

STAFF REPORT

DATE: January 22, 2018

TO: Social Services Commissioners

FROM: Ashley Feeney, Director, Community Development & Sustainability

SUBJECT: Proposed Ordinance Amendment to Article 18.05 Allowing for City Council Discretion to Approve Project Specific Affordable Housing Plans for Multifamily Rental Developments

Recommendation

1. Receive a report and staff presentation on the proposed Ordinance amendment
2. Recommend City Council approve the proposed Ordinance Amending City of Davis Municipal Code Article 18.05 to Provide Discretion to Approve Project Specific Affordable Housing Plans for Multifamily Rental Developments

Background

Currently the Municipal Code Section 18.05 requires a developer of rental housing developments containing twenty or more units to provide, to the maximum extent feasible, at least twenty-five percent of the units as affordable housing for low-income households and at least ten percent of the units as affordable housing for very-low income households.

The existing ordinance allows a developer to meet the City's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements. The existing ordinance also acknowledges the Palmer decision, which precluded local governments from requiring a developer to set affordable rent levels for private rental housing unless the developer has agreed to such rental restrictions in exchange for financial assistance or other consideration from the local government.

On September 29, 2017, Governor Brown signed Assembly Bill 1505 allowing for local jurisdictions to have inclusionary housing ordinances in place (i.e., allowing local governments to impose inclusionary zoning requirements on new rental housing developments) effectively overturning the Palmer decision as of January 1, 2018.

The City has several development applications that have been in process with the understanding that Palmer was in effect and that inclusionary housing would be negotiated with the City as consideration for project entitlements. The City Council held a workshop on November 3, 2017 and recognized that the existing inclusionary ordinance requirements should be studied to see if revisions are warranted. The City Council also expressed interest in providing for greater flexibility in how to provide inclusionary housing in various development prototypes, recognizing a one size fits all approach may not be appropriate given the complexity of different rental housing

models. The City Council also expressed interest in allowing for original proposals that integrate affordable units/beds into projects inclusive of the potential to serve the student population.

The City has engaged a consultant to prepare a financial analysis to study various rental housing prototypes in an effort to determine what may be an appropriate level of inclusionary housing to be placed on different projects (i.e. traditional multifamily, student serving, vertical mixed use, core infill small, core infill large, etc..) in recognition that housing diversity is important and the inclusionary ordinance may need to have greater flexibility in order to produce a diverse rental housing stock. This effort will inform a potential comprehensive update of the inclusionary housing requirements for multifamily housing that is more targeted in nature allowing for the potential to incentivize the production of different housing types and providing greater flexibility in how inclusionary housing is provided in different housing types.

The proposed ordinance amendment will effectively serve as a transition to allow Council to act on a project specific affordable program for certain projects that have been in process while Palmer was in effect should they desire to do so on an interim basis prior to potentially adopting a comprehensively revised inclusionary ordinance.

Social Services Commission Review

Staff is bringing this item before the Social Services Commission for review as part of the function/purpose of the commission is to advise City Council on matters related to affordable housing.

Staff Comments

Staff proposed that the Social Services Commission recommend City Council approve the proposed ordinance amendment allowing for City Council discretion to act on project specific affordable housing plans for multifamily rental developments.

Attachments

1. Proposed Ordinance Amending City of Davis Municipal Code Article 18.05 to Provide Discretion to Approve Project Specific Affordable Housing Plans for Multifamily Rental Developments.

ORDINANCE NO. ____

**ORDINANCE AMENDING CITY OF DAVIS MUNICIPAL CODE ARTICLE 18.05
TO PROVIDE DISCRETION TO APPROVE PROJECT SPECIFIC AFFORDABLE
HOUSING PLANS FOR MULTIFAMILY RENTAL DEVELOPMENTS**

WHEREAS, Section 18.05.060 of the City of Davis Municipal Code Article 18.05 (the “Affordable Housing Ordinance”) includes a requirement that a developer of rental housing developments containing twenty or more units shall provide, to the maximum extent feasible, at least twenty-five percent of the units as affordable housing for low income households and at least ten percent of the units as affordable housing for very low income households. A developer of rental housing developments containing between five and nineteen units, inclusive, shall provide, to the maximum extent feasible, fifteen percent of the units to low income households and ten percent to very low income households. Residential projects consisting of fewer than five market rate units will not be required to produce affordable units; and

WHEREAS, in 2009, the Second District Court of Appeal of the State of California published its opinion in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2nd Dist. 2009) 175 Cal.App.4th 1396 (“*Palmer*”), which held that the Costa-Hawkins Act (Civil Code §1954.50 *et seq.*) precluded local governments from requiring a developer to set affordable rent levels for private rental housing unless the developer has agreed to such rental restrictions in exchange for financial assistance or other consideration from the local government; and

