



SAN DIEGO
HOUSING
COMMISSION

INFORMATIONAL REPORT

DATE ISSUED: November 15, 2024

REPORT NO: HCR24-075

ATTENTION: Chair and Members of the San Diego Housing Commission Board of Commissioners
For the Agenda of November 22, 2024

SUBJECT: Affordable Housing Preservation Ordinance

COUNCIL DISTRICT: Citywide

NO ACTION IS REQUIRED ON THE PART OF THE HOUSING COMMISSION

SUMMARY

On May 28, 2020, the San Diego Housing Commission (Housing Commission) published the report "Preserving Affordable Housing in the City of San Diego." The Council of the City of San Diego (City Council) accepted the report on June 2, 2020, and referred it to the Land Use and Housing Committee (Committee) for further action (San Diego Resolution R-313066 [June 4, 2020]). On June 24, 2020, the Committee directed Housing Commission staff to return to the Committee in September with a recommended implementation strategy with detailed policy options.

On September 17, 2020, the Housing Commission proposed an implementation strategy for affordable housing preservation to the Committee. On October 27, 2020, the City Council approved the seven actions proposed to the Committee to implement a strategy for affordable housing preservation in the City of San Diego (City) (San Diego Resolution No. R-313276 [October 30, 2020]). On February 4, 2022, the Housing Commission Board of Commissioners (Board of Commissioners) approved the nomination categories and representative organizations to serve on the first Preservation Collaborative Stakeholder Group (Housing Commission Report No. HCR22-001). This group is ongoing and meets quarterly.

On March 2, 2023, Housing Commission staff presented an informational update about the City Council-approved preservation strategy action items to the Committee. The Committee directed Housing Commission staff to develop parameters for a deed-restricted affordable housing preservation ordinance, including provisions for a right of first offer and right of first refusal for qualified entities, including nonprofit and for-profit organizations and individuals, to be presented by the end of the year. Profit-motivated housing organizations were included at the request of the Committee and in accordance with the state's definition of "qualified entities" under California Government Code section 65863.11(d).

On November 16, 2023, Housing Commission staff presented proposed parameters for a local preservation ordinance, which would expand the opportunities granted under existing state law to preserve deed-restricted affordable housing and increase housing opportunities for very low-, low-, and moderate-income households. The Committee approved the parameters and directed Housing Commission staff to work with the San Diego City Attorney's Office (City Attorney) to draft a local deed-restricted affordable housing preservation ordinance, incorporating both the Committee's and public feedback.

Between January and May 2024, Housing Commission staff held meetings with the City Attorney's Office to refine the draft ordinance language. The City Attorney's Office provided the Housing Commission with a draft of the proposed ordinance on July 9, 2024. Between July and October 2024, Housing Commission staff presented the draft ordinance to 15 stakeholder groups for review and comment.

The proposed local affordable housing preservation ordinance would expand on applicable state laws to preserve deed-restricted affordable housing and ensure housing opportunities for very low-, low-, and moderate-income households are not permanently removed from the housing stock.

Currently, state law (Government Code sections 65863.10-11 and 65863.13) requires owners of deed-restricted affordable housing to issue a series of notices prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development:

- 3 Years Prior: Notice to prospective tenants and local government entities
- 1 Year Prior: Notice to tenants, prospective tenants, and affected public entities
- 6 Months Prior: Notice to tenants, prospective tenants, and affected public entities

Under California Government Code section 65863.11(b), an owner of deed-restricted affordable housing *shall not terminate a subsidy contract or prepay the mortgage* without first providing qualified entities, as defined under state law, an opportunity to submit an offer to purchase the development. The notice of the opportunity to submit an offer to purchase must at least be given before or concurrently with the notices listed above, no less than a period of 12 months, prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development.

Further, under California Government Code section 65863.11(c), an owner of deed-restricted affordable housing *shall not sell* the development at any time within five years before the expiration of rental restrictions or at any time within five years of the owner being eligible for prepayment on an assisted housing development or termination on a subsidy contract without first providing qualified entities an opportunity to submit an offer to purchase the development. Similarly, the notice of the opportunity to submit an offer to purchase must at least be given before or concurrently with the notices listed above, no less than a period of 12 months, prior to the anticipated date of the termination of a subsidy contract, the expiration of rental restrictions, or prepayment on an assisted housing development.

