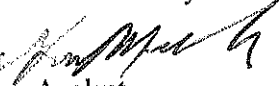


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 23, 2012

TO: Honorable Members of the City Council

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No.: 11-0994
Assignment No.: 12-04-0276

Los Angeles Housing Department – Tenant Disclosure Policy

SUMMARY

In a Communication from the April 4, 2012, Housing, Community and Economic Development (HCED) Committee meeting, the Chair recommended adoption of a Los Angeles Housing Department proposal, in response to Motion (Zine-LaBonge), relative to restricting relatives of any person who has invested in, developed, or managed City-subsidized housing from living in an affordable housing unit (C.F. 11-0994). Additionally, the Committee instructed this Office to report directly to Council on LAHD's proposal and make recommendations accordingly.

Overview

In its report dated March 13, 2012, the LAHD provides an overview of rules, regulations and practices that are based primarily on the federal HOME Program guidelines. Such guidelines provide guidance, qualifications and restrictions on how a developer/owner and/or jurisdiction should process instances in which an 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) may occupy an affordable housing unit. However, according to LAHD, no federal guidelines are provided with respect to tenants residing in affordable housing units who are immediate family members of owners or developers or any of the individuals mentioned above.

Additionally, LAHD indicates that current regulations with respect to loan documents contain a Conflict of Interest provision that precludes certain individuals including directors, officers, employees or agents from selecting or administering contracts or subcontracts supported by federal funds in cases in which such individuals are directors, officers, employees or agents of said contractors. These regulations also apply to situations where there is a familial relationship between the contractor and agent or owner of the project. However, these regulations do not explicitly restrict or regulate the occupancy of immediate family members of the owner/developer from occupying a HOME-funded housing unit.

LAHD indicates that 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. While current LAHD practices have improved the likelihood of successful completion and proper occupancy of affordable housing projects, such practices do not include a review of whether an occupant is a relative of, or has a business relationship, with any person who has invested in, developed, or managed an affordable housing unit that is federally funded. We recommend that LAHD report to Council with a description of the Affirmative Marketing and the Tenant Selection Plan to ensure optimal policy-making decisions with regard to equal treatment/access to affordable housing units.

LAHD Proposal

The proposed LAHD recommendations include a change to the definition of a family member to include adopted individuals, a modification to the conflict of interest language to prohibit family members of owners or developers of CDBG, NSP and/or HOME-assisted housing units from occupying such units, a tenant certification requirement, proposed changes to land use covenants and proposed penalties for tenants and developers who fail to disclose a potential conflict of interest related to family relationships. Each of these proposals is further discussed in the Attachment.

HCED Committee Comments

At the HCED meeting of April 4, 2012, Chair Cardenas recommended the development of a clear disclosure clause (Tenant Disclosure Policy) that requires tenants and those associated with the development or operations of a housing project to certify a familial or financial relationship. Chair Cardenas expressed that in addition to tenants, investors, developers, owners, and officers, any adopted policy should apply to board members and individuals with authority or influence over a housing project. Chair Cardenas stated that the policy should not discriminate against low-income individuals who may otherwise qualify for an affordable housing unit, but rather focus on the disclosure of any potential conflicts of interest, such as family relationship. According to LAHD, their proposal is not intended to discriminate but rather to provide full disclosure to ensure there is equal access to affordable housing units.

Equal Treatment of Tenant Selection

Chair Cardenas also requested that the proposed policy ensure that there be no preferential treatment with regard to the selection of tenants for affordable housing units. The LAHD report does not address this issue. We recommend that the LAHD report to Council on its tenant selection policy and other matters to strengthen systems that protect the integrity of an open and transparent tenant selection process that is consistent across all federally funded housing projects overseen by LAHD. We also recommend that our Office, with the assistance of LAHD and the City Attorney, develop the requested policy that not only applies to familial relationships but any other type of relationship that could potentially result in violations of conflict of interest policy and ensure that there is no preferential treatment in the tenant selection process and report back in 60 days.

