

TRANSMITTAL

To:

THE COUNCIL

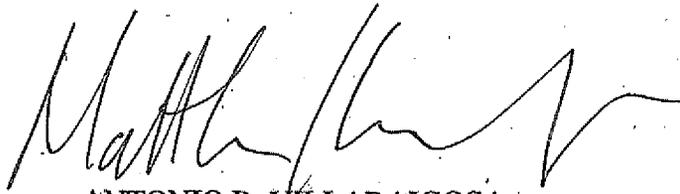
Date:

MAR 19 2012

From:

THE MAYOR

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.



ANTONIO R. VILLARAIGOSA

(Matt Karatz)

Mayor



Antonio R. Villaraigosa, Mayor
Douglas Guthrie, General Manager

March 13, 2012

Council File: C.F. 11-0994
Council District: City wide
Contact Persons: Rushmore Cervantes / 213-808-8405
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Honorable Antonio R. Villaraigosa
Mayor, City of Los Angeles
Room 303, City Hall
202 North Spring Street
Los Angeles, CA 90012

Attention: Mandy Morales
Legislative Coordinator

OFFICE OF THE MAYOR
RECEIVED
2012 MAR 16 PM 2:50
CITY OF LOS ANGELES

REPORT BACK ON RULES, REGULATIONS AND/OR PRACTICES RELATED TO RESTRICTING RELATIVES OF ANY PERSON WHO HAS INVESTED IN, DEVELOPED OR MANAGED CITY-SUBSIDIZED HOUSING FROM LIVING IN A UNIT WITHIN THE AFOREMENTIONED HOUSING DEVELOPMENT.

SUMMARY:

The General Manager of the Los Angeles Housing Department (LAHD) respectfully submits this report for Mayor and City Council review and approval. The purpose of this transmittal is to report back to the Housing, Community and Economic Development (HCED) Committee per its motion (C.F. 11-0994) of June 10, 2011 which instructed the LAHD to report on the following items:

1. Current rules, regulations and/or practices related to restricting the relatives of any person who has invested in, developed or managed a housing development/unit(s) in the City that received any public subsidy, including, but not limited to, grants, loans, tax credits or Section 8 vouchers, from living in a unit within the aforementioned housing development/unit(s).
2. Provide recommendations for rules or regulations that could be implemented that would restrict a relative, including a definition of "relative," of any person who has invested in, developed or managed a housing development/unit(s) in the City that received any public

subsidy, including, but not limited to, grants, loans, tax credits or Section 8 vouchers, from living in a unit within the aforementioned housing development/unit(s).

RECOMMENDATIONS:

The General Manager, LAHD, respectfully requests that:

1. Your office schedule this transmittal at the next available meeting(s) of the appropriate City Council committee(s) and forward it to City Council for review and approval immediately thereafter;
2. The City Council, subject to the approval of the Mayor, take the following action:
 - a. Direct the General Manager to work with the City Attorney to make the appropriate modifications as detailed in this transmittal to pertinent documents, including, but not limited to, loan documents, regulatory agreements, ordinances, management plans and land use covenants.
3. That the Mayor concur with the action of the City Council.

REPORT BACK:

Through its motion (C.F. 11-0994) of June 10, 2011, the HCED Committee requested a report on current rules, regulations and/or practices related to restricting relatives of any person who has invested in, developed or managed a housing development/unit(s) in the City that received any public subsidy, including, but not limited to, grants, loans, tax credits or Section 8 vouchers, from living in a unit within the aforementioned housing development/unit(s). In addition, the HCED Committee requested recommendations for rules or regulations that could be implemented to restrict a relative, including a definition of "relative," of any person who has invested in, developed or managed a housing development/unit(s) in the City that received any public subsidy, including, but not limited to, grants, loans, tax credits or Section 8 vouchers, from living in a unit within the aforementioned housing development/unit(s).

Current Rules, Regulations and/or Practices

The HOME Investment Partnerships (HOME) Program is the primary source of capital for the Affordable Housing Trust Fund (AHTF), the LAHD's affordable multi-family production program. As such, the rules, regulations and practices currently in place stem from the HOME program. In brief, yet detailed below, the HOME program provides guidance, qualifications and restrictions on how a developer/owner and/or a jurisdiction should process instances in which a business, funding or policy-maker relationship seeks to occupy a HOME-funded unit. However, the HOME program guidelines provide no guidance, qualifications and/or restrictions on how a

developer/owner and/or a jurisdiction should process instances in which a member of the Immediate Family (defined below) is involved.