Although state law requires owners to provide qualified entities an opportunity to submit an offer to purchase deed-restricted affordable housing, a sale can occur at any time prior to the state requirements being triggered, i.e., an owner sells prior to the five-year periods described under state law. The proposed local ordinance enhances state law protections by requiring owners to issue a notice whenever they *intend* to sell deed-restricted affordable housing, regardless of the expiration date of the affordability restrictions or an owner's eligibility for prepayment or termination. By requiring a notice of intent to sell and providing qualified entities with a right of offer to purchase and a right of first refusal before the state law requirements are triggered, the local ordinance ensures timelier opportunities for qualified entities to acquire deed-restricted affordable housing and preserve affordability restrictions in perpetuity.

An owner will not be required to comply with the local ordinance requirements if state law is triggered, i.e., an owner is within the five-year periods described under state law.

Following the receipt of the draft ordinance in July 2024, staff worked with the Preservation Collaborative Stakeholder Group to organize stakeholder meetings for feedback. Between July and October 2024, a total of 15 stakeholder meetings were held with organizations representing affordable housing developers, property owners, tenant advocacy groups, apartment owners, housing policy experts, and the general public.

Stakeholder Group	Meeting Date
California Apartment Association	July 18, 2024
Southern California Rental Housing Association	August 8, 2024
AARP San Diego Advocacy Team	August 8, 2024
Housing Commission Community-Based Organization Advisory Group	August 8, 2024
San Diego Regional Policy & Innovation Center	August 28, 2024
City Heights Community Development Corporation Transportation Equity Affordable Housing Task Force	August 28, 2024
San Diego City-County Reinvestment Task Force	September 5, 2024
Downtown San Diego Partnership	September 12, 2024
City of San Diego Development Services Department	September 25, 2024
San Diego Tenants United Stakeholder Group	October 2, 2024
San Diego Housing Federation Policy Committee	October 9, 2024
Community Budget Alliance	October 10, 2024
General Public Stakeholder Meeting	October 15, 2024
Affordable Housing Equity Provider	October 16, 2024
San Diego Housing Federation: Affordable Housing Developer Group	October 28, 2024

The table below summarizes the comments received from stakeholders regarding the draft ordinance, responses, and, where appropriate, actions taken.

Ordinance Section	Comment Type	Comment Summary	Response/Action Taken
Definitions	General Feedback	All multifamily properties should be subject to the ordinance.	Not adopted; focus remains on deed-restricted housing as directed by City Council.
Definitions	Specific Provision Concern	For-profit corporations should have California as their primary residence and provide more assurance they are	Not adopted; outcome-focused, ensuring affordability regardless of the provider's location.

		affordable housing providers.	
Definitions	Recommendation for Change	Adopt the City of Berkeley's broader definition of Tenant Organization.	Not adopted; using State's definition of Qualified Entity to ensure operational capacity.
Notice of Intent to Sell	Recommendation for Change	Exempt notice timelines when an owner sells directly to a Qualified Entity.	Adopted.
Notice of Intent to Sell	Request for Additional Provision	Suggests electronic publication or a registry of interest on the Housing Commission's website	Adopted; notice will be posted on the Housing Commission's website in addition to certified mail.
Letter of Interest	Recommendation for Change	Extend the Letter of Interest period from 15 to 30 days.	Adopted.
Letter of Interest	Recommendation for Change	Extend the Letter of Interest period to 45 days to accommodate nonprofits.	Not adopted; submitting a Letter of Interest does not lock a Qualified Entity (QE) into a sales price, and an additional 60 days is provided for the QE to determine an offer price, giving a total of 90 days (30 + 60) to submit an offer.
Offer to Purchase	Clarification Request	Clarify if the right of first offer period resets if a sale fails.	Clarified; only if property is removed from the market, notices must be reissued.
Purchase Agreement	Specific Provision Concern	120-day closing period for tax credits/bonds is unrealistic; allow agreement to prevail.	Adopted; agreement timeline flexibility allowed upon mutual consent.
Right of First Refusal	Recommendation for Change	Counter-offer should match all terms, including price, closing period, and conditions.	Adopted.
Exempt Transfers of Ownership	Clarification Request	Clarify exemptions if an owner transfers a property as a gift or to a descendent; will affordability be maintained?	Clarified; all grantees must maintain affordability under the ordinance.
Exempt Transfers of Ownership	Request for Revision	Concerns about financial emergency certification and who reviews it.	Clarified; certification will be reviewed in court if contested.

