

March 1, 2022

VIA U.S. MAIL

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RE: The Fruitvale Neighborhood
Dangerous Public Conditions and Activities Impacting Residents and Businesses

Dear Gentilepersons:

Please accept this as formal notice of the matters herein discussed. Many of these matters the City of Oakland (hereinafter "City" or "Oakland") is aware of for various reasons, such as police reports, reports of fires, reports to the local councilmember, reports from various neighborhood watch groups, reports to the City's 311 platform, and reports from businesses, media, and other stakeholders. Nonetheless, please consider this additional information and formal notice of the issues detailed herein, the impact of which can no longer be borne by residents of Fruitvale.

Below, we provide: (1) an introduction and general overview of issues and conditions that are impacting our neighborhood and the individuals who live and work in our community; (2) a reasonably detailed discussion of specific problems severely impacting our community, with some supporting photographic documentation; (3) a brief discussion regarding fundamental principles of equal treatment and equity vis-à-vis our community; (4) a formal notice regarding specific dangerous conditions in and around our neighborhood; and (5) an overview and notice regarding specific rights being impacted by the present conditions in our neighborhood.

We provide this information and make the factual allegations and assert topics of legal concern here in an effort to compel the City to address these issues and use and act in accordance with applicable law. Please be aware that we are providing this information to help with the betterment of our community, as well as the whole of Oakland, and seek ultimately not to assign blame, but to obtain obligatory solutions.

INTRODUCTION & OVERVIEW

Many parts of Oakland’s Fruitvale neighborhood face a desperate crisis. The Fruitvale neighborhood is a culturally diverse community comprised of many groups of people, including seniors, persons with disabilities, people of color, immigrants, individuals with low incomes, and families with children. And many of these residents—housed and unhoused—are being put at risk by the policies (formal or informal), actions, and inaction of the City.

As you are well aware, Fruitvale is historic neighborhood in Oakland. It is reasonably densely populated with a diverse populations.¹ The neighborhood of Fruitvale includes many families, many schools, shopping districts, and a BART station. The neighborhood is also home to many Latino-owned businesses and hosts several annual cultural events, including a Cinco de Mayo parade and a Día De Los Muertos festival.

Despite its importance to the cultural and commercial landscape of Oakland, in recent years, the Fruitvale community has been severely impacted by crime, homeless encampments, open-air drug dealing, shootings, constant public dumping, and blight. The conditions have become all too much to bare recently. And the City has been slow or inadequate in its actions to address the very real concerns of our community in this corner of Oakland.

Even before the onset of the COVID-19 pandemic, it appeared that the *de facto* policy of the City was to use the Fruitvale community, or at least portions of it, as a containment zone, which had resulted in a dramatic decline in the livability and safety of the neighborhood. The deplorable conditions tolerated by the City in portions of Fruitvale are not permitted in other neighborhoods in Oakland. This is a matter of fundamental fairness; what is a city-wide problem should not be allowed to weigh disproportionately on what is often referred to as a low-income working-class neighborhood. Oakland should not be abandoning a single neighborhood, in an apparent effort to spare other neighborhoods the burdens that confront the city at-large.

Many parts of Fruitvale are now blighted; its sidewalks are unsanitary, unsafe, and often impassable. Open-air drug sales and other criminal activity, plus crowds of drug users and sidewalk-blocking tents, pervade and threaten the health and lives of all of Fruitvale’s residents. What has long been suffered by the Fruitvale residents has become insufferable. The conditions now prevailing in too much of Fruitvale constitute a violation of the fundamental rights of those residing and working here.

Business owners, who reflect the cultural diversity of the neighborhood, face multiple challenges. With some of their economic viability potentially threatened by common issues related COVID-19 business disruption, they must also cope with a potential existential risk to their future, as customers elect to patronize establishments elsewhere where street or sidewalk conditions do not impose physical barriers to safe access or other risks.

¹ Neighborhood Link, 94601 Zip Code Profile, <http://www.neighborhoodlink.com/zip/94601>.

The recent influx of homeless people into Fruitvale has created a variety of problems for all stakeholders—permanent residents, businesses, schools, the police, and the homeless population itself. Open-air drug transactions are routinely tolerated in parts of Fruitvale. The easy availability of illegal drugs attracts users and intensifies the homelessness problem.

The tents, vehicles, trailers, recreational vehicles (“RVs”), other informal structures block the streets, sidewalks, and bike lanes of Fruitvale, impeding lawful vehicle, bicycle, and pedestrian travel. As we know from reports and from the experience of other local cities, they also serve as cover for drug dealers and others conducting nefarious activities.² However, upon information and believe, we understand that the Oakland Police Department (“OPD”) has been directed not to remove or disturb such tents, vehicles, trailers, RVs, other informal structures, despite the facts that they block the streets and sidewalks and shield criminals and despite the health risks that they pose to permanent residents, business owners, pedestrians, and homeless people themselves. The crisis in Fruitvale presents an immediate and dire public health problem. This crisis also presents an environmental problem, as the U.S. Environmental Protection Agency has recognized in its letter to Governor Gavin Newsom dated September 26, 2019.³

Constantly people in this neighborhood and adjacent areas complain of not being able to maneuver safely on city sidewalks and roads. Often times people have to walk in the street, among car traffic, because the sidewalks are impassable. Many of the people living on the streets and sidewalks openly urinate, defecate, and dump their trash on the sidewalks or between parked cars. Illicit drug sales and hypodermic drug use have become rampant and are often conducted in the open.

Many of the people camping on and occupying the sidewalks do not adhere to social distancing rules for the pandemic; they often congregate in large groups in close proximity, without masks; they often do not make way for other people who may be in the area, either on foot or in a vehicle in a roadway; and they sometimes display hostile and threatening behavior.

Residents routinely make numerous calls and contacts to the City and its agencies, asking them to act, but to no avail. People here worry that the conditions of the sidewalks and streets of Fruitvale jeopardize the health and safety of the residents, especially children going to and from school or recreational activities.

These condition severely impact the quality of life of our residents, and even pose daily threats to persons and property. We are not merely speaking of unsightliness or the just the common realities of modern urban living. We are talking about constant and all-consuming lawlessness. This is described in some detail below. We should also note at the outset, that, in addition to

² Phil Matier, *SF Homeless Tents, Once Seen as Problem, Now Seen as Path to Coronavirus Social Distancing*, San Francisco Chronicle (Apr. 12, 2020), <https://www.sfchronicle.com/bayarea/philmatier/article/SF-homeless-tents-once-seen-as-problem-now-seen-15193812.php>.

³ Letter from Andrew R. Wheeler, Administrator, U.S. Environmental Protection Agency, to Gavin C. Newsom, Governor, State of California (Sep. 26, 2019), https://www.epa.gov/sites/production/files/2019-09/documents/9.26.19_letter-epa.pdf.

blatant criminal activity, given recent history⁴ in this part of Oakland, it is concerning that the City does also not seem to be taking dumping, illegal structures, and urban blight⁵ seriously by timely addressing community members concerns and reports on these issues. Moreover, recent increases in crime have been consistent and relentless in impacting this community.⁶

Fruitvale is a beautiful neighborhood and corner of Oakland filled with history and wonderful people and families. But the regrettably preventable conditions outlined here are stark and devastating in their impact on this community. And they are entirely underserved and entirely preventable. This letter's assertions are too plainly understood by a simple visit to other parts of Oakland. One only needs to take a short drive to and through areas of Oakland such as Rockridge, Upper Diamond, Glen View, Piedmont Avenue, Redwood Heights, or Montclair to see the overwhelming difference as to how such issues are addressed and managed. These places are no far-of locations, but rather areas of the City just up the road from Fruitvale, where residents pay the same types of local taxes as our residents here in Fruitvale. However, the difference seems to be in the appropriation and application of local resources to these areas in contrast to the reality of Fruitvale. There is no conceivable rationale for the difference of conditions between here in Fruitvale and these fellow communities a short distance away. The disparate conditions we find here in comparison to other neighborhoods of Oakland are astounding, jarring, and mind boggling. One is only left to struggle to make sense of these inequities.

That said, one cannot adequately articulate these inequities in black-and-white print, but for some context, please for a moment pause and contemplate a scene one does not ever see on our City's Piedmont Avenue:



⁴ Sam Levin; Alan Yuhas, *Oakland warehouse party fire leaves nine dead and 25 missing*, The Guardian (Dec. 9, 2016), <https://www.theguardian.com/us-news/2016/dec/03/oakland-warehouse-party-fire-deaths>.

⁵ Elizabeth Chuck, Ali Gostanian, Rebecca Sai, and Erin Calabrese, *At Least 9 Dead, More Missing After Fire During California Warehouse Party*, NBC News (Dec. 3, 2016), <https://www.nbcnews.com/news/us-news/least-9-dead-others-missing-after-california-warehouse-fire-official-n691511>.

⁶ George Kelly, *Oakland: Three shot near Fruitvale BART station*, The Mercury News (Sep. 13, 2021), <https://www.mercurynews.com/2021/09/13/oakland-three-shot-near-fruitvale-bart-station/>.

For further context, through a good portion of the below portions of this letter, please see additional photographs demonstrating some representative examples of conditions routinely or continually seen in and around our neighborhood. Please note we could only choose a smattering of exemplary photographs here and could not possibly capture or do justice to the realities that our local residents of this neighborhood come in contact with daily. Please further note that sometimes these conditions can change on a day-to-day basis. For example, there are often times, after continued communication and documentation provided by local residents, certain City agencies or departments get involved in provide some help in cleaning up certain issues, including towing some abandoned cars or other vehicles from roadways or picking up portions of public dumping sites. Although these efforts are to be applaud and our community sincerely appreciates all of them and the people who actually do the work, it does not alleviate the larger problems and amounts to a mere tiny Band-Aid put on a giant festering and gushing wound. So, in effect, the Band-Aid quickly falls of and in short order no one is sure if it was ever even there at all. This is especially the case with the continued onslaught of dumped stolen, or just broken down, vehicles or the management of encampments. It is clear that sometimes people come by to help tidying up many of the subject encampments, which in large part merely amounts to pushing debris and various elements of the encampments closer together and closer to the vehicles, RVs, or shelter spaces. Then, usually within days, the debris and other elements of the encampments quickly start creeping back into the roadways, sidewalks, and crosswalks areas impacting or even entirely cutting of public passageways and views of traffic. Thus, we would like to point out that because one day the sidewalk or roadways is clear does not fix the problem of that same sidewalk or roadway not being clear or even completely blocked a large portion of the time when City officials or agents have not been present. One needs to only causally surf through online photos and complaints posted to the City's 311 platform to see how consistent and omnipresent these issues are.

OVERVIEW OF SOME SPECIFIC PROBLEMS

Local Shopping Center Conditions

In and around 4000 Alameda Avenue in Oakland, there is a popular shopping center with an Home Depot, a 24 hour Fitness, and a MacDonald's (hereinafter "Home Depot Shopping Center"). The Home Depot Shopping Center is used by many Fruitvale residents and other residents of Oakland, as well as many others in and around the San Francisco Bay Area.

However, in recent years many residents here and throughout Oakland continue to avoid this shopping center despite its very useful and needed businesses and the convenience of its location. Getting in and out of the Home Depot Shopping Center has become a dangerous gauntlet of traffic obstructions, including blocked or partially blocked sidewalks, crosswalks, roadways, intersections, and bike lanes. Often times Alameda Avenue, which is the only road that can be used to access the shopping center, has filled or partially filled roadways and other access points. These points of entry are often littered with garbage, piece of concrete, pieces of wood,

broken off sections of cars or other vehicles, as well as a myriad of other materials. In addition, many people living or spending time on these streets in and around the Home Depot Shopping Center wander back and forth in traffic, sometimes yelling and screaming and/or lunging at passing vehicle traffic. It has become a nightmare to attempt to drive or ride a bike to this Home Depot location to pick up your standard household needs. Many of us will never stop by the McDonald's for a cup of coffee or sandwich considering what needs to happen to get there. Additionally, many members of these communities around here were or are members of the 24 Hour Fitness, but have either given up our membership or do not attend this location – for trying to jog or ride one's bike to this 24 Hour Fitness location in many ways now more resembles a trip through a war zone than it does a daily community most people would consider reasonable.

This is a sad state of affairs, especially considering the important services and goods that businesses such of these in the Home Depot Shopping Center provide to any normal community throughout California. These are key goods and services that our general modern life depends on, including those that impact our health and our ability to improve or sustain our living conditions at home.

