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Honorable Members of the Planning Commission

COMMENTS ON PROPOSED ACADEMY OF ART UNIVERSITY SETTLEMENT AGREEMENT

Introduction

The proposed Settlement Agreement with the AAU raises serious questions about how the alleged value to the city of the agreement was determined, and whether it is commensurate with the multiyear transgressions of the AAU, especially regarding the serial illegal conversion of SRO and other lower income housing to student housing. These concerns were outlined in comments submitted February 2, 2017 regarding the draft Settlement Agreement, and in November 2, 2017 regarding the IMP. Since that time some changes have occurred that do not address or reduce those concerns, including some changes only recently revealed to the public and now incorporated into all the documents being submitted for approval by the City with minimal time for Commission or public review.

1. THE FINAL AGREEMENT MITIGATING THE PINE STREET PROJECT IS MORE BENEFICIAL to AAU THAN THE ORIGINAL ONE

A significant change from requiring AAU to renovate and newly construct a senior affordable housing project at adjacent Pine Street properties is the new element requiring a payment of \$37.600,000 to the city to support affordable housing activities. This represents \$235,000 per unit to support 160 units in lieu of having to undertake a 160-unit development at Pine Street. While this appears to be of equal value, the removal of an obligation to do a project at the site, plus the agreement to allow AAU to transfer the SRO unit designations at the existing 1055 Pine Street building to other buildings actually creates a large financial windfall for AAU, as the property can now be valued at market rate values. Without the transfer of units to current tourist hotel rooms at 620 Sutter St., there would be an Article 41, section 41.13 requirements to contribute 80% of the cost of replacement housing for converting or removing the existing 155 beds in group housing at 1055 Pine Street. Additionally, AAU saves thousands of hours of their own and consultant time trying to make the project happen, and taking risks and responsibilities for managing permanent affordable housing.

2. THE TOTAL AMOUNT OF MITIGATION FOR LOST HOUSING IS SUBSTANTIALLY BELOW THE CITIES OWN STANDARDS

The original agreement never sufficiently evaluated the value of the former SRO and Low-Income Apartments converted over time illegally by AAU. There is no evidence provided in all the documents of how the city arrived at the figure they negotiated, and it is simply much lower than

would have been expected if the city were using its own guidelines on a building by building basis. Not including the Pine Street building, AAU acquired and converted 10 buildings containing 144 units and 128 group housing or SRO rooms with the total capacity for 681 beds. Using the city's own mitigation formula for SRO conversion payouts and the costs for local non-profits to acquire SRO units, the actual mitigation costs for the 681 beds being converted to student housing, plus the 155 beds at Pine Street being re-designated from Group Housing subject to Article 41, should be \$78,075,000. The city is proposed a total of \$37,600,000, which is the in-lieu fee for allowing AAU not to do the 160-unit Pine Street Project as originally negotiated.

The fee the City ought to be getting is amount is calculated using current city policy requirements as shown on the attached AAU Housing Summary. The Breakdown is:

- a. For residential hotels or group housing, Article 41.13 requires a payment of 80% of the total costs including land acquisition to replace SRO units to current standards. Using figures from actual MOHCD funded projects of SRO and senior housing types, the estimated 80% figure is \$205,500 per one-room single occupancy unit, and \$250,000 per group housing small apartment suite. TOTAL \$26,375,000
 - b. For lower income apartments, City policy is to obtain funding equal to the city share of non-profit housing costs, assuming other non-city funds would provide additional resources. In these cases, the city does not try to get full replacement costs, so non-profits do access other sources such as tax credits, discounted funds, state and federal grants, and some mortgage debt to develop new units. The per unit figure of \$235,000 used by the City for the proposed Pine Street project has been verified by a local non-profit as close to the actual amount currently needed in 2018-19, and was used to calculate the city share. TOTAL \$33,135,000
 - c. For in-lieu fee for removal of units at 1055 Pine Street the city calculated a fee of \$235,000 per unit. TOTAL \$18,565,00
3. THE AAU's SPREADOUT CAMPUS PLAN REMAINS LARGELY INTACT The agreement also fails to sufficiently constrain AAU's currently widespread holdings into viable campus cores. Continued use of the isolated Cannery, dependence on a private bus transit system, use of city Rec and Park land for sports activities, and the removal of large retail frontages from active use all contribute to a campus that encroaches unnecessarily into many far-flung neighborhoods, and whose ground floor uses are in many cases deadening street retail activity.
4. THE PROPOSED PERFORMANCE SCHEDULE AND FUTURE OBLIGATIONS STIPULATIONS ARE INSUFFICIENT PROTECTIONS

