

December 2, 2008

City of Berkeley
Zoning Adjustments Board
c/o Aaron Sage, Senior Planner (asage@ci.berkeley.ca.us)
Planning and Development Department
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704

RE: Letter of Support for Ashby Arts Project at 1200 Ashby Avenue

Dear Members of the Zoning Adjustments Board:

I live at **1052 Murray St., Berkeley**, across the street from the proposed development at 1200 Ashby Avenue. I have been in contact with Mr. Kashani and Mr. Rhoades since the beginning of their design work on developing this vacant and blighting site in our neighborhood. I am writing in strong support of this development.

Even though we will lose our views of the beautiful Berkeley-Oakland hills, we believe the size and mass of the proposed project is appropriate for our major transit corridor, San Pablo Avenue. The project includes 98 new residential units including 15 affordable units to low and very low income families. It includes ground-floor retail, a nice open plaza and adequate parking and useable open space for its residents. Most importantly, this project is dedicating five feet of land along Ashby to help the City create a Left-Turn Lane for Westbound traffic on Ashby Avenue.

This project is a true Gateway to our city and would make a great statement for the part of the City that has been neglected by community investment for decades. As a LEED certified project, Ashby Arts helps the City meet its regional housing obligations and progress toward its Green House Gas reductions as envisioned in Measure G.

Finally, the developers have taken a great deal of care to work with the neighbors and have created appropriate set-backs and step downs to mitigate the impacts on the immediate neighbors.

I strongly support your approval of their application and appreciate for considering my comments. Please complete your necessary process and approve this project so that our neighborhood can receive the long-overdue investments it deserves.

Sincerely,

REYAD SALAMEH
Reyad Salameh

12-5-08

SANA SALAMEH
Sana Salameh

1

December 2, 2008

City of Berkeley

Zoning Adjustments Board

c/o Aaron Sage, Senior Planner (asage@ci.berkeley.ca.us)

Planning and Development Department

Land Use Planning Division

2120 Milvia Street

Berkeley, CA 94704

RE: Letter of Support for Ashby Arts Project at 1200 Ashby Avenue

Dear Members of the Zoning Adjustments Board:

I live at **3014 San Pablo Avenue, Berkeley**, across the street from the proposed development at 1200 Ashby Avenue. I have been in contact with Mr. Kashani and Mr. Rhoades since the beginning of their design work on developing this vacant and blighting site in our neighborhood. I am writing in strong support of this development.

Even though we will lose our views of the beautiful Berkeley-Oakland hills, we believe the size and mass of the proposed project is appropriate for our major transit corridor, San Pablo Avenue. The project includes 98 new residential units including 15 affordable units to low and very low income families. It includes ground-floor retail, a nice open plaza and adequate parking and useable open space for its residents. Most importantly, this project is dedicating five feet of land along Ashby to help the City create a Left-Turn Lane for Westbound traffic on Ashby Avenue.

This project is a true Gateway to our city and would make a great statement for the part of the City that has been neglected by community investment for decades. As a LEED certified project, Ashby Arts helps the City meet its regional housing obligations and progress toward its Green House Gas reductions as envisioned in Measure G.

Finally, the developers have taken a great deal of care to work with the neighbors and have created appropriate set-backs and step downs to mitigate the impacts on the immediate neighbors.

I strongly support your approval of their application and appreciate for considering my comments. Please complete your necessary process and approve this project so that our neighborhood can receive the long-overdue investments it deserves.

Sincerely,

Matt 

December 11, 2008

Stephen Wollmer
1823 'B' Berkeley Way
Berkeley, CA 94703
(510) 843-2053
stephenwollmer@gmail.com

Berkeley Zoning Adjustments Board

Re: Affordable housing commitments and request for density bonus incentive by Ashby Arts project (1200 Ashby Avenue)

I write to offer additional discussion and information about the Affordable Housing components of the project beyond that provided to you in the Staff report (excerpted and highlighted on Attachment 1), in Finding 3 (Attachment 2), and in Condition 68 (Attachment 3).

As I testified to the ZAB in August, because this project is required to comply with the requirements of Berkeley's Inclusionary Ordinance, is requesting a density bonus and an incentive under the State density bonus law, and is offered as the qualifying project for the City's application for San Pablo Avenue improvements under the State's Proposition 1C Infill Infrastructure Grant Program there are many 'unusual' elements in this project's proposed Affordable Housing component, a strategy I call Affordable Housing Arbitrage, or AHA for short. Unfortunately this 'complicated' application has led to a number of inconsistencies in the materials before you about the Below Market Rate units offered or required under the various programs.