Nonetheless, from any local source of information, whether media⁷, local neighborhood security groups, or social media applications, one will find a variety of documentation of unsafe conditions regarding these areas in and around the Home Depot Shopping Center, including reports of all types of crime⁸, robbery, theft, murders, break-ins, vehicle and illegal structure fires⁹, open-air drug dealing, assault and batteries, car theft and the like. These are not the conditions any local government should accept on behalf of its residents, especially considering the community-centered and vitality of this particular shopping location for our wider community. These conditions create daily threats and dangers¹⁰ to the members of our communities here, including to person, property, livelihoods, traffic accidents, fires in and around City's streets and property, and health impacts. The City, its officials and its agents need to plan and act. The wellbeing of our community depends on it.

Local resident routinely report and complain to City agents and officials about a myriad of illegal and illicit activities on and around Alameda Avenue, including theft, open-air chop shops operating with impunity, physical violence, guns handled and used in the open, drug dealing. Local residents report individuals and when they are finally arrested and/or face charges, within days local resident see these same individual out again freely moving about on and around Alameda Avenue. It seems to be just a revolving door that never gets addressed.

⁷ Annie Sciacca, Large retailers are paying for police protection in Oakland, East Bay Times (Feb. 19, 2021): <https://www.eastbaytimes.com/2021/02/18/large-retailers-are-paying-for-police-protection-in-oakland/>.

⁸ Phil Matier, Will 'out of control' crime wave force Home Depot to flee Oakland?, San Francisco Chronicle (Jun. 5, 2019), <https://www.sfchronicle.com/bayarea/philmatier/article/Home-Depot-said-to-threaten-pulling-out-of-13937174.php>.

⁹ Anne Scaccia, Oakland firefighters battle encampment blaze near Home Depot store (Mar. 31, 2021), <https://www.ktvu.com/news/oakland-firefighters-battle-encampment-blaze-near-home-depot-store>.

¹⁰ Da Lin, Rising Crime Near Oakland Homeless RV Camp Has Local Business Owners Concerned, CBS SF Bay Area (Sep. 17, 2021), <https://sanfrancisco.cbslocal.com/2021/09/17/rising-crime-near-oakland-homeless-rv-camp-has-local-business-owners-concerned/>.

Around this area, resident also complain of chop shops operating in the open at adjacent areas and these activities never being shut down by the City. People complain the reports of blight go unanswered, even when all day at all hours cars are dumped on the street at these locations. Even when fines are imposed on properties, the activities there never cease. The chop shops keep going, working on cars in the open on the street with hazards substances like oil spilling in to City drains and then, of course, eventually making their way to our presses water ways.

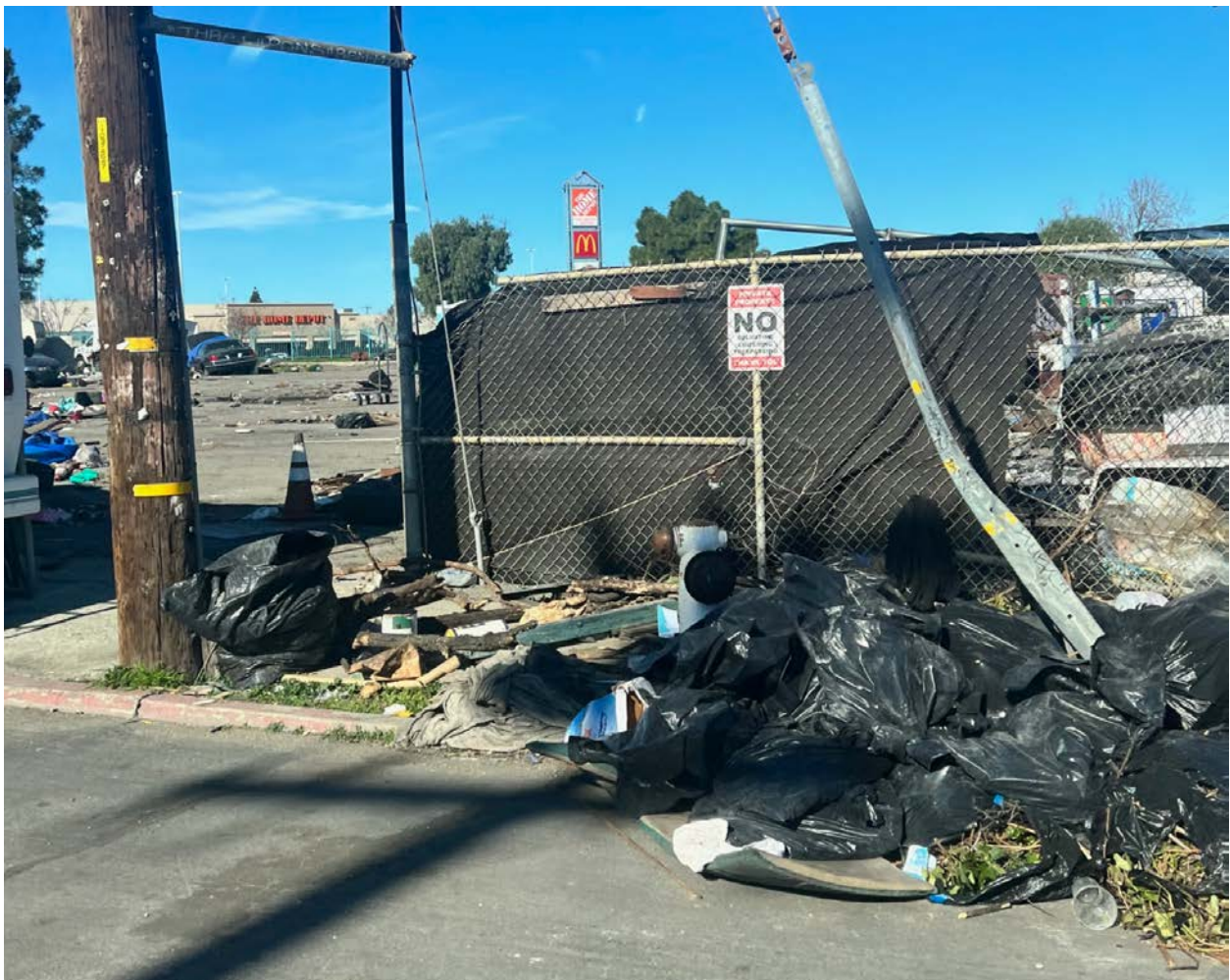
Not only does this all add to a general sense of lawlessness and cultivate a context that draws in other criminal behavior and activities, it also become a local environmental hazard and another tragedy, albeit small, that does not get addressed.

Please see below some example of representative conditions (from recent documentation) in or around the above-referenced locations.

































Conditions of Roadways/Side Walks

Many of the issues and conditions outlined here are found in numerous locations throughout Fruitvale. For our specific concerns, we outline a few important ones here. In and around the intersections of Sand Leandro Street and 38 Avenue, 39 Avenue, 40 Avenue there are numerous conditions impacting drivers, bicyclists, local residents, nearby businesses, and pedestrians on sidewalks.

Here, you will find conditions that resemble junk yards and chop shops more than city streets. The entire area is replete with encampments, public dumping, abandoned cars, and various burned out vehicles. In and around this area, people seem to be operating open-air chop shops in both the cover of night and in broad daylight. Criminals known to the police for theft, break-ins, and vehicle theft room freely. Cars are dumped on these streets and nearby residential areas all the time, at all hours of the day. The constant complaints from residents regarding parking issues, public health issues, criminal behavior, urban blight appear to be falling on deaf ears. What appear to be chop shops continue in the open with beat-up and broken-down vehicles on the streets being opening taken apart with oil and other liquids from the vehicles spilling into the street and the city storm drains. Makeshift structures, vehicles, encampment living spaces take up much of the streets and sidewalks, often times blocking passage ways for pedestrians and automobile drives and blocking or obscuring views of the streets and/or traffic control devices.

We understand residents have been complaining about accidents or near-accidents for years, and requesting traffic lights for this part of San Leandro Street.

The sidewalks are often not passable even for a person not hindered by any physical disability or ailment. Sometimes, the sidewalks are passable for some, but for others who may be disabled or be in a wheelchair, they would be forced into the street to pass. As indicated in this letter, there is poor traffic enforcement on the busy roadway that is San Leandro Street, with many people driving at extreme speeds all day and night and completely ignoring signage and traffic signals.

As an example of one issue, there is a local roofing supply company on 38 Avenue that now often times does not have space for the trucks that come and go for pick-ups and deliveries to maneuver on the adjacent street. This causes further access and visibility issues for the people using these streets and the nearby residents.

Further, residents and businesses are also impacted by the lack of parking in the area, as much of the public street parking is now permanently or semi-permanently taken up by encampments, abandoned vehicles, burnt vehicles or collections of piles of trash. This impacts the ability of local businesses from an attractiveness perspective for drawing in customers as well as from just a plain practical perspective as to access to parking. It is hard to get people to come buy lunch if parking and other access issues are a problem.

In addition to the traffic and accessibility issues, the constant trash on the streets is a public health issue. People often use the street for bathing or as a bathroom in general, including opening fire hydrants for various reasons (leading to a risk to damage to the fire hydrants). Vermin are increasing and can often be seen in the area, day and night, and dead in the street.

It is often heard from City officials that employees or agents of the City are participating in ongoing monitoring and cleaning activities to address some of these street conditions and issues related to encampments. However, we would like to note that giving something an active-sounding moniker such as “deep cleaning” may connote an active participation in addressing real issues, but when the moniker does not address the substantive issues or change anything on the ground for the residents of the City in any material fashion, it and its categories of activities it gives a name to have little meaning or real effect for the residents who are impacted daily by the City’s policies and practices, or lack thereof.

For clarity, these types of condition are not seen, or seen in very limited circumstances, in other parts of the City. This neighborhood should not be designated, by omission or otherwise, as a containment zone for the difficulties and issues of the City at large.

Please see below some example of representative conditions in or around the above-referenced locations.







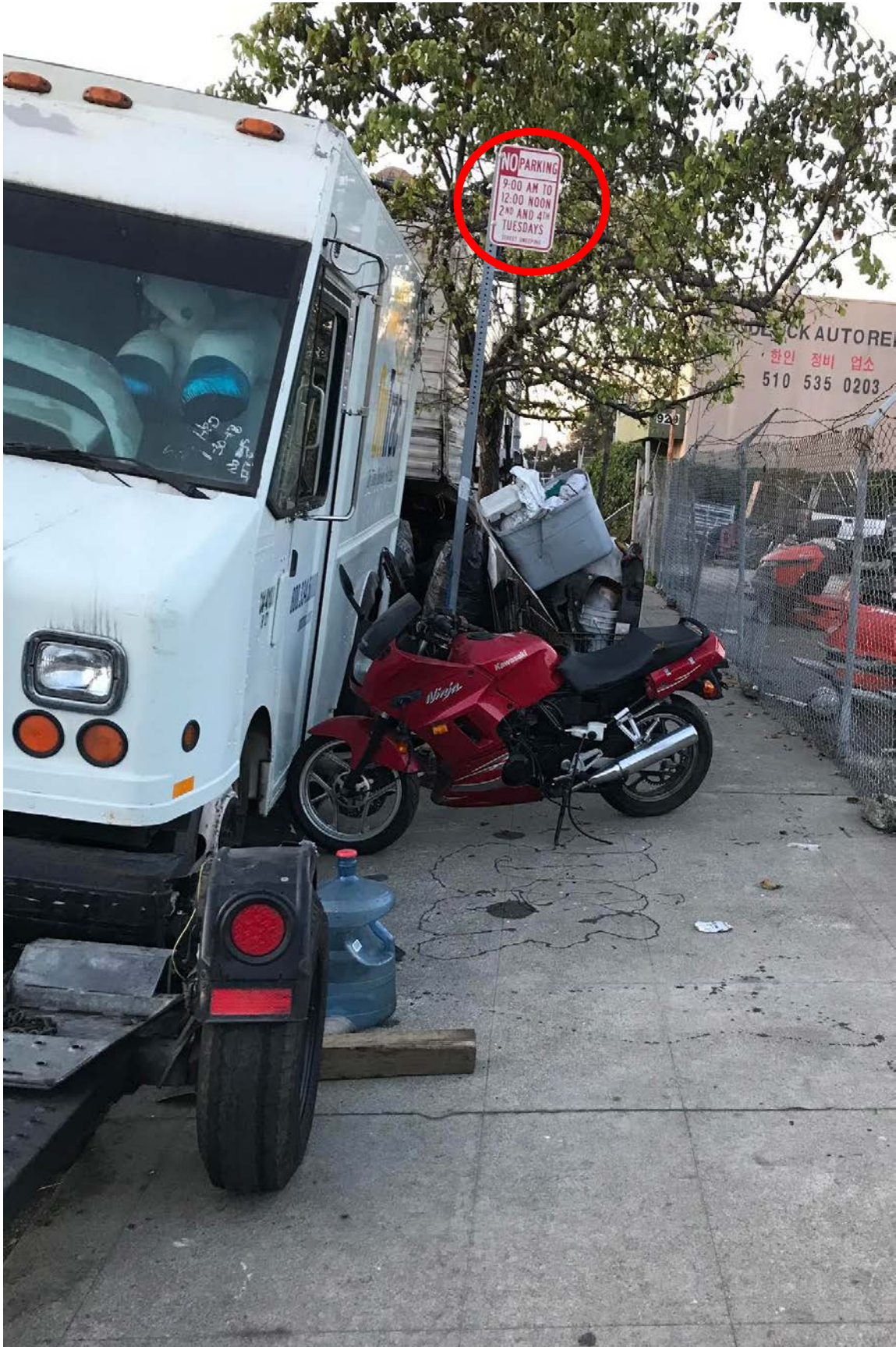


















Unsafe Local Vacant Lot with Constant Criminal Activity

There is a commercial lot at the intersection of Wattling Street and 38 Avenue (“Wattling Commercial Lot”) that has been taken over by encampments, open-air drug dealing, drug usage and other illegal activity.

