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Abstract

San Francisco, California's Affordable Housing Preference Program establishes a preference for occupying units or receiving assistance from the city's affordable housing programs. The program notes that a preference in qualifying for affordable housing for residents who have been, or are about to be, displaced is necessary. The city also assists in preserving access to schools, after school programs, stores, community centers, places of worship, and health care providers.

Resource

CHAPTER 47:
PREFERENCE IN CITY AFFORDABLE HOUSING PROGRAMS

- Sec. 47.1. Findings and Purpose.
- Sec. 47.2. Definitions.
- Sec. 47.3. Application of Preference.
- Sec. 47.4. Implementation and Monitoring.
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SEC. 47.1. FINDINGS AND PURPOSE.

Based on the information presented to the Board of Supervisors in Board of Supervisor's File No. 150622, staff presentations, and public testimony, the Board of Supervisors makes the following findings:

(a) In 2008, the City enacted Ordinance 232-08, to establish a preference in occupying units or receiving assistance under all City affordable housing programs to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program. In 2013, the City enacted Ordinance 277-13, to establish a second preference in occupying units or receiving assistance under all City affordable housing

programs to certain San Francisco residents displaced by an eviction under the Ellis Act, California Government Code Section 7060 et seq.

(b) From 2010 to 2014, eviction notices filed with the Rent Board for all causes (not just evictions under the Ellis Act) increased 45% Citywide. Within specific neighborhoods, including the Mission, the Sunset/Parkside, the Outer Richmond, the Tenderloin, and the Castro, the percentage of eviction notices recorded was significantly higher than the Citywide average.

(c) From 2010 to 2014, average residential rents increased 54% Citywide. Moreover, rents in those neighborhoods with the highest number of eviction notices filed have risen by a greater percentage over the same time period, including the Castro (145%), the Outer Richmond (137%), the Sunset/Parkside (121%), and the Mission (by 108%).

(d) While current market rate rents in San Francisco are unaffordable to more than 60% of all rental households in the City, current market rate rents are unaffordable to 100% of all low- and moderate-income San Francisco households earning less than 120% Area Median Income.

(e) San Francisco tenants are being displaced through evictions, and current market rate rents are unaffordable to the majority of San Francisco renters. Thus, when displacement now occurs, remaining in San Francisco and paying market rate rent is not a viable option for most San Francisco residents, especially low and moderate income households.

(f) Affordable housing in San Francisco is a scarce resource with limited availability. In addition, production of affordable housing in San Francisco has not kept pace with population growth, nor have the Regional Housing Needs Allocation goals for affordable housing been met.

(g) A preference in qualifying for affordable housing for residents who have been, or are about to be, displaced is necessary to achieve the important public purpose of increasing opportunities for those residents to continue to live in San Francisco even as market rate rents rise.

(h) 2010 data show that overcrowding is an issue faced by San Franciscans Citywide, and that there are specific neighborhoods, including the Mission, Chinatown, and the Tenderloin, in which the percentage of overcrowded households is close to double that of the Citywide average.

(i) Compounding the problem of overcrowding, nearly half of all San Franciscans are currently rent burdened, paying more than 30% of household income toward rent. Approximately 22% of San Francisco renters are severely rent burdened, meaning they pay more than 50% of their household income toward rent.

(j) The high cost of housing is a significant factor in causing low- and very-low income households to leave the City: 63% of people who moved out of San Francisco between 2011-2013 were members of low- or very-low income households.

(k) It is a necessary and important public purpose to provide relief for these economic and social ills arising from the housing challenges facing most San Franciscans. But because of the trends in current San Francisco market rate rents, moving low- and very-low income households into market rate housing in San Francisco is not a viable option.

(l) A limited preference for existing neighborhood residents that can be applied to a portion of new affordable housing developments in San Francisco will provide an opportunity to current low- and very-low income residents that are living in overcrowded housing configurations to

move into appropriately sized units without leaving the community. This preference will also help provide relief for rent burdened low- and very-low income households while allowing them to benefit from new affordable housing development within their communities.

(m) In addition, it is in the City's interest to assist residents in preserving their existing community-based safety nets, such as access to schools, after school programs, stores, community centers, places of worship, and health care providers. A neighborhood preference will help to preserve community webs that serve as efficient safety nets and enhance the quality of life for neighborhood residents.

(n) Developers, community advocates, and residents have a long history of collaboration on housing development in San Francisco. A neighborhood preference for current low income residents for a portion of new affordable housing opportunities acknowledges this collaboration and will help increase participation in this process, which will in turn help generate additional support for, and contribute to, the successful approval of more affordable housing development in San Francisco.

(Added by Ord. [204-15](#), File No. 150622, App. 12/3/2015, Eff. 1/2/2016)

SEC. 47.2. DEFINITIONS.

