



Council Meeting: April 9, 2013

SUBJECT: Follow up on Study Issue CDD 12-11 [Consider Adding Criminal Background Checks to Below Market Rate (BMR) Program Qualifications] for Further Consideration and Direction

DISCUSSION

On July 17, 2012, the City Council reviewed a study issue related to eligibility screening for prospective buyers of BMR ownership units, specifically considering whether criminal background checks of program applicants could be required. The Council adopted a motion directing the City Attorney to ask the Attorney General's Office for permission to access the State's criminal database for purposes of conducting background checks to screen BMR program applicants for prior criminal history.

As reported in an information only item to Council on January 15, 2013, accessing the criminal database for the purpose of screening applicants for the City's BMR ownership program is not permissible. Such access would require an amendment by the State Legislature to the Penal Code authorizing use of the database for this purpose. At the March 5, 2013 Council meeting, Council asked that staff review the direction from the July meeting to consider how, and whether, to proceed with the issue.

During the July 17th meeting, Council's discussion focused on whether or not the State's criminal database could be accessed by the City to perform background checks. A motion was made to direct the City Attorney to find out whether in fact the database could be so utilized. The maker of the motion noted that in the event the State database was not available, the matter should come back to Council for a discussion about whether to consider using a private service for criminal background checks, or whether to proceed with the issue at all.

The original study issue focused on the City's ability to require prospective BMR home buyers to undergo criminal background checks prior to being permitted to purchase a BMR home. If Council decides to go forward with something, it might be more productive to focus the discussion on permissible eligibility requirements rather than criminal background checks in general.

Under the current BMR ordinance, the eligibility of prospective buyers is determined by income threshold. In addition, applicants who reside or are employed in Sunnyvale at the time of application, including qualified public school employees, city employees, and childcare workers, have priority to purchase the BMR units. The Council might explore adding an additional safety-based eligibility criterion. Staff could then analyze whether the criterion was legally viable, the most effective way to formalize the requirement (i.e., should it be added to the ordinance?), and determine by what means it could be verified.

For example, if Council were to adopt a requirement that persons convicted of certain violent felonies are not eligible to apply for a BMR unit, staff could look into private service providers that review court records to determine past convictions. To consider what private services for background investigations are available without knowing what specific information is being sought raises several concerns. There are numerous State and federal laws regulating consumer investigations, and staff would have to know what information was being sought in order to analyze whether it complied with relevant laws. In order to be legally defensible, the safety requirement would have to be defined in a way that could be objectively verified and not left to a subjective determination by staff.

RECOMMENDATION

Provide direction to staff as the Council desires.

Prepared by:

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