



October 23, 2018

Katherine Hess
Community Development Administrator
City of Davis
23 Russell Boulevard
Davis, CA 95616

Via U.S. Mail & E-Mail

RE: West Davis Active Adult Community

Dear Ms. Hess:

Orange County Fair Housing Council, Inc. [dba Fair Housing Council of Orange County (FHCO)] is a private 501(c)(3) non-profit located in Santa Ana, California. The agency's mission is to foster diversity in housing through education and enforcement of state and federal fair housing laws. This includes upholding both the federal Fair Housing Act and the California Fair Employment and Housing Act (FEHA). As part of fulfilling that mission we conduct fair housing education, counseling and enforcement activities utilizing grant funds under the U.S. Department of Housing and Urban Development's (HUD's) Fair Housing Initiatives Program (FHIP).

We have recently become aware of the above-referenced development project proposed to be built within the city of Davis. We became aware of the project as a result of the concerns raised by some of the project's opponents regarding a possible resident preference to be imposed in 90% of the housing in favor of individuals that are "Davis-connected." While we believe that aspect may raise some legitimate fair housing issues, that is not what has prompted this letter. Our concern goes directly to the name that has been given to the project. More particularly the use of the term '**active adult.**'

This is of concern for two reasons. First, while fair housing and related civil rights laws recognize

senior housing, sometimes referred to as housing for older persons, those laws do not recognize or sanction adult-only or otherwise age restricted housing within California that falls outside of the specific definition of what constitutes senior housing. Straightforwardly, housing that is described as 'adult' housing rather than senior housing may give the impression that families with children are not welcome to live in that community.

HUD guidance on this issue is quite clear. HUD issued that guidance in conjunction with publishing a final rule implementing the Housing for Older Persons Act (HOPA), which became law on December 28, 1995 [SEE https://www.hud.gov/sites/documents/DOC_7769.PDF]. Among various items of guidance that were offered in a question and answer format, HUD provided the following:

May a housing facility or community advertise as "adult" housing and still demonstrate the intent to be housing for older persons?

Answer

Use of the word "adult" or "adult community" in an advertisement, sign or other informational material, or when describing the facility or community to prospective renters or purchasers or members of the public, does not demonstrate an intent to be housing for older persons as defined by the final rule. The use of these terms, on the other hand, does not destroy the intent requirement of HOPA. If a facility or community has clearly shown in other ways that it intends to operate as housing for older persons, and meets the 80% requirement, and has in place age verification procedures, the intent requirement can be met even if the term "adult" is **occasionally** used to describe it. The Department will look at the totality of the circumstances in the investigation of a complaint alleging that the facility or community does not qualify as housing for older persons. **[emphases added]**

Dubbing an entire community as an 'adult community' is clearly disfavored by this guidance.

While California may not have directly opined on the issue of the use of the term 'adult community,' Civil Code §51.3, a portion of the Unruh Civil Rights Act, makes clear that age restriction in housing is limited to housing which is described as and meets the associated requirements of 'senior citizen housing.'

It is our understanding that in order for the project to move forward there first will need to be a passage of Measure L on the November 6, 2018 ballot. That measure, if passed, will approve a General Plan Amendment to change the land use designations for the project area variously

from “Agriculture” and “Urban Agricultural Transition Area” to “Residential-Medium Density,” “Neighborhood Mixed Use,” “Residential-High Density,” and “Urban Agricultural Transition Area.” The language for that measure is already on printed ballots so we understand that, for current practical purposes, at this stage the project’s current name cannot be changed. The ballot language refers to Resolution 18-094, uses the project’s name and specifically mentions the project’s Baseline Project Features set forth in that resolution.

We understand from that resolution that at this stage, for other than 150 affordable senior housing apartments, the precise mix of housing types of the remaining maximum 410 housing units and how much will be designated as senior housing is yet to be determined. From the materials we have reviewed it appears at least a portion of these 410 units will not be designated as senior housing. Besides HUD’s above-mentioned guidance, it is for that reason we think the term ‘active adult community’ is very much misguided and needs to be changed. Otherwise, housing that that will be built that legally must be available to families with children quite likely will continue to be described as being in an ‘active **adult** community.’

There is a second reason we find the current project name problematic. That is the use of the term ‘**active**.’ It may tend imply that, even for the properly age restricted portion of the project, people with disabilities may not be welcome. The use of the term ‘active’ is already far too commonplace in connection with senior housing. While thus far it is not been found to be discriminatory per se, fair housing organizations such as ours discourage housing developers and operators from utilizing the term ‘active senior living,’ or other descriptions to that effect. We are disappointed that a municipal government has not likewise seen an issue with the use of the term in conjunction with a housing development over which it has substantial control. People with disability may feel that they are not welcome as part of a community if they may not be perceived as stereotypically ‘active.’

In closing we wish to remind you that the City of Davis, an entitlement jurisdiction that received over \$1,110,000 in FY 2018 HUD-administered federal funding, is obligated to conduct its programs in a manner that “affirmatively furthers fair housing” (AFFH) and must annually certify to HUD that it is doing so. We hope with that in mind the City of Davis will promptly move to give this proposed development project a different name that would be in line with AFFH considerations, rather than moving forward with a name that readily implies that the community is not welcoming of individuals who have a right to choose to live within in its borders. While that alternate name is something to be determined by the residents of Davis, their elected

representatives and the project's developer, we might offer a suggestion. How about West Davis Senior and Mixed-Age Community?

Please do not hesitate to contact me regarding our concerns. I can be reached via telephone at 714-569-0823 extension 204 and via e-mail at dlevy@fairhousingoc.org .

Sincerely,



David Levy
Programs Specialist

Cc: Alan Pryor, Commissioner, City of Davis Natural Resources Commission
Brett Lee. Mayor, City of Davis
Paul Smith, Intake Branch Chief, HUD-FHEO San Francisco
Mary Wheat, Deputy Director of Enforcement, California DFEH