

Michael,

In consultation with City legal counsel, we provide this response to your e-mail of March 30, 2018. In your email you question how the Nishi development can limit the affordable beds included in the development to student renters, and suggest that providing a preference for or restriction to student renters would be a violation of fair housing laws. However, limiting housing to students does not, on its face, violate state or federal fair housing laws. Both state and federal fair housing laws protect prospective renters and purchasers of housing based on specifically listed protected status. Non-students are not a protected class of renters under state or federal fair housing laws, and therefore limiting housing to students does not constitute a fair housing violation.

The federal Fair Housing Act (the “FHA”) prohibits discrimination by any party in the business of renting housing units based on a prospective tenant’s protected status. Federal law protects renters based on race, color, religion, national origin, disability and familial status (42 U.S.C. Sec. 3604.) The California Fair Employment and Housing Act (“FEHA”) prohibits the owner of any housing accommodation from discriminating against or harassing any person because of the person’s race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or genetic information. (Gov’t Code Sec. 12955.) A fair housing violation will occur under the FHA or FEHA when (1) the prospective purchasers or renters of housing are members of a protected class, (2) they sought and were qualified to rent or purchase the housing, (3) they were rejected, and (4) the housing opportunity remained available to other renters or purchasers. (*Mitchell v. Shane* (2d Cir. 2003) 350 F.3d 39, 47.)

Non-students are not a protected class under the FHA or FEHA, and so a non-student could not make a valid fair housing claim based solely on their status as a non-student. (*See Whitaker v. New York University* ((2d Cir. 2013) 531 Fed. Appx. 89, 91 [“We find no basis for concluding that New York University’s (“NYU”) general policy of not providing on-campus dormitory housing to spouses, domestic partners, or dependents of NYU students (unless those spouses, domestic partners, or dependents are also NYU students) is facially discriminatory, because the FHA does not identify non-student status as a protected class.”]; *Wilson v. Glenwood Intermountain Properties, Inc.* (10th Cir. 1996) 98 F.3d 590, 594 [“The Fair Housing Act does not make it unlawful for landlords to give preference to college students over non-students.”]).

The Nishi developers will have to ensure that the implementation of their affordable housing program will not result in a disparate impact on any protected class of people, as do all providers of student housing, including universities. (*See United States v. University of Nebraska at Kearney* (D. Nebraska 2013) 940 F.Supp.2d 974, 983 [holding that university owned housing is subject to the FHA, and a student with a disability may bring a claim under the FHA based on university’s refusal to allow her service animal in university housing].) The Nishi developer has committed as part of the entitlements to comply with all applicable fair housing laws in implementing the affordable housing program. (*See Development Agreement* p. 57-58 [“Developer shall be responsible for developing selection criteria for Affordable Beds that are consistent with all state and federal fair housing laws, including but not limited to the Federal

Housing Act, the California Fair Employment and Housing Act and the California Unruh Act (collectively, “Fair Housing Laws”).”].)

In your email you also state that you believe that the affordable beds at Nishi should be available to any lower income adult. While you are entitled to that perspective, the City Council does have the discretion to approve affordable housing for specific segments of the population where there is a particular need. The City Council received extensive public testimony in connection with both the Lincoln 40 and the Nishi development projects regarding the struggles that college students face in securing housing in Davis. These challenges are especially acute for lower income students, who will struggle to afford market rents in Davis, and are not eligible for most of the City’s other affordable units. Full time students that are single and do not have dependent children are generally not eligible for Section 8 rental assistance or any affordable housing projects assisted under the federal low income housing tax credit program, and students that are dependents of their parents cannot meet the eligibility requirements established for the vast majority of the City’s existing affordable housing units. The only City assisted affordable housing development that currently provides units intended for students is the Pacifico Student Cooperative Housing development in South Davis. Based on the request of the developer and the supporting testimony received in connection with the Nishi development, the Council approved the Nishi development’s student focused affordable housing program. The vast majority of affordable developments in the City continue to be available for non-students, including the 62 unit Bartlett Commons affordable housing development recently constructed in the Cannery subdivision, and the anticipated 38 unit affordable development that was approved in connection with the Sterling Apartment development at 2100 5th Street.

I hope this addresses your concerns. If you have any questions please let me know.

Sincerely,

Mike Webb

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City Manager

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