Most importantly Condition 68 fails to require the number and depth of affordability promised under Finding 3 for each and every one of the fifteen Lower Income units needed to qualify the project for its requested benefits under State density bonus law. Condition 68 applies City affordability standards of affordability where State law and regulation requires different and more stringent minimum standards:

65915(c)(1) **An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus** for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. **Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.**

Attachment 4 supplies the applicable State Health and Safety Code sections and implementing California Code of Regulation sections, Attachment 5 provides the current HCD spreadsheet giving affordable housing costs and rents for all income levels based on Alameda County's Area Median Income, and Attachment 6 presents some of the significant differences between City's Inclusionary Ordinance affordability standards and the State standards that projects requesting benefits under the State density bonus law must comply with.

Discussion

- Condition 68(B) requires that 15 for-sale BMR units be affordable to households earning no more than 60% of the Area Median Income (AMI). However Condition 68 sets the affordability for these units based on the City's definition of affordability (three times AMI) from the Inclusionary Ordinance. Not even under an extremely optimistic (6%) mortgage rate does this result in all qualifying units being affordable under State standards for Lower Income households, while State law requires that each and every qualifying unit must be affordable under State standards for the project to be considered as the basis for benefits State density bonus law. Attachment 7 applies State mandated costs factors to the applicant's proposed pricing in their pro forma.
- Condition 68(C) covering the affordability of the 15 for-rent units Lower Income units that qualified the project for benefits under the State density bonus law. The condition fails to apply applicable State standards for Lower Income households. State standards set a maximum affordable rent for Lower Income households to 60% of AMI, but the Condition sets the maximum rent for all BMR units at 81% of AMI. For the Very Low Income (50% of AMI) units required by the Inclusionary Ordinance the Condition offers the applicant the option of renting these units at Federally determined Fair Market Rent (FMR) to households holding a Section 8 voucher. Should the applicant avail themselves of the option of accepting Section 8 tenants at FMR, only the Studio unit would actually have a rent below State standards for Lower Income affordability, the standard that the project is required to meet to obtain benefits under the State density bonus law. Attachment 8 compares the rents proposed in the applicant's pro forma, Federal Fair Market Rents, the rents allowed by Condition 68(C), and the maximum State rents for qualifying Lower Income units.

Furthermore, the applicant is requesting an incentive to waive the Inclusionary Ordinance requirement that BMR units be equally dispersed and equivalent to market rate units (23C.12.040D). To support this request, the applicant provided financial information and Housing Department staff has reviewed this information and provided a report to the ZAB (attachment 10 of tonight's Staff Report). Unfortunately, the provided material lacks any narrative, is poorly formatted, and is likely to be unintelligible most laypersons, while the Housing Department staff analysis provides only a cursory review of their findings and offers what can be only described as a 'tepid' endorsement of the necessity for the incentive. Significantly, the provided financial information and the analysis does not analyze the return from the affordable housing pricing in Condition 68 and ignores the language of the finding for denial:

65915(d)(1)(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

The financial information and the analysis provided to you tests the benefit of the requested incentive against the City's additional affordability requirement for rental projects or the applicant's voluntary deeper affordability for a condo project, rather than the required testing against State standards.

Recommendation

Given the significant errors in the proposed affordable housing condition, I respectfully request that you defer action on this project until such time as you have been provided with a re-drafted affordable housing condition that ensures that each and every one of the units qualifying the project for benefits under State density bonus law are truly affordable under State standards and Staff provides you with an understandable set of financial information accompanied with a thorough Housing Department analysis should the applicant to continue to request any incentive.

Table 2 – Special Characteristics

Inclusionary Housing	Yes	<u>Project would provide 15 below market rate for-sale units: 8 units at prices affordable to households earning 50 percent of area median income (AMI), and 7 units at prices affordable to households earning 60 percent of AMI.</u>
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III. Project Description

C. Residential Units: The proposed unit mix is shown in Table 5 below. **The project qualifies for a State density bonus because it would provide 20 percent of the “base project” units (15 of 74 units) for households earning up to 60 percent of area median income (AMI).** The applicant has agreed to provide a greater affordability level than the City’s requirement of 80% of AMI, in order to help the City qualify for a State grant. The applicant ultimately intends to sell the units as condominiums, but may rent the units in the short term depending on market conditions.² See under “Key Issues” for further discussion.

Table 5: Proposed Unit Mix

		Unit Type							
		Studio		1/1.5 Bedroom		2 Bedroom		Total	
		Market Rate	Inclusionary	Market Rate	Inclusionary	Market Rate	Inclusionary	Market Rate	Inclusionary
Building Story	Second	1	1	13	2	7	2	21	5
	Third	2	0	11	4	8	1	21	5
	Fourth	2	0	12	3	5	2	19	5
	Fifth	2	0	14	0	6	0	22	0
Total Units		7	1	50	9	26	5	83	15
Average Size (sq. ft.)		571*	571	742*	750	1,081*	1,117	835*	860
Size Range (sq. ft.)		571*	571	595-828*	667-828	983-1,194*	1,074-1,194	571-1,194	667-1,194

* - Ranges and averages are for entire building.