The summary of future performance and obligations provided by the city do not adequately protect the city against default and possible bankruptcy by AAU. The AAU has a demonstrated history of bad-faith activities and failures to comply with city regulations when faced with financial penalties. As a for-profit entity with non-transparent financial operations, it could also quickly transfer assets and financial reserves to avoid payment of penalties or even declare insolvency. The city needs to immediately attach liens on AAU property whose total amount is equal to the total settlement amount, and only remove those liens as required payments are made. The major share of the settlement funds is related to illegal housing conversions, so the 10 residential properties that were former SRO and lower income apartment units should collectively have the liens related to housing mitigation.

In addition, there is no evidence that the AAU will be able to meet the student housing meeting formula beginning just 3 years hence. There must be an enforceable mechanism put in place that

allows the city to cap new admissions to AAU and establishes stiff penalties for violations of this as a strong disincentive. Students are admitted to universities 6-9 months before arriving, so this means establishing a city review of admissions starting in early 2000 if the 32% figure is to be met now. One possible leverage the city could use to cap admissions if metering is not met is to make academic building permits of occupancy conditional upon meeting metering requirements, and if not shut down use of some classroom and studio spaces as required to reduce teaching spaces. Hopefully the threat of this would provide a disincentive to violating the agreement, as financial disincentives unless tied to placing punitive liens on property have not historically motivated the AAU to comply.

Actions Needed

For the final Settlement Agreement to adequately, fairly, and comprehensively address the cumulative practices of the AAU the following must occur:

1. The City must establish a per bed housing mitigation fee for all properties for which AAU proposes to continue operating for any residential purposes using a transparent and equitable methodology based on current city policies and practices as suggested.
2. In allowing AAU to convert illegally used units to student housing, even with a mitigation fee the city should add a condition that these units are henceforth only permitted to be used as student housing, or as housing for low-moderate income occupants, and never reconverted to market-rate residential uses.
3. The City must establish geographic boundaries constraining AAU from operating programs or student housing outside core campus areas, and divest itself of properties outside these boundaries – including divestment of the Cannery, 1916 Octavia and 1900 Jackson Street (group housing too far west of Van Ness that would be better used for non-profit group housing facilities), and the Star Motel
4. The City should allow conversion of former live work buildings to student housing only with a levy of a conversion fee
5. Given the long-time lead required to find a site and get permits and construct new student housing, AAU should be given a year or less to acquire a site or face penalties. One way to insure they build new student housing is to require the use of the Pine Street property for new student housing.
6. The City should ban the AAU shuttle system
7. The City should mandate an AAU SF Park and Rec agreement on use of public parks and fields by AAU with higher fees and usage limits.
8. Much more aggressive mechanisms must be adopted to be sure AAU complies with the agreement, including uses of liens, building occupancy permits, and other actions other than penalties and access to the courts to guarantee performance or get adequate restitution for non-performance.

