



Memorandum

To: City of Berkeley Zoning Adjustments Board
 From: Rhoades Planning Group
 Date: November 13, 2025
 Re: **2029 University Avenue Infill Development**

The attached letter from Travis Brooks of Miller Starr Regalia lays out the legal requirements for the City's consideration of concessions pursuant to State Density Bonus Law, and particularly how it applies to the labor and bird safe glass concessions requested for the project at 2029 University Avenue. These concessions will save the project significant money and will help to offset the costs of building the below market rate units provided by the proposal and consistent with the findings for concessions pursuant to SDBL.

These costs are significant and are shown in the table below. In addition, it is important to also understand these costs with respect to the significant City/Municipal fees required for the project, which are shown in the table following the concessions cost savings table. Even with the concessions the City/Municipal fees represent more than 5% of the project's total costs, which we believe is one of the highest for a housing project in California.

CONCESSION REQUEST - PROJECT COST REDUCTION	
Apprenticeship	\$ 1,893,000
Health Care	\$ 2,839,000
Bird Safe Glass	\$ 400,000
Total	\$ 5,132,000

REQUIRED CITY FEES AND MITIGATION COSTS	
Permitting & Plan Check Costs	\$ 3,484,773
Plan Check Acceleration Fee for Building Permit First Phase	\$ 100,000
PG&E Power Connection & Capacity Charge	\$ 329,412
EBMUD Water & Sewer Connection & Capacity Charge	\$ 1,640,746
Cable & Phone (AT&T, Comcast, & Sonic) Connection	\$ 235,294
Berkeley Unified School District Costs	\$ 667,472
Streets and Open Space Improvement Plan Costs	\$ 427,719
In-Lieu Art Costs	\$ 391,326
In-Lieu Affordable Housing Costs	\$ 929,559
Permit Expediter	\$ 30,000
City Fee Contingency	\$ 200,000
Total	\$ 8,436,301



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November 12, 2025

Zoning Adjustments Board
Planning and Development
1947 Center Street, 2nd Floor
Berkeley, CA 94704

Re: Proposed Multi-Family and/or Student Housing Development At 2029
University Avenue (APN 057 2-5300801, ZP# 2024-0171 & ZP#2024-0182)
**Suitability of Incentive and Concession Requests to Modify HARD
HATS And Bird Glass Ordinance Requirements**

Dear Honorable Members Of The Zoning Adjustments Board:

This office represents Laconia Development, LLC (“Laconia”) in its applications for two alternative housing development projects at 2029 University Avenue in the City. One of these project alternatives proposes construction of 240 new residential apartment units in a single 23-story building, 18 of which would be deed-restricted affordable to very low income households and 18 of which would be deed-restricted affordable to moderate income households (total affordable units: 36) (“Project Alternative 1”). The other project alternative proposes construction of 160 new housing units which would provide housing for students in a single 23-story building. Twelve of these units would be deed-restricted affordable to very low income households, and 12 would be deed-restricted affordable to moderate income households (total affordable units: 24) (“Project Alternative 2”).

Both Alternatives would deliver much needed housing to the community and represent meaningful progress addressing the City and state’s pernicious housing shortage. The Alternatives are subject to the robust protections of the Housing Accountability Act (“HAA”, Gov. Code, § 65589.5), Senate Bill 330 (“SB 330”), and the Density Bonus Law (“DBL”, Gov. Code, § 65915).

As part of its project applications, Laconia appropriately requested three DBL incentives: two to reduce or eliminate certain provisions of the City’s HARD HATS Ordinance (“HARD HATS Ordinance”), and one to eliminate certain provisions of the City’s Bird Safe Glass Ordinance (“Bird Glass Ordinance”).

The HARD HATS Ordinance sets forth labor and employment criteria for project workers, which significantly exceed those required by state and federal law. The Bird Glass Ordinance mandates costly glass requirements not required by state or federal

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law. Granting of the requested incentives will result in significant reductions in project costs, which will help Laconia provide up to 36 affordable units and will increase the likelihood that the project receives the funding necessary to allow it to actually be built. Importantly, the incentives *will not* result in “any significant and unavoidable health and safety impacts” as that phrase is narrowly defined by state law. As a result, the City is required to grant the incentives.

Despite the above, we understand that parties with an economic interest in seeing the incentives not granted may claim that the incentives which relate to the HARD HATS Ordinance are somehow “novel and unorthodox” and would result in vaguely described impacts upon public health and safety. These claims are completely baseless. Project opponents have not, and cannot, identify any of the narrowly defined and rare “significant and unavoidable health and safety impacts” that would justify denial of the incentives.

