

Opinion: Berkeley vs. UC: Settlement or surrender?

By Dean Metzger, David Wilson

The mayor and City Council have secretly agreed to a deal that will bring irreversible and long-term harm to us all, two Berkeley residents write.

The Berkeley mayor and the city council announced on July 13 that they had signed a settlement agreement with UC Berkeley. Negotiations and debates about the terms were done in secret, and no public debate was permitted. Under the settlement, Berkeley withdrew from lawsuits it had joined with neighborhood groups trying to limit UC Berkeley expansion and promised not to litigate the impact of the university's long-term development plan (LRDP). The mayor is proud of his work. The neighbors are furious. Who is right?

Jesse Arreguín argues that Cal is exempt from local land-use laws and taxes. What he doesn't say is that UC Berkeley *is legally required* to reimburse the city for the cost of municipal services that it uses (police, fire, garbage, etc.). Independent consultants hired in 2018 by the city of Berkeley estimated net costs at \$21 million per year, much higher than the \$13 million estimated in 2005. Under the "settlement," Berkeley will get \$2.8 million a year for fire and other city services, and \$1.3 million will benefit residents living within a half-mile of the university if the university approves. The city gives up its right to the rest. Settlement or surrender?

The mayor is also silent about the university's obligation under the California Environmental Quality Act (CEQA) to mitigate the impact of its expansion plans on the Berkeley community. Just weeks ago, a neighborhood lawsuit (joined by the city of Berkeley) was decided against the university. The decision was critical: despite old promises to hold total enrollment to 31,780, the actual current student count is 43,695, with the new 2021 LRDP allowing for an increase of 1% per year or an increase of 437 students per year for a total of 50,687 students (plus added staff to support them) over the term of the agreement. If the 437-student increase per year is exceeded the city cannot sue UC Berkeley unless it withdraws from the agreement and risks loss of all future payments from Cal.

So, which is it, settlement or surrender? The mayor says that UC Berkeley's \$4.1 million in annual payments will be inflation-adjusted, but it is also true that Berkeley's underlying costs will inflate by far more: just look at the cost increase from \$13 million

to \$21 million from 2005 to 2018 (a 62% increase). The mayor also points to 2,000 units proposed for People's Park and other projects. But he says nothing about the fact that UCB Berkeley houses only 23% of its undergrads and 9% of its grad students, fewer than any other UC campus. A July 21 piece in *Berkeleyside*, alleges that it is student demand that more than any other single factor has resulted in enormous pressure on local rents. This in turn has led to speculation in proud older homes, which are being rented out, bedroom by bedroom, to tenants with no long-term commitment to our community.

The mayor says that if things turn out badly, the city has the right to “terminate the Agreement and sue the university over future development projects and enrollment increases that exceed one percent per year.” This is a classic “poison pill” provision: If UC Berkeley chooses to expand beyond 50,687, or to take even more property off city tax rolls, the city's only remedy is to give up its right to current payments for current costs incurred. Given the precarious state of the city's finances, that isn't going to happen.

All of this is debatable, but there has been no debate. The UC Berkeley deal was negotiated, discussed internally, voted on, and signed with the terms kept secret from the outside world. Bureaucrats will point to a “pending litigation” exception to the state law requiring public discussion before decisions on public issues. But the UC Berkeley deal goes way beyond current lawsuits about two current Cal projects. Berkeley is a company town, with UC Berkeley students and staff accounting for more than half of its daytime population and its obvious impact on the city budget. The LRDP promises decades of further expansion with no cap, and no discussion of city-wide impacts, much less mitigation. Based on a complaint largely funded with citizen dollars, the Alameda County Superior Court has held that these impacts must be disclosed and mitigated.

But all that is moot. Brought to the verge of victory, Berkeley has caved.

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