENDATION

Adopt a Resolution Authorizing the City Attorney to submit a letter in support of the University of California Regents' petition for review to the California State Supreme Court in *Make UC a Good Neighbor v. The Regents of University of California*.

BACKGROUND

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

On February 24, 2023, the California Court of Appeals in the First District issued a ruling that effectively halted the proposed project at People's Park by noting that student residents generate negative external impacts due to noise, and that these impacts must be mitigated by the University. Such noise is argued to have the potential to disrupt neighboring residential areas, despite the fact that such concerns are already addressed through the City of Berkeley's Noise Ordinance and UC Berkeley's Residential Code of Conduct. Shortly after the ruling, the University announced its intent to appeal the decision to the California Supreme Court. The ruling has received widespread condemnation, including from the Governor and Lieutenant Governor.

Rationale for recommendation

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

A portion of the planned development on People's Park will be set aside for the construction of a permanent supportive housing development operated by Resources for Community Development that will end homelessness for dozens of unhoused residents by providing over

100 units of badly needed permanent supportive housing (PSH). The City has already committed \$14.5 million¹ to the construction of this planned permanent supportive housing. Permanent supportive housing has been proven to end homelessness by combining wraparound services with stable, permanent housing for unhoused people.²

In addition to committing funding to the permanent supportive housing project that will be built on-site, the City is working in partnership with the University to provide temporary housing at the former Rodeway Inn for unhoused residents who previously resided at People's Park. Before the City Council today, in addition to this item, is a resolution authorizing a Project Homekey application to transfer ownership of the Rodeway Inn site so it can be converted to permanent supportive housing and so it can continue to be used to house unhoused residents.

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

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

FINANCIAL IMPLICATIONS

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

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Mayor Jesse Arreguin, (510) 981-7100
Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: Resolution

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

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SUBMIT A LETTER IN SUPPORT OF THE UC REGENTS PETITION FOR REVIEW IN *MAKE UC A GOOD NEIGHBOR V. THE REGENTS OF UNIVERSITY OF CALIFORNIA*

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

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

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

WHEREAS, the February 23, 2023 decision by the Court of Appeals of the State of California interprets student noise to be an admissible negative impact under the California Environmental Quality Act; and

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

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

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

WHEREAS, the February 23, 2023 decision also states that the Regents of University of California ought to have considered alternative sites in their CEQA analysis.

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

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