

LAW DEPARTMENT MEMORANDUM

To: Alderman Leonard J. Gentile, Chair, and Members of the Finance Committee

From: Marie M. Lawlor
Assistant City Solicitor

Date: May 22, 2013

Re: Finance Committee questions pertaining to First Time Homebuyer Program (Docket Item #55-13)

Cc: Trisha Kenyon Guditz, Housing Program Manager
Planning and Development Department

Rieko Hayashi, Housing Planner
Planning and Development Department

Questions Presented

I understand that the Finance Committee has posed two questions pertaining to recapitalizing the First Time Homebuyer Program (Program). The first question is whether the City is legally bound to use the \$75,000.00 asset limit recommended by the state Department of Housing and Community Development (DHCD) in order to determine a homebuyer's eligibility for the Program, or may instead use a lower asset limit. The second question is whether the City may exclude retirement savings from an asset determination.

Short Answers

1) The City may legally use a lower asset limit, but DHCD strongly advises against this for reasons discussed below; and 2) The City may not exclude retirement assets from asset determinations without also excluding Homebuyer Program units from the State's Subsidized Housing Inventory. (The Subsidized Housing Inventory is used to measure a community's inventory of low-and moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law.)

Background

By history and policy, the City has consistently adhered to the income and asset eligibility determinations set by the U.S. Department of Housing and Urban Development

(HUD), and followed by DHCD for first time homebuyer programs. When Newton's Program was started, funding was from federal sources, and such adherence to HUD regulations was required.

Newton's funding source has since changed to Community Preservation Funds and the Program currently uses no federal funding. While there appears to be no federal requirement (when using local funding) to adhere to the HUD income and asset determinations and guidelines, the Planning Department's policy has consistently adhered to those determinations and guidelines in order to be consistent with HUD and DHCD requirements, as well as with other Newton housing programs which do receive federal funds.

In addition, DCHD regulates the Program in the following ways. First, DCHD must approve all affordable housing covenants in connection with Newton's First Time Homebuyer Program. Second, DHCD is the regulatory authority for G.L. c. 40B, as mentioned previously, and administers the State's Subsidized Housing Inventory. DHCD determines whether or not Newton's First Time Homebuyer units will be counted toward Newton's 10% inventory of affordable housing units. Currently, Newton is at 7.6 percent.

Discussion

The \$75,000.00 asset limit:

DCHD has advised that local programs not using federal funds may apply to set an asset limit lower than the \$75,000.00, but strongly recommends against a lower limit in order to provide a cushion for home maintenance and unforeseen contingencies. Originally, DHCD's asset limit was \$50,000 but the agency increased it to \$75,000 in 2008 in order to provide a small reserve for needed repairs and capital replacements. Such a cushion is in the best interest of the Program, since it minimizes the possibility that a homebuyer will be unable to maintain the unit and will be forced to sell. Such a sale could potentially remove the unit from the Subsidized Housing Inventory. Moreover, DHCD cautions that lowering the asset limit would result in a reduced pool of First Time Homebuyer applicants to the detriment of the Program and the City's goal of providing homeownership opportunities to lower income families.

Exclusion of Retirement Assets from Income Asset eligibility determination:

DCHD has advised that it requires local Programs to include retirement assets in income asset determinations in accordance with HUD regulations. If Newton's Program fails to include retirement assets in such determination, DHCD has advised that the Program's units will not be counted on the Subsidized Housing Inventory, nor will the Program's Affordable Housing Restrictions be approved.

DCHD points out that uniformity with HUD and state regulations is important since most First Time Homebuyers must rely on soft second mortgage programs in conjunction with

local First Time Homebuyer programs in order to afford their home. These soft second mortgage programs require strict adherence to HUD and DHCD regulations, including the \$75,000 asset limit calculated with retirement savings included in the asset determination. Differing income asset determination standards would jeopardize a Newton First Time Homebuyer's eligibility for a soft second mortgage.