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Developer sues Palo Alto over affordable housing requirements

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Palo Alto is defending its low-income housing program against a lawsuit from a private developer who argues the city has no right to require him to pay for below-market-rate units.

John Mozart, the builder behind the 96-unit Sterling Park housing development on West Bayshore Road, filed a lawsuit in October in Santa Clara County Superior Court. He is challenging the city's requirement that housing developments larger than five acres set aside 20 percent of their units — or pay equivalent fees — for the city's affordable housing program.

Palo Alto's "inclusionary housing" policy has been on the books for decades and is similar to other programs in cities around the state. Officials say it ensures that low-income people can afford to live in the city despite some of the country's highest market-rate home prices.

According to the real estate data Web site AltosResearch, the median price of a single-family home in Palo Alto as of Dec. 6 was \$1.6 million. The market-rate homes in the Sterling Park development are selling for between \$700,000 and \$1.3 million, while the below-market-rate units go for between \$200,000 and \$400,000.

But recent California court decisions have called into question the legality of some cities' affordable housing policies. An appellate court struck down a hike in affordable housing impact fees by the city of Patterson earlier this year.

Mozart said he sees the need for below-market-rate housing in Palo Alto. But he said the city's requirements drive up the costs of new homes, putting the burden for the subsidies on a small number of new homebuyers.

"I'm an affordable housing advocate myself," Mozart said. "I think there needs to be a way to do it, but you need to do it legally. The city has to be able to measure an impact that these projects have on affordable housing" in order to charge fees to the projects' developers.

His attorney, David Lanferman, noted that the Sterling Park homes replaced a former office park. He said the city showed no evidence that the project increased demand for affordable housing in the city.

The lawsuit alleges that the city's policy is, in effect, a "special tax" on developers, which would be illegal without a two-thirds vote.

Donald Larkin, assistant city attorney, said Palo Alto's policy is different than Patterson's because it's an inclusionary housing requirement rather than an impact fee. The fee is offered only as an alternative to the requirement. Courts have upheld similar requirements in other counties, he said.

Requiring a developer to build below-market-rate units is "no different than requiring them to leave a percentage of property as open space," Larkin said. "It's just one of the things the city wants in

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exchange for being allowed to develop a certain number of units."

For that reason, he said, "We're not overly concerned about this particular lawsuit."

Still, he said, the recent wave of challenges does pose an issue for the state. California requires cities to provide a certain amount of affordable housing, Larkin said, so it would be problematic if cities had no legal way of doing so.

"I expect at some point this issue will reach the (state) Supreme Court," he said. "We're hoping it's not with us."

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