² Per Section 23C.12.060, if the applicant rents the units and Section 8 rental subsidies are available, 8 of the inclusionary units would have to be affordable to households earning no more than 50% of AMI. This has been reflected in the proposed conditions of approval (see Attachment 1, Conditions 68).

V. Issues and Analysis**A. Inclusionary Housing/Density Bonus Calculations:**

2. **Inclusionary Housing:** Pursuant to BMC Chapter 23C.12, at least 20 percent of the 74 base project units, or 14.9 units, are required to be affordable to households earning no more than 80 percent of area median income (AMI). As stated earlier, **the applicants propose to meet this requirement by providing 15 inclusionary housing units (20.3 percent of the base project) for households earning up to 60 percent of AMI.**

C. Concessions/Incentives: Government Code Section 65915 also provides that the project shall receive incentives or concessions, which may include modification of development standards or code requirements, or other benefits that provide for the project's affordable housing costs. Based on the percentage of proposed affordable units, the project is entitled to two concessions, **unless the City finds that the concessions either are not required to provide for affordable housing costs,** or would have a specific adverse impact upon public health and safety, the physical environment, or a property listed on the California Register of Historical Resources.

The applicants have requested one concession: to locate all inclusionary units on the second through fourth floors, and none on the fifth floor. This arrangement does not comply with Section 23C.12.040.D, which requires that inclusionary units be "reasonably dispersed throughout the project" because the 5th floor contains almost one quarter of the total units in the building, and there is no particular physical reason why such a large portion of the units cannot be on the fifth floor, since it is roughly the same size as the other floors. Furthermore, the fifth floor offers greatly enhanced views, and the City's longstanding approach to "reasonable dispersion" is that inclusionary and market-rate units should be more or less comparable throughout the building, with respect to floors, views, and other amenities.

The applicants expect the units on the fifth floor to sell for more than the project's other units due to their enhanced views, and they claim this premium is necessary to offset the costs of the project's inclusionary units. The ZAB has granted the same type of concession to other projects such as 2041-67 Center Street ("Arpeggio") and 2747 San Pablo Avenue.

The applicant has provided information regarding the value and financial necessity of the requested concession, and the Housing Department has reviewed this information and found it to be accurate in its assumptions and findings (see Attachment 10). Because there is no basis for denying the concession under State law, staff recommends that the ZAB grant the requested concession.

DENSITY BONUS / AFFORDABLE HOUSING FINDINGS

3. Pursuant to Government Code Sections 65915(b) and 65915(n), and BMC Section 23C.12.050.A, the Zoning Adjustments Board (ZAB) makes the following findings for density bonus entitlements:

A. The project is entitled to a density increase of 35 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (g)(1), plus two additional concessions or incentives as set forth in Finding 4 below.

B. Under the City's methodology for implementing density bonuses under Section 65915, the "base project" for the proposed 98-unit project consists of commercial space and parking on the ground floor, and 74 residential units on the first, second, third, and fourth floors, with an average unit size of 1,101 square feet.

C. **The applicants have committed that 15 (20.3 percent) of the units in the 74-unit "base project" will be affordable for lower income households**, as more fully set forth in Conditions of Approval 68. This commitment entitles the applicants to a minimum density bonus of 35 percent (26 units after rounding) with a total area of 29,729 square feet. The applicants have requested a density bonus of 32.4 percent (24 market-rate units) with a total area of 22,773 square feet.

D. The approval of a density bonus to promote the development of affordable housing at a location well-served by transit is consistent with the policies of the General Plan Housing Element (Policy H-16) and other West Berkeley Plan Policies cited in Finding No. 5, below.

Inclusionary Housing Requirements:

68. Inclusionary Requirements. Prior to the issuance of a certificate of occupancy, the applicant shall enter into an inclusionary housing agreement providing for compliance with the requirements of Berkeley Municipal Code (BMC) Chapter 23C.12 and the State Density Bonus Law (Gov. Code § 65915). The inclusionary housing agreement shall include, but not be limited to, the following conditions:

A. Number of Inclusionary Units. The project shall include fifteen (15) inclusionary dwelling units out of a total of 98 dwelling units in the project. The Inclusionary Units shall be as shown on the plans dated November 10, 2008, unless the selection of other units is authorized in writing by the City, pursuant to BMC Chapter 23C.12 and the Regulatory Agreement.

