Weinberg
Roger &
Rosenfeld

4311 Street, Suite 201
Sacramento, California 95814
TELEPHONE: (916) 443-6600
FACSIMILE: (916) 442-0244
Andrea Matsuoka
amatsuoka@unioncounsel.net

December 1, 2025

Via Email and Hand Delivery

Mayor Adena Ishii and City
Councilmembers Rashi Kesarwani, Terry
Taplin, Ben Bartlett, Igor Tregub, Shoshana
O'Keefe, Brent Blackaby, Cecilia
Lunaparra, and Mark Humbert
2180 Milvia Steet, 1st Floor
Berkeley, CA 94704
council@berkeleyca.gov

City Clerk Mark Numainville
2180 Milvia Steet, 1st Floor
Berkeley, CA 94704
clerk@berkeleyca.gov

Re: Appeal to City Council of 2029 University Avenue Use Permits #ZP2024-0181, #ZP2024-0182

Dear Mayor Ishii, City Council Members Kesarwani, Taplin, Bartlett, Tregub, O'Keefe, Blackaby, Lunaparra, and Humbert, and City Clerk Numainville:

Our law office represents the Building and Construction Trades Council of Alameda County, AFL-CIO ("Trades Council") and the Northern California Carpenters Regional Council also known as the Nor Cal Carpenters Union ("Carpenters"). We write on behalf of the Trades Council and Carpenters to appeal the approval by the City of Berkeley ("City") Zoning Adjustment Board ("ZAB") of Use Permits #ZP2024-0181 and #ZP2024-0182 for the 2029 University Avenue project ("Project").[1] The Trades Council appeared at the November 13, 2025 ZAB hearing to oppose approval of the Use Permits as presented.

The Project is proposed by Laconia Development ("Applicant"). Applicant applied for Use Permits for two alternative housing development projects at 2029 University Avenue in the City. Both Project alternatives proposed to demolish an existing two-story commercial building and a ten-car garage structure on a 12,385-square-foot lot, and to construct a 23-story residential building, but one alternative proposed the creation of 240 multifamily apartment units (18 moderate income and 18 very low-income) while the other proposed the creation of 160 student housing units (12 moderate income and 12 very low-income).

[1] City of Berkeley Zoning Adjustments Board Notices of Decision, 2029 University Avenue (Multifamily) and 2029 University Avenue (Student-Oriented), Date of Board Decision November 13, 2025, Date Notice Mailed November 17, 2025, Appeal Period Expiration December 1, 2025 ("Notices of Decision").

This appeal of Use Permits #ZP2024-0181 and #ZP2024-0182 for the Project is timely filed within fourteen (14) days of the City's November 17, 2025 mailing of the Notices of Decision, pursuant to Berkeley Municipal Code ("BMC") section 23.410.020. This appeal is accompanied by payment of the requisite fee of $3000.[2]

This appeal pertains to Applicant's requested "concessions" under the Density Bonus Law (Gov. Code, § 65915, et seq. or "DBL"), which are as follows:

1. Exemption from the "Apprenticeship Requirements" in establishing Healthcare and Apprenticeship Standards for Private Development, as required by BMC section 13.107.040.

2. Exemption from the "Health Care Expenditures" in establishing Healthcare and Apprenticeship Standards for Private Development, as required by BMC section 13.107.050.

3. Exemption from the "Bird Safe Building" requirement as required by BMC section 23.304.150.

In particular, this appeal pertains to the first two requested concessions above, which refer to the City's HARD HATS Ordinance (BMC § 13.107.010 et seq. or "HARD HATS"), which was adopted on May 2, 2023 and took effect on January 1, 2024. For the reasons that follow, these two requested concessions are improper under the DBL and should be denied.

I. The City Should Not Grant Concessions that Waive Local Labor Standards

The City should not grant concessions under the DBL that waive local labor standards. The Applicant is pursuing a novel and unorthodox strategy of using DBL concessions to avoid two construction labor standards, namely, the requirement to provide health care and apprenticeship training. Until very recently, the Trades Council and Carpenters were not aware of any project that had received similar concessions from the City (or any city). The requested concessions are an attempted misuse of the DBL to avoid important labor standards that the City enacted to protect public health and safety.

