November 11, 2026
Re: 2700 Shattuck Ave. Appeal

Dear Mayor Ishii and City Councilmembers,

Berkeley Neighborhoods Council asks that you implement Option 2 as laid out by the City Manager and City Planning Director in regard to the Appeal of the ZAB decision on 2700 Shattuck Ave. We also strongly recommend that you pass an ordinance to remove the option to pay in-lieu fees, at least temporarily, to prevent other developers from claiming the same concession while this appeal works its way through the legal system.

If, for some reason, Option 2 fails, we suggest you interpret the developer's request for an "Exemption from the in-lieu remainder fee of the affordable housing requirement" as a choice to opt out of option B1 of BMC Chapter 23.328 (see below). If the City Attorney agrees with this interpretation, couldn't the City grant the third concession, allow the developer to not pay the fee and revert to A1 as highlighted, requiring the 20% Affordable Units?

From BMC Chapter 23.328 — Inclusionary Housing:

A. Requirement to Construct Affordable Units.

1. Except as otherwise provided in this Chapter, no permit for the construction of any Housing Development Project shall be issued unless at least 20% of the Residential Units are Affordable Units.

B. Option to Pay In-Lieu Fee.

1. In lieu of providing some or all of the Affordable Units required under this Chapter (including any fractional units), an Applicant may elect to pay a fee...

We expect this appeal may take some time to resolve. In the meanwhile, Council must prevent other developers with projects planned or already approved in Berkeley from coming back to claim the same concession. Passing an ordinance to remove the mitigation fee as an option until this matter is settled would accomplish this. The dedication of land would still stand as an alternative to providing the units on-site, satisfying the state law requirement to offer an alternative.

Lastly, the staff report states that we missed the 30 day deadline due to an "unavoidable scheduling constraint." Looking at the timeline, we see as many as three missed opportunities to bring the 2700 Shattuck proposal to ZAB within the 30-days after consulting with the tribes.

- The staff report states that they knew of the timing issue on May 27, 2026, but did not proactively put the project on the June 11, 2026 ZAB agenda at that time.
- When tribal consultation ended on June 2nd, they knew the 30 day deadline was July 2nd, but still did not get the project on the June 11th meeting.
- The Planning Department also did not choose to call a June special meeting of the ZAB to meet the deadline.

Instead, they relied on "implied consent" to schedule the ZAB meeting after the July 2nd deadline. What policies do we have in place to require legal consultation before making such assumptions? The request for a concession to waive over $2M in Affordable Housing Mitigation fees should have triggered more scrutiny. Instead, it seems the city did not safeguard much-needed city funds. Steps must be taken to make sure this does not happen again.

Sincerely,

Berkeley Neighborhoods Council Executive Committee