Current Rules

The conflict of interest provisions in the HOME Final Rule at 24 CRF Part 92, Section 92.356 expands on conflict of interest rules. Specifically, Section 92.356(f)(1) directs that:

“(f) Owners and Developers. (1) No owner, developer or sponsor of a project assisted with HOME Funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME Funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.”

Section 92.356(f)(2) provides for case-by case exceptions to Section 92.356(f)(1) upon written request of the owner or developer and a review and evaluation of specified factors by the participation jurisdiction which lead to a determination that “the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner’s or developer’s HOME-assisted project.”

Said conflict of interest provisions apply to an owner, developer or sponsor or employee, agent, consultant, officer or elected or appointed official of the owner, developer or sponsor of a project assisted with HOME funds. It does not apply to Immediate Family (defined below).

Current Regulations

LAHD’s loan documents contain a Conflict of Interest provision, which incorporates the HOME program regulations and has been reviewed and periodically revised by the City Attorney. The current language states in pertinent part, “...Borrower covenants that none of its directors, officers, employees or agents shall participate in selecting, or administering any of its subcontracts supported (in whole or in part) by Federal funds where such person is a director, officer, employee or agent of the subcontractor; or where such person knows or should have known that:

1. A member of such person’s Immediate Family or organization has a financial interest in the contract. The term “Immediate Family” includes, but is not limited to, domestic partner and/or those persons related by blood or marriage, such as husband, wife, father,

- mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, son-in-law, and daughter-in-law, his or her significant other, and his or her domestic partner;”
2. The subcontractor is someone with whom such person has or is negotiating any prospective employment;
 3. The participation of such persons would be prohibited by the California Political Reform Act, California Government Code Section 87100, et seq., if such person were a public officer, because such person would have a “financial or other interest” in the subcontract;
 4. No members of the Board of Directors may be employed by the Contractor if this Contractor is a corporation;
 5. The Borrower shall incorporate the foregoing subsections of this section into every agreement that it enters into in connection with this Project;
 6. The above restrictions shall apply now and in the future to all activities that are a part of this Loan Agreement and Project and shall cover any such interests or benefits during or at any time after such person’s tenure, and;
 7. The Borrower shall comply with the conflict of interest provisions for the HOME and CDBG programs. This includes, but it is not limited to, the provision that no owner, developer or sponsor of HOME-assisted housing, including their officers, employees, agents, consultants or elected or appointed officials, may occupy a HOME-assisted unit in a development. If the household seeking to occupy the unit is a lower income household who would otherwise qualify for the unit, City may grant an exception on a case-by-case basis in accordance with federal regulations.”

The current LAHD loan documents do not contain language explicitly restricting and regulating the occupancy of Immediate Family (defined below) of the owner/developer from occupying a HOME-funded unit.

Current Practices

LAHD undertakes a number of activities and steps, which are summarized below, to make sure that borrowers are in good standing and comply with loan and regulatory agreements:

1. All borrowers of public funds are required to execute loan documents with related attachments and all applicants for land use concessions are required to execute land use covenants to memorialize their commitments to the City.
2. As stated above, loan documents contain provisions that require borrowers to comply with applicable local, state, and federal rules and regulations, which would include any

relating to conflict of interest. Loan documents and regulatory agreements also require borrowers to comply with state and federal fair housing laws, which prohibit bias in tenant selection. Loan documents are prepared in conjunction with the City Attorney. Currently land use covenants do not include conflict of interest provisions.

3. LAHD's Portfolio Management Unit conducts background checks on borrowers and their principals prior to awarding funds. The background check is conducted a second time prior to loan closing. The primary purpose of the background check is to identify and confirm "Good Standing" of the parties involved.
4. LAHD's Construction Services Unit reviews all construction contracts, contractors and subcontractors for cost reasonableness and Good Standing. Any potential conflict of interest or self-dealing that arises during these reviews or subsequent on-site or desk monitoring are immediately addressed by enforcing market-level contracting through the appropriate bidding process.
5. LAHD's Compliance Section, Prevailing Wage Unit reviews payroll and wage documents and makes site visits to the construction site to ensure that construction workers are being paid Davis-Bacon wages (similar to union wages) as required in the loan agreement.
6. At approximately 70% of construction completion, LAHD's Occupancy Monitoring Unit reviews Affirmative Marketing Plans to ensure the Tenant Selection Plan and Waiting List comply with HOME or other applicable regulations.,
7. After project completion, LAHD's Occupancy Monitoring monitors annually to ensure compliance with the affordable rent and occupancy requirements in the loan and regulatory agreement.
8. After completion, LAHD's Portfolio Management Unit collects loan payments, calculates residual receipt payments and monitors the project for financial stability, property taxes, and property insurance.

