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November 10, 2025

Honorable Mayor Adena Ishii and
Members of the Berkeley City Council
2180 Milvia Street, 1st Floor
Berkeley, CA 94704

Via Email at Council@berkeleyca.gov and Clerk@berkeleyca.gov

Dear Mayor Ishii and Members of the Berkeley City Council:

I write in support of the ZAB appeal for the 2425 Durant Avenue project submitted by the Building and Construction Trades Council of Alameda County and the Northern California Carpenters Regional Council.

As the State Senator representing Berkeley, I have never personally weighed in on a land use appeal and do not take lightly the fact that I am doing so. The reason I support this appeal is because of the precedent it would set for future projects, and the impact it would have on the application of various critical labor policies the Council has adopted over the years including prevailing wage requirements and the HARD HATS Ordinance, BMC Chapter 13.107. While on the face of it, this decision only impacts this one project in one city, it is a decision of statewide importance, that could undermine critical labor protections.

As you know, in 2023, I authored and the Council passed the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards ("HARD HATS") Ordinance. My colleagues and I were proud to adopt the HARD HATS Ordinance, which was intended to improve the recruitment, training, and retention of skilled construction workers in the City of Berkeley. In particular, the Ordinance ensured that construction workers employed on large development projects would enjoy high-quality health care for themselves and their families, thereby promoting worker retention and increasing the skilled construction labor pool residing in the City.

Furthermore, the HARD HATS Ordinance required contractors working on large development projects to participate in high-quality, industry-proven apprenticeship programs, which provide the best and safest training to new apprentices entering the construction industry. This has a direct impact on jobsite safety. This has been the law of Berkeley since January 1, 2024.

So, I was therefore surprised and disappointed to learn that the proponent of a development project at 2425 Durant Avenue is attempting to avoid the important labor protections in the HARD HATS Ordinance. Specifically, the applicant requested “concessions” under the Density Bonus Law (“DBL”) (Gov’t Code section 65915 *et. seq.*) that would render the Ordinance’s apprenticeship and health care requirements inapplicable. The applicant also requested a DBL “concession” that would make City’s prevailing wage requirement in the Southside Plan inapplicable.

As the sponsor of the HARD HATS Ordinance and Mayor at the time of its adoption, I never anticipated that the Ordinance’s seminal requirements could be circumvented through use of the DBL. It was surprising to me, to say the least, that an applicant would attempt to avoid the Ordinance’s labor protections and the Southside Plan’s prevailing wage requirements in this way. To my knowledge, this was never attempted while I served as Mayor.

More broadly, I do not believe that local cities and counties are required by the DBL to forego the application of minimum labor standards, rather waivers and concessions were intended to focus on lot development standards that not only affect economic feasibility but also preclude the physical construction of bonus units.

The DBL was intended to facilitate the development of affordable housing projects and the construction of higher numbers of affordable housing units. The “incentives or concessions” that an applicant can request under the law must therefore result in “identifiable and actual cost reductions” that will, in turn, actually provide for affordable housing costs. Here, the applicant has not provided any information regarding *how* the requested concessions are expected to result in cost reductions. There are several concrete cost reduction options the applicant could have pursued in lieu of cutting wages and benefits and increasing profits to the detriment of construction workers.

Moreover, the DBL was not, in my opinion, intended to allow developers to avoid minimum labor standards or other community benefits. Indeed, the DBL states that the Legislature intended to “ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing.”

The prevailing wage concession requested by the developer, in particular, conflicts with the intent of the DBL because, in addition to undermining the health and safety of construction workers, it would reduce their wages and make the housing they are building less affordable to them. This outcome would be antithetical to the policy of the DBL. In my experience, the DBL waivers and concessions that have been granted by the City over the years have not posed this problem. The DBL should not be misused to allow developers to avoid the City’s minimum labor standards or other social benefits, especially where there has been no demonstration of an actual financial benefit that would result in more affordable housing.

The HARD HATS Ordinance and the prevailing wage requirement in the Southside Plan were intended to promote a level playing field where contractors are equally required to pay workers a living wage, provide health care, and invest in training programs. In my opinion, the request by

the development proponent at 2425 Durant Avenue to avoid these requirements is a subversion of the will of the Council in adopting such high road labor policies. It is also not justified by any cost savings that would actually result in increased density.

For these reasons, I respectfully request that the Council either approve the Use Permit for 2425 Durant Avenue without the requested concessions or remand the matter for reconsideration by the Zoning Adjustments Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Arreguin", with a stylized flourish at the end.

Jesse Arreguin
California State Senator, District 7

cc. City of Berkeley Planning Department (planning@berkeleyca.gov)
Weinberg, Roger, and Rosenfeld (jkramer@unioncounsel.net;
amatsuoka@unioncounsel.net)