

## STAFF REPORT

**DATE:** April 5, 2011

**TO:** City Council

**FROM:** Elvia Garcia-Ayala, Community Services Director  
Danielle Foster, Housing & Human Services Superintendent

**SUBJECT:** City Procedure and Corresponding Fee for the Dissolution of a Limited-equity Housing Cooperative or Workforce Housing Cooperative Trust with Public Subsidy

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### **Recommendation**

Staff recommends that the City Council:

1. Hold a public hearing; and
2. Adopt the attached resolution (Attachment 1), adopting a procedure and corresponding fee for the city processing of dissolution requests by organizations under California Civil Code Section 817.2.

### **Fiscal Impact**

The fee being proposed would cover the costs of mailing the hearing notices and the staff hours in preparing and presenting the application at the public hearing. These are the standard costs charged an applicant for a public hearing.

### **Background and Analysis**

With the approval of Assembly Bill 1246 in October 2009, it became California Civil Code Section 817.2. This section of code outlines the process for dissolution of a limited equity housing cooperative or of a workforce housing cooperative trust that has received public subsidy. As part of this adopted code section (Attachment 2), the City is responsible for processing applications from local organizations requesting dissolution in accordance with the code. The City has not previously adopted a procedure and fee in accordance with this section of code. In January the City received an application request under the code from the Davis Area Cooperative Housing Association (DACHA), identifying the City's need for a procedure and corresponding fee.

The procedure that has been drafted relies on the content of the state code section. Basing the procedures primarily on code will (1) ensure consistency and (2) link the procedure to its root code, if it were to get amended or repealed. The fee being proposed for this application processing under the procedure is based on the projected mailing expenses of notices for the hearing and the per hour expense of staff time projected to draft a staff report and present the item at a public hearing before the City Council. This fee can be updated on an annual basis, as all fees are within the city, based on inflation, changes in mailing expenses, or changes in staffing expenses.

The California Code requiring this procedure requires applicant to pay "all costs associated with the public hearing." Typically, with planning applications, the City charges applicants for mailing expenses and staff time in preparation and presentation at the hearing. The fee being recommended is \$343.00. The maximum standard hourly rate charged by staff under the Housing & Human Services Division, who would process such an application, is \$75 per hour. Estimating that the staff person will need 3 hours for the preparation and presentation of an application at a public hearing results in a cost of \$225.00 for staff time. The state code section also requires 120-day notice be given to all who have registered with the California Center for Cooperative Development (CCCD) for this purpose. While CCCD has informed staff that no such noticing list currently exists, it did provide its membership list of 159 organizations. Noticing for these 159 organizations will cost the city approximately \$.75 each, for copying and stamps, and \$118 in total. Together, these expenses comprise the recommended fee.

Other options for determining a fee under this required process include:

1. **Solely charging for the staff time, no mailing costs- \$225.** Since the state code only speaks to the organization paying for the "costs of the public hearing" and not the costs of the mailing, Council could decide to only charge an applicant organization for the staff time to draft and present the necessary staff report.
2. **Accepting a \$500 deposit and charging against the deposit.** The issue with setting up a fee on a deposit basis is that (1) it requires capital that dissolving organizations may not have, (2) it requires a fee agreement that is secured against an asset, which dissolving organizations do not likely have, and (3) it is a set process under state code and it should not require additional processing or expense, which are the typical reasons for collecting a deposit fee.

Under the code, after review and necessary findings are made by the locality's governing body (the City Council) at a public hearing, the information is then transmitted to the Attorney General's Office for the review and processing of dissolution. Due to the broad nature of the findings, staff is recommending that information in the application (attached) include questions specific to such findings. This provides the necessary information to the City Council, included with a signature on the application that is signed under penalty of perjury, consistent with all applications.

Staff recommends adoption of the proposed procedure and fee in order for the city to comply with state code requirements of providing a process with specific components for dissolution requests under Section 817.2. Adoption of a fee requires a public hearing. This meeting and the fee being considered have been duly noticed.