Exempt Transfers of Ownership	Request for Revision	Questioned why transferring a property by gift is exempt.	Clarified; property rights allow for gifts, but exemptions require the grantee to comply with ordinance terms and maintain affordability.
Exempt Transfers of Ownership	Recommendation for Change	Questioned foreclosure exemptions; suggested the Housing Commission should have first right to purchase.	Not adopted; state and federal laws on foreclosure take precedence.
Method of Enforcement	General Support/Concern	Suggestion to research more efficient methods of enforcement beyond court action.	Clarified; city enforcement may include civil and criminal remedies.
Method of Enforcement	Recommendation for Change	Suggests penalties beyond bond requirements and attorney fees.	Adopted; may include civil and criminal remedies.

FISCAL CONSIDERATIONS

The proposed action has no fiscal impact.

HOUSING COMMISSION STRATEGIC PLAN

This item relates to Strategic Priority Area No. 1 in the Housing Commission Strategic Plan for Fiscal Year (FY) 2022-2024: Increasing and Preserving Housing Solutions. The Housing Commission is in the process of developing a new Strategic Plan.

EQUAL OPPORTUNITY CONTRACTING INFORMATION

This action is exempt from Equal Opportunity Contracting Evaluation per August 7, 2019, Memo – Actions Exempt from Equal Opportunity Contracting Program Review, as it is a Land Use Ordinance.

PREVIOUS COUNCIL AND COMMITTEE ACTIONS

On June 2, 2020, the City Council accepted the “Preserving Affordable Housing in the City of San Diego” report (Preservation Report) and referred it to the Land Use and Housing Committee (Committee) for further action (San Diego Resolution R-313066).

On June 24, 2020, the Committee provided input and directed San Diego Housing Commission (Housing Commission) staff to return to the Committee in September 2020 with a recommended implementation strategy that included detailed policy options and best practices for recommendations 2, 4, and 5 of the Housing Commission’s Preservation Report (Report No. LUH20-001).

On September 17, 2020, the Committee approved the Housing Commission’s recommendation for five actions to implement an affordable housing strategy, with an amendment to the first action related to directing former redevelopment funds to affordable housing preservation (Report No. LUH20-004).

On October 27, 2020, the Council of the City of San Diego (City Council) approved the seven actions proposed to implement a strategy for affordable housing preservation in the City of San Diego (San Diego Resolution R-313276).

The Housing Commission convened the Interagency Working Group, which held its first meeting on April 8, 2021, and met quarterly throughout 2021. On February 4, 2022, the Housing Commission Board of Commissioners approved the nomination categories and representative organizations to serve on the first Preservation Collaborative Stakeholder Group (Housing Commission Report No. HCR22-001). This group is ongoing and meets quarterly.

On March 2, 2023, Housing Commission staff presented an informational update about the City Council-approved preservation strategy action items to the Committee. The Committee directed Housing Commission staff 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 organizations and individuals, for consideration (Report No. LUH23-002).

On November 16, 2023, Housing Commission staff presented to the Committee proposed parameters for a local preservation ordinance, which would expand the opportunities granted under existing state law to preserve deed-restricted affordable housing and increase housing opportunities for very low-, low-, and moderate-income households. The Committee approved the parameters and directed Housing Commission staff to work with the San Diego City Attorney's Office to draft a local deed-restricted affordable housing preservation ordinance, incorporating both the Committee's and public's feedback. (Report No. LUH23-006).

ENVIRONMENTAL REVIEW

The proposed action to recommend that the Council of the City of San Diego (City Council) amend San Diego Municipal Code Chapter 9, Article 8 to adopt the proposed Affordable Housing Preservation Ordinance is not a project as defined in the California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5) as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment and, therefore is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3). Nevertheless, the action would be exempt from the California Environmental Quality Act (CEQA) pursuant to the "common sense" exemption set forth in CEQA Guidelines Section 15061(b)(3), which states the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action is to recommend that the City Council amend San Diego Municipal Code Chapter 9, Article 8 to adopt the proposed Affordable Housing Preservation Ordinance, which would enhance state law protections by requiring owners to issue a notice whenever they intend to sell deed-restricted affordable housing, regardless of the expiration date of the affordability restrictions or an owner's eligibility for prepayment or termination. By requiring a notice of intent to sell and providing qualified entities with a right to offer to purchase and a right of first refusal before the state law requirements are triggered, the local ordinance ensures timelier opportunities for qualified entities to acquire deed-restricted affordable housing and preserve the affordability restrictions in perpetuity. These noticing

requirements and right conferred on qualified entities can be seen with certainty to have no possibility of having a significant effect on the environment.

Respectfully submitted,

Approved by,



Molly Chase
Senior Vice President, Policy and Land Use
San Diego Housing Commission



Jeff Davis
Deputy Chief Executive Officer
San Diego Housing Commission

Hard copies are available for review during business hours at the information desk in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101. Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org.