



Office of the City Manager

07

CONSENT CALENDAR

November 10, 2020

(Continued from October 13, 2020)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Interim Director, Planning and Development Department
Subject: Resumption of Fees at Oregon Park Senior Apartments

RECOMMENDATION

Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.

SUMMARY

On March 14, 2017, City Council authorized a fee abeyance for OPSA until certain conditions were met, including conducting a financial audit, conducting an assessment of the structure and the facility needs and hiring a property manager. These conditions have not been met. In May 2017, Housing Code Enforcement received a complaint from a tenant at the property, inspected the unit and identified 21 violations of the housing code. As of September 1, 2020, OPSA has not corrected 17 of the violations including visible mold, wall damage, a kitchen sink drain leak, deteriorated plumbing fixtures, a roof leak and a severe tripping hazard on the exterior concrete entrance slab. The inability to charge housing inspection service fees since the abeyance was granted has hampered enforcement. By restoring the authority to charge inspection fees, the City will encourage the owner to correct the violations and restore basic habitability conditions for OPSA tenants.

FISCAL IMPACTS OF RECOMMENDATION

All owners of rental housing in the City of Berkeley are subject to fees for housing code enforcement inspections: \$400 for the first reinspection of any unit (only charged when violations are not corrected), \$600 for the second reinspection and \$800 for the third and any subsequent reinspections, which typically occur every 30 working days. Currently with fees in abeyance, the costs of City inspections are not being covered. If fees had not been held in abeyance, Housing Code Enforcement would have billed inspection service fees of \$15,000 for reinspections which occurred at the property between June 2017 and January 2020. These fees are not recoverable and will not be charged or collected. Inspection service fees will incur going forward. The indefinite abeyance also increases the risk that the City would become obligated to reimburse the unpaid inspection fees from General Fund revenues.

CURRENT SITUATION AND ITS EFFECTS

OPSA is a 61-unit, resident-managed senior rental housing development in Southwest Berkeley. OPSA is legally organized as a non-profit organization, not as a limited equity or other type of housing cooperative. The property has private funding and is not regulated by any public agency. OPSA representatives reported that tenant incomes are restricted to 120% of median. Importantly, OPSA provides affordable housing for seniors in Berkeley, and many are low income people of color.

On March 14, 2017, the City Council held fines in abeyance for OPSA until certain conditions were met. These included OPSA conducting a financial audit, doing a full assessment of the building and facility needs, and hiring a property manager.

After the March 14, 2017 Council meeting, City staff met with the OPSA board at Oregon Park Senior Apartments to discuss the Council referral, answer questions and provide a personal contact. On May 31, 2017, staff from a law firm representing OPSA emailed the office of Councilmember Davila with a potential quote for a needs assessment. The email stated that OPSA's representatives would be meeting with a Certified Public Accountant that week, after other CPAs were unable to help. OPSA subsequently submitted a partial structural assessment and indicated that a fuller assessment would be completed and sent to the city. On July 21, 2020 the City sent a letter to the OPSA Board reminding them of the outstanding items, requesting that they be sent to the City and informing them that if they are not provided staff will request that City Council reinstate the fees for subsequent inspections. As of the drafting of this Council report, the City has not received further documentation to indicate compliance with Council's conditions from March 2017. The current situation is not incentivizing OPSA's Board to meet the conditions, since once completed the City would resume charging fees.

Housing Code Enforcement staff are concerned about tenant safety at the property currently due to longstanding violations in one of the units. In May 2017, the tenants of an apartment at Oregon Park Senior Apartments filed a complaint to Housing Code Enforcement, due to the unsafe conditions in their unit. On May 29, 2017, a Housing Inspector performed an initial inspection and identified 21 code violations, including visible mold, wall damage, a kitchen sink drain leak, deteriorated plumbing fixtures, a roof leak and a severe tripping hazard on the exterior concrete entrance slab. Between June 2017 and January 2020, the Housing Inspector performed 22 reinspections of the unit. Three violations have been corrected and 18 violations still need to be abated, more than three years after the initial inspection took place. The remaining violations most likely will require skilled workers to complete the remediation work, which includes exterior deck repairs, mold removal, wall patching repair, painting of the unit and floor repairs.

In addition to funding the cost of implementing the Residential Housing Safety Program, the inspection service fees motivate property owners to correct violations. Without that incentive, reinspections inconvenienced the tenants without further pressure for the

owner to make the needed repairs. The two elderly tenants pursued a civil lawsuit to try to get their unit repaired.

On August 27, 2020, a request for service was submitted by another tenant at 1425 Oregon Street complaining of mold, black fungus, a long-standing water pipe leak and the lack of a manager. A housing inspection took place on September 1, 2020 and confirmed there is a substantial leak from the sink/shower drain of a neighbor's unit. To correct this violation, OPSA will need to remove the damaged sheetrock, make the necessary repairs to stop the leak, and patch, paint and seal the bathroom walls.

