



INFORMATIONAL REPORT

DATE ISSUED: October 5, 2023

REPORT NO: HCR23-105

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of October 13, 2023

SUBJECT: Workshop & Discussion: Deed-Restricted Affordable Housing Preservation Ordinance Framework

COUNCIL DISTRICT: All

NO ACTION IS REQUIRED ON THE PART OF THE HOUSING COMMISSION

An informational workshop will be presented about the proposed framework for an Affordable Housing Preservation Ordinance for the City of San Diego and stakeholder comments that San Diego Housing Commission (Housing Commission) staff has received about the proposed framework.

SUMMARY

On February 9, 2023, Housing Commission staff presented an informational workshop to the Housing Commission Board of Commissioners (Board) about Affordable Housing Preservation and Financing Strategies. During that workshop, staff provided updates to the Board about the Affordable Housing Preservation Strategy that the San Diego City Council adopted October 27, 2020, following the Housing Commission's study report, *Preserving Affordable Housing in the City of San Diego*. The updates included a request by City Councilmember Joe LaCava to include the development of an Affordable Housing Preservation Ordinance as part of the City Council Land Use and Housing Committee's 2023 Priorities. It was pending inclusion as a future item in the Committee's 2023 work plan at that time.

On March 2, 2023, Housing Commission staff presented an informational update to the Land Use and Housing Committee about the Affordable Housing Preservation Strategy Implementation and the Preservation Collaborative Stakeholder Group. The Committee gave direction to Housing Commission staff to return to the Committee to present parameters for an Affordable Housing Preservation Ordinance that would include a right of first offer and right of first refusal to be provided to qualified entities, including nonprofit and for-profit, for consideration by the end of the year.

Housing Commission staff worked with the Preservation Collaborative Stakeholder Group (Stakeholder Group) to draft a proposed preservation ordinance framework. In consultation with the Stakeholder Group, a schedule of stakeholder meetings was established to include for-profit and nonprofit representatives of the affordable housing development community, private rental housing owners, downtown business and housing owners, tenant associations, and the general public.

A series of stakeholder meetings were held in which presentations on the Affordable Housing Preservation Ordinance framework were given, and comments were received.

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Stakeholder Groups	Meeting Dates
San Diego Housing Federation Affordable Housing Developers Group (Part 1)	July 13, 2023
Affordable Housing For-Profit Developer Group	July 25, 2023
Southern California Rental Housing Association	August 3, 2023
San Diego Housing Federation Affordable Housing Developers Group (Part 2)	August 23, 2023
San Diego Housing Federation - Policy Committee	September 13, 2023
San Diego Downtown Partnership	September 14, 2023
Tenant Organizations Stakeholder Group	September 14, 2023
San Diego Housing Commission Developer Collaborative	September 21, 2023
General Public Stakeholder Meeting	October 4, 2023

Comments received at these meetings have helped form additional clarifications, amendments and exceptions to the ordinance framework. This workshop will review the proposed Affordable Housing Preservation Ordinance framework and highlight the stakeholder comments that have been received to date.

Housing Commission staff anticipates presenting the proposed Affordable Housing Preservation Ordinance framework to the Land Use and Housing Committee on November 16, 2023.

HOUSING COMMISSION STRATEGIC PLAN

This item relates to Strategic Priority Areas No. 1 and No. 5 in the Housing Commission’s Strategic Plan for Fiscal Year (FY) 2022-2024:

1. Increasing and Preserving Housing Solutions.
5. Advocacy, Communication, Public Engagement.

EQUAL OPPORTUNITY CONTRACTING AND EQUITY ASSURANCE

The Housing Commission’s Strategic Plan for FY 2022-2024 includes the following statement regarding the Housing Commission’s commitment to equity and inclusivity: “At SDHC, we are about people.

SDHC embraces diverse approaches and points of view to improve our programs, projects and policies.

- We believe in delivering programs and services in innovative and inclusive ways.
- We are committed to advancing equity and inclusion both internally and externally.”

Respectfully submitted,



Wendy DeWitt
Vice President of Preservation
San Diego Housing Commission

Approved by,



Jeff Davis
Interim President & Chief Executive Officer
San Diego Housing Commission

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Attachments: 1) Draft Deed-Restricted Preservation Framework

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 also available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission website at www.sdhc.org.



SAN DIEGO
HOUSING
COMMISSION

Local Deed-Restricted Preservation Ordinance Framework

in Addition to State Noticing Requirements

Questions? Contact:

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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, the San Diego Housing Commission, 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.

Adopting a local preservation ordinance would expand the opportunities granted under state law to preserve deed-restricted affordable housing by requiring a *notice of intended sale*, and a right of first offer and right of first refusal for appropriate “qualified entities” *on deed-restricted properties that are for sale*.

State Preservation Notice Law Requirements

California Government Code Sections 65863.10, 65863.11, and 65863.13

California enacted its own state notice law in 1987. Government Code Sections 65863.10-13 contain a series of provisions designed to give tenants sufficient time to understand and prepare for potential rent increases, as well as to provide local governments and potential preservation buyers with an opportunity to preserve the property. Made permanent in 2011, the State Notice Law has become a critical tool for preservation in the state as it has increased opportunities for preservation transfers, thereby extending affordability for an additional 30-55 years.

