



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: July 20, 2021
TO: Christine Daniels, City Manager
FROM: Charles S. Bryant, Director of Community Development
SUBJECT: Study Session – EmeryStation Overland Flexible Community Benefit Proposal

ACTION REQUESTED

Staff requests that the City Council consider this staff report and provide direction by responding to the questions posed under the section “Issues to be Considered”.

SUMMARY

Wareham Development is proposing to construct a new 5-story, 300,000 square foot Research and Development building with a 450 space 7-level parking garage on the western portion of the block bounded by 62nd and 63rd Streets and Overland Avenue, to be called “EmeryStation Overland”. The project will need 100 development bonus points for height because a portion of the site containing the proposed garage is in the 30’/55’ height district and the garage will have a height of 55’, the maximum allowable with a bonus. Pursuant to the Planning Regulations, 50 of the bonus points must come from paying an increased Affordable Housing Impact Fee, and the other 50 points must come from the provision of other community benefits. One of the categories of community benefits, called the “Flexible Community Benefit”, allows developers to propose a currently undefined community benefit, which must be approved by the City Council based on 10 bonus points for every 1% of project construction valuation.

Wareham has proposed that, in order to earn some of the community benefit bonus points, a portion of the live-work units in the adjacent Hollis Street Building be set aside as Below Market Rate (BMR) units. This would trigger City Council approval of the entire project with a recommendation from the Planning Commission. The purpose of this study session is to gauge the Council’s reaction to this proposal. If Wareham ultimately decides not to pursue the Flexible Community Benefit, then approval of the project will be decided by the Planning Commission, whose decision will be appealable to the City Council. In order for the Council to remain unbiased in the event that the Flexible Community Benefit is not pursued and the Planning Commission decision is appealed, this study session focuses narrowly on the issue of the Flexible Community Benefit, with only enough information about the overall project to provide context for the Council’s discussion. On the other hand, if Wareham ultimately decides to pursue the Flexible Community Benefit, meaning that the decision on the project would be made by the City Council, then a Council study session on the full project will be scheduled in the future.

BACKGROUND

The City's Planning Regulations outline base and bonus categories for residential density, height and floor area ratio (FAR). If a developer chooses to request development bonuses, they can do so by providing affordable housing and community benefits. If a project requires a maximum of 100 bonus points, then half of the points (50) are obtained by providing affordable housing units for residential projects or an increased Affordable Housing Impact Fee for non-residential projects, and the remaining 50 points are obtained by providing community benefits, as outlined in Table 9-4.204(e): *Community Benefits and Bonus Points* (see Attachment 1).

Table 9-4.204(e) outlines seven possible categories of community benefits, which include the following:

- (1) Public Open Space;
- (2) Zero Net Energy;
- (3) Public Improvements;
- (4) Utility Undergrounding;
- (5) Additional Family Friendly Units;
- (6) Monetary Contribution to Citywide Fund to Support Small Businesses; and
- (7) Flexible Community Benefit

The seventh category, *Flexible Community Benefit*, is an all-encompassing, undefined category that allows a developer to be creative by proposing a community benefit that is significant and substantially beyond normal requirements. Unlike the other six categories, if a developer elects to obtain the required bonus points partly or fully under this category, then the entire project requires approval from the City Council, with a recommendation from the Planning Commission. The regulations state that the City Council shall determine the number of points to grant for the proposed community benefit based on 10 points for every 1 per cent of project construction valuation.

Wareham Development has elected to obtain a portion of their bonus points for the EmeryStation Overland project under this category. The purpose of the study session is only to solicit feedback on whether Wareham's proposal for the Flexible Community Benefit is something that the Council is willing to entertain. If so, then staff will schedule a second City Council study session where the proposal would be presented in its entirety for feedback on all aspects of the project. On the other hand, if the Council thinks that the proposed Flexible Community Benefit is not appropriate in this case, then the project will be reviewed by the Council only if it is appealed.

DISCUSSION

The first section below briefly describes the project and is followed by analysis of Wareham's proposal.

Project Description

Wareham Development proposes redevelopment of a portion of their property bounded by Overland Avenue and 62nd, 63rd, and Hollis Streets, and totaling approximately 172,560 square feet. The proposal includes preservation of the existing Hollis Street Building that accommodates Ruby's Café and 41 live-work units, and demolition of all other structures on the western portion of the block. In the space created by the demolished buildings, the project will construct a new 5-story, 300,000 square foot Research and Development ("R&D") biotech/lab building and a new 450 space 7-level parking garage that would include one basement level of parking. The new R&D building would be located on the western portion of the parcel and the garage would be along 63rd Street, behind the Hollis Street Building. The R&D building would be 80 feet high and shaped in a U-formation with a 10,600 square foot central plaza off of 62nd Street, with the building front oriented towards Horton Street to the south. The project would also provide a new bicycle/pedestrian path for the public that would cut through the block between 62nd Street and 63rd Street.

The project was reviewed by the Planning Commission at its April 22, 2021 meeting; the staff report and plans presented to the Commission are attached (see Attachment 2).

