



SAN DIEGO  
HOUSING  
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# San Diego Housing Commission (SDHC)

## Deed-Restricted Affordable Housing Preservation Ordinance Framework

Presentation to the SDHC Board of Commissioners  
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# SDHC – Preservation Ordinance Framework

## Introduction

- **May 28, 2020:** SDHC completed a yearlong study and published a report, *Preserving Affordable Housing in the City of San Diego*.
- **October 27, 2020:** City Council approved seven actions to implement a strategy for affordable housing preservation, including convening an Interagency Working Group and Preservation Collaborative Stakeholder Group.
- **April 8, 2021:** SDHC convened the first meeting of the Interagency Working Group.
- **February 4, 2022:** SDHC Board of Commissioners (Board) approved the nomination categories and representative organizations to serve on the first Preservation Collaborative Stakeholder Group, which continues to meet quarterly.
- **March 2, 2023:** Staff presented an informational update about the City Council-Approved Preservation Strategy Action items to the City Council's Land Use and Housing Committee.
  - The Committee directed SDHC to return to the Committee by the end of the year to present parameters for a deed-restricted preservation ordinance that provides a right of first offer and right of first refusal to qualified entities, including nonprofit and for-profit, for consideration.



# SDHC – Preservation Ordinance Framework

## Deed-Restricted Affordable Housing Ordinance

- **Preservation Action Item No. 5:** Develop an Affordable Housing Preservation Ordinance to require that owners of **deed-restricted** affordable housing properties who wish to sell their property provide a **notice of intent to sell** to the City of San Diego, SDHC, and qualified nonprofit or for-profit affordable housing developers; and to further provide both a **right of first offer and a right of first refusal**, to qualified nonprofit or for-profit affordable housing developers.
- The public has invested substantial resources toward the creation of affordable housing and desires to protect the affordable housing stock wherever possible by keeping it affordable in perpetuity.
- A local ordinance would expand the opportunities granted under state law to preserve deed-restricted affordable housing and increase housing opportunities for people with very low, low and moderate income.



# SDHC – Preservation Ordinance Framework

## Proposed Framework

	State Law (Government Code Sections 75863.10 – 13)	Proposed Local Ordinance
<b>Notices to “Qualified Entities”</b>	Required at intervals prior to expiration of deed restrictions (at 3 years, 12 months and 6 months)	Required at intended sale of property
<b>Right of First Offer</b>	Required	Required
<b>Right of First Refusal</b>	Required	Required

- Notice when a property is for sale provides a better opportunity for qualified entities to acquire and preserve the property’s affordability in perpetuity.



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

### Stakeholder Meetings

Stakeholder Groups	Meeting Dates
San Diego Housing Federation Affordable Housing Developer Stakeholder Group (Part 1)	July 13, 2023
Affordable Housing Developer Group Meeting	July 25, 2023
Southern California Rental Housing Association Stakeholder Group	August 3, 2023
San Diego Housing Federation Affordable Housing Developer Stakeholder Group (Part 2)	August 23, 2023
San Diego Housing Federation Policy Committee Stakeholder Group	September 13, 2023
Downtown San Diego Partnership Stakeholder Group	September 14, 2023
Tenant Organizations Stakeholder Group	September 14, 2023
San Diego Housing Commission Developer Collaborative	September 21, 2023
General Public Stakeholder Meeting	October 11, 2023



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

### Properties Subject to Local Deed-Restricted Preservation Ordinance

- Deed-restricted multifamily affordable housing properties of five units or more in the City of San Diego.

### When Preservation Ordinance Applies

- The owner of a deed-restricted, multifamily affordable housing property may not sell or otherwise transfer ownership of the property without first providing a notice of intent to sell that includes a right of first offer and right of first refusal to the City of San Diego and SDHC (collectively the “Local Government Entities”) and “Qualified Entities” as defined by the state.

### Required Noticing Timeline

- Notice of intent to sell:
  - Owners of deed-restricted affordable developments who wish to sell their property are first required to provide a *notice of intent to sell* to affected households, Local Government Entities, and to Qualified Entities (adopt state definition).
  - The right to make a first offer to purchase and a right of first refusal shall be provided to Local Government Entities and Qualified Entities only.



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

- Qualified Entities to whom a notice and opportunity to purchase shall be provided include only:
  - (1) The tenant association of the development
  - (2) Local nonprofits and public agencies
  - (3) Regional or national nonprofit organizations; regional or national public agencies
  - (4) Profit-motivated housing organizations or individuals committed to maintaining the affordability of the property for very low-, low- or moderate-income households.
- Qualified Entities must be approved by the state and listed on the state Qualified Entity List.