#### **Attachments**

1. Resolution Adopting a Procedure and Fee for the Dissolution of Organizations under California Civil Code Section 817
2. California Civil Code Section 817

**RESOLUTION NO. 11-XXX, SERIES 2011**

**RESOLUTION OF THE CITY OF DAVIS ADOPTING A CITY PROCEDURE AND FEE  
IN ACCORDANCE WITH SECTION 817.2 OF THE CALIFORNIA CIVIL CODE**

WHEREAS, the State of California adopted Assembly Bill 1246 in October 2009 regarding the dissolution of cooperative and land trust organizations as defined by the bill; and

WHEREAS, the bill, now Section 817.2 under California Civil Code, requires localities to create a procedure and processing fee for dissolution requests made by organizations governed by the section of code that reside within the locality's jurisdiction.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that the attached procedure and application, provided as Exhibit A of this resolution, are adopted in accordance with the city's responsibilities under Section 817.2 of the California Civil Code.

AND FURTHER, BE IT RESOLVED that the fee for the processing of applications under this procedure will be \$343.00, which will be updated in accordance with inflation and other changes as deemed necessary by the City Council.

PASSED AND ADOPTED by the City Council of the City of Davis on this 5<sup>th</sup> day of April, 2011 by the following vote:

AYES:

NOES:

Joseph F. Krovoza  
Mayor

ATTEST:

Zoe S. Mirabile, CMC  
City Clerk

**Procedure for the Dissolution of a Limited-equity Housing Cooperative or Workforce Housing Cooperative Trust that Receives or has Received a Public Subsidy**

**Purpose.**

The purpose of this procedure is to comply with the city's obligations under California Civil Code Section 817.2.

**Required.**

As set forth in section 817.2, this procedure is required to be used for any dissolution request from a limited-equity housing cooperative or workforce housing cooperative trust located within the City that receives or has received a public subsidy.

**Definitions.**

*Limited-equity housing cooperative and Workforce housing cooperative trust* - For purposes of this procedure and in accordance with California Civil Code, means a corporation organized on a cooperative basis consistent with California Civil Code Article 817.

**Application.**

Application for dissolution shall be made by an authorized representative of the cooperative or cooperative trust to the City on the attached form prescribed by the City. City processing of dissolution under these procedures does not exempt applicant from complying with the requirements of other ordinances and codes.

**Fee.**

The application fee for this procedure and associated hearing shall be prescribed by city resolution.

**Accompanying documentation.**

The application for dissolution shall be accompanied by evidence of the necessary organizational action to authorize a request for the City to process an application under this procedure and any documents related to completion of the application.

**Public hearing and notice.**

A public hearing before the City Council shall be held on an application for dissolution. Notice of such hearing shall be given at least 120 days prior to the date of the hearing through first-class mail using a list from the California Center for Cooperative Development (CCCD) of all other limited-equity housing cooperatives and cooperative development organizations in the state, if such a list exists. The City will contact CCCD for said list. Interested parties who wish to be notified of applications in relation to this procedure can contact CCCD directly for addition to the list.

**City Council Consideration.**

Upon completion of the public hearing, the City Council shall adopt a resolution approving of the dissolution, in accordance with California Civil Code, based on the necessary certifications by the applicant and corresponding findings by the City Council that the dissolution plan:

1. Meets the requirements of state and federal law;
2. Meets the donative intent standards of the United State Internal Revenue Service; and
3. Is free of private inurement, which includes, but is not limited to, a prohibition on any member receiving any payment in excess of the transfer value to which he or she is entitled.

This resolution by the City Council shall acknowledge that final review and approval of the proposed dissolution plan is for consideration by the Office of the Attorney General.

If the necessary certifications are not provided and the City Council cannot make the corresponding findings, the application is denied.

**Written Information.**

Once the public hearing is completed, the City shall provide all written information and written testimony from the hearing to the Office of the Attorney General for the Attorney General to consider as part of his or her ruling on the dissolution.