"City Affordable Housing Programs" shall mean, unless specified otherwise, all programs related to the provision of affordable housing administered or funded by MOHCD, including but not limited to Tax Exempt Bond Developments. "City Affordable Housing Programs" does not include programs or affordable housing units exclusively supported by the Department of Housing and Urban Development, the San Francisco Human Services Agency, the San Francisco Department of Public Health, or the San Francisco Housing Authority.

"Displaced Tenant" shall mean any person who applies to MOHCD and who MOHCD determines qualifies under any of the categories below. If a person disputes MOHCD's determination that he or she does not qualify as a "Displaced Tenant" under this Section 47.2, such person shall have the right to a hearing conducted by a Rent Board Administrative Law Judge (as defined in Administrative Code Section 37.2(f)), with MOHCD as the responding party:

Category 1: A tenant residing in San Francisco who on or after January 1, 2010 receives a Notice of Intent to Withdraw Rental Units ("Notice of Intent to Withdraw") pursuant to the Ellis Act, California Government Code Sections 7060 et seq., and corresponding provisions of the Rent Ordinance. MOHCD shall establish a process for a tenant to verify his or her status as a "Displaced Tenant" under Category 1 that, at a minimum, shall require a tenant to show: (a) the landlord filed with the Rent Board a Notice of Intent to Withdraw; and (b) the tenant either: (1) is listed on the Notice of Intent to Withdraw; (2) is listed on the lease for the unit in question; or (3) has other evidence sufficient to establish, in MOHCD's reasonable discretion, that he or she resided in the unit at the time the Notice of Intent to Withdraw was filed. If the Rent Board grants a landlord's request to rescind the Notice of Intent to Withdraw before a tenant moves out of his or her unit, such tenant shall no longer qualify as a "Displaced Tenant."

Category 2: A tenant residing in San Francisco who on or after January 1, 2010 receives a notice that his or her landlord plans to recover possession of the unit under Section 37.9(a)(8) of the Rent Ordinance. MOHCD shall establish a process for a tenant to verify his or her status as a "Displaced Tenant" under Category 2 that, at a minimum, shall require a tenant to show:

(a) the landlord filed with the Rent Board the notice to vacate, as required under Rent Ordinance Section 37.9(c); and (b) the tenant either: (1) is listed on the notice to vacate; (2) is listed on the lease for the unit in question; or (3) has other evidence sufficient to establish, in MOHCD's reasonable discretion, that he or she resided in the unit at the time the notice to vacate was filed.

Category 3: A tenant residing in San Francisco who is required to vacate his or her unit by a public safety official due to fire, and who can provide sufficient evidence to MOHCD that demonstrates that he or she cannot return to the unit within a period of six months from the date of the order to vacate the unit. MOHCD shall establish a process for a tenant to verify his or her status as a "Displaced Tenant" under Category 3 that, at a minimum, shall require a tenant to show: (a) a public safety official provided an order to vacate the unit to such tenant or to the owner of the unit; and (b) the tenant either: (1) is listed on the order to vacate; (2) is listed on the lease for the unit in question; or (3) has other evidence sufficient to establish, in MOHCD's reasonable discretion, that he or she resided in the unit at the time the order was provided.

Category 4: A tenant residing in San Francisco who is vacating the tenant's unit because MOHCD has verified that a multi-family residential property will no longer be restricted to ensure affordability based on income under any regulatory agreement (including a regulatory agreement based on the issuance of housing mortgage revenue bonds) or other affordable housing agreement and/or recorded instrument within 5 years, and the landlord of such property has leased unrestricted residential rental units in the same building at a market rent that is more than 40% of the tenant's total annual gross household income. MOHCD shall establish a process for a tenant to verify the tenant's status as a "Displaced Tenant" under Category 4 that, at a minimum, shall require the tenant to show: (a) documentation of the tenant's total gross household income on a form provided by MOHCD in accordance with the Inclusionary Procedures Manual in effect at the time of application for a "Displaced Tenant" housing preference; (b) evidence that market rate rent in the tenant's building will exceed 40% of the tenant's current total annual gross household income; and (c) the tenant either: (1) is listed on the lease for the unit in question; or (2) has other evidence sufficient to establish, in MOHCD's reasonable discretion, that he or she resides in the unit at the time the landlord increased the tenant's rent.

"MOHCD" shall mean the Mayor's Office of Housing and Community Development or its successor.

"Neighborhood" shall mean any one of the 11 Supervisorial Districts as defined and established in the San Francisco Charter, Appendix E plus a buffer such that for each unit or project that is part of a City Affordable Housing Program "Neighborhood" means the Supervisorial District in which the unit or project is located, plus a ½ mile buffer around the location of the unit or project.