B. Sales Prices of Inclusionary Units. If inclusionary housing units are sold as condominiums, the sales price shall not exceed three (3) times 60 percent (60%) of the Area Median Income (hereinafter referred to as “AMI”) as of the date of the sale the unit, and as adjusted for the appropriate household size pursuant to City of Berkeley Resolution No. 60,328-N.S.

C. Rents of Inclusionary Units. If the inclusionary housing units are rented, the following ceilings shall apply: 1) Eight (8) units shall be rented at a level that is affordable to households with an income level of not more than fifty percent (50%) of the AMI. In the alternative, this requirement may also be met through rentals pursuant to the Section 8 program at the rent levels authorized by that program. 2) Seven (7) units shall be rented at a level that is affordable to households with an income level of not more than eighty-one percent (81%) of the AMI. 3) The **gross** rent levels of units that are not rented pursuant to the Section 8 program shall not exceed 30% of the applicable income level ceiling for the unit (either fifty percent (50%) or eighty-one percent (81%) of AMI). Gross rents shall include an allowance for utility costs in accordance with the inclusionary housing ordinance. Gross rent levels of units rented pursuant to the Section 8 program shall be determined by the regulations of that program. The requirements of this section shall apply to rentals of units that are individually owned as condominiums as well as to units in rental projects.

D. Calculation of Area Median Income (AMI). AMI shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income. The AMI applicable to each unit shall be determined in accordance with the following table:

Unit Size	Applicable AMI Standard
Under 400 sq. ft	AMI for a one person household
400-599 sq. ft.	AMI for one person household plus one quarter of the difference between the AMI for a one person household and for a two person household
600-699 sq. ft.	AMI for one person household plus one half of the difference between the AMI for a one person household and for a two person household
700-849 sq. ft.	AMI for a two person household
850-999 sq. ft.	AMI for a three person household
1,000-1,199 sq. ft.	AMI for a four person household
1,200 sq. ft or more	AMI for a six person household

E. Contents of Inclusionary Housing Agreement. The inclusionary housing agreement shall include:

- 1) Designation of the inclusionary units on the project floor plans;
- 2) Requirements governing the selection of tenants;
- 3) Requirements governing the marketing and sale of units;
- 4) City monitoring and reporting requirements;
- 5) Restrictions on the resale prices of condominium units;
- 6) Other terms and conditions necessary to ensure compliance with BMC Chapter 23C.12.
- 7) Any other provisions required for the purpose of qualifying the project for a density bonus under Government Code Section 65915.

50053.

(a) For any rental housing development that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, "affordable rent" with respect to lower income households shall not exceed the percentage of the gross income of the occupant person or household established by regulation of the department that shall not be less than 15 percent of gross income nor exceed 25 percent of gross income.

(b) For any rental housing development that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, **"affordable rent," including a reasonable utility allowance, shall not exceed:**

(1) For extremely low income households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.

(2) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(3) For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those lower income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(4) For moderate-income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(c) The department's regulation shall permit alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to regulations adopted under subdivision (f) of Section 50462. The department shall, by regulation, adopt criteria defining and providing for determination of gross income, adjustments for family size appropriate to the unit, and rent for purposes of this section. These regulations may provide alternative criteria, where necessary, to be consistent with pertinent federal statutes and regulations governing federally assisted rental and cooperative housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing developments.

For purposes of this section, "area median income," "adjustments for family size appropriate to the unit," and "moderate-income household" shall have the same meaning as provided in Section 50052.5.

50052.5

- (a) For any owner-occupied housing that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, "affordable housing cost" with respect to lower income households may not exceed 25 percent of gross income.
- (b) For any owner-occupied housing that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, **"affordable housing cost" may not exceed the following:**
- (1) For extremely low households the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.
- (2) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.**
- (3) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit.** In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.
- (4) For moderate-income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.
- (c) The department shall, by regulation, adopt criteria defining, and providing for determination of, gross income, adjustments for family size appropriate to the unit, and housing cost for purposes of determining affordable housing cost under this section. These regulations may provide alternative criteria, where necessary to be consistent with pertinent federal statutes and regulations governing federally assisted housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing development.
- (d) With respect to moderate- and lower income households who are tenants of rental housing developments and members or shareholders of cooperative housing developments, or limited equity cooperatives "affordable housing cost" has the same meaning as affordable rent, as defined in Section 50053.
- (e) Regulations of the department shall also include a method for determining the maximum construction cost, mortgage loan, or sales price that will make housing available to an income group at affordable housing cost.
- (f) For purposes of this section, "area median income" shall mean area median income as published by the department pursuant to Section 50093.
- (g) For purposes of this section, "moderate income household" shall have the same meaning as "persons and families of moderate income" as defined in Section 50093.
- (h) For purposes of this section, and provided there are no pertinent federal statutes applicable to a project or program, "adjusted for family size appropriate to the unit" shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.**