On October 21, 2025, our office made a California Public Records Act request to the City seeking all records relating to whether the City has, at any time, granted any State Density Bonus concessions or waivers relating, in any way, to the City's HARD HATS Ordinance. The City responded that the only project that has received such concessions is the 2425 Durant project, which the Trades Council and the Carpenters appealed and will be heard by City Council on February 10, 2026.[3]

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[2] Notice of Decisions, page 4; BMC § 23.410.030. The Trades Council and Carpenters believe a single appeal is proper pursuant to BMC §§ 23.410.030(A) "(Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter") and 23.404.020(F) ("An applicant shall request City approval of all required permits as part of a single application. . . ."). Since the Berkeley Municipal Code establishes that all permits for a project be filed as part of the same application and that appeals be filed consistent with permit applications, it follows that appeals of two different use permits for a single project should be filed as one appeal. That should especially be true where, as here, the appellant's reasons for appealing both permits are identical. In an abundance of caution, however, the Trades Council and Carpenters are prepared to file two copies of this letter and two filing fees in case the City believes this appeal should be filed and processed as two separate appeals.

[3] The response received from the City of Berkeley Planning and Development Department was previously submitted to City Council in relation to the Trades Council and Carpenters' 2298 Durant & 2360 Ellsworth ZAB appeal and can be provided again upon request.

II. The City Cannot Waive HARD HATS' Healthcare and Apprenticeship Standards Because Such Waiver Does Not Constitute a Concession or Incentive Under DBL

The DBL, Government Code section 65915(k), establishes that a "concession or incentive means any of the following": "(1) [a] reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission . . . including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions . . . ."; "(2) [a]pproval of mixed-use zoning in conjunction with the housing project . . . ."; or "(3) [o]ther regulatory incentives or concessions proposed by the developer or the city. . . that result in identifiable and actual cost reductions to provide for affordable housing costs . . . ."[4]

As used in the DBL, "development standard" means a:

> . . . site or construction condition, including but not limited to a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.[5]

Here, the City cannot waive HARD HATS' apprenticeship or health care expenditure requirements on the Project because such waiver would not qualify as a "concession or incentive" under the DBL.

Contrary to Applicant's argument, HARD HATS' labor requirements are not "site development standards" and therefore not subject to reduction via "concession or incentive" pursuant to Government Code section 65915(k)(1).

As stated above, under the DBL, a "development standard" is either a "site" or "construction" development standard depending on whether it is "a site or construction condition," and only "site development standards" can be reduced by concession or incentive under Government Code section 65915(k)(1). The three examples of "site development standards" the DBL lists are: "setback . . . requirements," "square footage requirements," and "the ratio of vehicular parking spaces that would otherwise be required." Under the statutory construction principle of *ejusdem generis*, by which courts "interpret a general or collective term" in a list of items "in light of any common attributes shared by the specific items,"[6] "site development standards" should be interpreted as relating to physical characteristics of a development as situated on its site because all three examples do. Here, HARD HATS' labor requirements are plainly not "site development standards" because they do not amount to physical conditions of how a project is situated on a site. Instead, the requirements are workers' rights protections that relate only to how contractors working on the project should treat their workers.[7] Moreover, HARD HATS' requirements are also procedurally unlike the DBL's examples of "development standards" even more broadly—"a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement,

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[4] Gov. Code § 65915, subds. (k)(1)-(3).

[5] *Id.*, § 65915, subd. (o)(2).

[6] *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 458 (quotation marks removed).

[7] BMC § 13.107.030.

or a parking ratio"—in that, unlike all these examples, they have extra enforcement mechanisms outside of any zoning code in order to benefit the workers they seek to protect, namely a private right of action whereby an affected worker or representative may bring a civil suit against a contractor employer who fails to abide by the wage and expenditure requirements.[8] For these reasons, HARD HATS' labor requirements do not meet the definition of development standards, let alone the more narrow category of site development standards subject to reduction via concession or incentive under the DBL.[9]

Finally, the legislative intent of the DBL demonstrates the waiver of HARD HATS' labor requirements is not a DBL concession or incentive. The stated intent of the DBL is to allow developers "to include more total units in affordable housing projects than would otherwise be allowed by local zoning ordinances," and to "cover at least some of the financing gap of affordable housing."[10] The Legislature also 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."[11] In other words, the Legislature was mindful of the need to balance housing density with social benefits, not disregard social benefits like labor standards.

The requested health care expenditure concession is doubly in conflict with the intent of the DBL because, in addition to threatening the health and safety of construction workers, the concession would suppress their total compensation and make the very housing they are building less affordable to them. This outcome would be antithetical to the intent and policy of the DBL, which is ultimately to make housing more affordable. Historically speaking, 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 minimum labor standards or other social benefits.