Please note that the applicant has made some revisions to the plans since the Planning Commission study session. The key change is that the bicycle/pedestrian path is now a straight path through the site instead of a circuitous path wrapping around the garage, as previously shown. This change is not germane to the Council's discussion of the Flexible Community Benefit proposal and is not reflected on the attached plans that were reviewed by the Planning Commission.

Flexible Community Benefit Proposal: Designating Existing Live-Work Units As Affordable Units

Wareham's proposal (see Attachment 3) is to convert existing vacant live/work units into Below Market Rate (BMR) housing to satisfy the need for Flexible Community Benefits points. The proposal concludes that, by converting existing market rate units to below market rate units, the public will benefit by (1) retaining legacy live/work units in Emeryville, (2) expanding the number of low-income housing opportunities in Emeryville, and (3) creating affordable housing units in Emeryville in a cost effective way. Additionally, the proposal states that, by calculating the loss in rental revenue between the market rate rent and affordable rent and compounding that present day value over the period of affordability, the value would equate to the percentage of construction valuation necessary to receive the desired number of community benefit points. The proposal assumes the following:

- Affordable rent to be charged to the converted units will be based on the California Tax Credit Allocation Committee (CTCAC) published rent limits;
- Converted units will be set aside for households between 40-70% of the Alameda County Area Median Income ("AMI");
- Converted units will remain affordable for 30 years;
- Converted units will have a reasonable rent increase of 5% annually, with a 4% discount rate; and

- Converted units will include nine vacant units only.

Applicability of the Affordable Housing Program

The City's Affordable Housing Program ("AHP") requires that, for new construction and conversion of non-residential space into rental units, the developer shall set aside 12% of total project units as designated BMRs, of which 4% of total project units shall be designated as BMRs for very low-income households and 8% of total project units shall be designated as BMRs for low-income households. The City may only approve a proposal to provide affordable rental units if the applicant agrees in a recorded agreement with the City to limit rents in consideration for a direct financial contribution or a form of assistance (Housing Affordability Agreement, or "Agreement"). The conditions shall require an Agreement to be recorded prior to occupancy that indicates the number, type, location, approximate size, and construction scheduling of all dwelling units, the appropriate rent levels, provision for income certification and screening of potential occupants of affordable units, a density bonus, if applicable, compliance with the Costa-Hawkins Act, and such reasonable information as shall be required by the City for the purpose of determining the applicant's compliance with the AHP. The Agreement shall require that the rental affordable units be rented to low income households for a period of at least fifty-five years from the date of recordation of the Agreement unless all of the units in the residential project are offered to the public for purchase. (Planning Regulations Section 9-5.407.)

EmeryStation Overland is not required to comply with AHP, as the conversion of the live/work units does not qualify as conversion of non-residential space into rental units. However, the AHP can provide the policy basis for how the City Council may consider the approval of the conversion of market rate units into Below Market Rate units.

Applicable Rents

The City of Emeryville adopts a Housing Affordability Table annually that outlines the affordable rent limits, income limits, and maximum sales prices for BMR units in Emeryville. The Housing Affordability Table for 2021 was adopted by the City Council on June 15, 2021. The Housing Affordability Table does not align with the CTCAC published rent limits as proposed by Wareham; however, the table is based on the housing affordability definitions found in the California Health and Safety Code at Section 50052.5 and 50053. Additionally, the City only publishes rent limits at 50%, 80%, 100% and 120% of AMI, while CTCAC publishes rent limits at 10% increments. Table 1 illustrates the difference between the two published rent schedules for studio units in 2021.

Table 1: Rent Comparison Chart per Income Category

	Emeryville	CTCAC	Difference
40% AMI	NA	\$959	NA
50% AMI (Very Low)	\$1,099	\$1,198	\$99
70% AMI	NA	\$1,678	NA
80% AMI (Low)	\$1,139	\$1,918	\$599

Note: A utility allowance and required charges/fees must be deducted from rents shown above.

Income Targeting

The AHP requires that 12% of total project units be designated as BMR units, of which 4% of total project units shall be designated as BMRs for very low-income households (i.e. 50% AMI) and 8% shall be designated as BMRs for low-income households (i.e. 80% AMI). The developer is proposing that the number of affordable units be finalized after the City Council approves their approach for Flexible Community Benefits. However, Wareham has provided two analyses for four units to be designated as affordable to household between 40-60% AMI or 50-70% AMI (see page 8 of Attachment 3). Table 2 outlines the differences between the income targeting options.

Table 2: Income Targeting Options

	AHP Requirement	Developer Option #1	Developer Option #2
Total Units	5	4	4
Very Low Income Units (50% AMI)	2	3	1
Low Income Units (80% AMI)	3	1	3

Affordability Period

The AHP requires that BMR units be restricted for 55 years through the recording of an Housing Affordability Agreement. The developer is proposing that the BMR units be affordable for 30 years and does not specify if the 30 years would be secured through a recorded agreement.

Rent Increases

BMR units are subject to annual rent increases not to exceed the published rent schedule. The California State Legislature adopted AB 1482 in October 2019, which limits annual rent increases to no more than 5% plus local CPI (CPI = inflation rate), or 10%, whichever is lower. Units that have received a Certificate of Occupancy within the past 15 years or that are under a local rent restriction agreement are not required to comply with the State requirement. Table 3 illustrates the maximum Emeryville rent increase trend for the past three years for studio units.