Welcome to the online source for the California Code of Regulations

25 CA ADC § 6918

25 CCR § 6918

Cal. Admin. Code tit. 25, § 6918

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 25. HOUSING AND COMMUNITY DEVELOPMENT
DIVISION 1. HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER 6.5. PROGRAM OPERATIONS
SUBCHAPTER 2. PROGRAM ELIGIBILITY AND AFFORDABILITY FOR LOWER INCOME
HOUSEHOLDS

This database is current through 3/21/08, Register 2008, No. 12

§ 6918. Rent.

"Rent" shall mean the total of monthly payments for a rental or cooperative unit for:

(a) Use and occupancy of a housing unit and land and facilities associated therewith.

(b) Any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.

(c) A reasonable allowance for utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.

(d) Possessory interest, taxes, or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than the lessor.

Monthly rent shall be an average of estimated costs for the next twelve months.

Note: Authority cited: Sections 50052.5 and 50053, Health and Safety Code. Reference: Sections 50052.5, 50053, and 50098, Health and Safety Code.

HISTORY

1. Editorial correction of NOTE filed 4-27-83 (Register 83, No. 18).

25 CCR § 6918, 25 CA ADC § 6918
1CAC

25 CA ADC § 6918

END OF DOCUMENT

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Attachment 4-3

[Docs In Sequence](#) [Table of Contents](#)



Welcome to the online source for the California Code of Regulations

25 CA ADC § 6920

25 CCR § 6920

Cal. Admin. Code tit. 25, § 6920

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 25. HOUSING AND COMMUNITY DEVELOPMENT
DIVISION 1. HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER 6.5. PROGRAM OPERATIONS
SUBCHAPTER 2. PROGRAM ELIGIBILITY AND AFFORDABILITY FOR LOWER INCOME
HOUSEHOLDS

This database is current through 3/21/08, Register 2008, No. 12

§ 6920. Housing Cost of a Purchaser.

"Housing cost" of a person or family purchasing a housing unit shall include all of the following associated with that housing unit:

(a) Principal and interest on a mortgage loan including any rehabilitation loans, and any loan insurance fees associated therewith.

(b) Property taxes and assessments.

(c) Fire and casualty insurance covering replacement value of property improvements.

(d) Property maintenance and repairs.

(e) A reasonable allowance for utilities, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.

(f) Homeowner association fees.

(g) Space rent, if the housing unit is situated on rented land.

Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve months.

Note: Authority cited: Section 50052.5, Health and Safety Code. Reference: Section 50052.5, Health and Safety Code.