The people using Wattling Commercial Lot do not own the property or have permission to operate from the owners of the property. The City is well aware, through report from local resident to police and other officials, that these activities are constant at the Wattling Commercial Lot.

There is endless reporting from local resident that people are participating in a open-air drug markets, open chop shop, and public dumping, prostitution and related activities have been. The activities and behavior on this property have clearly attracted all types people doing unsavory and illegal actions in and around the adjacent intersection and residential streets, including theft of cars, breaking into cars, dumping, blocking roads, urinating in public, etc.

In addition, there is a constant threat of fire danger hanging over the adjacent residential area. There was a large fire of a unlawful structure on the Wattling Commercial Lot just recently. This fire was raging for some time within feet of a residential building that is directly next to the lot. Although there have been many calls for the burned structure, which was stinking up the neighborhoods for weeks with the smell of noxious, toxic odors, has still not been removed. We are informed that at one point the owner of the Wattling Commercial Lot attempted to go onto the lot with towing equipment to remove the burned structure, but was met at the property by a person trespassing there. The person threaten the owner with a gun, telling the owner that the

owner of the lot was the one trespassing on the land. To our knowledge, City officials and/or police have not addressed this matter or the people apparently living there and willing to openly threaten people with weapons. In addition, one of our residents here in our neighborhood was all chased away from the property by these individuals who are unlawfully stationed on the lot. It has also been witnessed that there is constant evidence of prostitution activities, drug use, and drug dealing in and around this same commercial lot. One of neighborhood residents who live adjacent to the lot has found syringes or other drug injection equipment in their yard. Others have also continued to find evidence of drug use and dealing around the Wattling Commercial Lot.

It is completely unclear to local residents why people who are clearly breaking the law and trespassing on other's property are allowed to act and engage in daily illegal and dangerous behavior without any repercussions.

Please see below some example of representative conditions in or around the above-referenced locations.

















Dangers Near and Around Railroad Tracks and Nuisance of Train Horn Noise

Encampments, dumping, fires, loitering by pedestrians, open drug use and sales, illegal and reckless driving of vehicles and dumping of cars and other vehicles are all conditions or activities that are regularly seen in and around the railway corridor that runs roughly parallel to I-880 and through a large portion of Fruitvale. This is especially true from the area from approximately the railway crossing at 37 Avenue down to and beyond the railway crossing at High Street. This causes a present danger for the residents of this area, the residential properties nearby, and the trains that operate here. There should never be the excess of debris, garbage, dumped and partially disassembled vehicles, and people living in makeshift tents and structures regularly within feet of the railroad tracks. This causes a severe hazard for those individuals that are unlawfully present around the tracks as well as the households who live here and the businesses that operate nearby.

This also causes a nuisance to residents living here, as we have witnessed in recent months that the trains are continuing to increase the amount horn blowing, both the frequency and volume of these train horns are continuing at all times of the day and night. This obviously negatively impacts the health and quality of life for our residents in this community. It is our understanding that there are strict regulations on the amount and timing of such horn usage by train operators in an area such as this. But it seems clear that these train operators are reacting to what are likely safety concerns with people constantly wandering around the train tracks and even setting fires and building encampment. This is another untenable situations for all our residents, the City, and the unhoused who are engaging in these type of activities.

Please see below some example of representative conditions in or around the above-referenced locations.





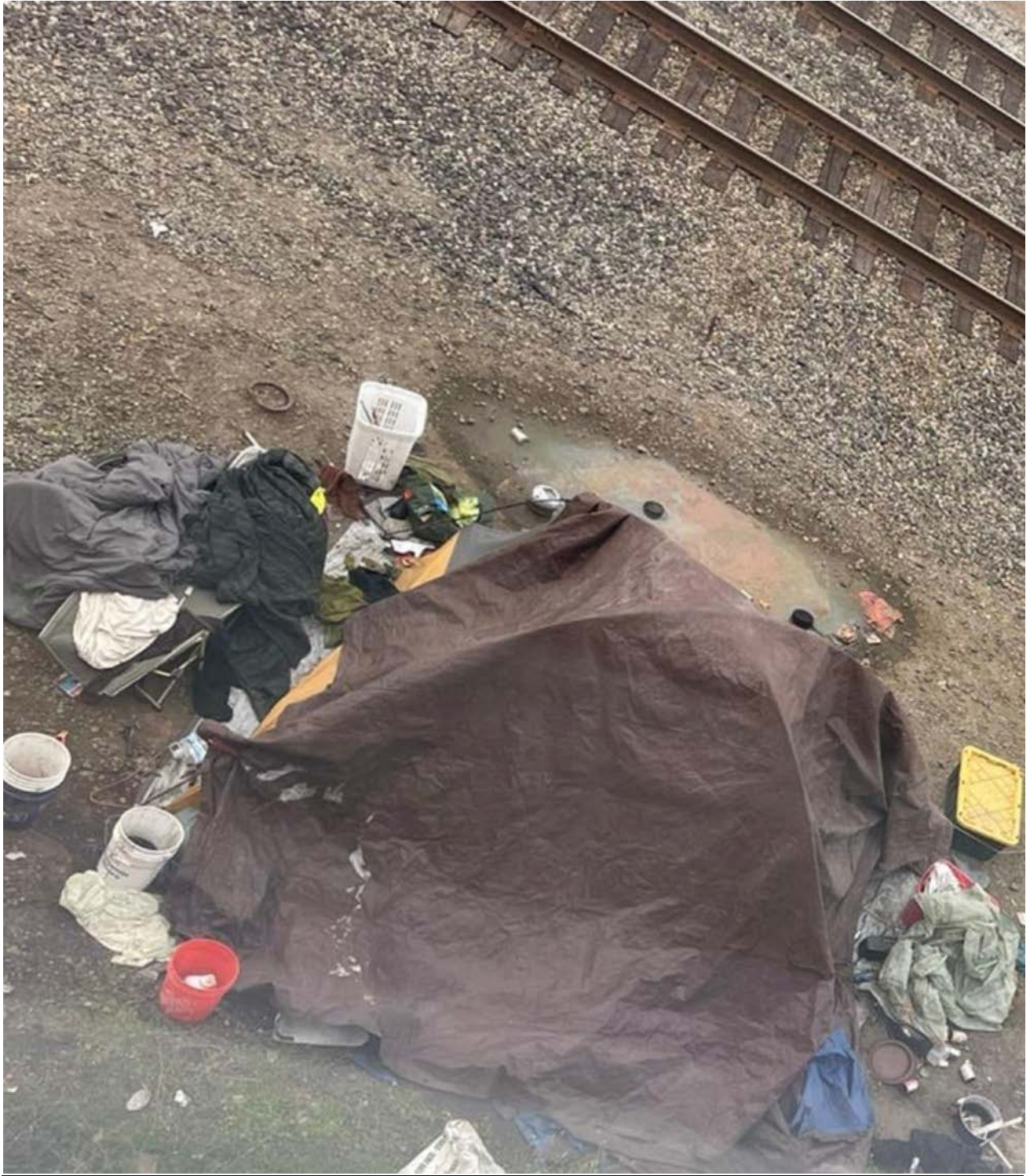












Consistent Fire Dangers

As mentioned above, note the variety of fire dangers at all of these locations in our neighborhood of Fruitvale. The threat of fire at these locations is consistent and pervasive. Almost daily, smoke and toxic burning debris is seen and/or smelled in and around these areas. Often times, there are entire vehicles on fire right on the street or just adjacent to the street. The same streets where there is a lot of traffic, commercial activities and homes. The fires include burning small vehicles, large trailers and RVs, and makeshift structures or tents, in addition to just open burning of trash. Such fires have been witnessed and documented by local residents and City officials or agents at all of the above-mentioned locations. One merely needs to peruse the local newspaper, the City's 311 online platform, or social media to find these fire events on a regular basis. This should never happen in any area of any town, but especially where there are so many families living within short distances to a variety of schools. The residents here can only report these matters. It is up to the City to do something about them and effect both short-terms and long-term preventative measures and policies to stop these dangerous events. This is a completely unacceptable situation and ongoing risk for our community.

As a further example, just recently our community was again inundated with a variety of fires, with much of the smoke blowing directly into residential homes, filling the homes with smoke and toxic or noxious smells. In fact, one of these vehicle fires were started directly adjacent to a residential property line, where the vehicle in question actually partially exploded, within mere yards of peoples' homes, prior to the fire department being able to put out the blaze. In addition to the real danger to people and homes these fires present, there continued existence around the community make it impossible for people to enjoy their homes and surrounding outside areas. Many residents constantly complain that they cannot enjoy sitting outside in the their yards, patios, or balconies, because of the almost daily smell of burning debris, in addition to their outside furniture being covered constantly with residue from such fires.¹¹

Please see below some example of representative documentation of recent fires in or around the locations referenced herein.

¹¹ See generally Marrison Kendall, *As Bay Area homeless camps grow, so does fire danger*, The Mercury News (Jan. 4, 2021), <https://www.mercurynews.com/2021/01/03/as-bay-area-homeless-camps-grow-so-does-fire-danger/>.









Additionally, although the below photographs are not of fires in our exact neighborhood, they are from a very nearby neighborhoods here in Oakland and they are representative of the fires residents often see in Fruitvale, including at the following areas in recent months: the San Leandro Street corridor, the railroad tracks corridor from Fruitvale Avenue down through High Street, intersections and onramps around and adjacent to I-880, and areas and streets adjacent to the above-referenced Home Depot Shopping Center.

Note also that such sites are routinely visible from the roadway driving north and south on I-880, or on adjacent parallel City streets, during the day or night. This continued barrage of fires started in and around local encampments and/or abandoned vehicles are often far too close to family homes, local schools, highly trafficked intersection or local businesses. In addition to the relentless toxic fumes and noxious odors from such fires, they continue to be an present and unnecessary risk imposed on local residents, their safety, and their property.





Traffic Enforcement Issues

There is seemingly no traffic enforcement in or around the above-referenced parts of Fruitvale. No one can recall seeing a traffic law actually enforced here. Debris from routine accidents, especially on or near San Leandro Street are constantly everywhere one looks.

Discussions with local police indicate that OPD does not have the resources or personnel to put officers on the street in this area of Oakland for regular traffic enforcement. We are not aware of all the specifics or OPD budgets or particulars of internal allocations of resources, but we are aware of the specific results we see on our streets every day. What we see on our streets every day is many people, who actually do not live in our community, operating vehicles with a complete disregard for applicable law and what appears to be a blatant and intentional lack of respect for any rules of the road or the safety of others. This puts all of our community members in danger. The behavior and impact is obvious to any resident here, as well as other.¹²

With the lack of police presence and/or enforcement of applicable rules, it is no wonder these individuals act in this regard, with impunity that is. These lawbreakers drive up and down the streets flaunting traffic laws and almost any general sense of decency or care to our community.

¹² See generally Jose Feroso, *Cameras, cops, and red light-running: Can Oakland solve its collision problem?*, The Oaklandside (Nov. 26, 2021), <https://oaklandside.org/2021/11/26/oakland-collisions-red-light-traffic-signal-cameras/>.