With 21 cases at the property in the last ten years, involving multiple violations, Housing Code Enforcement does not believe these to be isolated instances. In 2017, OPSA filed a lien appeal related to \$9,240 in outstanding reinspection fees from pre-2017 code enforcement cases at the property, incurred prior to February 2017. This lien appeal request is still pending consideration.

BACKGROUND

At the March 14, 2017 Council meeting, Council reviewed the Housing Advisory Commission report "Support for Oregon Park Senior Apartments" and the City Manager "Companion Report: Support for Oregon Park Senior Apartments," (attached) and approved the fee abeyance with the following conditions:

1. Oregon Street Park Apartments will conduct a financial audit.
2. Oregon Street Park Apartments will conduct a full assessment of the structure of the building and the facility needs.
3. Oregon Street Park Apartments will hire a property manager to oversee the financials and the property.
4. The City will commit to holding the fines in abeyance until such time that conditions 1-3 are completed.

Since that time, OPSA has submitted a partial structural analysis.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The purpose of Housing Code Enforcement is to ensure that all Berkeley tenants have safe, decent living conditions that meet housing code standards. Holding these fees in abeyance for three years has not led to improvements in the living conditions at OPSA. Staff recommend the resumption of inspection fees with the goal of incentivizing property management to complete the required repairs.

Housing Code Enforcement followed all prescribed regulations for investigating, documenting and citing violations of the Berkeley Housing Code. Approval of the

recommended action will allow the Planning and Development Department to continue its effective practices for obtaining compliance with Housing Code.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Jenny McNulty, Resilient Buildings Program Manager, Planning, 981-7451

Attachment:

1: March 17, 2017 report to Council from Housing Advisory Commission, and staff companion report



Housing Advisory Commission

ACTION CALENDAR

February 28, 2017

(Continued from January 24, 2017)

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Igor Tregub, Acting Chairperson, Housing Advisory Commission
Subject: Support for Oregon Park Senior Apartments

RECOMMENDATION

Direct staff to work with Oregon Park Senior Apartments to undertake a physical needs assessment and to consider assistance with financing to address any issues identified in the physical needs assessment, and to hold the fines in abeyance in the interim.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Residents from the Oregon Park Senior Apartments (OPSA) seek the City's assistance for emergency improvements to their facilities. They are requesting a low-interest loan to be repaid promptly.

The OPSA complex is 43 years old and now requires considerable repair. In particular, the sewer, roof and sidewalk must be repaired as soon as possible before recently imposed City fines OPSA and costs for maintenance increase. The HAC identified the performance of a physical needs assessment that would provide City staff with a satisfactory understanding of current needs as the most immediate priority. Following such an assessment City staff could evaluate those needs and make a recommendation such that the City Council would be able to consider financing options to address the repairs.

BACKGROUND

The OPSA is a non-profit 501(c)3. The City approved predevelopment funding for OPSA in 2005 and 2010 but the City and OPSA did not execute a loan either time. In 2014, disputes within the OPSA Board Directors contributed to serious financial problems. The situation devolved into a costly legal dispute that has hampered the OPSA's ability to make funding allocations from its budget to do necessary repairs for the sewer, roof, and sidewalk. With their legal problems now behind them, OPSA seeks to immediately make necessary repairs, but requires financial assistance.

At the November 3, 2016 meeting of the Housing Advisory Commission, the following action was taken:

Action: M/S/C (Wolfe/ Soto-Vigil) to request that City Council direct staff to work with Oregon Park Senior Apartments to undertake a physical needs assessment and to consider assistance with financing to address any issues identified in the physical needs assessment, and to hold the fines in abeyance in the interim.

Vote: Ayes: Abramson, Aguilar-Canabal, Crandall, Darrow, Lee-Egan, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Berg (excused) and Martinucci (excused).

ENVIRONMENTAL SUSTAINABILITY

There are no environmental implications identified for this recommendation.

RATIONALE FOR RECOMMENDATION

The OPISA's structure, as a cooperatively owned non-profit, makes it more difficult for the organization to secure funding from traditional sources. This facility and its cooperative members are a vital part of the Berkeley community, and an inquiry into the means by which the City may support them would be a low-cost and potentially highly beneficial approach to preserving our scarce affordable housing.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See companion report.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406



Office of the City Manager

ACTION CALENDAR

March 14, 2017

(Continued from February 28, 2017)

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services Department

Subject: Companion Report: Support for Oregon Park Senior Apartments

RECOMMENDATION

Refer the Housing Advisory Commission's recommendation that staff work with Oregon Park Senior Apartments (OPSA) to the Council prioritization process so that the Council can evaluate this recommendation in the context of other recommendations for the use of Housing & Community Services staffing resources.

FISCAL IMPACTS OF RECOMMENDATION

More information and analysis is required before the fiscal impacts of funding OPSA can be estimated.

CURRENT SITUATION AND ITS EFFECTS

OPSA is a 61-unit, resident-managed senior rental housing development. OPSA representatives reported that tenant incomes are restricted to 120% of median. The property has private funding and is not regulated by any public agency. At the November Housing Advisory Commission (HAC) meeting, OPSA representatives indicated a need for \$349,000 for repairs related to multiple housing code enforcement cases and sewer lateral work, including at least \$78,000 for work that had already been completed. They presented conceptual projections of future rent scenarios to support loan repayment.