25 CCR § 6920, 25 CA ADC § 6920
1CAC

25 CA ADC § 6920

END OF DOCUMENT

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Attachment 4-4

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COUNTY (fill-in):		ALAMEDA		2008		(fill-in: Cal Yr)	
Affordable Housing Costs/Rents:		AREA MEDIAN INCOME:		\$86,100		(fill-in: median income, 4-person)	
Health & Safety Codes:		RENTER	OWNER				
		§§ 50053	§§ 50052.5				
Extremely Low		30%	30%	Formula			
Very Low		50%	50%	(These columns show how the maximum monthly rent and maximum housing cost were calculated.)			
Low		60%	70%	Above			
Moderate		110%	110%	County's			
Note: amounts do not reflect required allowances to deduct				Area * Family			
Unit Size		Max Monthly Rent Cost	Max. Monthly House Cost	Max Cost	Median %	Income	Adj. Size
Income Group	Bedroom(s)	(Renters)	(Owners)	%	Upper Limit	Income	Months
Extremely Low Income HH	0 (Studio)	\$452	same	[30% x	30% x	\$86,100	x 0.7) / 12]
	1 bedroom	\$517	same	[30% x	30% x	\$86,100	x 0.8) / 12]
	2 bedrooms	\$581	same	[30% x	30% x	\$86,100	x 0.9) / 12]
	3 bedrooms	\$646	same	[30% x	30% x	\$86,100	x 1.0) / 12]
	4 bedrooms	\$697	same	[30% x	30% x	\$86,100	x 1.08) / 12]
Very Low Income HH	0 (Studio)	\$753	same	[30% x	50% x	\$86,100	x 0.7) / 12]
	1 bedroom	\$861	same	[30% x	50% x	\$86,100	x 0.8) / 12]
	2 bedrooms	\$969	same	[30% x	50% x	\$86,100	x 0.9) / 12]
	3 bedrooms	\$1,076	same	[30% x	50% x	\$86,100	x 1.0) / 12]
	4 bedrooms	\$1,162	same	[30% x	50% x	\$86,100	x 1.08) / 12]
Low Income HH	0 (Studio)	\$904	60% does not apply to owners (70% below does)	[30% x	60% x	\$86,100	x 0.7) / 12]
	1 bedroom	\$1,033		[30% x	60% x	\$86,100	x 0.8) / 12]
	2 bedrooms	\$1,162		[30% x	60% x	\$86,100	x 0.9) / 12]
	3 bedrooms	\$1,292		[30% x	60% x	\$86,100	x 1.0) / 12]
	4 bedrooms	\$1,395		[30% x	60% x	\$86,100	x 1.08) / 12]
	0 (Studio)		\$1,055	[30% x	70% x	\$86,100	x 0.7) / 12]
	1 bedroom	70% does not apply to renters (60% above does)	\$1,205	[30% x	70% x	\$86,100	x 0.8) / 12]
	2 bedrooms		\$1,356	[30% x	70% x	\$86,100	x 0.9) / 12]
	3 bedrooms		\$1,507	[30% x	70% x	\$86,100	x 1.0) / 12]
	4 bedrooms		\$1,627	[30% x	70% x	\$86,100	x 1.08) / 12]
0 (Studio)	\$1,657		30% does not apply to owners (35% below does)	[30% x	110% x	\$86,100	x 0.7) / 12]
1 bedroom	\$1,894	[30% x		110% x	\$86,100	x 0.8) / 12]	
2 bedrooms	\$2,131	[30% x		110% x	\$86,100	x 0.9) / 12]	
3 bedrooms	\$2,368	[30% x		110% x	\$86,100	x 1.0) / 12]	
4 bedrooms	\$2,557	[30% x		110% x	\$86,100	x 1.08) / 12]	
Moderate Income HH	0 (Studio)		\$1,934	[35% x	110% x	\$86,100	x 0.7) / 12]
	1 bedroom	35% does not apply to renters (30% above does)	\$2,210	[35% x	110% x	\$86,100	x 0.8) / 12]
	2 bedrooms		\$2,486	[35% x	110% x	\$86,100	x 0.9) / 12]
	3 bedrooms		\$2,762	[35% x	110% x	\$86,100	x 1.0) / 12]
	4 bedrooms		\$2,983	[35% x	110% x	\$86,100	x 1.08) / 12]

Background information on State Density Bonus Law

State density bonus law (Government Code §65915) differs from the City's inclusionary ordinance in both purpose and application. While City Ordinance requires all projects larger than 5-units to reserve 20% of the units for lower income households, the intent of State law is to 'contribute significantly to the economic feasibility of lower income housing in proposed housing developments' (§65917). To fulfill this purpose, State law provides a graduated schedule of density bonuses and number of 'incentives and concessions' based on the percent of affordable units and targeted to one income group.

Significantly, the State density bonus law requires projects receiving benefits to comply with the affordability standards set by State Health and Safety Code definitions and implementing regulations. State law and regulations apply whenever an applicant requests a density bonus or 'incentives or concessions' and **preempt** City Ordinance and standards whenever they conflict with State law – some of the significant areas of preemption include:

- Under §65915(b)(2) an applicant must 'elect' a single category of affordable housing to qualify their project for benefits under State density bonus law, while rental projects under City law must set aside for units for both lower and very low income households if Federal Section 8 vouchers are available, which they are.
- Under §65915(c)(1) affordability is defined under Health and Safety Code sections §50053 (affordable rent) and §50052.5 (affordable housing cost for ownership units) as implemented under CCR 25s6920 and 25s6918 respectively (Attachment 4). HCD annually updates income limits and provides a spreadsheet to calculate affordable rents and housing costs (Attachment 5).
- Under §50052.5(h) (ownership units) and §50053(c) (rental units) household size and income are determined by a unit's number of bedrooms, while the City bases its household size and imputed household income on a unit's square footage.
- In projects that qualify for benefits under State density bonus law based on providing lower Income ownership units, the State defines 'affordable housing cost' as no more than 30% of 70% of AMI (including all ordinary expenses) while the City Ordinance sets an affordable sales price of three times 80% of AMI.
- For projects qualifying based on providing Very Low Income ownership units the State defines 'affordable housing cost' as no more than 30% of 50% of AMI (including all ordinary expenses). City Ordinance does not require ownership project to provide units affordable to very low income households, nor does it establish a sales price for these units, but based on the Seagate and 1122 University Avenue projects, the City will probably set an affordable sales price of three times 50% of AMI.
- It is important to note that the State's definition of 'affordable housing cost' and 'affordable rent' (Attachment 4) is much more holistic than the City's covering the full range of a homebuyer's first year costs, thus providing significant protection to both initial and subsequent buyers. On the other hand the City's simplistic formula 'three times applicable AMI' exposes buyers of 'affordable' units to mortgage market conditions and increases in other costs, in particular a project's HOA dues.