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

- Response - Letter of Interest
  - Local Government Entity/Qualified Entity has 30 days from receipt of notice of intent to sell to indicate interest in submitting an offer to purchase.
- Offer to Purchase
  - Local Government Entity/Qualified Entity has 60 days from letter of interest to make an offer to purchase.
- Offer to Purchase Rejected – Right of First Refusal
  - Where a Local Government Entity or Qualified Entity's offer to purchase is not accepted by the owner and the owner markets the property and gets an offer from a non-qualified entity that the owner intends to accept, the owner must provide the Local Government Entity or Qualified Entity whose offer was not accepted 7 days to make a counter-offer.
  - The counter-offer must mirror the terms and conditions of the pending offer to purchase, unless modified by mutual consent.





# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

- Purchase Agreement
  - Upon owner acceptance of the offer to purchase, the Local Government Entity or Qualified Entity has 30 days to enter into a purchase agreement.
- Close of Escrow
  - Upon execution of a purchase agreement, the Local Government Entity or Qualified Entity has 120 days to close escrow.
  - Upon the sale to a qualified entity, the property must be preserved at current income levels, and tenants cannot be involuntarily displaced unless the tenant has breached the terms of the lease.

### Method of Notice Delivery

- All notices to affected tenants must be made by prepaid, first-class mail postage or electronically.
- All notices to affected public agencies must be made by either prepaid, first-class mail postage or electronically to any public entity that has provided an email address for that purpose.



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

### Exempt Transfers of Ownership

This ordinance does not apply to the following transfers of ownership:

- A government taking by eminent domain or negotiated purchase
- Forced sale pursuant to a foreclosure
- Transfer by gift, devise, or operation of law
- Sale to a person who would be included within the table of descent and distribution if there were a death intestate of an owner
- For purposes of refinancing, where control of the property remains unchanged
- Upon exit of the Limited Partner in a tax credit limited partnership Year 15 restructuring
- Owner who certifies under penalty of perjury the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of sale
- Where owner intends to sell to another Qualified Entity
- Transfer of a property with affordability restrictions required by a local affordable housing land use program where 25% or less of the units are restricted as affordable



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

### Method of Enforcement

The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right of first refusal under this section or any tenant association at the property or any affected public entity that has been adversely affected by an owner's failure to comply with this section. In any judicial action brought pursuant to this subdivision, the court may waive any bond requirement and may award attorney's fees and costs to a prevailing plaintiff.



# SDHC – Preservation Ordinance Framework

## Proposed Framework (Continued)

- *Qualified Entity* means an organization or individual qualified by the state to participate in the opportunity to submit an offer to purchase that meets the eligibility criteria, which includes:
  1. The entity is the tenant association of the affected development; a local, regional, or national nonprofit organization or public agency; or a profit-motivated organization or individual;
  2. The entity is capable of purchasing residential properties for the purpose of maintaining long-term affordability and rental restrictions;
  3. The entity is financially capable of managing the housing and related facilities for the remaining useful life, either by itself or through a management agent;
  4. The entity agrees to obligate itself and any successors in interest to maintain the affordability of the project for very low-, low- or moderate-income households for either a 30-year period from the date the entity takes legal possession of the project or the remaining term of the existing federal government assistance, whichever is greater;



## SDHC – Preservation Ordinance Framework

### Proposed Framework (Continued)

5. The entity agrees to maintain the occupancy profile of very low-, low- and moderate-income tenants in the approximate percentages specified in the existing use restrictions at time of intent to sell;
6. The entity agrees to renew subsidies if available and sufficient to maintain the project's economic feasibility;
7. A local nonprofit organization or public agency ensures no officers or directors will have a financial interest in the project to be purchased;
8. The entity agrees to record affordable rents and use restrictions in a regulatory agreement.



# SDHC – Preservation Ordinance Framework

## Comments Summary

### Summary of Comments Received

Can an owner selling to a qualified entity be exempt from these noticing requirements?

Having adversely affected parties enforce by going to court is not an efficient way of enforcement.

Eliminate timelines and allow for the purchase agreement dictate the timelines.

120 days to close escrow is not sufficient time to secure affordable housing financing.

Extend time to submit letter of interest from 15 days to 30 days.

Extend period of time for qualified entities to make offers from 30 days to 60 days.

These added regulations can restrict an owner's property rights.



# SDHC – Preservation Ordinance Framework

## Next Steps

- **November 16, 2023:** Proposed Local Preservation Ordinance Framework presented to Land Use and Housing Committee
- **January 2024 – June 2024:** Drafting of preservation ordinance language with City Attorney
- **June 2024 – November 2024:** Stakeholder Meetings about Draft Ordinance
- **First Quarter 2025:** Final Draft preservation ordinance presented to Land Use and Housing Committee for consideration and to City Council for potential adoption.



## Questions & Comments

