



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 12, 2013

TO: Mayor and Councilmembers

FROM: Administration, Housing and Human Services, Community Development

SUBJECT: Request To Restate And Amend Covenant On Property Located At 203, 215, And 221 Hitchcock Way ("Rancho Franciscan Apartments")

RECOMMENDATION:

That Council approve a Restated and Amended Declaration of Covenants, Conditions, and Restrictions Imposed on Real Property ("Covenant") to Comply with Housing and Urban Development (HUD) Requirements Concerning Age Discrimination and Subordination of the Covenant to a New HUD Insured Loan During the Term of the Loan and Authorize the Community Development Director to Execute Such Agreements and Related Documents, Subject to Approval as to Form by the City Attorney, as Necessary.

DISCUSSION:

In 1988, the owner of the property located at 203, 215 and 221 Hitchcock Way sought discretionary development approval for a 111 unit senior housing development. The proposal sought approval for a higher density and substantially less parking than permitted by the City's Zoning Ordinance. Approval of the project was granted conditioned upon the recordation of a restrictive Covenant on the Property which would insure that elderly households would occupy the units for the life of the units with monthly rents tied to the Area Median Income for a period of thirty (30) years.

The current owner of the Rancho Franciscan Apartments, Rancho Franciscan, L.P., is proposing to refinance an existing Wells Fargo loan with a new thirty-five (35) year HUD-insured loan. Under HUD's policies related to seniors and age-restricted multifamily housing, each unit must be occupied by a "head of household" who is 62 years of age or older and may also be occupied by others not restricted by age.

The 1988 Covenant contains restrictions inconsistent with HUD's current policies. HUD is therefore requiring that, for the term of the HUD insured loan, the Covenant be amended to comply with HUD's policy. The Restated and Amended Covenant will incorporate the terms required by the HUD Security Instrument and HUD Regulatory

Agreement that result in the subordination of the Covenant to the new HUD-insured loan.

The Restated and Amended Covenant will have no impact on any current resident of the Property and the Owner will revise its standard lease to notice any future residents of the HUD occupancy requirement.

ATTACHMENT(S): 1. September 18, 2013 letter from The Towbes Group, Inc.
2. HUD Memorandum, re: Age Restrictions in FHA Insured Housing

PREPARED BY: Deirdre Randolph, Community Development Programs Supervisor

SUBMITTED BY: Paul Casey, Assistant City Administrator

APPROVED BY: City Administrator's Office

ASSET MANAGEMENT
CONSTRUCTION

September 18, 2013

Ms. Deidre Randolph
Community Development Program Supervisor
City of Santa Barbara
PO Box 1991
Santa Barbara, CA 93102



RE: Rancho Franciscan Apartments

Dear Ms. Randolph:

Rancho Franciscan, L.P. owns the Rancho Franciscan Apartments, a 111 unit senior apartment community located at 203, 215 and 221 Hitchcock Way. When the project was originally built, the owners entered into certain CC&R's, a copy of which is enclosed. Section A defines a "Qualifying Resident" and a "Qualified Permanent Resident". It goes on to state in Section C.3 that when the 62 years old or older Qualified Resident no longer resides on the premises, the remaining Qualified Permanent Resident of 45 years or older is entitled to continue his or her occupancy.

We are in the process of refinancing the property with an FHA 223(f) loan. Under HUD's FHA/MAP policies, all heads of households are to be 62 years or older, but we cannot discriminate against non-elderly family members, including children. A copy of the HUD Memorandum regarding age restrictions in FHA insured housing is enclosed. You'll note on the second page of the Memorandum that affordable properties are defined in the third bullet under #2, and since Rancho Franciscan does not qualify in that category, the policy to which Rancho Franciscan will be subject is that for market rate properties. In addition, the current CC&R's age restriction does not comply with federal law. HUD is therefore requiring that the CC&R's be amended to comply with the requirements with respect to occupancy. The new standards are in Section (g) of the draft Amendment which I have enclosed.

Per Section G.5 of the existing CC&R's, since the current covenant cannot be amended without City approval, we respectfully request that the City consent to this Amendment.

We can certify that this change will have no impact on any current resident of Rancho Franciscan Apartments, and we will revise Section 5 of our lease per the enclosed draft so that any future residents are put on notice that they must meet this HUD requirement.

Please give me a call so we can discuss this matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Michael Towbes".