They often race up and down the street spreading giant plumes of smoke from their vehicles and driving at dangerous speeds on streets where children are active. Further, surrounding roadways and interactions have been a draw to these so called “side shows” activities. Let us be clear as to what these activities are. They are the unlawful gathering of large amounts of people and vehicles blocking public roads for the purpose of driving around at willfully reckless speeds endangering themselves, onlookers, and surrounding members of the community. These event normally correspond with people getting intoxicated in public, shooting off fireworks, and unfortunately often times discharging fire arms. In addition to the dangers of these large gatherings in “side shows,” the groups that take part in these events often break-off and drive recklessly down and around nearby residential adjacent roads, with screeching tires, often times barely missing parked cars as they slide around the street at high speeds. We often hear rhetoric from local officials that plans are in place or being implemented to address these issues. But for years and years, what we don’t hear or see is the people who participate in these activities being stopped, having their vehicles taken away from them, and facing reasonable and proportional consequences deserving of anyone who participates in unlawful activities that create a clear and proximate risk to human lives, as well as destroying community-shared property.

Request for Traffic Light(s)

We understand the community in and around the intersection of 38th Avenue and San Leandro Street has long been requesting a stop light for that intersection to help address some of the dangers the community faces, including dangers to school children and others crossing San Leandro Street because of the nearby school. As described above, the community here faces a variety of risks in the past and currently. With the influence of new dangers and lack of traffic enforcement in recent years, proper and safe traffic control for this community is more pressing than ever.

Local neighbors have continued to follow up with the City on the traffic calming measures on San Leandro Street for approximately a decade. We understand that for a brief moment in or around November of 2020, after repeated requests by the neighborhood for safety at the intersection to be addressed, there was some type of speed trailer that was placed near the 39th Avenue and San Leandro Street intersection, apparently indicating the City’s belief there was an issue at this intersection. However, local residents rarely saw the equipment operating, if it ever was at all. Shortly after the installation of this device and after a local re-election campaign came to an end, we understand the trailer suddenly disappeared in January or February of 2021. We are unaware of any further traffic control efforts at this intersection initiated by the City since then.

The San Leandro Street and the 39th Avenue intersection continues to prove itself to be a deadly intersection. Below, you will find photograph of examples of accidents that understand have occurred at the above-referenced intersection in approximately the last twelve (12) months.

Neighbors are aware of this dangerous intersection and drive as cautiously as possible. However, there are also many residents who do not have vehicles and need to use the City’s walkways here to get to local grocery stores, shopping, and restaurants. People who need to use these roadways

and walkways for the necessities of their lives and families can only do so much themselves to mitigated the dangers of such situations. These are unfair and unjust demands to force upon people here, especially for the elderly and families with children, considering the pristine conditions in other parts of the City.

We further understand that a local resident living adjacent to the intersection was actually dropped by an insurance provider due to so many drivers crashing through the resident's fence near his home.

In addition, the majority of homes on the adjacent sections of 39th Avenue and 40^t Avenue consist of multiple family members and generations. This last year an additional fifty-one units were added on the adjacent Wattling Street without any requirements to improve traffic safety along San Leandro Street. The majority of these new residents have cars adding additional traffic to the intersection at 39th Avenue and 40th Avenue. All of these and other homes in the area pay significant property taxes and special assessment taxes.

Moreover, in reality, 40th Avenue and 39th Avenue are the only practical ways in and out of this residential neighborhood. 38th Avenue has never been a reliable street for ingress/egress due to the large trucks accessing the industrial businesses and, in recent years, 38th Avenue has become overrun by encampments that the City has ignored. The resident here need a reasonable and sustainable long-term traffic control solution. The need is at least a decade old, and getting more pressing almost by the day, considering many of the issues outlined here.







Lack of Parking for Lawful Parking for Residents and Businesses

Conditions described in detail above have impacted the ability of residents and local businesses to make use of lawful street parking that would otherwise be available and was designed for their benefit. Street parking available in and around the areas discussed about has decreased significantly because of the lack of enforcement of parking rules, including without limitation permanent parking in what are temporary zones and dumping of vehicles on city streets.

Our businesses and residents need routine enforcement of parking rules for an orderly community with usable streets, as well as needed commercial activities.

Dangers and Crime in the Neighborhood

All evidence and experience of our neighbors lead to the conclusion that these above-referenced conditions combined with a seeming indifference on the part of the City to certain unlawful activities and/or lack of policing have led to increasing criminal activity, property crimes, theft, trespass and other dangers, burdens, and risks to our community. A situation that is no longer tenable.

For example, people are seen in public openly caring weapons on the street in broad daylight. Also, people are consistently breaking into and trying to steal automobiles, both during the day and all times of the night. People are routinely seen, and even captured on camera, wondering around private common areas, casing the outside of houses and residential yards, hopping fences, stealing packages, testing door handles on cars and homes, and hiding and waiting for automatic gates to open so they can unlawfully enter. This is just a small sampling of the general lawlessness

seen every day on the streets of this neighborhood that are unacceptable by any modern standard.

All one needs to do is talk to local people or check any social media feed or app covering the local area and one will see endless reporting of all types of dangerous crimes, including without limitation: robberies, car jackings, shootings, people attacking others on the street with a variety of blunt instruments, etc. Local crime reports do not do justice to the amount of incidents, crime and/or attempted or inchoate crimes happening here every day. There are many complexities to crime reporting, many of which result in underreporting of criminal activity.¹³ Everyone here knows that response times for police are very long. If you get actually through to an operator on the phone and report something, a police officer does not show up for hours, long past the time when the events are happening. Moreover, there are many difficulties in making a timely call to police whether regarding an emergency or a non-emergency situation. Often times the 911 line is busy, and even when you get through, after repeatedly calling over and over, you are placed on hold for an extended period of time. Then, after actually getting through to the call center and reporting the event, you are then transferred to an actual City representative who you have to report the events to all over again. Suffice to say, it is obvious from talking to anyone in or around this neighborhood that many crimes and attempted crimes never get reported, for just these reasons. This is consistent with what many see in such environments.¹⁴

Moreover, these conditions are made even scarier by increased gun violence¹⁵ and increases of other acts of violence in Oakland. These are major issues impacting quality of life for our community's residents, but more importantly, these are substantial risks of severe bodily harm, risks to peoples' lives, and risks to peoples' property, i.e., property that is material to their existence and safety.

Nevertheless, recently, some people discussing such matters in public forums have started to point to the fact that in absolute numbers, certain criminal activity is not as bad as it was in certain years, decades ago. It is hard to understand what significance one is to take from such assertions. Such assertions have no effect on our present circumstances. Such assertions do not provide path to solving current problems of public safety. And such assertions do not provide a remedy for current victims of crime. Regrettably, such fallacious assertions appear to merely be a rhetorical tool to deliberately deflect warranted criticism related to current public safety conditions. It is

¹³ See generally Dispatch, *Why do so many crimes go by unreported in the states?*, The NYU Dispatch (Aug. 31, 2018), <https://wp.nyu.edu/dispatch/2018/08/31/why-do-so-many-crimes-go-by-unreported-in-the-states/>; See also Jennifer L. Doleac, Gun violence in major U.S. cities is massively underreported, Brookings Institution (Apr. 27, 2016), <https://www.brookings.edu/blog/up-front/2016/04/27/gun-violence-in-major-u-s-cities-is-massively-underreported/>; See also Carl Chan as told to Michelle Pitcher, Nobody Wants to Be Identified as a Victim, The Marshall Project (Apr. 8, 2021), <https://www.themarshallproject.org/2021/04/08/nobody-wants-to-be-identified-as-a-victim>; See also Susie Neilson, *Oakland released detailed historical crime data. Here's what it shows*, San Francisco Chronicle (Jan. 26, 2022), <https://www.sfchronicle.com/crime/article/Oakland-released-detailed-historical-crime-data-16804838.php>; See also Seokhee Yoon, *Why Do Victims Not Report?: The Influence of Police and Criminal Justice Cynicism on the Dark Figure of Crime Justice*, CUNY Graduate Center (2015), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=2209&context=gc_etds.

¹⁴ Jeff Asher, *Fewer Crimes Get Counted When Police Are Slow To Respond* (Jan. 29, 2018), FiveThirtyEight, <https://fivethirtyeight.com/features/fewer-crimes-get-counted-when-police-are-slow-to-respond/>.

¹⁵ Eric Westervelt, *Her daughter was killed and now this mom is calling on Oakland to step up and help*, NPR (Dec. 6, 2021), <https://www.npr.org/2021/12/06/1060986954/homicides-gun-violence-oakland-california>.

illogical to say that today's crime wave is somehow of no real concern, because it used to be worse decades ago. No one is thankful for the being a victim of a crime or being faced with daily risks of being a victim of crime, because the circumstances that existed decades ago would have made it even more likely to be a victim of a crime at that point. No one facing the impacts of a current tragedy is comforted by the fact that some past tragedy was even worse in scope or severity as compared to the current tragedy. For anyone to assert such to people who are coping with and managing the ongoing constant criminal activity in the neighborhood they live in is disingenuous, at best, and downright insulting. This is especially true when such people saying these things live in communities or neighborhoods with very different and more safe conditions.

Other Cities¹⁶ are getting the message, and it is time for our City to address these issues here in Oakland, especially in this neighborhood. The experience of the average person, on any average day, walking or driving down an average street, on average, should not be materially different as to proximate dangers and risks encountered, whether that person is present in the Fruitvale neighborhood or in the Rockridge neighborhood or some other similar neighborhood in Oakland, period. However, that is not the current case here in our City. In accordance with recent sentiments expressed by other local California leaders, we need a safer Fruitvale and a safer Oakland, and we need it now.¹⁷

Please see below for just a few examples of representative activities and conditions in or around the above-referenced locations. *Nota bene*, these photographs below are only a small selection of a small selection of activities that were actually caught on camera, and therefore this collection does not come close to real depiction of the daily bombardment of criminal activity residents here are faced with. The images of most relevant events cannot be captured because the events happen too fast or are entirely too scary to pull out a camera to document. For example, this does not come close to capturing the essence of routine scenes such as individuals, sometime in groups, stalking the streets in broad daylight and breaking into cars, or the multiple of times local residents' cars were attacked by people wielding blunt instruments, sometimes just breaking windows and other times attempting to steal the automobile, or the sense one gets when long caravans of cars and/or motorized dirt bikes and other off-road vehicles race up and down the same street children play on at freeway speeds, or the horror of watching a man driving 50 mph down a residential street while simultaneously holding on to and beating his female passenger. We could go on and on. But please keep that in mind as you take in this sampling of images.

¹⁶ Michael Shellenberger, *Victory! San Francisco Mayor Promises Crackdown on Drug Dealing & Crime*, TodayVille (Nov. 2021), <https://www.todayville.com/victory-san-francisco-mayor-promises-crackdown-on-drug-dealing-crime/>.

¹⁷ Matt Stieb, *London Breed Is Sick of the 'Bulls*t That Has Destroyed' San Francisco* (Dec. 15, 2021), New York Magazine, <https://nymag.com/intelligencer/amp/2021/12/london-breed-is-sick-of-the-bulls-t-that-has-destroyed-sf.html>









In conclusion for this section, the above-detailed issues represent a crisis. This crisis in Fruitvale presents an immediate and dire public health problem. However, currently and likely for a very long time, this community of Oakland has received very little attention and services needed to secure or maintain reasonable levels of security, health and safety for its residents. That needs to end.

These problems are hiding in plain sight, as in other places locally where municipalities have adopted, formally or informally, a containment zone strategy for such issues.¹⁸ With similar circumstances existing in only certain, discrete neighborhoods in Oakland, it should not be a surprise to anyone that several groups have filed a lawsuit against the City of Oakland for failing to enforce a policy requiring the city to clean up homeless encampments and move residents into housing. These types of actions continue to be a trend in California, as well as other places in the country.¹⁹ It is time to take a proactive approach in addressing these matters for all Oakland's neighborhoods.

¹⁸ See generally Trisha Thadani, Yoohyun Jung, Stephen Lam, Carlos Avila Gonzalez, and Guy Wathen, *A Disaster in Plain Sight*, San Francisco Chronicle (Feb. 2, 2022), <https://www.sfchronicle.com/projects/2022/sf-fentanyl-opioid-epidemic/>.