**THE DEPARTMENT OF COMMUNITY DEVELOPMENT AND SUSTAINABILITY**



**DISSOLUTION APPLICATION FORM**

Please complete this application thoroughly and accurately, and attach the required documentation and necessary payment. Please note that an incomplete application will **not** be accepted for processing.

<b>Name of Organization:</b>	
<b>Location of Properties Held by Organization:</b>	
<b>Applicant/Contact Name:</b>	
<b>Applicant Mailing Address:</b>	
<b>Applicant Phone Number:</b>	
<b>Applicant Email Address:</b>	

Detailed description of the Organizational Dissolution Plan (Attach additional sheets if necessary)



Section 817 of California Civil Code

817. "Limited-equity housing cooperative" or a "workforce housing cooperative trust" means a corporation organized on a cooperative basis that, in addition to complying with Section 817.1 as may be applicable, meets all of the following requirements:

(a) The corporation is any of the following:

(1) Organized as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust.

(3) Holds title to real property subject to conditions that will result in reversion to a public or charitable entity upon dissolution of the corporation.

(4) Holds a leasehold interest, of at least 20 years' duration, conditioned on the corporation's continued qualification under this section, and provides for reversion to a public entity or charitable corporation.

(b) (1) The articles of incorporation or bylaws require the purchase and sale of the stock or membership interest of resident owners who cease to be permanent residents, at no more than a transfer value determined as provided in the articles or bylaws, and that shall not exceed the aggregate of the following:

(A) The consideration paid for the membership or shares by the first occupant of the unit involved, as shown on the books of the corporation.

(B) The value, as determined by the board of directors of the corporation, of any improvements installed at the expense of the member or a prior member with the prior approval of the board of directors.

(C) Accumulated simple interest, an inflation allowance at a rate that may be based on a cost-of-living index, an income index, or market-interest index, or compound interest if specified in the articles of incorporation or bylaws. For newly formed corporations, accumulated simple interest shall apply. Any increment pursuant to this paragraph shall not exceed a 10-percent annual increase on the consideration paid for the membership or share by the first occupant of the unit involved.

(2) (A) Except as provided in subparagraph (B), for purposes of a return of transfer value, both of the following are prohibited:

(i) A board of directors returning transfer value, either full or partial, to a member while he or she still remains a member.

(ii) An existing member accepting the return of his or her transfer value, either full or partial.

(B) A board of directors may return to an existing member and the existing member may accept return of his or her transfer value in the event that the member moves within the cooperative from a category of unit initially valued at a higher price to a different category of unit valued at a lower price.

(c) The articles of incorporation or bylaws require the board of directors to sell the stock or membership interest purchased as provided in subdivision (b) to new member-occupants or resident shareholders at a price that does not exceed the "transfer value" paid for the unit.

(d) The "corporate equity," that is defined as the excess of the

current fair market value of the corporation's real property over the sum of the current transfer values of all shares or membership interests, reduced by the principal balance of outstanding encumbrances upon the corporate real property as a whole, shall be applied as follows:

(1) So long as any such encumbrance remains outstanding, the corporate equity shall not be used for distribution to members, but only for the following purposes, and only to the extent authorized by the board, subject to the provisions and limitations of the articles of incorporation and bylaws:

(A) For the benefit of the corporation or the improvement of the real property.

(B) For expansion of the corporation by acquisition of additional real property.

(C) For public benefit or charitable purposes.

(2) Upon sale of the property, dissolution of the corporation, or occurrence of a condition requiring termination of the trust or reversion of title to the real property, the corporate equity is required by the articles, bylaws, or trust or title conditions to be paid out, or title to the property transferred, subject to outstanding encumbrances and liens, for the transfer value of membership interests or shares, for use for a public or charitable purpose.

(e) Amendment of the bylaws and articles of incorporation requires the affirmative vote of at least two-thirds of the resident-owner members or shareholders.