Tenant Noticing

- Requires owners of government-assisted developments to provide a notice three years, twelve months and six months *prior to the expiration of deed restrictions* to all affected households and to affected public agencies.
 - The 3-year notice is posted in a conspicuous place in the lobby/common area(s) of the building; prospective tenants must be notified at time of interview for eligibility; and notice to affected public entities must be provided via first-class mail postage prepaid or electronically
 - The one-year notice is mailed to affected households via first-class, postage prepaid mail. A separate one-year notice of expiring deed restrictions is mailed to “qualified entities,” which includes local public agencies, and provides a right of first offer and right of first refusal in the event that the owner intends to sell the property; the right of first offer, right of first refusal to qualified entities must be mailed by registered or certified mail, return receipt requested
 - The 6-month notice to affected households is mailed via first-class, postage prepaid mail.

“Qualified Entity” requirements are as follows:

- Types of entities eligible:

- tenant association of the affected development;
- a local, regional, or national nonprofit organization or public agency;
- or a profit-motivated organization or individual;
- Entity is:
 - Capable of purchasing residential properties for the purpose of maintaining long term affordability and rental restrictions;
 - Financially capable of managing the housing and related facilities for the remaining useful life, either by itself or through a management agent;
- Agreement:
 - 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;
 - Maintain the occupancy profile of very low-, low- and moderate-income tenants in the approximate percentages that existed at the time the 12 month **Notice of Intent** to prepay or terminate was given or the approximate percentages specified in the existing use restrictions, whichever is higher;
 - Renew subsidies if available and sufficient to maintain the project's economic feasibility;

Proposed Local Deed-Restricted Preservation Ordinance Framework

Purpose

The regulations in this Division are intended to benefit the general public by preserving the existing deed-restricted affordable housing stock in the city, thereby increasing housing opportunities for persons of very low, low and moderate income. The loss of affordable housing through its conversion to market-rate housing is an ongoing and critical problem in the expensive and limited San Diego housing market. The public has invested substantial resources toward the creation of affordable housing and desires to protect the affordable housing stock whenever possible by keeping the housing affordable to lower-income residents in perpetuity. State law, California Government Code Sections 65863.10, 65863.11 and 65863.13, provides for notice and opportunity to purchase affordable deed-restricted properties at the expiration of the deed-restrictions, a time when the property is not necessarily for sale. These regulations are intended to strengthen the notice requirements to provide a first opportunity to purchase to local public agencies and qualified entities when the owner of a deed-restricted affordable property intends to sell, thereby providing a better opportunity to acquire and preserve the property's affordability in perpetuity.

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 the Local Deed-Restricted Preservation Ordinance Applies

The owner of a deed-restricted multi-family 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, the San Diego Housing Commission, collectively the "Local Government Entities," and Qualified Entities" as defined by the state.

Timeline of Noticing Requirements

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
- 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 (See Qualified Entity state qualification requirements in Definitions, below)

Response - Letter of Interest

- o 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

- o 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

- o Where a Local Government Entity or Qualified Entity's offer to purchase is not accepted by owner and the owner markets the property and gets an offer from a non-qualified entity that owner intends to accept, 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.

Purchase Agreement

- o 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

- o Upon execution of a purchase agreement the Local Government Entity or Qualified Entity has 120 days to closed
- o 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 first-class mail postage prepaid or electronically. All notices to affected public agencies must be made by either first-class mail postage prepaid or electronically to any public entity that has provided an email address for that purpose.

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.

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.

Definitions:

Affected Public Entities means the City of San Diego and the San Diego Housing Commission

Deed Restricted multifamily housing means multifamily rental housing that received or receives governmental assistance under any of the following programs (same list of programs that the state preservation notice law applies to):

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 (d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code . 1

(F) Section 142(d) of the Internal Revenue Code or its predecessors (tax-exempt private activity mortgage revenue bonds).

(G) Section 147 of the Internal Revenue Code (Section 501(c)(3) bonds).

(H) Title I of the Housing and Community Development Act of 1974, as amended (Community Development Block Grant Program).

(I) Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (HOME Investment Partnership Program).

(J) Titles IV and V of the McKinney-Vento Homeless Assistance Act of 1987, as amended, including the Department of Housing and Urban Development's Supportive Housing Program, Shelter Plus Care Program, and surplus federal property disposition program.

(K) Grants and loans made by the Department of Housing and Community Development, including the Rental Housing Construction Program, CHRP-R, and other rental housing finance programs.

(L) Chapter 1138 of the Statutes of 1987.

(M) The following assistance provided by counties or cities in exchange for restrictions on the maximum rents that may be charged for units within a multifamily rental housing development and on the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction, as reflected by a recorded agreement with a county or city:

(i) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(ii) Local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code .

(iii) The sale or lease of public property at or below market rates.

(iv) The granting of density bonuses, or concessions or incentives, including fee waivers, parking variances, or amendments to general plans, zoning, or redevelopment project area plans, pursuant to Chapter 4.3 (commencing with Section 65915).

Assistance pursuant to this subparagraph shall not include the use of tenant-based Housing Choice Vouchers (Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o) , excluding subparagraph (13) relating to project-based assistance). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county, city, or city and county.

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 that 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;

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.

Written Comments may be submitted to:
PreservationOrdinance@sdhc.org