6.0% Mortgage Rate: ProForma Sales Price Vs. State Density Bonus Law Lower Income Affordable Housing Cost

Unit Type	Unit Size Sq Ft	P.F. HH Size	P.F. Sales Price	FHA 1.5% Mortgage Insurance	FHA 3% Down Payment	3.0% Closing + Fees	Up Front Costs	Total Loan Amount	30-yr P+I @6.0%	PMI per mo. (@0.5%)	Taxes per mo. (@1.5%)	Insurance per mo. (@.25%)	Electric Utilities per mo.	HOA Dues per mo.	P.F. Cost @ 6.0%	State HH Size	Affordable Housing Cost*	P.F. Vs. State Cost	P.F. Vs. State Pct
P0 (Studio)	654	1.5	\$116,300	\$1,745	\$3,489	\$3,489	\$6,978	\$114,556	\$687	\$48	\$145	\$24	\$29	\$150	\$1,083	1	\$1,055	\$28	3%
P1C (1-br)	690	1.5	\$116,300	\$1,745	\$3,489	\$3,489	\$6,978	\$114,556	\$687	\$48	\$145	\$24	\$29	\$175	\$1,108	2	\$1,205	(\$97)	-8%
P1A (1-br)	730	2	\$124,000	\$1,860	\$3,720	\$3,720	\$7,440	\$122,140	\$732	\$51	\$155	\$26	\$29	\$175	\$1,168	2	\$1,205	(\$37)	-3%
P1F (1-br)	734	2	\$124,000	\$1,860	\$3,720	\$3,720	\$7,440	\$122,140	\$732	\$51	\$155	\$26	\$29	\$175	\$1,168	2	\$1,205	(\$37)	-3%
P2A (2-br)	1050	4	\$155,000	\$2,325	\$4,650	\$4,650	\$9,300	\$152,675	\$915	\$64	\$194	\$32	\$40	\$225	\$1,470	3	\$1,356	\$114	8%
P2B (2-br)	1117	4	\$155,000	\$2,325	\$4,650	\$4,650	\$9,300	\$152,675	\$915	\$64	\$194	\$32	\$40	\$225	\$1,470	3	\$1,356	\$114	8%
Average increase																	\$11	1%	

6.5% Mortgage Rate: ProForma Sales Price Vs. State Density Bonus Law Lower Income Affordable Housing Cost

Unit Type	Unit Size Sq Ft	P.F. HH Size	P.F. Sales Price	FHA 1.5% Mortgage Insurance	FHA 3% Down Payment	3.0% Closing + Fees	Up Front Costs	Total Loan Amount	30-yr P+I @6.5%	PMI per mo. (@0.5%)	Taxes per mo. (@1.5%)	Insurance per mo. (@.25%)	Electric Utilities per mo.	HOA Dues per mo.	P.F. Cost @ 6.5%	State HH Size	Affordable Housing Cost*	P.F. Vs. State Cost	P.F. Vs. State Pct
P0 (Studio)	654	1.5	\$116,300	\$1,745	\$3,489	\$3,489	\$6,978	\$114,556	\$724	\$48	\$145	\$24	\$29	\$150	\$1,120	1	\$1,055	\$65	6%
P1C (1-br)	690	1.5	\$116,300	\$1,745	\$3,489	\$3,489	\$6,978	\$114,556	\$724	\$48	\$145	\$24	\$29	\$175	\$1,145	2	\$1,205	(\$60)	-5%
P1A (1-br)	730	2	\$124,000	\$1,860	\$3,720	\$3,720	\$7,440	\$122,140	\$772	\$51	\$155	\$26	\$29	\$175	\$1,208	2	\$1,205	\$2	0%
P1F (1-br)	734	2	\$124,000	\$1,860	\$3,720	\$3,720	\$7,440	\$122,140	\$772	\$51	\$155	\$26	\$29	\$175	\$1,208	2	\$1,205	\$2	0%
P2A (2-br)	1050	4	\$155,000	\$2,325	\$4,650	\$4,650	\$9,300	\$152,675	\$965	\$64	\$194	\$32	\$40	\$225	\$1,520	3	\$1,356	\$164	12%
P2B (2-br)	1117	4	\$155,000	\$2,325	\$4,650	\$4,650	\$9,300	\$152,675	\$965	\$64	\$194	\$32	\$40	\$225	\$1,520	3	\$1,356	\$164	12%
Average increase																	\$54	4%	