AAU HOUSING SUMMARY

revised November 12, 2019

TOTAL BEDS PROPOSED IN SETTLEMENT AGREEMENT	1843 beds in	16 Buildings	
BEDS IN ILLEGALLY CONVERTED SRO HOTELS AND APTS.	681 beds in	9.5 Buildings	860 Sutter is part SRO hotel, part tourist hotel
BEDS IN ILLEGALLY CONVERTED LIVE-WORK UNITS	132 beds in	1 Building	
BEDS IN TOURIST HOTEL or MOTEL ROOMS	1030 beds in	5.5 Buildings	860 Sutter is part SRO hotel, part tourist hotel
BEDS IN 1055 PINE, CONVERTED CONVALESCENT HOME	155 beds in	1 Building	To be vacated as per settlement agreement - designation as sro rooms removed and transferred to 860 Sutter

DETAILED RESIDENTIAL BUILDING INFORMATION

SUMMARY of AAU HOUSING with proposed bed count and room count

Category I: AAU Beds in former hotel/office space, not a conversion of existing apartments or SRO. Action: consider retaining as student housing

620 Sutter	136 beds	61 rooms	retain
655 Sutter	177 beds	55 rooms	retain
817-825-831 Sutter	222 beds	111 rooms	retain
860 Sutter - current tourist hotel portion	84 beds	39 rooms	project converts these to SRO/student housing
SUBTOTAL	619 beds	266 rooms	
2550 Van Ness Heritage Motel	306 beds	136 rooms	
1727 Lombard Star Motel	105 beds	52 rooms	
SUBTOTAL	411 beds	188 motel buildings	
TOTAL	1030 BEDS	454 ROOMS	

Category II: AAU Beds/Units in former live/work units, not a conversion of existing apartments or SRO. Action: Consider retaining as student housing

575 Harrison	132 beds in	33 live work units	retain
168 Bluxome Street	beds in	units	withdrawn
TOTAL	132 BEDS	33 UNITS in live/work spaces	

Category III: AAU Beds/Units in former SRO or Apartment Buildings that must be divested or mitigated. Action: Require sale to non-profit or mitigation fee

SRO AND GROUP HOUSING UNITS ACCORDING TO PLANNING				AAU SHOULD:
2211 Van Ness	24 beds in	3 units plus 4 rooms	*	convert back or mitigate
2209 Van Ness	57 beds in	18 rooms	*	convert back or mitigate
1916 Octavia	46 beds in	22 rooms	*	convert back or mitigate
1153 Bush	42 beds in	16 rooms	*	convert back or mitigate
860 Sutter SRO room portion	102 beds in	50 rooms		mitigate as part of 860 use as student housing
SUBTOTAL SRO and GROUP HOUSING UNITS	271 BEDS	110 ROOMS + 3 UNITS		
APARTMENT UNITS ACCORDING TO PLANNING				
1900 Jackson	42 beds in	9 units		convert back or mitigate
1080 Bush	150 beds in	42 units plus 15 rooms in 1 group housing unit		convert back or mitigate
736 Jones	74 beds in	35 units		convert back or mitigate
680-88 Sutter	80 beds in	27 units		convert back or mitigate
560 Powell	64 beds in	27 units		convert back or mitigate
SUBTOTAL APARTMENT UNITS	410 BEDS	141 UNITS plus 15 rooms in 1 group housing unit		
TOTAL SRO, GROUP HOUSING, AND APARTMENT UNITS	681 BEDS	144 UNITS + 125 ROOMS		

TOTAL ALL BEDS Categories I, II, III	1843 BEDS		Total of all beds in all combined SRO and apartment units proposed by AAU 2019
TOTAL COMBINED UNITS AND ROOMS Categories I, II, III	579 ROOMS plus	180 UNITS	Total of SRO and group housing rooms plus apartment units owned by AAU 2019

The final AGREEMENT includes the following provision, which by inference is assumed to be mitigation for all AAU conversions, and is the basis for then designating all the above properties as STUDENT HOUSING