WHEREAS, the Affordable Housing Ordinance acknowledges that the City could not enforce Section 18.05.060 and declared that the City could not enforce Section 18.05.060 while *Palmer* was in effect, and declares that Section 18.05.060 shall be operative at such time that the *Palmer* case is overturned, disapproved or depublished by a court of competent jurisdiction, or the state legislature amends state law to authorize local governments to require the development and restriction of affordable rental units in the manner set forth in Section 18.05.060; and

WHEREAS, since the issuance of the *Palmer* decision, when considering housing developments that includes rental housing, the City has negotiated with each developer of such housing for the inclusion of affordable housing on a case-by-case basis in exchange for other consideration from the City as a component of a development agreement negotiated in accordance with Government Code section 65864 *et seq.*; and

WHEREAS, in 2017, the Governor of the State of California signed into law AB 1505, which expressly authorizes cities to require as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households; and

WHEREAS, in AB 1505 the Legislature declared its intent in granting cities such express authorization was to supersede the holding and dicta in the court decision of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 to the extent that the

decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances; and

WHEREAS, as a result when AB 1505 became effective on January 1, 2018, Section 18.050.060 came back into effect, triggering the requirement that rental housing developments include twenty-five percent of their units as low income units and ten percent of their units as very-low income units; and

WHEREAS, the City is currently processing multiple applications for multifamily rental housing developments that were received prior to the adoption of AB 1505, and were proposed with the expectation that each development would negotiate its contribution to the City's affordable housing needs as a component of the development agreement for each proposed project, and would not be subject to the affordable housing requirements imposed on rental housing developments in the City prior to the adoption of *Palmer*; and

WHEREAS, the Apartment Vacancy and Rental Rate Survey prepared by the UC Davis Office of Student Housing in 2016 showed a total of 15 vacant units in 2016, representing a 0.2 percent apartment vacancy rate in the City, which is substantially lower than the last reported Countywide vacancy rate of 4.2 percent; and

WHEREAS, the City's General Plan Policy HOUSING 1.2 declares that the City will strive to maintain an adequate supply of rental housing in Davis to meet the needs of all renters, including students; and

WHEREAS, based on the demand for rental housing as indicated by the City's extremely low vacancy and testimony before the City Council by students and others in need of rental housing on multiple occasions, the City desires to ensure that it is financially feasible to develop multifamily rental housing in the City of Davis, while still furthering the City's other land use and housing goals, including but not limited to the provision of adequate affordable housing; and

WHEREAS, the City is concerned that the current requirements imposed on rental housing development by the Affordable Housing Ordinance will serve as an impediment to the development of multifamily rental housing, especially for those developments that were proposed prior to the adoption of AB 1505, which could not anticipate that they would be subject to the requirements of the Affordable Housing Ordinance; and

WHEREAS, on _____, 2017, the City Council held a community workshop to discuss the City's Affordable Housing Ordinance and potential approaches to furthering this City's goals for providing affordable housing in the City; and

WHEREAS, since the Council workshop, City staff has been in the process of analyzing the economic impacts of the current requirements of the Affordable Housing Ordinance as applied to market rate rental development, and plans to propose revisions to the Affordable Housing Ordinance based in part on the findings of that analysis; and

WHEREAS, until such time that the City Council has the opportunity to review and consider

proposed revisions to the Affordable Housing Ordinance, the City desires to retain the flexibility to require market rate multifamily residential development to address the City's affordable housing needs on a case by case basis as deemed appropriate by the City Council, consistent with the manner utilized by the City since the issuance of the *Palmer* decision in 2009; and

WHEREAS, the Social Services Commission held a meeting January __, 2018 to consider and recommend that the City Council adopt the amendments to the Code as set forth in this ordinance; and

WHEREAS, the City Council discussed amendments to the Code at their _____, 2018 meeting and directed staff to draft the enclosed amendments for their consideration; and

WHEREAS, the revisions to the City's affordable housing requirements as set forth in this ordinance provide the City with the most effective means to satisfy its affordable housing goals while also providing flexibility for currently proposed multifamily developments to ensure that those proposed developments help to address the City's needs for for all housing types that meet the housing needs of an economically and socially diverse city;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The Recitals set forth above are incorporated into this Ordinance, and are deemed true and correct.