¹⁹ Andria Borba, *Oakland Hit With Lawsuit Over Failure To Clean Up Homeless Camps*, CBS SF BayArea (Sep. 23, 2021), <https://sanfrancisco.cbslocal.com/2021/09/23/oakland-homeless-encampment-cleanup-lawsuit-we-deserve-better-alliance/>; See also Marissa Perlman, *Sacramento Files Lawsuit Claiming City Prioritizes Homeless Cleanups In Affluent Neighborhoods*, CBS Sacramento (Nov. 19, 2021), <https://sacramento.cbslocal.com/2021/11/19/sacramento-lawsuit-homeless-camps/>; See also Caroline Champlin, *LA County Wants Out Of Big*

PRINCIPLES OF EQUAL TREATMENT AND EQUITY

The plight of Fruitvale seems to be aggravated by attitudes and treatment of other neighborhoods in Oakland. That is, as the streets of other Oakland neighborhoods improve, the condition of Fruitvale seem to deteriorate. It appears from looking around the City of Oakland that either through *de jure* or *de facto* policies and regulations some neighborhoods like Fruitvale, as well as some other traditionally lower-income neighborhoods, are being treated as containment zones, where certain conditions, actions, and behavior is tolerated, including the toleration of everything from blatant drug dealing to open-air injection drug use to filthy sidewalks and streets, that wouldn't stand in wealthier parts of town. In other wealthier parts of this city, you will not see the levels of gun violence, routine theft and robbery on the streets, car jackings, open and obvious prostitution activities, or complete disregard for any type of traffic law.

It is often heard that Oakland is referred to as a “progressive city.” However, from just a mere casual look around its streets and different neighborhoods, it appear it still maintains a double standard that bars activities in gentrified neighborhoods that it allows in places like Fruitvale. This is in addition to other general inequalities and hazards experienced by this community.²⁰

However, on its face, this should not be the case, just like the high-end apartments and condominium towers in the corridors and adjacent areas of newly-developed Broadway or MacArthur BART Station, or the idyllic residential homes of Piedmont Avenue, Rockridge, Montclair, Crocker Highlands, Oakmore, or Redwood Heights, the hard working residents, business owners, and school-going children of Fruitvale deserve a reasonable and proportional amount of the attention, resources, services, and protection of the City. It is true that sometimes homes in those other mentioned areas of Oakland sell for two, three, or four times the amount of the average home in Fruitvale. Nonetheless, that should not create such a great disparity in how our neighborhood is serviced and managed by the City.

One does not need sophisticated or detailed data to see these disparities. One only needs to drive or walk around these neighborhoods to witness what are clearly inequitable results in plain sight. Other wealthier neighborhoods mentioned above do not experience the conditions and hazards described in this letter, or if they do, it is to a much more limited and controlled extent. Those neighborhoods are generally clean with reasonably organized and monitored streets. Cars speeding through red lights and driving into oncoming traffic are not a routine occurrence in those areas. Children or elderly have access to sidewalks and do not see open-air drug markets

Federal Homelessness Lawsuit, LAist (Mar. 29, 2021), <https://laist.com/news/los-angeles-county-wants-out-federal-homelessness-lawsuit>; See also David Zahniser, *Woman sues L.A. after being struck by a car on a street where tents block the sidewalk*, Los Angeles Time, (Aug. 4 2021), <https://www.latimes.com/california/story/2021-08-04/woman-sues-after-being-hit-by-a-car-on-street-where-homeless-encampment-blocks-the-sidewalk>; See also Eva Anderson, *Companies sue Minneapolis, Hennepin County over homeless encampment*, KARE11 (Oct. 22, 2021), <https://www.kare11.com/article/news/local/businesses-sue-city-of-minneapolis-hennepin-county-over-homeless-encampment-technology-drive-homelessness-triangle-warehouse-benchmark-logistics-cue/89-0364bd4a-54c7-46c6-b5a9-c56cb216ac05>.

²⁰ See generally Josette Thornhill, *Fruitvale: environmental racism in Oakland*, The Argagon Outlook, (Mar. 25, 2021), <https://aragonoutlook.org/2021/03/fruitvale-environmental-racism-in-oakland/>.

as they make their way to a Bus stop. Criminals are not freely walking around at all times of day openly stealing things, trespassing on private residential property, or threatening people.

That said, the people of Fruitvale pay the same taxes rates. It should be mentioned that these tax rates for Oakland are exceedingly high by almost any standard.²¹ Despite the high taxes for the city and local residents, including especially special assessments, the local neighborhood residents get little attention and little in terms of resources. One can only draw the conclusion that the City has by either intentional stewardship or by willful omission created what could reasonably be called “containment zones” such as our neighborhood and surrounding areas, where these various illicit, reckless, and/or illegal activities and dangerous conditions, described in some detail above, are allowed to exist, evolve, increase and/or fester.

The ways in which these inequitable conditions in a neighborhood such as Fruitvale impact peoples’ lives are too numerous to get into here. But, one mere pedestrian – but practically impactful – example is how these matters impact normal insurance premiums almost everyone pays for vehicle liability insurance. An informal survey shows that because of the particular risks, as analyzed by insurance companies, for this area, a household trying to insure two vehicles may pay as much as \$600.00 to \$800.00 year more, as compared to if they resided in other local Oakland zip codes a short distance down the road, such as 94602 or 94611. In practical terms, this in effect amounts to a regressive tax on local residents. This is just one more example of inequitable impacts on such a community.

Bottom line, whether by deliberate policy or recklessly overlooking the needs of this community, the enforcement of the law in some areas while declining to enforce the law in others, inequitably places a disproportionate burden on this and other similarly situated communities and businesses. This does not accord with fundamental principles our society holds dear. It is hard to fathom how anyone could characterize this outcome as anything less than objectively intolerable.

DANGEROUS CONDITIONS

Please also let this letter serve as actual notice of the existence of the dangerous conditions listed below. This includes, but is not limited to, configurations of the intersections, in combination with inadequate traffic control devices, construction, high traffic volumes, abandoned vehicles, dumped garbage and trailers, piles of waste and trash from public dumping and/or adjacent homeless encampments, people wandering in the street (often times intoxicated and sometime hostile); harassing aggressive behavior of people living in and spending time in and around encampments and abandoned vehicles; people not obeying traffic laws; lack of enforcement of the traffic laws, especially with people traveling by vehicle to and from vacant lots or encampments; open-drug markets creating unwanted additional traffic and illegal parking in the street, and gatherings people acting in inappropriate and often illegal manner on and around

²¹ See generally California Property Taxes 2022, <https://www.tax-rates.org/california/property-tax>; See generally East Bay Times Editorial, *Editorial: Curb Oakland Mayor Schaaf’s insatiable tax appetite*, The Mercury News (Feb. 12, 2020), <https://www.tax-rates.org/california/property-tax>.

public streets and passageways; lack of enforcement to laws and other City policy attracting criminal elements to certain locations near where there are schools and/or where people live or have to go for commercial activities; and other factors that create non-trivial dangers which poses a substantial likelihood of imminent injury or death. In addition, in many of these areas, the available visibility, signage, signaling and striping is not only inadequate, but, to the extent it exists, it gives a false sense of security to pedestrians and cyclists thereby creating a trap for the unwary pedestrian or bicyclist.

This risk is heightened by the fact that there are many children going and coming from schools and numerous bicyclists and/or vehicles use these intersections as part of their daily commute route. Especially since there is one specific school located within one-to-two blocks of many of these dangerous conditions referenced below, specifically, the ASCEND school located at 3709 E. 12th Street and surrounding area.

As to most, if not all, of the below-referenced dangerous conditions, we are informed and believe that there have already been several serious injuries which have occurred because of the dangerousness of these conditions, areas, and/or intersections. As concerned citizens, we implore you to undertake prompt remedial measures to address these hazards. Please save lives, secure the health and safety of our residents to a reasonable level, protect the property of those who live here, and save taxpayer money by avoiding a tragedy and subsequent lawsuits.

Dangerous Conditions No. 1

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of San Leandro Street and 38th Avenue there are dangerous conditions as indicated above.

Dangerous Conditions No. 2

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of San Leandro Street and 39th Avenue there are dangerous conditions as indicated above. This is the intersection referenced above that local residence have been working for approximately of decade without success to get the City to install reasonable and adequate traffic control mechanisms. Given the severity of the issues and the surrounding conditions, it is hard to image that anything less than a full controlled street light installation is reasonable under the circumstances.

Dangerous Conditions No. 3

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of San Leandro Street and 40th Avenue there are dangerous conditions as indicated above.

Dangerous Conditions No. 4

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of 37th Avenue and East 9th Street, including the nearby railroad crossing on 37th Avenue, the roadway extending toward Fruitvale Avenue on East 9th Street, and the roadway extending toward San Leandro Street on 37th Avenue, there are dangerous conditions as indicated above.

Dangerous Conditions No. 5

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the onramp area for CA-185 from direction of the intersection of 40th Avenue and East 12th Street there are dangerous conditions as indicated above. This onramp, nearby street areas, and CA-185 are usually littered with debris, trash, including furniture, mattresses, and various thrown away household items and industrial materials or refuse.

Dangerous Conditions No. 6

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersections of High Street, Oakport Street, and Alameda Avenue there are dangerous conditions as indicated above.

Dangerous Conditions No. 7

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of Alameda Avenue and East 8th Street there are dangerous conditions as indicated above.

Dangerous Conditions No. 8

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of Alameda Avenue and Howard Street there are dangerous conditions as indicated above.

Dangerous Conditions No. 9

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of Alameda Avenue, from the intersection of Alameda Avenue and Oakport Street all the way along Alameda Avenue west past the Home Depot Shopping Center and all the way to approximately the intersection of Alameda Avenue and Fruitvale Avenue, there are dangerous conditions as indicated above.

Dangerous Conditions No. 10

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of Alameda Avenue and Tidal Place, east of the entrance to the Home Depot Shopping Center, there are dangerous conditions as indicated above.

Dangerous Conditions No. 11

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the intersection of Alameda Avenue and Tidal Place, west of the entrance to the Home Depot Shopping Center, there are dangerous conditions as indicated above.

Dangerous Conditions No. 12

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the I-880 north-bound onramp area, from CA-185, there are dangerous conditions as indicated above. This onramp, nearby street areas, and CA-185 are usually littered with debris, trash, including furniture, mattresses, and various thrown away household items and industrial materials or refuse. There is also dangerous collected debris and encampments under the nearby freeway.

Dangerous Conditions No. 13

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. In and around the offramp area for CA-185 existing CA-185 for East 12th Street heading towards the intersection of East 12th Street and High Street there are dangerous conditions as indicated above. This onramp, nearby street areas, and CA-185 are usually littered with debris, trash, including furniture, mattresses, and various thrown away household items and industrial materials or refuse.

Please also note that the above-listed dangerous conditions only represent a few of such conditions one will see in and around Fruitvale. These are merely listed here because they represent some of the conditions that are of immediate concern to the residents of this part of Fruitvale. However, even within blocks of these locations, you will find additional very similar conditions in other nearby parts of Fruitvale.

As it relates to the above-referenced dangerous conditions, please forward a copy of this letter to the persons or departments responsible for traffic, pedestrian and bicycle safety as well as those responsible for inspecting, evaluating, maintaining and configuring intersections so they are on notice and can act promptly. It may also be helpful to hold a community town hall on intersection safety.

NOTICE REGARDING SPECIFIC LEGAL RIGHTS/ISSUES

Notice – Violation of Due Process – 42 U.S.C. § 1983; U.S. Const. Amend. V/XIV

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. Based upon information and believe, by the acts and omissions described above, it appears that the City, by abdicating its duties under the law to ensure safe and secure living conditions in the portions of the Fruitvale neighborhood referenced, has denied residents due process of law as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution. The squalid streets, sidewalk conditions, exacerbated profoundly by the threat of infection, have denied residents their unimpeded liberty and use of their property, and have allowed conditions to fester that threaten residents' health and lives. Upon information and belief, this was done with deliberate intent and/or reckless disregard of rights of the residents in our part of the Fruitvale neighborhood.

Notice – Violation of Equal Protection – 42 U.S.C. § 1983; U.S. Const. Amend. V/XIV

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. By the acts and omissions described above, the City, by enforcing the law in some areas and declining to enforce the law in others, has arbitrarily determined where homeless encampments may or may not be located and what communities should be affected, without following its own procedures and in violation of both state and federal law. This has placed a disproportionate burden on some persons, communities, and businesses over others. Upon information and belief, this was done with deliberate intent and/or reckless disregard of rights of the residents in our part of the Fruitvale neighborhood.

Notice – Violation of Due Process Clause, State-Created Danger Doctrine – 42 U.S.C. § 1983; U.S. Const. Amend. XIV

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. By the acts and omissions described above, the City has affirmatively created or increased the risk that residents of this neighborhood would be exposed to dangerous conditions, which placed these residents and their families specifically at risk, and these residents were harmed and/or will likely be harmed as a result. The City knew or should have known and/or is now on notice that its acts or omissions specifically endangered and/or are endangering residents of this neighborhood. From all information and believe available at this point, it appears that the City was and is deliberately indifferent thereto.