AMENDED AGREEMENT PROPERTIES

1055 Pine current use	current 155 beds	81	\$ 19,035,000	\$ 235,000	current proposal to vacate and pay in lieu fee
1069 Pine current site adjacent to 1055 Pine		79	\$ 18,565,000	\$ 235,000	current proposal to retain lot and pay in lieu fee
PROPOSED FEE FOR HOUSING FROM FINAL SETTLEMENT			\$ 37,600,000		

AAU ALTERNATIVE HOUSING MITIGATION CALCULATION

The following is provided as an example of how a housing mitigation amount could have been calculated based on current city policies and practices:

ANALYSIS OF POSSIBLE REPLACEMENT COSTS

1. Article 41 - requires payment of 80% new develop. Costs	125 rooms plus	\$ 205,000	per unit	\$ 25,625,000	Article 41 section 41.13
FOR ROOMS OR "GROUP HOUSING UNITS" IN SRO buildings	3 units in sro's	\$ 250,000	per unit	\$ 750,000	based on creating new SRO units with individual
			subtotal	\$ 26,375,000	handicapped accessible baths but no kitchens
2. City Policy to Mitigate Loss of former low income apartments	141 units	\$ 235,000	per unit	\$ 33,135,000	
FOR UNITS using city figure of \$235,000 city share of subsidy					
Not including Pine Street					
TOTAL MINIMUM MITIGATION AMOUNT FOR Category III Buildings				\$ 59,510,000	
PLUS NEGOTIATED MITIGATION FOR 1055 Pine Street				\$ 18,565,000	
ACTUAL MINIMUM AMOUNT CITY SHOULD COLLECT UNDER CURRENT HOUSING POLICIES				\$ 78,075,000	

RECENT SRO AND SENIOR HOUSING DEVELOPMENT COSTS FUNDED BY MOHCD				Completed Average
Project Name	<i>Transbay Block 11 - Rene Casanave</i>	<i>Rosa Parks II</i>	<i>Dr. George Davis Sr. Community</i>	
Address	25 Essex	1239 Turk St	1751 Carroll Ave	
Lot sq.ft	17,196	26,000	80,209	41,135
Compl. Date	3/1/2013	7/26/2016	6/1/2016	
# of Units	120	98	121	113
# of BR¹	120	99	125	115
Res.²	76,460	62,809	121,860	87,043
Non-Res.	3,395	31,560	30,955	21,970
Total	79,855	94,369	152,815	109,013
Acq. Cost	\$ 922,933.00	\$ 2,706,500.00	\$ 4,991,545.00	\$ 2,873,659.33
Constr. Cost⁶	\$ 33,541,645.00	\$ 31,227,020.00	\$ 41,779,783.00	\$ 35,516,149.33
Soft Cost	\$ 13,951,569.00	\$ 11,270,730.00	\$ 11,557,097.00	\$ 12,259,798.67
Total Dev. Cost	\$ 48,416,147.00	\$ 45,204,250.00	\$ 58,328,425.00	\$ 50,649,607.33
per unit building area	637.1667	640.9082	1,007.1074	
cost per unit	\$ 403,467.89	\$ 461,267.86	\$ 482,053.10	
cost per square feet	\$ 606.30	\$ 479.02	\$ 381.69	\$ 489.00
Local Subsidy³	\$ 18,879,547.00	\$ 1,181,988.00	\$ 26,221,201.00	\$ 15,427,578.67
Comments	8 story Type IA -Supportive housing (HOPWA, DAH)	5 Story (4 story Type V over 1 story Type I) INCL. RPI costs	4 Type V over 2 Type IA. (bsmt pkg) & comml. Kitchen (significant non-res.)	
PROTOTYPE SRO PROJECT				
			assume 350 sf per unit plus 25% more for circulation, commons etc - no supportive service spaces = 437.5 SF per unit in 2017	\$ 213,938.91
			Adjustment for inflation to 2019	\$ 256,726.70
			Article 41 required payment for removing or demolishing SRO units = 80% of total costs	\$ 205,381.36