These practices have significantly improved the likelihood of successful completion and proper occupancy of affordable housing projects funded by the City. However, they do not include a review of whether an occupant is a relative of, or has a business tie with, any person who has invested in, developed or managed a housing development/unit(s) in the City that received any public subsidy, including, but not limited to, grants, loans, tax credits or Section 8 vouchers, from living in a unit within the aforementioned housing development/unit(s). Reviewing the family and/or business ties of each applicant for housing in the portfolio would be extremely expensive and time consuming without the guarantee of wide success. However, there are some modifications and changes LAHD is proposing to its rules, regulations and/or practices to minimize potential conflicts of this nature.

PROPOSED MODIFICATIONS AND RECOMMENDATIONS

Pursuant to HCED's request, LAHD proposes the following recommendations moving forward:

1. Update the definition of "Immediate Family". Currently, "Immediate Family" is defined as:

"domestic partner and/or those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, son-in-law, and daughter-in-law, his or her significant other, and his or her domestic partner;"

LAHD recommends that the definition for Immediate Family be adjusted in the following manner:

"domestic partner and/or those persons related by blood, marriage *and/or adoption*, such as husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, son-in-law, and daughter-in-law, his or her significant other, and his or her domestic partner;"

2. Modify the loan document by expanding the conflicts of interest language pertaining to the occupancy of a bond, CDBG, NSP and/or HOME-assisted unit to include the revised language as follows: "Borrower shall comply with the conflict of interest provisions for all sources of funds. This includes, but is not limited to, the provision that no (a) owner, developer or sponsor of the project; (b) officer, employee, agent, consultant or elected or appointed official of the owner, developer or sponsor; or (c) a member of the Immediate Family of such person described in subsection (1), may occupy a unit in the development. If the household seeking to occupy the unit is a lower income household who would otherwise qualify for the unit, written request must be made to City. City may grant an exception on a case-by-case basis in accordance with applicable policies, procedures and regulations.
3. Tenant Self-Certification. Add to Section 2.6: Tenant Selection of the loan agreement: Borrower shall require each prospective tenant to certify under penalty of perjury that they are not (a) an owner, developer or sponsor of the project; (b) an officer, employee, agent, consultant or elected or appointed official of the owner, developer or sponsor; or (c) a member of the Immediate Family of such person described in subsections (a) and (b). Borrower shall not rent any unit of the Project to any of said individuals. Any exceptions shall be requested in writing and subject to consideration in accordance with applicable policies, procedures and regulations. There is no practical manner to effectively monitor conflict of interest compliance other than on a complaint/discovery

basis. Conflict of interest regulations are contained in the loan documents, however, currently the City has no other option but to rely on Borrowers to self regulate compliance with applicable statutory and contractual regulations with regard to Conflict of Interest including the requirement for potential tenants to identify any family relationships on the tenant applications.

4. Add conflict of interest language as modified above, to be included in all bond, CDBG, NSP and HOME loan agreements and applicable ordinances, if any. Land Use Covenants for projects that also receive LAHD funding through bond, HOME, CDBG and/or NSP programs do not have to have comprehensive conflict of interest restrictions. In order to add conflict of interest language those Land Use Covenants, applicable land use ordinances, if any, may also need amending.
5. For those Land Use Covenants for projects that receive LAHD funding through bond, HOME, CDBG and/or NSP programs, add a section 6, after "Tenant Selection", entitled: "Tenant Self-Certification" with the following language:

Tenant Self-Certification. Before approving an tenant for tenancy in an Restricted Unit, Owner shall require each prospective tenant to certify under penalty of perjury that they are not: (a) an owner, developer, or sponsor of the Project, (b) an officer, employee, agent or consultant, or elected or appointed official of the Owner, developer or sponsor of the Project; or (c) a member of the Immediate Family of such person described in subsections (a) or (b). Owner shall not rent any Restricted Unit to any of said individuals. Any exceptions shall be requested in writing and subject to consideration in accordance with applicable policies, procedures and regulations.

6. In the event that Conflict of Interest provisions are violated penalties will be assessed to both the owner/developer and the occupant. For the owner/developer the penalty shall be \$5,000 per incident per unit. For the occupant the penalty shall be immediate eviction, within the constraints of local, state and federal laws. Exact language to be developed by the City Attorney.

FISCAL IMPACT:

There is no impact on the General Fund.

Prepared by:



MANUEL H. BERNAL
Director of Multi-Family Housing

Reviewed by:



HELMI HISSERICH
Assistant General Manager

Approved by:



RUSHMORE CERVANTES
Executive Officer

Approved by:



DOUGLAS GUTHRIE
General Manager