For the reasons set forth above, the City cannot waive HARD HATS' health care expenditures and apprenticeship requirements because such waiver does not constitute a concession or incentive under the DBL.

III. Even if the Waiver of HARD HATS' Health Care & Apprenticeship Requirements Were Concessions or Incentives Under the DBL, the City Should Not Grant Them Because the Waiver Would Have Specific, Adverse Impacts Upon Public Health and Safety

The DBL provides that a city shall grant an applicant's proposal for a concession or incentive unless it "makes a written finding, based on substantial evidence, of any of the following: . . . .the concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-

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[8] *Id.* § 13.107.111.

[9] Additionally, no other DBL definition of "concession or incentive" applies. Government Code 65915(k)(2), relating to approval of "mixed-use zoning," is inapplicable to the entirely residential Project. Government Code section 65915(k)(3) is largely redundant with (k)(1) and k(2) already discussed: in defining "concession or incentive" the paragraph circularly refers to "incentives or concessions," thereby referring to the prior paragraphs defining the term, and only serves to clarify which entities may propose concessions or incentives.

[10] Gov. Code, § 65915, subd. (u)(1)

[11] Gov. Code, § 65915, subd. (u)(2).

income households."[12] An impact is a "specific, adverse impact" when it is "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."[13] "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors,"[14] and a "feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes "any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit."[15]

As explained below, waiving HARD HATS' health care and the apprenticeship requirements would have a specific, adverse impact upon public health and safety, namely a blatant difference in health care expenditures for construction workers and a measurably increased likelihood of health and safety hazards on jobsites, which could not be feasibly mitigated or avoided.

(a) Health Care

Waiving HARD HATS' health care requirements would have a specific, adverse impact upon public health and safety that cannot be feasibly mitigated or avoided.

First, waiving these requirements would have a significant, quantifiable, direct, and unavoidable impact on public health and safety based on the policies of the HARD HATS ordinance itself as well as written public health safety conditions identified in research by the UC Berkeley Labor Center and Harvard Medical School and Cambridge Health Alliance.

A recent publication from the UC Berkeley Labor Center found that California construction workers were 2.6 times more likely than other California workers to be uninsured, and that California construction workers and/or their dependents account for a disproportionately high percentage of spending on Medicaid/CHIP.[16] Additionally, a study conducted by Harvard Medical School and Cambridge Health Alliance found that uninsured, working-age Americans have a 40% higher risk of death compared to those with insurance.[17]

The City adopted the health care expenditure requirement in HARD HATS precisely to "enhance the good health of construction workers working in the City" and thereby combat these public health and safety

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[12] Gov. Code, § 65915, subd. (d)(1)(B); see also, Gov. Code, § 65915, subd. (d)(3) ("[t]his subdivision shall not be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.")

[13] Gov. Code, § 65589.5, subd. (d)(2).

[14] *Id.*, § 65589.5, subd. (h)(1).

[15] See Health & Saf. Code, § 17959.1, subd. (e)(1). Like the DBL, Health and Safety Code section 17959.1 concerns government permitting and feasible alternatives and uses identical language. It explains in relevant part, "a city or county may not deny an application . . . to install a solar energy system unless it makes written findings based upon substantial evidence . . . the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

[16] See https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-californias-construction-industry/.

[17] See https://news.harvard.edu/gazette/story/2009/09/new-study-finds-45000-deaths-annually-linked-to-lack-of-health-coverage/.

harms that result from uninsured construction workers.[18] Granting Applicant a waiver of this requirement would directly, unavoidably and significantly undermine the City's protective framework and place the health of workers on the Project at greater risk by exempting all contractors on the Project from having to contribute to their workers' health care costs, leaving many workers without any health care coverage or dedicated funds to spend on their health care. Additionally, this impact would be quantifiable because the City could ask each contractor working on the Project whether, in the absence of HARD HATS, they would make health care expenditures for their workers and, if so, how much those expenditures would be. The City could then determine how much higher those expenditures would be under HARD HATS' statutory formula, which is simple math.

Finally, there is no "feasible" method to avoid or mitigate the specific, adverse impact on workers' health care coverage or other costs that waiving HARD HATS' health care expenditure requirement would produce. Most future Project workers will not be eligible for government-sponsored healthcare because their incomes exceed Medi-Cal eligibility thresholds, they do not have "Satisfactory Immigration Status"[19] or are otherwise not Medi-Cal eligible.[20] Given this country has not evolved to the point where it has passed universal health care, and is highly unlikely to do so "within a reasonable period of time," there is no feasible alternative to contractor employers on the Project contributing to their workers' health care costs.