817.1. (a) A "workforce housing cooperative trust" is an entity organized pursuant to this section that complies with Section 817 and with all of the following:

(1) Allows the governing board to be composed of two classes of board members. One class is elected by the residents, and one class is appointed by sponsor organizations, including employer and employee organizations, chambers of commerce, government entities, unions, religious organizations, nonprofit organizations, cooperative organizations, and other forms of organizations. Resident members shall elect a majority of the board members. However, sponsor organizations may appoint up to one less than a majority of the board members. The numerical composition and class of the sponsor and resident board members shall be set in the articles of incorporation and in the bylaws.

(2) Requires the charter board of a workforce housing cooperative trust to be composed of only sponsor board members, to remain in place for one year after the first resident occupancy. One year after the first resident occupancy, the resident members shall elect a single board member. Three years after the first resident occupancy, resident members shall elect a majority of the board members.

(3) Prohibits the removal of the appointees of sponsor organizations, except for cause.

(4) Allows for the issuance of separate classes of shares to sponsor organizations or support organizations. These shares shall be denominated as "workforce housing shares" and shall receive a rate of return of no more than 10 percent simple interest pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 817.

(5) Requires, in order to amend the bylaws or articles of incorporation of a workforce housing cooperative trust, the

affirmative vote of at least a majority of the resident-owner members or shareholders and a majority of each class of board members. The rights of the sponsor board members or the sponsors shall not be changed without the affirmative vote of two-thirds of the sponsor board members.

(b) A workforce housing cooperative trust shall be entitled to operate at multiple locations in order to sponsor limited-equity housing cooperatives. A workforce housing cooperative trust may either own or lease land for the purpose of developing limited-equity housing cooperatives.

(c) A workforce housing cooperative trust may be created when at least 51 percent of the occupied units in a multifamily property that is in foreclosure support efforts to buy the building or property.

817.2. The procedure for the dissolution of a limited-equity housing cooperative or workforce housing cooperative trust that receives or has received a public subsidy shall be as follows:

(a) The city, or the county for any unincorporated area, in which the limited-equity housing cooperative or workforce housing cooperative trust is located, shall hold a public hearing. The cooperative or trust shall pay for all costs associated with the public hearing.

(b) The city or county shall provide notice to all interested parties. The notice shall be given at least 120 days prior to the date of the hearing. The city or county shall obtain a list of all other limited-equity housing cooperatives and cooperative development organizations in the state from the California Center for Cooperative Development, if the list exists, and provide notice to all of the entities on the list in an effort to create a merger with an existing limited-equity housing cooperative or workforce housing cooperative trust. The notice shall be mailed first class, postage prepaid, in the United States mail.

(c) If the dissolving limited-equity housing cooperative or workforce housing cooperative trust merges with an existing cooperative or trust, to the extent possible, the merger shall be with the geographically closest cooperative or trust.

(d) If the dissolving limited-equity housing cooperative or workforce housing cooperative trust does not merge with an existing cooperative or trust, both of the following shall occur:

(1) Upon completion of the public hearing required pursuant to subdivision (a), the city or county shall adopt a resolution approving of the dissolution and make a finding that the dissolution plan meets the requirements of state and federal law, meets the donative intent standards of the United States Internal Revenue Service, and is free of private inurement, which includes, but is not limited to, a prohibition on any member receiving any payment in excess of the transfer value to which he or she is entitled pursuant to subdivision (b) of Section 817.

(2) The city or county shall forward all of the information and written testimony from the hearing to the Office of the Attorney General for the Attorney General to consider as part of his or her ruling on the dissolution.

817.3. Each entity named as a sponsor organization of a workforce housing cooperative trust formed pursuant to Section 817 shall have the legal standing of a member unless it revokes, in writing, its sponsorship.

817.4 (a) In any action instituted on or after January 1, 2010, against a board of directors and its members based upon a breach of corporate or fiduciary duties or a failure to comply with the requirements of this chapter, a prevailing plaintiff may recover reasonable attorney's fees and costs.

(b) If an organization formed under this chapter uses public funds, it shall not use any corporate funds to avoid compliance with this chapter or to pursue dissolution if the intent or outcome is for some or all of the members to receive any payment in excess of the transfer value to which he or she is entitled pursuant to subdivision (b) of Section 817.