SECTION 2. Section 18.05.060 of the Davis Municipal Code is hereby amended to read as follows:

~~A developer of rental housing developments containing twenty or more units shall provide, to the maximum extent feasible, at least twenty five percent of the units as affordable housing for low income households and at least ten percent of the units as affordable housing for very low income households. A developer of rental housing developments containing between five and nineteen units, inclusive, shall provide, to the maximum extent feasible, fifteen percent of the units to low income households and ten percent to very low income households. Residential projects consisting of fewer than five market rate units will not be required to produce affordable units. Such housing shall be provided either by the construction of units on site or by land dedication.~~

~~The approval process for affordable housing plans will adhere to that which is required by Section 18.05.040(b). Affordable rental units shall rent to low income households at not more than thirty percent of eighty percent (thirty percent of eighty percent is twenty four percent) of area median income, and to very low income households at not more than thirty percent of fifty percent of area median income, adjusted for family size.~~

To the maximum extent feasible, each developer must meet the affordability requirement as it pertains to the project, as set forth below:

- (a) **Standard rental affordable housing requirements.** Except as set forth in subdivision (b) of this Section, All requirements listed under the respective category must be adhered to and included within the project's affordable housing plan.

- (1) Exempt Projects Pursuant to Section 18.05.080. No affordability requirements.
- (2) Projects Totaling Five to Nineteen Units for Rent.
 - (A) A number equivalent to fifteen percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low income households, households with gross incomes at or below eighty percent of area median income for Yolo County.
 - (B) A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low income households, households with gross incomes at or below fifty percent of area median income for Yolo County.
 - (C) The complete number of required affordable units must be constructed on-site.
 - (D) The on-site construction shall be in conformance with all that is stated in subsection (b), entitled On-site construction of affordable units for rent.
- (3) Projects Totaling Twenty or Greater Units for Rent.
 - (A) A number equivalent to twenty-five percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to low income households, households with gross incomes at or below eighty percent of area median income for Yolo County.
 - (B) A number equivalent to ten percent of the total units being developed, after the inclusion of the density bonus for the project, shall be developed and made affordable to very low income households, households with gross incomes at or below fifty percent of area median income for Yolo County.
 - (C) This requirement may be fulfilled through either on-site construction as stated in subsection (b) of this section or land dedication detailed in subsection (c), as long as the minimum amount of land is provided to make the site economically feasible.
- (4) Project Individualized Programs for Rental Housing.
 - (A) The developer may meet the city's affordable housing requirement with a project individualized program that is determined to generate an amount of affordability equal to or greater than the amount that would be generated under the standard affordability requirements. The affordable units must, at a minimum, meet the same income targets specified in the standard rental affordable housing requirements as set forth in subsection (a)(2) and (3).
 - (i) A project individualized program shall be developed by the developer and city staff, taken action on by the social services commission, and if the main project application requires, heard before the planning commission for decision.
 - (ii) If the main project is requesting planning entitlements that require city council approval, the project individualized program shall then be heard before the city council for final decision.
 - (iii) If the main project does not require a city council hearing, the planning commission's or the social services commission's determination may be appealed to the city council by any member of the public.

(B) The project individualized program is not intended to allow exception to a public input and review process. The project individualized program is intended to be viewed thoroughly and scrutinized in public forums, allowing for input and competition from the public, other community-based nonprofits, staff, and at a minimum, the social services commission. The public hearing at the social services commission shall be noticed to all community-based housing nonprofits in the area, to the greatest extent possible, regardless of their involvement in the project. This public hearing shall scrutinize the project based on the following criteria:

- (i) Need for government subsidy;
- (ii) Sustainability of the development and its services;
- (iii) Community need of the project type based on recent needs assessments and recent projects completed;
- (iv) Uniqueness/innovation of the proposed project;
- (v) Overall benefits and drawbacks of the project;
- (vi) Development's compliance with the standards as outlined within this article.

These meetings shall be carried out without any finite contracts in place between the parties involved, allowing for the potential direction to the developer to change the project. If the social services commission finds that the proposed project does not satisfy one or all of the criteria listed above, it may choose to direct the developer to fulfill his or her affordable housing requirement through a land dedication process. This decision may be altered at either the planning commission or city council public hearing, if the project requires review by either of these deciding bodies. Decision of either the social services commission or the planning commission to direct the developer to do a land dedication to meet his or her affordability requirement, may be appealed to the city council.