(b) Apprenticeship Requirements

Waiving HARD HATS' apprenticeship requirements would also have a specific, adverse impact upon public health and safety that cannot be feasibly mitigated or avoided.

First, waiving the apprenticeship requirements would have a significant, quantifiable, direct, and unavoidable impact on public health and safety based on the policies of the HARD HATS ordinance itself as well as written public health safety conditions identified in a study of the construction industry by the Illinois Economic Policy Institute ("ILEPI") and the Washington State Department of Labor & Industries ("L&I").

L&I's 2023 study found that an "apprenticeship program is associated with fewer work injuries"; even controlling for variables, workers with apprenticeship training had a 46% lower rate of accepted workers' compensation claims compared to workers in the same field with no apprenticeship training.[21] Additionally, ILEPI's study found that in 2019 alone, jobsites participating in joint management apprenticeship programs— were 19% less likely to have health and safety violations and had an average of 34% fewer violations per inspection" than those that did not.[22]

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[18] BMC § 13.107.020.

[19] The Migration Policy Institute estimates that over 84,000 construction workers in northern California counties are "unauthorized" immigrants. See https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles.

[20] A family of four with an income above $44,367 is ineligible. For definitions of Unsatisfactory Immigration Status, see https://www.dhcs.ca.gov/Medi-Cal/Pages/immigration-status-categories.aspx.

[21] See https://www.sciencedirect.com/science/article/pii/S0022437522001451. Study of journey level plumbers. Variables controlled include "controlling for differences in year . . . worker age . . . number of employers . . . size of employer, license for plumbing specialty other than [journey level plumber], and workers' compensation claim rate in the five years prior to [journey level plumber] certification."

[22] See https://theconstructionbroadsheet.com/report-union-construction-jobsites-significantly-safer-than-nonunion-site-p547-175.htm.

This is precisely why the City adopted apprenticeship requirements in HARD HATS: to ensure contractors in the City invest in apprenticeship and thereby ensure workers are "competently trained" on City projects.[23] HARD HATS requires each contractor on covered projects to participate in an approved apprenticeship program.[24] Allowing Applicant to avoid apprenticeship requirements would directly, unavoidably and significantly undermine the City's protective framework and place workers' health and safety at greater risk by exempting all contractors on the Project from participating in apprenticeship programs that decrease health and safety violations. This impact is also quantifiable. The City could ask contractors how many apprentices they would have on the Project in the absence of HARD HATS. The answer is likely to be zero or close to zero for non-union contractors because, in the absence of HARD HATS, contractors typically only employ apprentices when required to by the Labor Code or by a collective bargaining agreement with a union. The City could then conclude that waiving HARD HATS' apprenticeship requirements on the Project would lead to a significant drop in apprenticeship participation and determine the projected increase in safety violations and workers' compensation claims according to the studies above. Finally, no feasible alternatives exist because research has shown that in the absence of either collective bargaining agreements or government regulation, apprenticeship training is unlikely to occur and worksite injuries are therefore more likely to occur.[25] As it is beyond the scope of local governments' powers to regulate collective bargaining, and dedicating a sufficient number of City employees to monitor all of Berkeley's major construction sites for safety regulation compliance is fiscally infeasible, the HARD HATS regulation is the sole available, feasible alternative.

For the reasons described above, waiving HARD HATS' health care and apprenticeship requirements would have a specific, adverse impact upon public health and safety that could not be feasibly mitigated or avoided. Thus, even if the waiver of HARD HATS' requirements qualified as concessions or incentives under the DBL—which they do not—the City should make a written finding about this specific, adverse impact and decline to grant the concessions or incentives.

IV. Alternatively, the City Could Request Reasonable Documentation to Support the Concessions and/or Remand the Matter Back to ZAB For Further Consideration

The DBL "does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus."[26] This includes incentives or concessions.[27] Moreover, the local government is also tasked with "provid[ing] the applicant with a determination as to the following matters:

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[23] BMC § 13.107.020.

[24] BMC § 13.107.040. A contractor may also make contributions to the California Apprenticeship Council (BMC § 13.107.040), which would fulfill the same purposes of participating in apprenticeship programs given the California Apprenticeship Council is exclusively dedicated to supporting state-approved apprenticeship programs and would spend all funds received accordingly, which would in turn improve worker safety as described in the studies above.