I. **Laconia Appropriately Seeks To Reduce / Modify Parts Of The HARD HATS and Bird Glass Ordinances, Which Are “Reduction(s) In Site Development Standards...” Or Other Regulatory Incentive(s) Providing Significant Cost Reductions.**

For similar projects, opponents have inaccurately claimed that requested incentives from the HARD HATS Ordinance are “novel or unorthodox”. However, the HARD HATS (and Bird Glass) provisions are exactly the sort of costly “development standards” the DBL requires local agencies to eliminate when incentives are requested. The purpose of such incentives is to provide cost reductions that enable construction of affordable housing.

Under the DBL, housing development projects providing qualifying levels of affordable housing are entitled to request varying numbers of incentives and/or concessions. (Gov. Code § 65915 subd. (d).)

The relevant incentives in this case are “**reduction(s) in site development standards**” as specified in Gov. Code § 65915 subd. (k), *emph. added*. Development standards that may be reduced or modified by way of an incentive are broadly defined as including:

“a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation that is adopted by the local government or that is enacted by the local government’s electorate exercising its local initiative or referendum power,

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whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local government.”

(Gov. Code § 65915 subd. (o)(2), emph. added.)

Here, the relevant HARD HATS and Bird Glass Ordinance provisions certainly fall under the DBL's broad definition of “development standards” which include “any ordinance or other local condition, law, policy, resolution, or regulation...” adopted by the City. There is no state building code or federal law requiring Laconia or the City to comply with the relevant provisions of the HARD HATS or Bird Glass Ordinance. Here, Laconia is requesting incentives/concessions so that it will not have to strictly comply with these particular policies, which significantly exceed those required in most cities and counties in the state.

II. The City Is Required To Grant The Requested Incentives And Any Failure To Do So Would Result In An Actionable Violation Of State Housing Law.

Under the DBL, when an applicant requests an incentive or concession, a local agency “**shall**” grant the concession or incentive unless a city makes a written finding based on substantial evidence that:

- (A) The concession or incentive does not result in identifiable and actual cost reductions...
- (B) The concession or incentive would have a specific, adverse impact... upon public health and safety....
- (C) The concession or incentive would be contrary to state or federal law.

(Gov. Code, § 65915(d)(1).)

In considering an incentive request, a city is required to interpret the DBL “**liberally in favor of producing the maximum number of total housing units.**” (Gov. Code § 65915, subd. (r).) Where a city refuses to grant a requested incentive or concession in violation of the DBL, an applicant can initiate judicial proceedings to reverse a city's refusal and typically will recover reasonable attorney's fees and costs. (Gov. Code § 65915(f)(3).)

With regard to item (A) above, the requested incentives will result in millions of dollars in cost reductions. As the court in *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549 recognized, an incentive **is presumed** to result in cost reductions that satisfy the DBL, and a local agency has the burden of proof to overcome such presumption. The millions of dollars of cost savings which result from these incentives mean that the City obviously cannot overcome the presumption.

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Regarding item (B) above, to deny Laconia's incentives the City would need to identify a "... specific, adverse impact" upon public health or safety. (Gov. Code § 65915, subd.(d)(1)(B), § 65589.5(d)(2) .)

A "specific adverse impact" upon the public health or safety is narrowly defined as:

"a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, or conditions as they existed on the date the application was deemed complete." (Gov. Code § 65915, subd. (d)(2).)

The DBL and HAA's definition of a "specific, adverse impact" upon public health or safety is purposely narrow. As the Department of Housing and Community Development recognizes:

[t]he [Housing Accountability Act] considers that such impacts would be rare: "It is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety, as described in paragraph (2) of subdivision (d) and paragraph (1) of subdivision (j), arise infrequently." (Gov. Code, § 65589.5, subd. (a)(3).)

(HCD, Housing Accountability Act Technical Assistance, September 15, 2020, at p. 20.)

First, we note that the standards for which the incentives are requested are not "public health or safety standards." They are requests that seek to force higher costs onto development projects which are attempting, in difficult economic times, to fulfill the mandate of the state of California to build more housing including affordable housing. Neither the HARD HATS Ordinance nor the Bird Glass Ordinance are intended to address any quantifiable and direct impact on public health or safety – in the same way, for example, that occupational safety, fire, hazardous materials regulations, or building codes do.

Project opponents similarly have not and cannot identify "a significant, quantifiable, direct, and unavoidable impact" on health or safety. There neither is, nor can there be, any evidence that not providing the specific impositions in the HARD HATS Ordinance will result in quantifiable, direct, or unavoidable health and safety impacts.

Finally, with regard to item (C) above, granting the requested incentives will not in any way violate state or federal law.

In sum, the City is required to grant the requested incentives and any failure to do so will result in violations of state housing law.

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III. Conclusion.

Laconia looks forward to working with the City to deliver the much needed new homes proposed by the Project Alternatives consistent with the binding provisions of state housing law. Should you have any questions regarding the above, please do not hesitate to contact me directly.

Very truly yours,

MILLER STARR REGALIA

A handwritten signature in blue ink, appearing to read "T. Brooks", with a horizontal line extending from the end of the signature.

Travis Brooks

TZB:tzb