Notice – Uncompensated Taking – 42.U.S.C. § 1983; U.S. Const. Amend. V/XIV

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. The Fifth Amendment mandates, in relevant part, that "private property [shall not] be taken for public use, without just compensation." The

Fifth Amendment is applied to the states through the Fourteenth Amendment.²² The actions by the City, as described in detail supra, have limited, damaged, and/or burdened the property owners so substantially that they rise to the level of a regulatory taking, yet no compensation has been provided. Upon information and belief, this was done with deliberate intent and/or reckless disregard of rights of the residents in our part of the Fruitvale neighborhood.

Notice – Municipal Liability for Unconstitutional Custom or Policy – 42 U.S.C. § 1983

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. We are informed, believe and allege that, at all times herein mentioned, the City and its agents, with deliberate indifference, and conscious and reckless disregard to the safety, security, and constitutional and statutory rights of the residents of this neighborhood, engaged in the unconstitutional conduct and omissions set forth above, all pursuant to policy, procedure, or customs held by the City. The actions and inactions of the City were known or should have been known to the policy makers responsible for the applicable agencies and occurred with deliberate indifference to the constitutional violations set forth above, and/or to the strong likelihood that constitutional rights would be violated as a result of its customs and/or policies.

Notice – Violation of Title II of the Americans with Disabilities Act – 42 U.S.C. §§ 12131 et seq.

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. The ADA provides that people with disabilities be afforded “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation”²³ Further, the ADA ensures that transportation facilities are constructed to a set of standards that ensures accessibility for the disabled. Sidewalks are the most common element of transportation infrastructure, yet if they are not accessible, they pose great challenges and dangers to anyone in a wheelchair or who has other mobility restrictions.

Sidewalks are subject to the access requirements of Title II of the ADA and § 504 of the Rehabilitation Act.²⁴ Accordingly, sidewalk width requirements ensure that sidewalks are accessible for use by wheelchair-bound individuals. The minimum width for an ADA-compliant sidewalk is 36 inches.²⁵ “A public entity shall maintain in operable working condition those

²² *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 241, 17 S. Ct. 581, 586 (1897).

²³ 42 U.S.C. § 12182(a).

²⁴ *Willits v. City of Los Angeles*, 925 F. Supp. 2d 1089, 1093 (C.D. Cal. 2013) (“Any public sidewalk over which the City of Los Angeles has responsibility to inspect and notify property owners of repair needs is a ‘program, service, or activity’ within the meaning of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.”).

²⁵ 36 C.F.R. § 1191, app. D, § 403.5.1 (“the clear width of walking surfaces shall be 36 inches (915 mm) minimum”).

features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.”²⁶

Throughout portions of the Fruitvale neighborhood referenced above and some adjacent areas, the City is failing to uphold its obligations to maintain clear and accessible sidewalks and public rights-of-way for its disabled residents and visitors, resulting in regular violations of the Americans with Disabilities Act. These ADA violations are obvious and known to the City both through its own inspections and various reports of blocked sidewalks due to encampments through its own reporting mechanisms, such as through the City’s 311 platform. The City and its agents and employees have failed and continue to fail to provide reasonable accommodations for disabled persons using public sidewalks.

The City is obligated to operate the “service, program, or activity” “so that . . ., when viewed in its entirety, it is readily accessible to an useable by individuals with disabilities.”²⁷ Yet when “viewed in its entirety” public rights-of-way are not provided by the City to be “readily accessible to and useable” by individuals bound to wheelchairs.

The discrimination and denial of access to the City’s rights-of-way for persons with disabilities is the direct result of the City’s policies and practices of deliberately permitting tents and encampments to proliferate, and the failure to adopt or implement any adequate procedure for regularly inspecting and maintaining the pedestrian rights-of-way clear of obstructions.

As a direct and proximate result of the aforementioned acts or omissions, including but not limited to City’s deliberate indifference to the violation of federally protected rights of certain residents of the communities detailed above, individuals have suffered or likely will suffer pain, humiliation, hardship, anxiety, indignity, and severe mental and emotional anguish. This deprives such individuals of their independence and prevents them from accessing the services and benefits of public establishments.

Notice – Violation of California Disabled Persons Act – Cal. Civ. Code §§ 54 et seq.

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. California’s Disabled Persons Act codifies requirements that ensure equal and full access to individuals with disabilities. That Act provides, in part:

Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks,

²⁶ 28 C.F.R. § 35.133(a).

²⁷ 28 C.F.R. § 35.150(a).

walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.²⁸

Further,

Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices . . . and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.²⁹

For those with disabilities as defined by the Disabled Persons Act, many of these conditions detailed here are or will potentially be denying such people full and equal access to places to which the general public is invited, including "free and full use" of public sidewalks, by the policies and practices of the City, including its failure regularly to maintain its sidewalks in a manner that permits wheelchair-bound individuals "full and free use" thereof.

Notice – Violation of Section 504 of the Rehabilitation Act – 29 U.S.C. §§ 794 et seq.

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. Section 504 of the Rehabilitation Act of 1973 provides in relevant part:

[N]o otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance³⁰

We believe it is likely that there are many residents in or around the Fruitvale neighborhood that otherwise would be qualified to participate in the services, programs, or activities that are provided to individuals in the City. We understand that the City is a recipient of federal financial assistance and therefore subject to Section 504. Upon information and belief, the City and its agents and employees appear to have violated and continue to violate Section 504 of the Rehabilitation Act by excluding such applicable individuals from participation in, denying them the benefits of, and subjecting them to discrimination regarding the benefits and services involved in utilizing public rights-of-way based solely on their disability. Upon information and belief, said discrimination appears to have occurred with deliberate intent and/or reckless disregard of such people's rights.

²⁸ Cal. Civ. Code § 54(a).

²⁹ Cal. Civ. Code § 54.1(a)(1).

³⁰ 29 U.S.C. § 794(a).

Notice – Negligence

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. We understand that the City, by and through its agents and employees, has the sole right and responsibility to control, maintain, and keep safe and clean the public and public-right-of-way areas in Oakland, including parks, sidewalks, streets, and public buildings, and to make and enforce laws assuring the public health and safety thereof for its citizens and their guests. Among other things, the City has the duty to maintain these areas in a manner that does not unreasonably interfere with the free passage or use by residents of these neighborhoods and that addresses and alleviates conditions that are harmful to health or indecent or offensive to the senses, that create a fire hazard, or that permit crime to occur unabated including the illegal sale of controlled substances.

As controlling law makes clear, “The public is entitled to the free and unobstructed use of the entire streets and sidewalks. . . .”³¹ Indeed, municipalities “have the duty to keep their communities’ streets open and available for movement of people and property, the primary purpose to which the streets are dedicated.”³² Upon information and belief, it appears the City and its agents have breached their duty to Oakland’s citizens, including and specifically to the residents of this Fruitvale neighborhood, and each such person has suffered as a result, as described more fully above and below. The bases of such claim for relief may include the conduct, acts, and omissions of individual responsible City officials, based on the theory of respondeat superior. Said residents deserve some equitable relief from these conditions.

Notice – Public Nuisance – Cal. Civ. Code §§ 3490 et seq.

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. California has defined nuisance as:

[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.³³

³¹ *Vanderhurst v. Tholcke*, 113 Cal. 147, 152 (1896).

³² *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 160, 60 S. Ct. 146, 150 (1939).

³³ Cal. Civ. Code § 3479.

That statute “is an expression of the Legislature’s public policy against public nuisances, and it is plainly aimed at protecting the public from the hazards created by public nuisances.”³⁴ In addition to health and safety hazards, “[a] reduction in property values caused by activities on a neighboring piece of land, and an assault on the senses by noise, dust, and odors, are just the kinds of harm that common law suits to abate a nuisance are designed to redress.”³⁵ A public nuisance is the substantial and unreasonable interference with a public right.³⁶

As described above and upon information and belief, the City, by its failure to maintain the public property under its control and to enforce the laws requiring the same, is perpetuating and facilitating a public nuisance. The residents of the above-referenced neighborhoods have experienced a substantial and unreasonable interference with the enjoyment of their property, whether that be a building owned or a room rented, and with their right of free passage and use; each has suffered and continues to be threatened with respect to his, her, or its health and welfare, by reason of the constant threat of disease and the experience of human waste, trash, tents, and encampments outside his, her, or its property and along and on the sidewalks and streets.

Each such applicable resident has been damaged in his, her, or its own right, in a manner specially injurious to himself, herself, or itself. It is our belief that no such resident consented to the City’s conduct in this regard.

Notice – Private Nuisance – Cal. Civ. Code §§ 3501 et seq.

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. Upon information and belief, each of these residents or business owner describe here owns, leases, occupies, or otherwise controls all of a portion of the home or business identified herein. By the City’s actions and inactions, each has created a condition or permitted a condition to exist that is harmful to the health, is indecent and offensive to the senses, obstructs the free passage and use of public parks, squares, streets, highway, and sidewalks, permits unlawful sales of illicit narcotics, and constitutes a fire hazard, as described *supra*.

The City’s conduct in such matters has been and is intentional and unreasonable, or unintentional but negligent or reckless. Alternatively, the condition permitted to exist was the result of abnormally dangerous activity that substantially interfered with each such person’s use or enjoyment of his, her, or its land that would reasonably annoy or disturb an ordinary person.

Upon information and belief, it is our understanding that no applicable individuals herein these neighborhoods consented to City’s conduct in these matters; each was harmed; the City’s

³⁴ *People v. ConAgra Grocery Prods. Co.*, 17 Cal. App. 5th 51, 136 (2017).

³⁵ *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 505 (7th Cir. 1996).

³⁶ *San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal. 4th 893, 938 (1996).

conduct was a substantial factor in causing the harm; and the seriousness of the harm outweighs any public benefit of such conduct (which is none).

Notice – Violation of Mandatory Duty – Cal. Gov’t Code § 815.6; Cal. Welf. & Inst. Code § 17000

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. By the acts and omissions described above, we see potential that the City is liable under Cal. Gov’t Code § 815.6 and common law negligence theory for violation of a statutorily mandated duty to provide medical care for the indigent. Cal. Welf. & Inst. Code § 17000 provides:

Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

Cal. Welf. & Inst. Code § 10000 clarifies and defines the purpose of these obligations as follows:

The purpose of this division is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of ancestry, marital status, political affiliation, or any characteristic listed or defined in Section 11135 of the Government Code. That aid shall be so administered and services so provided, to the extent not in conflict with federal law, as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society.

Sections 17000 and 10000 taken together mandate that “medical care be provided to indigents . . . promptly and humanely.”³⁷ This means that cities and counties must provide medical care to the poor “at a level which does not lead to unnecessary suffering or endanger life and health.”³⁸ The California Supreme Court has held that municipalities must provide “subsistence medical services.”³⁹ Cities and counties have an obligation to provide “‘medically necessary’ care, not just emergency care.”⁴⁰

³⁷ *Tailfeather v. Board of Supervisors*, 48 Cal. App. 4th 1223, 1245 (1996).

³⁸ *Id.* at 1240.

³⁹ *Hunt v. Superior Court*, 21 Cal. 4th 984, 1014 (1999) (“Section 10000 imposes a minimum standard of care—one requiring that subsistence medical services be provided promptly and humanely.”).

⁴⁰ *County of Alameda v. State Bd. of Control*, 14 Cal. App. 4th 1096, 1108 (1993) (quoting *Bay Gen. Cmty. Hosp. v. County of San Diego*, 156 Cal. App. 3d 944, 957 (1984)).

Importantly, a city or county's obligation to provide medically necessary care must be fulfilled "without regard to its fiscal plight."⁴¹ "Medically necessary" for adults is defined by statute: "[A] service is 'medically necessary' or a 'medical necessity' when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain."⁴²

In view of the above-described facts and circumstances, and the significant studies, statistics, and reports including those set forth *supra*, and other such evidence as may be provided, a person's status as an unsheltered homeless individual both causes and exacerbates physical and mental health problems, ultimately causing much higher rates of infection, disease, decay, pain, and death.

Basic shelter is "medically necessary" because it is "reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain," and, to the extent the City fails to provide the same to its homeless population, it may constitute a breach of its duty under Cal. Welf. & Inst. Code §§ 17000 & 10000.

Our concern is that the residents of the above-described neighborhoods have been damaged by the City's failure to provide shelter, as described in detail *supra*.