(b) **Alternative rental housing requirements.** The City Council may, at its discretion, approve alternative affordable housing requirements on a project specific basis that provide for a lesser percentage of the total units to be provided as affordable housing, or provide for affordable housing in an alternative manner, including but not limited to providing affordable housing by bedroom or individual bed, in an amount as deemed appropriate by the City Council. In considering whether to approve alternative affordable housing requirements pursuant to this subdivision (b), the City Council will consider the following factors in determining whether to approve such alternative requirements:

- (1) Whether the market rate component and/or the affordable component of the proposed development is anticipated to meet a specific housing need as identified in the City's housing element or general plan policies;
- (2) Whether the market rate units are anticipated to provide housing to low or moderate income households through the incorporation of design components that will encourage greater affordability including reduced units sizes and reduced utility costs;

- (3) The extent to which the proposed development furthers other land use goals of the City, including but not limited to reductions in the need for private vehicles and the encouragement of development consistent with the Metropolitan Transportation Plan/Sustainable Communities Strategy adopted for the Sacramento Region by the Sacramento Area Council of Governments;
- (4) Whether the proposed market rate development includes unusually high infrastructure costs or other cost burdens as conditions to the development of the project;
- (5) Whether the proposed affordable housing component may be partially funded by public subsidy or other public financing from a source other than the City;
- (6) Whether the affordable component is provided on a bed or bedroom basis, that encourages greater integration of the affordable and market rate components of the project;
- (7) Whether any or all of the affordable housing is provided at a deeper level of affordability (such as Extremely Low Income housing, as defined in California Health & Safety Code Section 50106); and
- (8) Whether the application for the proposed development was submitted to the City for consideration prior to the adoption of AB 1505.

(c) On-site construction of affordable units for rent. A developer of a development containing twenty or more units may meet the rental affordable housing requirement by constructing twenty-five percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households. A developer of a development containing between five and nineteen units, inclusive, may meet the rental affordable housing requirement by constructing fifteen percent of the total number of units on-site to be permanently affordable to low income households and ten percent of the total number of units on-site to be permanently affordable to very low income households.

- (1) **Criteria for On-Site Construction.** Affordable housing units constructed on-site shall include a mix of unit sizes, dispersed throughout the entire development, as approved by the director of the department of community development, based on the local housing needs of unit sizes. Affordable housing units shall not be clustered together in any building, complex or area of the development. Affordable housing units constructed on-site shall be constructed using the same building materials and including equivalent amenities as the market rate units.
- (2) **Affordability Agreement.** In order to qualify as affordable units pursuant to this section, such units shall be maintained in perpetuity as affordable units. The developer shall enter into

an agreement with the city to ensure the continued affordability of all affordable rental housing units in perpetuity. This agreement shall be recorded.

(3) **Density Bonus.** A one-for-one city density bonus shall be awarded for the construction of on-site affordable units.

(4) **Annual Monitoring.** Affordable units must be managed by the developer or his or her agent. Each developer shall submit an annual report to the city identifying which units are affordable units, the monthly rent, vacancy information for each affordable unit for the prior year, gross annual incomes for the households of each affordable unit during the prior year, and other information as required by city staff. This annual monitoring shall include the inspection of ten percent of the on-site affordable units. Inspection reports created by an acceptable third party and completed within the same city fiscal year will be accepted in-lieu of city staff performing the on-site inspection, for that given monitoring year.

(5) **Affordable Rents.** Affordable rents shall be determined annually on a city-wide basis by city staff based upon the area median income and utility allowances for Yolo County, as determined by the Federal Department of Housing and Urban Development, the State Department of Housing and Community Development, and the Yolo County housing authority. If these agencies do not provide the information, the City of Davis will determine monthly rent amounts based on thirty percent of the targeted household's gross monthly income.

(6) **Tenant Selection and Screening.** Please refer to Section 18.05.040(g) for the guidelines of this section.

(e~~d~~) **Land dedication.** A developer may, as an alternative to constructing the affordable rental units on-site, make an irrevocable offer of dedication to the city of sufficient land to meet the total affordable rental housing units required pursuant to this section.

(1) **Credit.** The density of development for the purpose of calculating the acreage to be dedicated under this section shall be twenty units per net acre for multifamily residential use.

(2) **Procedure—General Plan Consistency.** The developer shall identify the land to be dedicated at the time the developer applies for a pre-zone or zoning amendment, but in no event later than the application for tentative subdivision map. Building permits shall not be issued prior to identification of land to be dedicated under this section. The proposed land use of such land must be consistent with the general plan. The city may approve, conditionally approve or reject such offer of dedication. If the city rejects such offer of dedication, the developer shall be required to meet the affordable housing obligation by other means set forth in this section and identified by the city.

(3) **Characteristics and Minimum Size.** The developer shall make an irrevocable offer to the city of sufficient land, without abnormalities (shape and terrain) and with complete environmental review, which can accommodate the land dedication requirement for the development in its entirety. The land dedicated shall be of sufficient size to make the development of the required affordable units economically feasible, no less than two acres.

