

  
CITY ATTORNEY'S OFFICE

**OAKLAND CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

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**A RESOLUTION THAT MEMORIALIZES THE CITY COUNCIL'S SUPPORTIVE FINDINGS, ADDITIONAL CONDITION OF APPROVAL, AND DENIAL OF THE APPEAL OF THE PLANNING COMMISSION'S CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION FOR CASE NO. PLN22189, AN ADDITION AND ALTERATION TO AN EXISTING COMMERCIAL STRUCTURE FOR CHILDCARE ACTIVITIES**

**WHEREAS**, Mehdi Shafiei (applicant) filed an application with the City of Oakland (City) Bureau of Planning on November 18, 2022, for a minor conditional use permit and regular design review approval for a proposed childcare center and addition and alteration to an existing building located at 5315 College Avenue (PLN22189) (the Project); and

**WHEREAS**, the Project is located along the College Avenue commercial corridor on the southern end of the Rockridge neighborhood in North Oakland; and

**WHEREAS**, on October 12, 2023, the Bureau of Planning approved the proposal with project-specific conditions requiring a pick-up/drop-off transportation plan and window details and determined that the Project is exempt from California Environmental Quality Act (CEQA) review under Sections 15301 and 15183 of the State CEQA Guidelines; and

**WHEREAS**, on October 20, 2023, Jake Allen, the owner of the property surrounding the site (Appellant), filed an appeal (PLN22189-A01) challenging the findings for the conditional use permit and regular design review approval and challenging whether the Project complied with CEQA; and

**WHEREAS**, on February 21, 2024, the Planning Commission took testimony and considered the Project at its duly noticed public meeting and at the conclusion of the public hearing deliberated on the matter and voted unanimously (+7,0) to affirm the Bureau of Planning's determination that the project was exempt from CEQA under Sections 15301 and 15183 of the State CEQA Guidelines and to deny the appeal with the additional conditions as described in the Planning Commission staff report; and

**WHEREAS**, on March 4, 2024, the Appellant filed an appeal (PLN22189-A01-A01) of the Planning Commission’s decision to the City Council, challenging the determination that the Project was exempt from CEQA; and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the appeal came before the City Council as a public hearing on July 2, 2024; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the City Council voted to continue the item to July 16, 2024 to provide an opportunity for the Applicant and the Appellant to independently mediate outstanding issues;

**WHEREAS**, on July 16, 2024, the City Council reopened the public hearing and provided opportunity for the Applicant and the Appellant to provide additional information on the status of their discussions;

**WHEREAS**, at said meeting the City Council voted to deny the appeal and directed the City Administrator to prepare a resolution for City Council adoption memorializing the City Council’s supportive findings and final action on the appeal and further directed that the Planning Bureau to include as an additional condition of approval to require a code enforcement inspection monitoring for compliance with City of Oakland noise performance standards to occur approximately twelve months after the opening of the child care center at 5315 College Avenue and that the City Administrator prepare an informational report to return to City Council on the outcome of said code enforcement inspection; now, therefore, be it

**RESOLVED:** That the City Council hereby independently finds and determines that the project is exempt from CEQA under CEQA Guidelines Sections 15301 and 15183; and be it

**FURTHER RESOLVED:** That the City Council having heard, weighed all the evidence in the record presented on behalf of all parties, and being fully informed on the application, the Planning Commission’s decision, and the appeal, finds that the Appellant has **not** shown that the categorical exemptions under CEQA Guidelines Section 15301 and 15183 and has **not** shown that any exception to the exemptions as listed in CEQA Guidelines Section 15300.2 apply; and be it

**FURTHER RESOLVED:** That the City Council finds that the Class 1 CEQA exemption under CEQA Guidelines Section 15301, minor alterations of existing buildings, applies to the project, based on the fact that the proposal fits within the illustration provided in the CEQA Guidelines as an addition to existing structures provided that the addition will not result in an increase or more than 10,000 square feet if a project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and the area in which a project is located is not environmentally sensitive – the proposed additional floor area of 2,270 square feet is far below the 10,000 square foot threshold described in the CEQA Guidelines, the site is in a highly urbanized area where all public services and facilities are available; and the project is not located in an environmentally sensitive location; and be it

**FURTHER RESOLVED:** That the City Council finds that the statutory exemption under CEQA Guidelines Section 15183 also applies to the project based on substantial evidence that the project is consistent with the development density established by the existing zoning and general plan policies under the Land Use and Transportation Element for which an EIR was certified; and be it

**FURTHER RESOLVED:** That the City Council finds Appellant has not provided evidence that the exemptions described above do not apply in the first instance and instead has argued that there are impacts peculiar to the parcel that were not previously addressed in the City of Oakland Land Use and Transportation Element EIR; and be it

**FURTHER RESOLVED:** That the City Council finds that no exceptions to the Class 1 exemption under CEQA Guidelines Section 15300.2 has been shown to be present and that no impacts peculiar to the parcel or the project related to cultural resources, traffic, parking, and land use that were not previously addressed in the City of Oakland Land Use and Transportation Element EIR; that the Land Use and Transportation Element EIR identified and analyzed the fact that a mix of commercial and residential uses in near proximity could pose noise compatibility problems but that those impacts were found to be less than significant due to the proposed policies in place as part of the Land Use and Transportation Element as well as additional measures identified in the EIR that are now imposed on the proposed Project through the City of Oakland standard conditions of approval; and be it

**FURTHER RESOLVED:** That, accordingly, the City Council denied appeal PLN22189-A01-A01 and said denial is hereby memorialized in this resolution, based upon the substantial evidence provided in the record in the February 21, 2024 Staff Report to the Planning Commission, the accompanying July 2, 2024 City Council Agenda Report, and all attachments thereto; and be it

**FURTHER RESOLVED:** That the City Council hereby directs the Planning Bureau to include as an additional condition of approval on the Project to require a code enforcement inspection monitoring for compliance with City of Oakland noise performance standards to occur approximately twelve months after the opening of the child care center at 5315 College Avenue and further directs that the City Administrator prepare an informational report to return to City Council on the outcome of said code enforcement inspection, which report shall identify if any exceedances were present, whether activities were required to be abated, and whether any appropriate noise reduction measures were installed and compliance verified by the City pursuant to City of Oakland Standard Condition of Approval Number 26; and be it

**FURTHER RESOLVED:** That, the record before the Council relating to this Application and appeal includes, without limitation, the following:

1. The application, including all accompanying maps and papers;
2. All plans submitted by the Applicant and their representatives;
3. The notice of appeal and all accompanying statements and materials;

4. All final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearing transcripts and videos;
5. All oral and/or written evidence received by the City’s Planning Commission and City Council during the public hearings on the appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal; and
6. All matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council’s decision is based are respectively: (a) Department of Planning and Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> floor, Suite 2114, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That the recitals contained in this Resolution are true and correct and accurately memorialize the City Council’s decision.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California