Conflict of Interest Concerns at HACLA

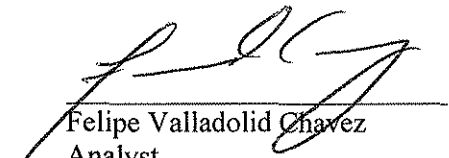
During the discussion, Chair Cardenas inquired about a Housing Authority of the City of Los Angeles (HACLA) board member involved in allegations of potential violations of conflict of interest policy while serving as Chair of the organization. The LAHD representative explained that two immediate family members of the individual in question had been residing at market rate housing units operated by HACLA. It is not clear whether that in and of itself constituted a violation of conflict of interest policy. The City Attorney is currently investigating these and other allegations of former HACLA board members, and the City Controller is conducting a second audit of HACLA which could potentially include findings regarding conflict of interest. We recommend that the Council instruct our office to continue to monitor the Controller's report and any findings by the City Attorney of potential conflict of interest violations and include them in the report back to the Council. It is further recommended, that the City Council request HACLA to submit, for Council review, their current conflict of interest policy pertaining to familial, financial or any other type of relationship between tenants and board members, developers, owners, agents or officers of housing developments in 30 days.

RECOMMENDATIONS

That the City Council:

1. Receive and File the Los Angeles Housing Department (LAHD) recommendations included in the report dated March 13, 2012.
2. Instruct the Office of the Chief Legislative Analyst to work with the LAHD, City Attorney and any other relevant department accomplish the following objectives:
 - a. Develop a clear and transparent tenant disclosure policy that not only applies to familial relationships but also to any other type of relationship that could potentially result in violations of conflict of interest policy and that could compromise the integrity of a fair and transparent tenant selection process.

- b. Develop a disclosure policy that applies to individuals associated with the financing, development and operations of a housing project, including but not limited to, investors, developers, owners, and board members.
 - c. Provide clear definitions of individuals affected by the proposed policy, clearly defined procedures and guidelines that describe the potential dispositions when tenants disclose a potential relationship to a developer/owner or other authority figure with financial interest in a housing project, and associated penalties for violations.
 - d. A description of the LAHD Affirmative Marketing and the Tenant Selection Plans to ensure optimal policy-making decisions with regard to equal treatment/access to affordable housing units.
 - e. Make recommendations to strengthen internal LAHD systems to ensure that there is no preferential treatment in the tenant selection process for affordable housing units.
3. Request the Housing Authority of the City of Los Angeles to submit, for Council review, their current conflict of interest policy pertaining to familial, financial or any other type of relationship between tenants and board members, developers, owners, agents or officers of housing developments, in 30 days.
4. Instruct the Chief Legislative Analyst to continue to monitor and report to Council with any findings by the City Controller and/or the City Attorney with regard to violations of conflict of interest policy or preferential treatment at HACLA.



Felipe Valladolid Chavez
Analyst

Attachment: LAHD Proposed Tenant Guidelines

GFM:fvc

LAHD Proposed Tenant Guidelines

LAHD proposes the following recommendations to ensure that there are no conflicts of interest resulting from family members of owners or developers of an affordable housing unit:

1. Definition of Family Member

Current definition of family member includes:

“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 proposes to insert “...persons related by blood or marriage and or/adoption...”

2. Modification of Conflict of Interest Language

Expand the loan document conflict of interest language pertaining to the occupancy of bond, Community Development Block Grant, 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’s; or (c) a member of the immediate family or such person described in subsection (1), may occupy a unit in the development.

LAHD states that if the household seeking to occupy the unit is a lower income house hold who would otherwise qualify for the unit, written request must be made to the City. The City may grant an exception on a case-by-case basis.

3. Tenant Self-Certification

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.

Loan borrowers would be required to certify 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 a person described in subsections (a) and (b). Borrowers shall not rent any unit of the Project to any said individuals.

Any exceptions shall be requested in writing and subject to consideration in accordance with applicable policies, procedures and regulations.

4. Land Use Covenants

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. Land Use Covenants- Tenant Self Certification

For those Land Use Covenants for projects that receive LAHD funding through bond, HOME, CDBG, and/or NSP programs, add the following language:

Before approving a tenant for tenancy in a Restricted Unit, prospective tenants shall be required to certify 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 a person described in subsections (a) and (b). Borrowers shall not rent any unit of the Project to any said individuals.

Any exceptions shall be requested in writing and subject to consideration in accordance with applicable policies, procedures and regulations.

6. *Violation of Conflict of Interest Provisions- Penalties*

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.