



# Information Item

Date: January 21, 2009

To: Mayor and City Council  
From: Andy Agle, Director of Housing and Economic Development  
Subject: Investigation of Inclusionary Affordable Units at the Arboretum Apartments

## **Introduction**

At the April 29, 2008 City Council meeting, several residents of the Arboretum Apartments addressed the City Council with concerns regarding practices at the rental complex, which has a total of 97 deed-restricted affordable apartments. The residents' concerns included: requests for maintenance and repairs, residency of ineligible tenants, exposure to chemicals and other potentially unsafe conditions, and that the deed-restricted units are located in the least desirable areas of the property. Speakers alluded to feeling threatened, harassed and intimidated regarding requests for service or repairs due to fear of having their leases terminated or not renewed. The City Council directed staff to investigate these concerns. This report summarizes the findings of the investigation completed by staff and identifies follow-up actions.

During a subsequent Housing Commission meeting, a resident of the Arboretum stated that significant rent increases in June 2008 were targeted to residents who had filed legal actions against the owners of the Arboretum Apartments for health conditions resulting from mold exposure. Staff expanded the scope of the investigation to analyze this allegation.

## **Background**

The Arboretum is located at 2200 Colorado Avenue and opened in 2001. The Arboretum contains 350 rental units, of which 97 have deed-restrictions targeting

low and moderate-income households pursuant to the City's Affordable Housing Production Program. Of the 97 units, 45 units must be affordable to low-income households (60 percent of the Area Median Income) and 52 units must be affordable to moderate-income households (100 percent of the Area Median Income). Legacy Property Management initially managed the property, with Riverstone Property Management assuming property management responsibilities since 2005.

### **Discussion**

Staff requested documentation of income eligibility, move-in date, rent amount charged at move-in, current rent amount charged, and other pertinent information from the Riverstone Property Management Agency regarding all deed-restricted units.

Staff conducted the investigation through:

1. File audit of 15 files of occupied units representing 32% of all non-Section 8 units. (HUD Section 8 Housing Choice Voucher Program requires annual unit inspection and income eligibility of all 51 units leased to Section 8 voucher holders);
2. Letters were mailed to all 97 units informing residents that health and safety concerns would be investigated by staff from the Building and Safety Division when contacted; and
3. On June 23, 2008, inspectors from the Housing Authority and Building and Safety Division conducted physical inspections of 13 deed-restricted units due for annual inspection by HUD regulation.

The file audit included five low-income units and ten moderate-income units. According to the documents provided by Riverstone Property Management, nine of the 15 households were income qualified, four had not provided sufficient income documentation and two households were not qualified (over income). Three leasing agents employed by Riverstone Property Management share one designated low-income apartment and exceeded the income qualifications. The investigation also

revealed that during tenant selection, eight of the 15 tenants received preference for working or living in Santa Monica as required in city policy. Only one unit was confirmed as being selected from the City's waiting list, whereas the remaining 14 units' files provided no information regarding eligibility for the selection from the City's waiting list. The recorded deed restriction stipulates that the owner may either select an applicant from the City's waitlist or self-select. All Section 8 Housing Choice Voucher holders were appropriately taken from the Housing Authority's waiting list with a Santa Monica priority applied according to the Housing Authority's Annual and Administrative Plans.

HUD regulations provide landlords with the opportunity to increase rent to the current Fair Market Rent rate established by HUD annually. The Arboretum requested an annual rent increase, which had not been requested in several years resulting in a dramatic rent increase for some tenants. The Arboretum has elected to make available for occupancy designated 1 and 2 bedroom moderate-income units to very-low, and low income Section 8 program participants. In doing so, the maximum allowable rents for these affordable units is established by the Housing Authority at or below the Section 8 payment standards, not the higher maximum allowable rental rates set forth for moderate-income households. By providing affordable units to low-income households that participate in the Section 8 Program, the Arboretum agrees to accept lower rental rates than legally provided under the development agreement.

City inspectors interviewed tenants of 13 units regarding the property management's customer service and response to complaints. Those tenants reported to the inspectors that property management was responsive to their requests for repairs and maintenance. Upon completion of inspections, no health and/or safety code violations were discovered.

In order to determine if tenants involved in the mold lawsuit were assessed higher rents, staff reviewed a list of 32 plaintiffs named in the case. (Because the class action potentially includes every tenant at the building, staff focused on those tenants named

as plaintiffs in Lindsey Smith v. Legacy Partners Management Case No. BC 308986.aff). Currently only two of the 32 plaintiffs named in the suit remain housed at the Arboretum. The others have relocated over the nine year period since the development opened. Neither of the two remaining tenants received rent increases in June 2008.

Some residents complained that they are given less desirable units in the complex but the unit designation was determined through the planning approval process which allows the developer to place higher rents on more “scenic” units.

The Arboretum’s deed restrictions also prohibit discrimination against tenants based on disability. Since the April 29<sup>th</sup> City Council meeting, the Legal Aid Foundation of Los Angeles and Bet Tzedk Legal Services have helped fourteen disabled tenants file discrimination complaints against the Arboretum. These fair housing complaints presented a wide range of unique situations where a disabled tenant’s housing needs conflicted with Arboretum rules, policies, and procedures. One complaint was based on discrimination and the other thirteen were requests for Reasonable Accommodations. When the first three complaints arrived, City Attorney staff began meeting with the Arboretum, Riverstone property management, and their attorneys from Karsaz & Associates. As a result of those meetings, the Arboretum has agreed to provide nearly all of the tenants’ requested reasonable accommodations. The Arboretum has verbally agreed to send staff to training on reasonable accommodation. However, fair housing complaints are still filed on a regular basis as Riverstone personnel continue to initially deny accommodation requests, forcing the tenants to turn to LAFLA, Bet Tzedek and the City Attorney for help.

### **Conclusion**

Staff met with Arboretum representatives and requested that Riverstone Property Management employees complete training regarding eligibility, documentation procedures, and fair housing to assure compliance with Section 14 of the deed

restrictions. A corrective action plan and a conflict of interest policy to address the findings of the investigation, including the over-income tenants were requested at the meeting. Staff recommended that in-place tenants who exceed low and moderate income categories be considered for a moderate and market rate units at the Arboretum. Vacant units must be marketed and occupied by qualified low and moderate income households. After six months, staff will conduct a follow-up investigation to evaluate compliance with deed-restriction requirements. Failure to meet the program requirements could result in enforcement by the City Attorney's Office. Subsequent to the follow-up evaluation, staff will report findings to the City Council. Staff is currently drafting revisions to the Affordable Housing Production Program Guidelines, which govern inclusionary affordable units like those at the Arboretum. The revisions will include changes intended to strengthen the City's ability to ensure appropriate tenancy in inclusionary affordable housing. Staff anticipates bringing the revisions to City Council in March 2009.

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