MICHAEL TOWBES

cc: Sarah Knecht, City Attorney's Office
Rob Pearson, Executive Director/CEO City Housing Authority



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers

FROM: Theodore Toon, Director, Multifamily Development, HUD

SUBJECT: Age Restrictions in FHA Insured Housing

Purpose:

There are inconsistencies and conflicts between various programs, policies, controlling authority, and in HUD's implementation of issues related to seniors and age-restricted multifamily housing. These issues have been raised by lenders, owners, HFAs, members of Congress, and HUD staff around the country. A Mortgagee Letter and companion Housing Notice are currently in clearance to clarify FHA and MAP Guide policy on these issues. Until the guidance is issued, however, we can effectuate the planned policy through the use of MAP Guide waivers, where appropriate. This memorandum outlines the policy positions, and provides the basis for waiver requests to be made to Headquarters.

The objective is consistent and coherent policy that adheres to the applicable laws and regulations, fully complies with the Fair Housing Act, is fair and reasonable to implement for stakeholders, promotes affordability, and that Multifamily can effectively administer. After publication of the Mortgagee Letter and Housing Notice, these policies will be incorporated in the next version of the MAP Guide, and into Asset Management guidance.

Background:

Age Restrictions and Occupancy requirements: HUD policy regarding age restrictions has been driven by the various statutory, regulatory, and administrative references, which generally fall into the following categories:

- Elderly projects which require all Head of Households to be 62 years or older, but cannot discriminate against non-elderly family members, including children. [*Most common FHA program standard.*]
- Elderly projects which require all residents to be 62 or older.
- Elderly and disabled projects [*Section 231 new construction / substantial rehabilitation program, which require not less than 50% elderly and/or disabled.*]
- Assisted projects developed prior to 1992 which allow both Elderly and Handicapped.
- Tax Credit and Tax Exempt Bond programs generally use the 55+ (80% of residents) standard and may be able to transition to FHA standards over time, assuming local zoning is permissive. In some cases these projects have been combined with Section 8 contracts or other HUD assistance, but may or may conform to the FHA definition.
- Risk Share programs. Regulations give flexibility as to which Fair Housing exemption (55+ or other) to use in age restricted projects, but the Handbook goes to the FHA definition.

FHA/MAP Guide Policy on Age Restrictions:

1. **Market-rate properties.** FHA Multifamily Insurance will continue its longstanding policy of insuring age-restricted properties only if they are serving head of household 62 years or older, and which do not discriminate against nonelderly family members including children. This policy will apply to all market rate properties.
2. **Affordable Properties.** For affordable properties, FHA will exercise greater flexibility:
 - FHA will grandfather affordable properties with current age restrictions and allow age-restriction regimes that may not be conforming to the otherwise applicable FHA policy, whether the age restrictions are imposed by HUD, LIHTC, state, local, zoning, or affordable programs, as long as these properties meet both the relevant elderly use restrictions imposed by the applicable program, and comply with the Fair Housing Act. Properties may conform with the Fair Housing Act by not discriminating based on any protected class (including race, color, religion, national origin, familial status, disability, or sex), or if they exclude families with children under 18, by meeting a housing for older persons exemption to the Fair Housing Act (such as the 55+ exemption).
 - Assisted, age-restricted properties that serve a mix of elderly and non-elderly disabled residents pursuant to a HUD regulatory agreement or other HUD requirement will be permitted to continue to serve their targeted populations, regardless of the type of mortgage insurance or direct loan or grant financing previously used.
 - Affordable properties are defined as projects with Project based Section 8, LIHTC (new, or existing with at least 15 year remaining on the affordability use agreement), Section 202 refinancings, or “older assisted” FHA mortgage insurance programs such as Section 236 or 221(d)(3) BMIR.

Waivers:

Waiver requests on a HUD-2 must be submitted to Headquarters for approval. Please send to Tom Goade (Thomas.L.Goade@hud.gov) and David Wilderman (David.B.Wilderman@hud.gov) in the Development - Technical Support Division. The waiver request must include:

- Description of project affordability (how does it qualify as affordable?)
- Description of Age restriction currently in place, including:
 - Duration of the affordability restriction
 - Age limitation on the current restrictions
- The Borrowers certification that the project is in compliance with the application age restriction exemption under Fair Housing Law.
- The Field Office’s recommendation.

Please contact me (Ted Toon) at (202) 402-8386 if you have any questions about this memorandum.