Table 3: Emeryville Rent Increase Trend

	2018	2019	2020	2021
50% AMI	\$914	\$978	\$1,043	\$1,099
% Increase		7%	7%	5%
80% AMI	\$1,097	\$1,173	\$1,252	\$1,319
% Increase		7%	7%	5%

Other BMR Rental Requirements for Consideration

The AHP also incorporates other requirements for BMR units that were not identified by the developer but should be taken into consideration.

- *Marketing Plan:* A marketing plan must be submitted to the City for approval. This plan may be required to be updated annually, every five years, or upon request by the City.
- *Lottery:* Property Management staff must initially populate BMR units through a lottery process pursuant to the BMR Rental Guidelines.
- *Waitlist:* Property Management staff must maintain a waitlist for BMR units pursuant to the BMR Rental Guidelines.
- *Annual Income Recertification:* Property Management staff must conduct an annual income recertification of BMR residents to ensure that they continue to meet the income restriction requirements.
- *Annual Report:* Property Management staff must submit an Annual Rental Compliance Report to the City to ensure compliance with the rent and income restrictions.
- *Management Plan:* A management plan may be required to be submitted to the City for approval. The management plan must identify a schedule for when major maintenance or replacement of items will occur.

Methodology for Determining Value of Flexible Community Benefit

The developer has proposed that the anticipated loss of rental revenue for the dedicated affordable units, projected through the affordability period, be used to determine the value of the Flexible Community Benefit, equating to 3% of construction valuation necessary to secure 30 bonus points. According to their proposal, “a valuation estimate of \$2 million was used for the one percent” (see page 4 of Attachment 3). The two examples provided show of how this could work with four BMR units, using their proposal of a 30-year affordability period, 5% annual rent increase, and CTCAC rent limits (see page 8 of Attachment 3). Example 1 equates to a net present value of \$2.18 million and Example 2 equates to a net present value of \$2.42 million. Using this methodology, conversion of these four units to BMRs would equate to a little over 10 bonus points. If 30 bonus points are sought, approximately three times as much net present value will be required.

Attachment 4 shows staff’s analysis of Example 2, as well as another option that would be compliant with AHP guidelines (which, as noted above, is not required for this project). Staff’s analysis produces a slightly different result for Example 2, with a net present value after 30 years of \$2.79 million, compared to the applicant’s result of \$2.42 million. The second page of Attachment 4 shows the result if the City were to apply the AHP program guidelines to this work (i.e., 5 units (12% of the 41 units), 55-year affordability period, average rental rate increase, AHP rent limits). The net present value would equate to about \$10.5 million by following the AHP guidelines. If it is assumed that one percent of construction valuation is \$2 million, as the applicant contends, then this would equate to a little over 5% of construction valuation, which would be good for 50 bonus points. Since the AHP guidelines are not required to be followed for this project, the City Council would have

the option to negotiate which requirements the Developer must follow.

It should be emphasized that these calculations are illustrative only. If it is ultimately determined to move forward with Wareham's Flexible Community Benefit proposal, staff will engage our affordable housing economic consultant to assist in the preparation of more detailed and precise calculations.

Issues To Be Considered

1. Does the City Council want to allow the conversion of existing market rate units to below market rate units to satisfy the Flexible Community Benefit?
2. If yes, does the City Council want to follow the AHP guidelines or require a modified set of guidelines for the developer to comply with?
 - Percent of units affordable (12% or another percentage)
 - Income targeting of units (4% at 50% AMI and 8% at 80% AMI, or another percentage of units at different income levels)
 - Applicable rent limits (AHP or CTCAC)
 - Affordability period (55 years or 30 years)
 - Other BMR rental guidelines
3. If yes, does the City Council agree with the methodology outlined to calculate net present value as a determinant for the valuation of construction cost?

FISCAL IMPACT

This item is for informational and discussion purposes only; there is no fiscal impact.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has discussed the project and Flexible Community Benefit proposal with the applicant. Also, as noted above, the Planning Commission held a study session on the project on April 22, 2021. The Commission was generally not in support of the proposal to obtain bonus points via conversion of a portion of the existing 41 live-work units into BMRs. It was noted that this proposal would not actually add to the number of affordable units in the City, as the applicant stated that these units were already being rented at below market levels. There was also a concern expressed regarding potentially displacing existing tenants. (At that point, the applicant had not clarified that the conversion would affect vacant units only.)

CONFLICT OF INTEREST

None.

CONCLUSION

Staff requests that the Council discuss the issues listed above and provide feedback. If Wareham's decision is ultimately to pursue the proposed Flexible Community Benefit, then staff will schedule a future City Council study session on the overall project.

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APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Christine Daniel, City Manager

ATTACHMENTS:

1. Table 9-4.204(e): *Community Benefits and Bonus Points*
2. April 22, 2021 Planning Commission staff report and attachments
3. Wareham Proposal for Community Benefits
4. Staff's Net Present Value Analysis