The City previously offered to fund predevelopment work in 2005 and 2010, but OPSA did not agree to the terms of City funding either time. City funds supported capacity building technical assistance for the board before the development went into receivership a few years ago.

In light of the extent and duration of housing code enforcement issues at OPSA, the organization's capacity to complete repairs and maintain the property should be evaluated before providing public funds. Based on the age of the property and the housing code issues that have already been identified, it is likely that Oregon Park Senior Apartments has more extensive capital needs that should be assessed before the City funds repairs to ensure the longevity of this housing.

Typically requests for housing development funding go through the Housing Trust Fund (HTF). OPSA may not meet the HTF Guideline's standards for tenant incomes, which require a significant percentage of units in a building to be rented to tenants with income below 60% AMI and some to tenants below 30% AMI. Otherwise, however, OPSA is similar to other projects that have been funded through the City's HTF.

BACKGROUND

The City approved predevelopment funding for the property in 2005 and 2010 in response to housing code violations. In 2005, City staff worked with OPSA on a predevelopment loan agreement to pay for independent legal counsel. OPSA decided against signing the loan agreement. Board members expressed concerns to staff at that time regarding agreeing to City oversight and repaying the loan. In 2010, staff and OPSA were unable to come to an agreement regarding predevelopment loan terms for \$15,000 to pay for a physical needs assessment.

Considering prior experiences, the HAC's recommendation would require substantial staff time, and would include working on at least the following issues:

- Legal status and make-up of the organization, in order to be able to enter into a contract for public funds. In 2010, staff determined that OPSA was organized as a nonprofit organization, not a cooperative.
- Financial capacity of the organization, including examining reserves available for repairs, income and expenses, and terms of the existing debt.
- Organizational capacity and technical expertise to complete the proposed work. The HTF guidelines, as an example, require that applicants demonstrate a successful track record with similar projects either with current staff or through consultants. This 61-unit property is larger than many HTF-funded developments.
- A comprehensive physical needs assessment and a study of OPSA's replacement reserve needs (funds set aside annually to fund regular maintenance). Housing code compliance issues from 2005 to present are an indicator that the property probably has more physical needs than those identified for emergency repair. Since City housing funds typically come with 55 years of restrictions related to incomes, rents, and building quality standards, the comprehensive needs and assessment of OPSA's interest in moving forward given City restrictions, should be evaluated before the City commits development funding.
- Evaluating existing income and rent restrictions along with current rents. It is relatively common for tenant-managed housing to keep rents very low, which can result in too little rental income to operate the property, maintain it, and fund reserves for larger repairs. At the November HAC meeting, OPSA representatives reported that tenancy was restricted to households with incomes at or below 120% of Area Median Income (AMI), with an average tenant rent of

less than \$800 per month. Currently, affordable one-bedroom rents for households at 120% of AMI are \$2,340, around three times as much. Staff would need to work with OPSA on reviewing tenant incomes and rents for sustainability before committing development funds.

The City would need to evaluate the availability of funds for OPSA in the context of funds available in the Housing Trust Fund (HTF) and other proposed projects, including the Berkeley Way project which has been identified as a priority by Council. Measure U1 business license tax revenue will start being collected soon, and revenue from the Harold Way development depends on if and when the project proceeds.

The City's recent experience with Strawberry Creek Lodge (SCL) and William Byron Rumford Sr. Plaza (WBR) provide examples that may have parallels with OPSA. Although not a cooperative, SCL (150 units developed in 1962) was owned by the Strawberry Creek Lodge Foundation (SCLF), which exists solely to support that development and its residents. In 2008, SCLF applied to the City for \$126,500 for repairs through the City's Public Facilities RFP. In recognition of the scale of the needs, the project was referred to the City's Housing Trust Fund. Ultimately, SCLF partnered with Satellite Affordable Housing Associates, which was able to secure low income housing tax credits and completed more than \$12 million in rehabilitation with just \$820,000 in City funds.

In the case of WBR (43 units developed in 1990), South Berkeley Community Housing Development Corporation partnered with Resources for Community Development (RCD) for rehabilitation. RCD eventually concluded that it would not be feasible to use low income housing tax credits since tenant incomes were too high to qualify. The City provided more than \$4.6 million to support the rehab, including refinancing \$1.3 in outstanding City loans. These projects illustrate the scale of recent rehabilitation projects, and benefits of low income housing tax credits for projects that can qualify. If directed to work with OPSA, staff will recommend that the OPSA board reach out to tenant leaders at SCL and WBR to learn about their experiences.

ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental effects associated with the content of this report.

RATIONALE FOR RECOMMENDATION

OPSA provides affordable housing for seniors, which are needed now more than ever. Housing code issues at OPSA evidence the need for more rehabilitation. Granting rehabilitation funds to this unrestricted property could assist with the current situation but would not address any underlying needs. Based on past experience, working with OPSA will require an investment of staff time and future funding, and should be evaluated alongside other housing priorities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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