[25] Waddoups, Jeff, "Union Coverage and Work-Related Training in the Construction Industry," *Industrial & Labor Relations Review* Vol. 67, No. 2, April 2014, pp. 532-54; The Effect of Prevailing Wage Law Repeals and Enactments on Injuries and Disabilities in the Construction Industry - Zhi Li, Chimedlkham Zorigtbaatar, Gabriel Pleités, Ari Fenn, Peter Philips, 2019; APPRENTICESHIP TRAINING IN THE US CONSTRUCTION SECTOR (Bilginsoy, 2003).

[26] Gov. Code, § 65915, subd. (a)(2).

[27] *Id.*, § 65915, subd. (b)(1).

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(II) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, waivers, or reductions of development standards."[28]

In the case *Schreiber v. City of Los Angeles*, the Court of Appeal recognized that "[a] city or county is not prohibited from requesting or considering information relevant to cost reductions."[29] This is the case even though the statute places the ultimate burden of proof on the local government.[30] Accordingly, the City can and should take the position that Applicant has not yet provided adequate information for the City to make a determination as to its requested concessions, and require Applicant to provide reasonable documentation in support of same.

Here, Applicant has not provided the City evidence to substantiate its requested concessions. It simply claimed cost-reduction impacts.[31] The ZAB findings similarly do not provide any rationale whatsoever that the requested concessions do not have a specific, adverse impact on public health or safety.[32] Instead, the ZAB makes summary conclusions by referencing back to the law without any analysis or explanation.[33] Thus, if the City disagrees with the Trades Council and Carpenters and is inclined to treat the HARD HATS waiver as concessions, the Trades Council and Carpenters respectfully request that the City at least remand this matter to the ZAB to request reasonable documentation from Applicant in support of the requested concessions, so the City can determine whether they should be granted.

V. Conclusion

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[28] *Id.*, § 65915, subd (i).

[29] *Schreiber v. City of L.A.* (2021) 69 Cal.App.5th 549, 557.

[30] Gov. Code, § 65915, subd. (d)(4); *Schreiber* at p. 556-557 ("This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), or waivers or reductions of development standards, as described in subdivision (e).")

[31] See Rhoades Planning Group Nov. 13, 2025 Memorandum. The Memorandum asserted dollar costs but did not provide any clues as to the data or methodology used to arrive at the claimed costs. Simple math suggests that the Applicant's consultant assumed Project contractors will employ construction trades workers for an unreasonably high average number of work hours per unit: ($1,893,000 claimed "Apprenticeship Project Cost Reduction" ÷ 240 units) ÷ $3.10 (plumber apprentice contribution rate) = 2,544 trades work hours per unit. Carpenters research into other Alameda County multifamily residential projects' total construction trades work hours suggests the Applicant's implicit assumption regarding Project work hours is inflated by 50% before considering the likelihood the Project will include at least some unionized construction trades contractors, with or without the requested concessions.

[32] See Gov. Code, § 65915, subd. (d)(1)(B).

[33] Notices of Decision, p. 7.

The Trades Council and Carpenters respectfully request City Council reverse the ZAB decision approving Use Permits #ZP2024-0181 and #ZP2024-0182 for the Project with the HARD HATS concessions or reverse the ZAB decision with respect to the HARD HATS concessions but approve the remainder of the Use Permits. In the alternative, if the City disagrees and is inclined to treat the HARD HATS waiver as concessions, the Trades Council and Carpenters request the City Council at least remand the matter to ZAB to reconsider the application in light of the foregoing[34] and direct staff to request supporting documentation from Applicant and confer with Applicant regarding the grounds for its requested concessions. The City may also, if appropriate, request that the Applicant voluntarily agree to rescind its requested concessions in order to promote health and safety and the public benefits that would otherwise derive from the Project.

The Trades Council and Carpenters request that the City schedule a hearing on this appeal before the City Council at the earliest feasible date.[35] The Trades Council and Carpenters reserve the right to submit additional correspondence and evidence concerning this appeal prior to the hearing date.[36]

Thank you for your consideration of this appeal. Feel free to contact the undersigned with any questions or concerns.

Sincerely,

Andrea Matsuoka

Jolene Kramer

ACM:

cc: City of Berkeley Planning Department, via e-mail only (planning@berkeleyca.gov)

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[34] BMC § 23.410.040(G).
[35] BMC § 23.410.040(A).
[36] BMC § 23.410.040(F).