Notice – Deprivation of the Guarantee of Safety and the Pursuit of Happiness – Cal. Const. art. I § 1

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein. California Constitution, article I § 1 provides:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The actions by the City have limited, damaged, and/or burdened applicable residents' constitutionally guaranteed inalienable rights, including applicable residents' rights to enjoy and defend their life and liberty; to acquire, possess, and protect their property; and to pursue and obtain safety, happiness, and privacy.⁴³

⁴¹ Id.

⁴² Cal. Welf. & Inst. Code § 14059.5(a).

⁴³ See generally Joseph R. Grodin, *Rediscovering the State Constitutional Right to Happiness and Safety*, 25 Hastings Const. L.Q. 1, 29 (1997) ("Either as an alternative or as an additional meaning, the happiness and safety clauses could be viewed as a declaration, and even a judicially enforceable one, that government has an affirmative obligation to provide at least the minimum conditions necessary for human happiness and safety. This would entail, arguably, the assurance of such things as minimal requirements for food, shelter, and medical care, and so far as possible, a nondangerous environment.").

Notice – Inverse Condemnation – Cal. Const. art. I § 19

We re-allege and incorporate herein by reference each and every allegation set forth in the paragraphs above as though set forth fully herein.

California Constitution, article I § 19(a) provides in relevant part:

Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

Upon information and believe, the actions or omissions by the City have potentially limited, damaged, and/or burdened at least some of the owners' property and/or businesses of the Fruitvale neighborhood so substantially that they rise to the level of a regulatory taking, yet no compensation has been provided.

CONCLUSION

Please forward a copy of this letter to the persons or departments responsible for the matters discussed above, including without limitation: public safety, public health, safety and control of our streets and other public passageways, so they are on notice and can act promptly. In addition to the intersection safety issues outlined above, it may be helpful to hold a community town hall on larger public safety and public health issues impacting this community.

Please keep a copy of this letter on file with the City Attorney, the Department of Public Works, and Police and Fire Departments.

In conclusion, the conditions and outcomes described herein are neither just, nor fair. Our community deserves better. Although we realize that many of these matters can be very complex in their nature and scope, the bottom line here is we, like the residents of other neighborhoods, deserve clean streets, safe roadways, and some reasonable peace of mind so that we can sleep at night and feel reasonably comfortable that our families, friends, and community members are safe and secure. However, sadly, that is not currently the case on any of those fronts for many, if not all, of the residents in this community.

We provide this information in good faith for your earnest review and consideration. We hope that you find it informative. It is obvious that it is long past time for the City and its applicable departments and agents to address these matters for the health and safety of this neighborhood's residents and businesses, as well as our beautiful community of Oakland at large. Our community stands ready and willing to engage in discussion, dialogue, and problem solving with the City and its officials and agents to address these matters. We stand by ready to support and partner with the City in its efforts. However, it must be noted that it is only the City and its department that have the resources and authority to really address these issues.

Sincerely,

Very Concerned and Proud Oakland Residents

Very Concerned and Proud Oakland Residents

Copy: **VIA U.S. MAIL**

Oakland City Administrator - Ed Reiskin
Oakland Fire Department - Reginald Freeman
Oakland Planning & Building Department - William Gilchrist
Oakland Department of Public Works - G. Harold Duffey
Oakland Department of Transportation - Ryan Russo
Oakland Department of Violence Prevention - Guillermo Cespedes
Governor Gavin Newsom
Attorney General Rob Bonta
Senator Nancy Skinner
Assemblymember Buffy Wicks
Selected Fruitvale Neighborhood Residents
Neighbors Together Oakland
Fruitvale Unity Neighborhood Crime Prevention Council
Alameda County District Attorney – Nancy E. O’Malley
Sacramento County District Attorney – Anne Marie Schubert
Roofline Supply and Delivery
4 Caminos Restaurant
King's Boxing Gym
Hankook Tire Shop
Shell Corporation
Noor Auto Tires & Wheels
Bay Island Gymnastics
Y H Sheet Metal
Economy Lumber Company
High Street Car Wash and Oil Change
Larm's Building & Garden Supply, Inc.
GO! Gas & Food
Hua Hai Plumbing Supply
The Home Depot
24 Hour Fitness
McDonald's
Union Pacific



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

May 10, 2022

Peterson Vollmann, Planner IV
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

RE: 3600 Alameda Avenue Project – Notice of Preparation for a Draft Environmental Impact Report (**SCH Number: 2022040061**)

Dear Peterson Vollmann,

Bay Area Air Quality Management District (Air District) staff has reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the 3600 Alameda Avenue Project (Project). The Project applicant is proposing to demolish all existing structures on the project site and construct an approximately 426,022 square foot, 56-foot-tall industrial building. The applicant proposes the Project on a speculative basis as the end-user and nature of the use are unknown at this time. For the purposes of the EIR, the end use is assumed to be a distribution warehouse. The new facility would include up to 30,000 square feet of accessory office space. The Project would include an employee parking lot to the north of the building as well as loading docks and truck parking areas in the southern part of the project site.

The East Oakland community is disproportionately impacted by air pollution. The Air District has worked for many years to improve air quality and reduce health risks in this area, including current efforts to develop a community-led East Oakland Area Community Emissions Reduction Plan as part of the AB 617 Program. As such, it is imperative that future development not increase emissions and exposure in the community.

Air District staff recommends the EIR include the following information and analysis:

- **The East Oakland community is currently cumulatively impacted with air pollution, which highlights the urgency of avoiding additional air pollution in these communities.** Increases in air pollution exposure in areas that are already overburdened would be of concern; therefore, the EIR should fully evaluate potential significant impacts and implement all feasible measures to minimize air quality impacts to the greatest extent possible.
- **The EIR should estimate and evaluate the potential health risk to existing and future sensitive populations near the Project area from toxic air contaminants (TAC) and fine particulate matter (PM2.5) as a result of the Project’s construction and operation.** Air District staff recommends that the EIR evaluate potential cumulative health risk impacts of TAC and PM2.5 emissions on sensitive receptors near the Project area.

- ALAMEDA COUNTY**
John J. Bauters
(Vice Chair)
Pauline Russo Cutter
David Haubert
Nate Miley
- CONTRA COSTA COUNTY**
John Gioia
David Hudson
Karen Mitchoff
(Chair)
Mark Ross
- MARIN COUNTY**
Katie Rice
- NAPA COUNTY**
Brad Wagenknecht
- SAN FRANCISCO COUNTY**
Tyron Jue
(SF Mayor’s Appointee)
Myrna Melgar
Shamann Walton
- SAN MATEO COUNTY**
David J. Canepa
Carole Groom
Davina Hurt
(Secretary)
- SANTA CLARA COUNTY**
Margaret Abe-Koga
Otto Lee
Sergio Lopez
Rob Rennie
- SOLANO COUNTY**
Erin Hannigan
Steve Young
- SONOMA COUNTY**
Teresa Barrett
Lynda Hopkins

Alexander Crockett
INTERIM
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:



-
- **The Climate Impacts (GHG emissions) analysis should include a discussion of how the Project will implement land use and design elements to achieve the State's 2045 climate target.** The Air District's current recommended land use project thresholds of significance for climate impacts are based on the State's climate target of achieving carbon neutrality by 2045. If the City chooses to use the Air District's recommended thresholds for climate impacts, the EIR should demonstrate how the Project a) will incorporate the recommended design elements to do its fair share to achieve the goal of carbon neutrality by 2045; or b) is consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b). Further information on the recently updated climate impacts thresholds of significance can be found here: <https://www.baaqmd.gov/ceqa-guidelines> The recommended design elements are:
 1. The Project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
 2. The Project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
 3. The Project will achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA.
 4. The Project will achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
 - **The EIR should evaluate all feasible measures, both onsite and offsite, to reduce air quality impacts to a less-than-significant level.** The EIR should prioritize onsite mitigation measures, followed by offsite mitigation measures, within the Project area. Examples of potential emission reduction measures that should be evaluated and considered include, but are not limited to:
 - Require or incentivize zero emission trucks for facility operations to the greatest degree feasible
 - Prohibit or minimize the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (<http://dieselfree33.baaqmd.gov/>)
 - Require construction vehicles to operate with Tier 4 or zero-emission engines as commercially available
 - Use grid power for construction activities whenever possible; if grid power is not available, use alternative power such as battery storage, hydrogen fuel cells, or renewable fuels. If no other options are available, use Final Tier 4 diesel generators
 - Prohibit trucks from idling for more than two minutes or prohibit idling altogether

-
- Implement a program that incentivizes construction workers and building tenants to carpool, use EVs, or use public transit to commute to and from the site. The program may include the following features, as feasible:
 - Provide a shuttle service to and from BART
 - Provide preferential parking to carpool vehicles, vanpool vehicles, and EVs
 - Schedule work shifts to be compatible with the schedules of local transit services
 - Install electric vehicle charging infrastructure
 - Install electric connections for transportation refrigeration units
 - Require electric forklifts and install associated charging stations
 - Install outdoor electrical receptacles for charging or powering of electric landscape equipment
 - Implement green infrastructure and fossil fuel alternatives in the development and operation of the Project, such as solar photovoltaic (PV) panels, electric heat pump water heaters, and solar PV back-up generators with battery storage capacity, and commit to pursue carbon-free electricity service if on-site renewables do not meet the full electricity demand
 - **The EIR should require all possible measures to ensure the impact of a distribution warehouse use is minimized to the greatest extent feasible.** The Air District recommends that the City review the California Air Resources Board's (CARB) [Concept Paper for the Freight Handbook](#) and the State Attorney General's [Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act](#). The Air District also recommends that the City review the Air District's comments and recommendations for logistics center/warehouse projects on our website, <https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-comment-letters>. See specifically the CenterPoint North Richmond Warehouse Project EIR and the Scannell Properties, LLC North Richmond Warehouse Project NOP letters.

The Air District's current recommended land use project thresholds of significance for climate impacts, described above, could apply to a warehouse project. The design elements for building energy use can be applied to warehouses, as can the EV parking and the VMT elements. The 2022 CalGreen update includes requirements for EV capability for off-street loading docks for warehouses, retail, and grocery store projects. Additionally, the Air District is available to support lead agencies in their determination of how to apply these thresholds of significance and will be sharing guidance and best practices for certain distinct project types including warehouses.

- **The EIR should evaluate the Project's consistency with the Air District's 2017 Clean Air Plan (2017 CAP). The EIR should discuss 2017 CAP measures relevant to the Project and show the Project's consistency with the measures. The 2017 CAP can be found on the Air District's website: <https://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans>**

-
- **The EIR should evaluate the Project's consistency with the Oakland 2030 Equitable Climate Action Plan and the 2021 Local Hazard Mitigation Plan.**

The Air District's CEQA website contains several tools and resources to assist lead agencies in analyzing air quality impacts. These tools include guidance on quantifying local emissions and exposure impacts. The tools can be found on the Air District's website: <https://www.baaqmd.gov/ceqa-resources>

- **Certain aspects of the Project may require a permit from the Air District (for example, back-up diesel generators).** Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or byoung@baaqmd.gov to discuss permit requirements. Any applicable permit requirements should be discussed in the EIR.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, or would like to schedule a meeting, please contact Alesia Hsiao, Senior Environmental Planner, at 415-749-8419, or ahsiao@baaqmd.gov.

Sincerely,



Greg Nudd
Deputy Air Pollution Control Officer

cc: BAAQMD Vice Chair John J. Bauters
BAAQMD Director Pauline Russo Cutter
BAAQMD Director David Haubert
BAAQMD Director Nate Miley



January 20, 2022

By electronic transmission

Peterson Vollmann
City of Oakland Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612
Subject: 3600 Alameda Ave., NOP

Dear Mr. Vollmann,

Thank you for the opportunity to comment on the NOP for the 3600 Alameda Avenue project. We are disappointed that the applicant is deciding to clear cut the entire site, versus using some of the existing fabric in the new project. We believe that historic industrial sites offer high design quality and authenticity. The piers on the Embarcadero in San Francisco and the recent renovation of Pacific Pipe in West Oakland offer examples on how historic structures can be reused for new purposes, and to greater effect and lower impact than completely new ones.