(4) **Density Bonus.** A one-for-one city density bonus shall be awarded for dedication under this section on the basis of twenty units per net acre.

(5) **Housing on Dedicated Land.** Housing built on land dedicated for affordable housing shall be permanently affordable. The city shall adopt a resolution establishing a process whereby

property dedicated to the city pursuant to this section may be conveyed to third parties who shall enter into an agreement with the city to produce affordable housing within a specified period of time. The city shall consult with the social services commission, nonprofit corporations, affordable housing organizations and developers in designing this process.

Housing on land dedicated pursuant to this section may consist of any of the housing types listed in Section 18.05.050(b)(2) of this article.

~~(de)~~ **Options for small developments.** Small developments of fifteen rental units or fewer, and totaling no greater than thirty-eight bedrooms in the project, that are located within the core area, that are not otherwise exempt pursuant to Section 18.05.050, and are found to meet a specified community goal, can request to fulfill the twenty-five percent affordable housing requirement through one of the following options, as approved during the review process of the project's affordable housing plan.

(1) Construction Subsidy. City staff will work with the developer to provide financial assistance to be used in the construction of the affordable unit(s) required on-site, in order to assist in ensuring the project's feasibility. The developer shall present a pro forma (for the affordable units) to staff showing the necessary amount of construction assistance needed through supplemental city funds, in order to make the project economically feasible. The project will require the standard review process, and the necessary funding approval from the city council.

(2) Combination of On-Site Construction and In-Lieu Fees. The affordability requirement may be fulfilled through a combination that includes the on-site development of a portion of the required affordable units, with the remaining amount of the affordability requirement fulfilled through in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis. The exact split of the combination shall be determined during the review process for the project's affordable housing plan, based on the developer's stated ability to provide affordable units on-site.

(3) In-Lieu Fees. In the event that the developer cannot accommodate options (1) and (2) within the proposed project, the affordability requirement may be fulfilled through the payment of in-lieu fees pursuant to an adopted fee schedule to be revised on an annual basis. A payment plan may be approved by the social services commission in the event that the developer does not have the necessary funds available for payment; however, the majority of in-lieu fees shall be paid prior to the issuance of the certificate of occupancy on any of the market rate units. In addition to the standard in-lieu fee, the city maintains the right to adopt an in-lieu fee for use in future resource-pooled projects. This special in-lieu fee would apply to projects within a specific project area where the fee is intended to be used towards a planned resource-pooled project.

~~(e) The City acknowledges that the published appellate case of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2nd Dist. 2009) 175 Cal.App.4th 1396 holds that the Costa-Hawkins Act (Civil Code Section 1954.50 et seq.) precludes local governments from requiring a developer to set affordable rent levels for private rental housing unless the developer has agreed to such rental restrictions in exchange for financial assistance or other consideration from the local government. This section shall be operative at such time that the *Palmer* case is overturned, disapproved or depublished by a court of competent jurisdiction, or the state legislature amends state~~

~~law to authorize local governments to require the development and restriction of affordable rental units in the manner set forth in this section. (Ord. 2418 § 1, 2013)~~

SECTION 3. The City Council finds and determines that this Ordinance is consistent with the City's General Plan as amended to date, including but not limited to the City's adopted 2013-2021 Housing Element. This finding is based in part on the following:

(a) The Ordinance is consistent with General Plan Policy HOUSING 4.1 which requires the City to maintain and periodically review the Affordable Housing Ordinance to require the inclusion of affordable housing in all new development areas to the extent feasible. This Ordinance will maintain the Affordable Housing Ordinance in effect which granting to the City Council the flexibility to develop alternative means to provide affordable housing and allow proposed multifamily rental developments to proceed.

(b) The Ordinance is consistent with General Plan Policy Housing 1.1 which declares the City will encourage a variety of housing types that meet the housing needs of an economically and socially diverse Davis by providing the City Council with the flexibility to consider alternative means of meeting the City's affordable housing requirements as needed to help meet the existing need for rental housing as evidenced by the City's current 0.2 percent rental vacancy rate.

(c) The Ordinance is consistent with General Plan Policy Housing 1.2 which declares the City will strive to maintain an adequate supply of rental housing in Davis to meet the needs of all renters, including students, by providing the City Council additional flexibility that may be utilized if needed to facilitate the development of additional rental housing.

SECTION 4. Upon final passage and adoption, this Ordinance shall be in full force and effect from and after the 1st day of June, 2015.

INTRODUCED on the ____ day of _____, 2018, and PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

Robb Davis
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk