

October 10, 2016

VIA E-MAIL (NMCPEAK@ALAMEDACA.COM) & FEDEX

President John Knox White and Alameda Planning Board
c/o Nancy McPeak, Executive Assistant
Community Development Department
Alameda City Hall
2263 Santa Clara Avenue, Room 190
Alameda, CA 94501

Re: Agenda Item 7-D: File No. 2016-3445 - Planning Board Study Session to
Consider Draft Universal Design Ordinance

Dear President Knox White and Planning Board Members:

Thank you for the opportunity to submit comments on Agenda Item 7.D regarding File No. 2016-3445 - the Draft Universal Design Ordinance (the "Draft Universal Design Ordinance"). I am writing on behalf of my client, Tim Lewis Communities ("TLC") in response to the Draft Universal Design Ordinance being considered by the Alameda Planning Board at its October 10, 2016, study session.

As you are aware from my client's work on the Del Monte warehouse project, they are committed to incorporating universal design concepts in their development projects. After reviewing the recently proposed Draft Universal Design Ordinance, my client is concerned about the ordinance's potential impact on project design, variety of housing types and construction costs. TLC is currently working with its consultants to quantify the potential costs associated with implementation of the proposed ordinance, so more information will be forthcoming from them. At this time, I would like to take this opportunity to identify some of our concerns with the Draft Universal Design Ordinance as currently drafted. Upon first glance, the draft ordinance appears overreaching. We are also concerned that it is inconsistent with State law, and imposes an unreasonable burden on housing developers such that it will preclude new multi-family housing opportunities in Alameda.

The Draft Universal Design Ordinance is Overreaching and Inconsistent with State Law.

Under AB 1400 (Chapter 648 of Statutes of 2003), the State Legislature adopted Section 17959.6 of the Health & Safety Code requiring California builders constructing new for-sale residential units to provide a “checklist” of universal accessibility features to potential buyers. The purpose of the law was to require that builders identify universal design features that *may* be available. While features on the checklist must comply with the California Building Code (CBC), and specifically, Chapters 11A and 11B, a homebuilder is not required to include all of the features identified in Chapters 11A and 11B. In this regard, Chapter 11A applies to residential development. Chapter 11B generally applies to public facilities and institutions. Under AB 2787, the Department of Housing and Community Development (HCD) was required to develop guidelines and adopt a model ordinance for new construction and home modifications that are consistent with particular principles of universal design. AB 2787 authorized a city or county to adopt by ordinance, any changes or modifications to the requirements of the CBC, if the city, county, or city and county determines that the ordinance is reasonably necessary and is substantially the same as the HCD guidelines or model ordinance under AB 2787.

We reviewed the City’s Draft Ordinance and compared it to the model universal design ordinance and the checklist issued by HCD pursuant to AB 2787 and AB 1400. Based on our review of the Draft Universal Design Ordinance, Alameda appears to be imposing Universal Design Ordinance requirements from both Chapters 11A and Chapter 11B on new housing inventory in the City, which conflicts with State law as only Chapter 11A of the State Building Code applies to residential development. Thus, we request that the City revise the Draft Universal Design Ordinance so only Chapter 11A applies to private facilities, if adopted.

Additionally, State law does not mandate that the developer of a rental project incorporate all of these universal design features into an apartment building. State law only applies universal design features to new for-sale residential units. Again, the City of Alameda is overreaching in its attempts to impose universal design requirements on rental apartments. If the City intends to adopt this ordinance, we request that you limit the scope of the ordinance to for-sale residential projects.

The Draft Universal Design Ordinance Creates Inconsistencies with State Law, and Will Result in Conflicting Requirements and Confusion.

The definitions in the Draft Universal Design Ordinance are inconsistent with the Model State Ordinance and the New Home Universal Design Checklist. Section 18.2 of the Draft Universal Design Ordinance contains definitions that are inconsistent with the State building code definitions. For example, under the State Building Code, Chapter 11A, Section 202, “accessible” means:

“A site, building, facility, or portion thereof that is approachable and usable by persons with disabilities in compliance with this code.”

Alameda’s Draft Universal Design Ordinance, however, defines “accessible” as,

“Standards for features or *fixtures, designs, or other improvements* [*emphasis added*] which are equal to or exceed the minimum requirements of Chapter 11A or 11B.”

Alameda’s Draft Universal Design Ordinance appears to conflict with the CBC. The State Building Code regulates structures. Alameda purports to go beyond the subject matter of the State Building Code by regulating fixtures, products and designs. This is just one of many inconsistencies that we request be eliminated.

Alameda purports to regulate all new residential units and requires that checklists be provided that indicate all universal design features be incorporated into the building. It is our understanding that a builder of new for-sale residential units (not rental) is required to provide a “checklist” of universal accessibility features to potential buyers so that the builder can provide and/or agree to specified standards or features requested by the buyer at a reasonable time, if the features are “reasonably available and feasible to install or construct.” The developer/builder is not required, however, to provide any feature on the checklist. The purpose of the checklist is to inform the buyer as to the available features, but the builder is not required to install all of the features. By contrast, Sections 18.5 and 18.7 of Alameda’s ordinance suggests that *all* features be included for exterior access, accessible primary entries, accessible internal access from a primary entrance to an accessible bathroom and common use area or bedroom, and adaptable internal stairwells which may be infeasible for multi-family residential buildings. In this regard, the ordinance far exceeds State law requirements, and we request that the City revise the ordinance to be consistent with State law.

There is no standard of reasonableness throughout the ordinance. Importantly, the City’s requirements are framed in terms of meeting the basic needs “to the greatest extent possible” or for the “greatest number of people.” There is no test of reasonableness or feasibility. At a minimum all references to “greatest extent possible” need to be replaced by “reasonable extent feasible.” Furthermore, the Ordinance should define the criteria that will be applied to make such a determination and identify the entity responsible for making this determination.

There is no basis to impose an extra requirement for units that do provide universal design features. The Draft Universal Design Ordinance imposes an extra requirement under Section 18.6 for 30% of the units to provide additional universal design features for interior access when those features are the same features as those required in Section 18.5 with the exception of the access to laundry facilities. The Draft Universal Design Ordinance fails to

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substantiate the basis for the additional requirements on interior access for 30% of the units when the units would already be subject to most of the requirements under Section 18.5 of the Draft Universal Design Ordinance. No rationale is provided for why an additional 30% of the units must also provide additional interior access features, and this provision should be eliminated.

No tangible criteria are provided to guide the city's determination of "undue hardship" or "equivalent facilitation." The exemptions set forth in Section 18.8 do not identify the test that will be applied to make a determination of "undue hardship" or "equivalent facilitation." Moreover, the State's model ordinance includes an exemption for any residential structures constructed or substantially rehabilitated if the primary entry of that structure is above grade because the primary entry is located over subterranean or grade-level parking. Under Alameda's Ordinance, multi-story residential structures cannot comply with the visitability and accessibility requirements and there is no exemption from these requirements, unlike the State's model ordinance. Accordingly, this ordinance conflicts with State law and could prevent the construction of multi-family development projects for the foreseeable future, and would impact the ability to provide a variety of housing types.

For all of the reasons identified above, we respectfully request that the Planning Board substantially revise its Draft Universal Design Ordinance to tailor it to the State's model ordinance. We support the City's efforts to provide for accessible housing for Alameda residents, but the ordinance as drafted raises questions regarding the feasibility of actually constructing such housing.

Sincerely,

BUCHALTER NEMER
A Professional Corporation

By 
Alicia Guerra 

cc: Jessica Grossman
Mike O'Hara
Andrew Thomas
Jim Meek