In this EIR, we ask that you study the following:

- 1) Provide robust mitigations to demolition. Mitigations might include facade improvement program funds, funds to aid historic structures in need in historic areas in the immediate area, or farther afield such as the Moss House, or retention/relocation of significant architectural elements of the site.
- 2) An alternative that retains the oldest and most historic structures. The site is large (23.9 acres), so we believe that the project goals can be accomplished without wiping the slate completely clean. In proposing complete demolition of the complex rather than at least partial reuse, is this project inconsistent with Oakland's resource conservation objectives, which promote reuse of existing buildings rather than demolition and replacement?
- 3) The implications of altering the roadways for adjoining neighborhoods. With the advent of wayfinding software which flag congestion, traffic is often diverted into neighborhoods that cannot survive with heavy truck use. We are extremely concerned about impacts upon area residents, businesses, artists, and arts-related enterprises.
- 4) The effects of the development upon air pollution and usability should include consideration of the increasing number of residences in the Jingtowntown in recent years, and the continuing improvements to the Bay Trail. If the air is dangerous to breathe, the project will be at cross-

purposes with recent development and intensifying sports and rowing uses of the Estuary. How will this development relate to Oakland's equity objectives? Will income-diverse neighborhoods in the area experience further deterioration of air quality with an increase in truck emissions?

5) Effects on nearby areas of Alameda as well as traffic impacts to the Fruitvale and High Street bridges.

6) An alternative that entirely substitutes internal combustion engines and diesel trucking with less-polluting vehicles. We should strive to make the air along 880 cleaner, not dirtier. **This project presents an enormous opportunity to initiate forward-looking cleaner transport of goods.**

7) Mitigations that serve to educate citizens about Oakland's agricultural, food production, processing, and shipping heritage, among the key industrial foundations of the city's economy, perhaps repurposing original historic built structures or artifacts to do so.

Thank you again. We look forward to making future comments and to seeing this project evolve to bring this site back to use, but while also respecting Oakland's industrial history.

Sincerely,



Mary Harper
President

By electronic transmission:

cc: William Gilchrist, Ed Manasse, Robert Merkamp, Catherine Payne, Karen August, and Betty Marvin, Bureau of Planning/Zoning
Councilmembers Gallo and Kaplan



May 3rd, 2022

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza
Suite 2214
Oakland, CA 94612
pvollmann@oaklandca.gov

Re: Sierra Club NOP Comments for 3600 Alameda Ave

Dear Mr. Vollmann,

The Sierra Club, the Alameda Labor Council, and Teamsters Local 853 appreciate the opportunity to comment on the Notice of Preparation (NOP) for the draft Environmental Impact Report (DEIR) for the proposed 3600 Alameda Avenue Project, Case File Number PLN21223-ER01. We understand that the prospective use for study would be a distribution warehouse. Distribution warehouses can vary widely in their operations and impacts, with certain heavy distribution centers leading to sharp increases in environmental impacts both during the construction phase and during operations. We would like to see the DEIR include analyses into the following areas:

1. Air Quality Impacts

The proposed project site is in an area that is already burdened with air pollution, with a CalEnviroScreen score in the 94th percentile. Sensitive receptors are nearby, with residential neighborhoods less than 1000 feet from the 3600 Alameda Ave site. In analyzing the potential air quality impacts from the development, we recommend a robust and comprehensive modeling that includes emissions from construction, including diesel generators and vehicle emissions. Additionally, we recommend studying the full impacts of a last-mile delivery warehouse, including one that could have Transportation Refrigeration Units. For diesel-powered equipments, we would want to see the highest level, such as the use of equipment that meets the EPA's Tier 4 Interim emissions standards for off-road diesel-powered construction equipment.

Last-mile style delivery warehouses can see hundreds of trucks and vans entering and leaving the site a day, on top of employee commutes. Many of these trucks and vans are diesel-powered which causes diesel particulate matter emissions and other criteria pollutants such as Nitrous Oxide (NOx) that negatively impact people's health. Refrigerants for cold storage, i.e. Transportation Refrigeration Units, also have the potential for greenhouse gas emissions, potential that should be studied in the EIR. We encourage including the possibility of requiring the electrification of van and truck fleets within the next five years, while studying the mitigations necessary to meet that level of emissions reduction even without electrification of vehicles. However, since the City may be unable to require the electrification of fleets not domiciled at the site (i.e. common carriers) we would like to see the

inclusion of emissions from common carriers in the DEIR so that the community can have the full picture.

The impacts of air quality are cumulative, requiring each aspect to be analyzed and minimized so as to reduce the burden of air pollution on historically polluted communities.

2. Energy Impacts

The City of Oakland has already passed legislation calling for new construction to be all-electric. On top of this, we would like to see this development built to the highest standards of decarbonization possible by ensuring reliance on sustainable energy. We would like to see the building and installation during construction of rooftop photovoltaic solar panels with the hopes of 100% reliability of the building's own energy needs. For any energy needs that can't be met by on-site solar, we highly encourage the building be powered by 100 percent renewable energy through East Bay Community Energy's Renewable 100 service plan. Additionally, we would like to see EV charging stations for electric vehicles on-site, with as much reliance on the site's solar array as possible.

3. Water Quality Impacts

The site at 3600 Alameda Ave is directly adjacent to the Tidal Canal that separates Oakland and Alameda, part of the ecologically important Oakland Estuary and San Francisco Bay. Although this site has been zoned industrial in the estuary plan, the impacts from the site on the waters must still be studied. Industrial runoff can easily spill into the estuary and Bay, or contaminate groundwater, causing potentially harmful effects. Please see section 5 for further concerns about hazardous materials which could also leak into stormwater drains. We also recommend including and studying non-potable on-site water treatment treatment. A large commercial project of this nature should be required to collect and reuse blackwater including wastewater containing biological waste

4. Traffic Impacts

The boom in e-commerce has led to a proliferation of warehouses to meet distribution demands in turn increasing traffic in the communities where distribution centers are sited. In addition to the emissions impacts raised earlier, the increase in traffic must be studied and analyzed. Increased truck and van trips, for those domiciled at the site and those subcontracted out, should be analyzed in a traffic study. Increased traffic leads to greater wear on roads, increased commute times, and poses dangers to pedestrians. The neighborhood nearest to where 3600 Alameda Ave, Jingtown, already has narrow streets without sidewalks. The proposed street changes in the NOP point to increased traffic in an area that's already facing unequal infrastructure investments. Please include a traffic study as part of the review process that takes into account the full possibility of truck and van fleets required for fulfillment centers.

5. Hazardous Materials

The site at 3600 Alameda Ave homed the Owen-Brockway Glass Plant. As a location of industrial manufacturing for some time, there may be hazardous materials that have leached into the land.

Construction could potentially turn up these toxic substances into the air and the nearby waters. Those who live and work nearby could be exposed to toxins, especially considering projections for sea level rise and groundwater rise. With that in mind, we recommend studying the site for hazardous materials and then basing possible remediation needs based off of that.

Conclusion

We ask that these matters, along with any other relevant topics that may arise, are rigorously studied in the Draft Environmental Impact Report so that projects are designed with community education and investment. We hope to see development that doesn't negatively impact the nearby communities and that creates family-sustaining jobs from construction through operation. We look forward to reviewing the DEIR upon completion and thank you again for this opportunity to comment.

Sincerely,



Nick Pilch, Conservation Chair
Sierra Club, SF Bay Chapter, Northern Alameda County Group

Liz Ortega, Executive Secretary-Treasurer
Alameda Labor Council, AFL-CIO

Michael K. Henneberry, Business Agent-Political Coordinator
Teamsters Local 853

CC:

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May 3, 2022

Mr. Peter Vollmann

City Planner

City of Oakland Planning & Building Department
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Plan for 3600 Alameda Ave (The old Glass Factory at Fruitvale and Alameda Ave)

Mr. Vollmann,

I believe using the old Glass Factory is a great use of the property as an Amazon Distribution facility. Planning can make this a win for Oakland and the neighborhoods. However, living in Jingtletown for thirteen years has seen much change in the neighborhood. We have experienced Caltrans review of traffic plans for 880, resulting in new, continuous traffic routed through narrow, crowded streets with limited parking as the only access for I-880 southbound and secondary access for I-880 northbound. Additionally, since the end of the pandemic, the Fairn and Swanson warehouse at the end of Lancaster Street now has as many as five tractor trailers parked on the streets, awaiting access to warehouse docks. This results in one lane around these vehicles, often meeting oncoming, fastmoving traffic in that lane. It is common to have to stop to allow long vehicles to navigate the streets of Jingtletown. There is NO viable way to use existing off ramps to reach the proposed facility with Prime trailers.

A thorough review of the access plan should reflect access for trailers and for the exiting use of Fruitvale and Park Ave, already heavy congestion multiple times per day. The existing 37th Avenue could be optimized for access and minimizing impact on neighborhoods and traffic. Also, consideration to be given to the active nighttime rail traffic on the spur line that runs through Jingtletown, which will have an impact on vehicle access, causing delays. Additionally, alternate use of Alameda Ave would require traffic planning to I-880 access on High Street.

Thank you for the opportunity to share insights that may not be fully accounted for by highway traffic counters. Human experience often sees valuable data as well.

Respectfully submitted,

David G. Young, M.A.

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Date: 20 April 2022

From: Mathew & Kathryn Bliven
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Phone 510-388-3045

To: Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning,
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Questions regarding 3600 Alameda Ave Project (Case File Number PLN21223-ER01)

- (1) Will the environmental analysis consider the potential impacts to the residential homes in Alameda that are located near the proposed site? Approximately 100 homes on Marina Dr are located on the Oakland Tidal Canal, and approximately 25 are directly across from the proposed site, some within 500 ft of the opposite shoreline. These homes may reasonably be expected to be impacted by vehicular noise, light and diesel emissions, fixed lighting, and increased vehicular traffic from the proposed distribution center.
- (2) Why was the proposed distribution center oriented on the project site such that loading bays and the majority of vehicle activity will face south and towards the Oakland Tidal Canal, SF Bay Trail, and residential homes along the Canal? Can the proposed structure be redesigned or reoriented on the site so the loading bays and vehicle activity face either Fruitvale Ave or 37th St?
- (3) Will the height of the proposed distribution center either partially or fully block views of the Oakland Hills from pedestrians and cyclists that may be enjoying the SF Bay Trail? How about the impact to views from Alameda residents who live directly across from the project site along the Oakland Tidal Canal? Will sight lines be calculated and analyzed?
- (4) What are the proposed traffic schemes for vehicles traveling between the proposed distribution center and nearby roads and highways? Will trucks arriving to and departing from the site use the entrances on 37th Ave or Alameda Ave, or both? What will be the impact on traffic density and congestion at the intersection of Fruitvale Ave and Alameda Ave, as well as at the intersection of Alameda Ave and either Howard St or Oakport St?
- (5) Will vehicle lights from trucks departing the distribution center and turning onto Alameda Ave shine directly into the residential homes in Alameda that are across the Tidal Canal? Will residents in the adjacent Oakland and Alameda neighborhoods be subject to vehicle engine noise, horns, and back-up alarms 24/7/365? Can the project be improved by including mounding, trees, physical walls, or other buffers in the green space shown south of the property vehicle parking area in Figure 2, which would mitigate noise and light from the site?

- (6) The current sidewalk and bike lane on the east side of Fruitvale Ave and adjacent to the project site is narrow and hazardous to pedestrians and cyclists. Can the project be improved by expanding the available space to widen the sidewalk and bike lane and provide lighting?
- (7) As the proposed project lies within 100 ft of the Oakland Tidal Canal, which is considered part of the San Francisco Bay, what design trade-offs will need to be considered to protect the Bay and satisfy the regulations enforced by BCDC?
- (8) Approximately 1000 ft of Alameda Avenue along the SW edge of the property is also immediately adjacent to the shoreline of the Oakland Tidal Canal, separated by only a sidewalk and a sloping bank down to the water. It is one of a very few places in the East Bay where a vehicular roadway is located close to San Francisco Bay without any buffer space or barriers to prevent dumping of garbage, yard waste, and construction material into the Bay by passing vehicles. In the past 15 years, at least three motor vehicles have driven off the roadway and into the Bay at this location, creating an additional pollution problem for the Bay. The proposed Site Plan (Figure 2) appears to show that Alameda Ave will be relocated slightly away from the water along this border of the site but does not show any other details. The Project Description only states: *"The Alameda Avenue realignment would include widened sidewalks and a bike path."* What is planned between the Alameda Avenue realignment and the water to create a natural buffer space for the Bay, might mitigate noise and light from the distribution center, and could be enjoyed by pedestrians and cyclists who are using the Bay Trail?
- (9) Could this project be improved to include features that address the long-standing problem of the San Francisco Bay Trail terminating at Fruitvale Ave (i.e., no direct access to the Bay Trail immediately west of the Miller-Sweeney Bridge)?
- (10) Parking spots appear to be depicted as part of the proposed Alameda Avenue realignment in Figure 2 but are not discussed in the Project Description. What is the purpose of the proposed parking spots and will parking restrictions be included to prevent overnight parking and homeless encampments, as currently exist along Alameda Ave?

Signed //



Mathew & Kathryn Bliven