7.0% Mortgage Rate: ProForma Sales Price Vs. State Density Bonus Law Lower Income Affordable Housing Cost

Unit Type	Unit Size Sq Ft	P.F. HH Size	P.F. Sales Price	FHA 1.5% Mortgage Insurance	FHA 3% Down Payment	3.0% Closing + Fees	Up Front Costs	Total Loan Amount	30-yr P+I @7.0%	PMI per mo. (@0.5%)	Taxes per mo. (@1.5%)	Insurance per mo. (@.25%)	Electric Utilities per mo.	HOA Dues per mo.	P.F. Cost @ 7.0%	State HH Size	Affordable Housing Cost*	P.F. Vs. State Cost	P.F. Vs. State Pct
P0 (Studio)	654	1.5	\$116,300	\$1,745	\$3,489	\$3,489	\$6,978	\$114,556	\$762	\$48	\$145	\$24	\$29	\$150	\$1,158	1	\$1,055	\$103	10%
P1C (1-br)	690	1.5	\$116,300	\$1,745	\$3,489	\$3,489	\$6,978	\$114,556	\$762	\$48	\$145	\$24	\$29	\$175	\$1,183	2	\$1,205	(\$22)	-2%
P1A (1-br)	730	2	\$124,000	\$1,860	\$3,720	\$3,720	\$7,440	\$122,140	\$813	\$51	\$155	\$26	\$29	\$175	\$1,248	2	\$1,205	\$43	4%
P1F (1-br)	734	2	\$124,000	\$1,860	\$3,720	\$3,720	\$7,440	\$122,140	\$813	\$51	\$155	\$26	\$29	\$175	\$1,248	2	\$1,205	\$43	4%
P2A (2-br)	1050	4	\$155,000	\$2,325	\$4,650	\$4,650	\$9,300	\$152,675	\$1,016	\$64	\$194	\$32	\$40	\$225	\$1,570	3	\$1,356	\$214	16%
P2B (2-br)	1117	4	\$155,000	\$2,325	\$4,650	\$4,650	\$9,300	\$152,675	\$1,016	\$64	\$194	\$32	\$40	\$225	\$1,570	3	\$1,356	\$214	16%
Average increase																	\$99	7.78%	

**1200 Ashby Avenue ProForma Rents compared with
State Density Bonus Law Affordable Rents and Federal Section 8 FMR rents**

Lower Income (80% of AMI)

Unit Type	Nbr of Units	Unit Size Sq Ft	City HH Size	City LI Rent	Pro Forma 60%	State HH Size	State LI Rents	Federal Section 8 FMR	City LI Vs. State LI Rents	ProForma Vs. State LI Rents
P0 (Studio)	1	654	2	\$1,249	\$937	1	\$904	N/A	\$345	\$33
P1C (1-br)	1	690	2	\$1,292	\$1,034	2	\$1,033	N/A	\$259	\$1
P1A (1-br)	2	730	2	\$1,395	\$1,034	2	\$1,033	N/A	\$362	\$1
P1F (1-br)	1	734	4	\$1,722	\$1,292	2	\$1,033	N/A	\$689	\$259
P2A (2-br)	1	1,050	4	\$1,744	\$1,292	3	\$1,162	N/A	\$582	\$130
P2B (2-br)	1	1,117	4	\$1,744	\$1,292	3	\$1,162	N/A	\$582	\$130

Monthly Increase	\$3,181	\$555
Annual Increase	\$38,172	\$6,660
Capitalized Value @ 6%	\$636,200	\$111,000

Very Low Income (50% of AMI)

Unit Type	Nbr of units	Unit Size Sq Ft	City HH Size	Pro Forma 50%	City IO Rent	State HH Size	State LI Rents	Federal Section 8 FMR	Pro Forma Vs. State LI Rents	Section 8 Vs. State LI Rents
P0 (Studio)	1	654	2	\$808	N/A	1	\$904	\$866	(\$96)	(\$38)
P1C (1-br)	1	690	2	\$861	N/A	2	\$1,033	\$1,046	(\$172)	\$13
P1A (1-br)	3	730	2	\$861	N/A	2	\$1,033	\$1,046	(\$172)	\$13
P1F (1-br)	1	734	4	\$1,076	N/A	2	\$1,033	\$1,046	\$43	\$13
P2A (2-br)	1	1,050	4	\$1,076	N/A	3	\$1,162	\$1,239	(\$86)	\$77
P2B (2-br)	1	1,117	4	\$1,090	N/A	3	\$1,162	\$1,239	(\$72)	\$77

Monthly Increase	(\$899)	\$104
Annual Increase	(\$10,788)	\$1,248
Capitalized Value @ 6%	(\$179,800)	\$20,800