"Neighborhood Resident" shall mean any person who has a primary residence in a certain Neighborhood at the time he or she applies for a unit or assistance. MOHCD shall establish a process for a person to verify status as a "Neighborhood Resident" for a particular Neighborhood, which, at a minimum, shall require a person to show: (a) that he or she is listed on the lease for a unit in that Neighborhood; or (b) other evidence sufficient to establish, in

MOHCD's reasonable discretion, that the person resides in a unit in that Neighborhood. If a person disputes a MOHCD determination that he or she does not qualify as a "Neighborhood Resident" under this Section 47.2, such person shall have the right to a hearing conducted by a Rent Board Administrative Law Judge (as defined in Administrative Code Section 37.2(f)), with MOHCD as the responding party.

"Rent Board" shall mean the Residential Rent Stabilization and Arbitration Board.

"Rent Ordinance" shall mean the San Francisco Rent Stabilization and Arbitration Ordinance, Administrative Code Chapter 37.

"Residential Certificate of Preference Holders" shall mean a person who holds a Residential Certificate of Preference under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521.

"Tax Exempt Bond Development" shall mean any housing development financed through a tax-exempt bond issuance that imposes rent and occupancy restrictions as a condition of the financing.

(Added by Ord. [204-15](#), File No. 150622, App. 12/3/2015, Eff. 1/2/2016; amended by Ord. [164-16](#), File No. 151122, App. 8/11/2016, Eff. 9/10/2016; Ord. [210-17](#), File No. 170860, App. 11/3/2017, Eff. 12/3/2017, Retro. 9/10/2016; Ord. [120-19](#), File No. 190140, App. 6/28/2019, Eff. 7/29/2019; Ord. [137-21](#), File No. 210698, App. 8/4/2021, Eff. 9/4/2021, Retro. 1/1/2021)

SEC. 47.3. APPLICATION OF PREFERENCE.

Except to the extent prohibited by an applicable State or Federal funding source, MOHCD shall give, or require project sponsors or their successors in interest funded through MOHCD to give, preference in occupying units or receiving assistance under all City Affordable Housing Programs after any priority given under Administrative Code Section 39.4. Each preference enumerated below shall be applied as of the effective date of the legislation establishing each preference. The City established preference for holders of Certificates of Preference in Ordinance No. 232-08, for Displaced Tenants, Category 1 in Ordinance No. 277-13, for Displaced Tenants, Category 2 and Neighborhood Residents in Ordinance No. 204-15, for Displaced Tenants, Category 3 and persons who live or work in San Francisco in Ordinance No. 164-16, and for Displaced Tenants, Category 4 in Ordinance 120-19. The preference requirements are intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing contract entered into by the City. Notwithstanding the prior sentence, the preference requirements shall apply to contracts entered into by the City on or after the effective date of the legislation establishing each preference, including contracts materially amended on or after the effective date. Preference shall be given:

(a) First, to Residential Certificate of Preference Holders, who meet all of the qualifications for the unit or assistance. Preference under this subsection (a) shall be given in 100% of the units in all initial sales, re-sales, initial leases, and subsequent leases.

(b) Second, to any Displaced Tenant who meets all of the qualifications for the unit or assistance. For any Displaced Tenant displaced prior to the effective date of this Chapter 47, preference under this subsection (b) shall expire six years from the effective date of this Chapter 47. For any Displaced Tenant displaced after the effective date of this Chapter 47,

preference under this subsection (b) shall expire, for Category 1, six years from the date the landlord filed with the Rent Board a Notice of Intent to Withdraw, for Category 2, six years from the date the landlord filed with the Rent Board the notice to vacate pursuant to the Rent Ordinance Section 37.9(c), or, for Category 3, six years from the date of the order to vacate. Preference under this subsection (b) shall be applicable to:

(1) 20% of the units in any new residential development that is part of a City Affordable Housing Program going through the initial occupancy or sale process; and

(2) units in all re-sales and subsequent leases until 20% of all units that are part of a City Affordable Housing Program in a building are occupied by tenants who have exercised this preference.

The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates.

(c) Third, to a Neighborhood Resident, who meets all of the qualifications for the unit or assistance. Preference under this subsection (c) shall be given:

(1) for units located in the same Neighborhood as the person resides;

(2) only for any new residential development in that Neighborhood going through the initial occupancy or sale process, and only to 40% of the units in such development.

(d) Fourth, to any person who lives or works in San Francisco who meets all of the qualifications for the unit or assistance. Preference under this subsection (d) shall be applicable to:

(1) any unit in any new residential development that is part of a City Affordable Housing Program going through the initial occupancy or sale process; and

(2) units in all re-sales and subsequent leases.

(Added by Ord. [204-15](#), File No. 150622, App. 12/3/2015, Eff. 1/2/2016; amended by Ord. [164-16](#), File No. 151122, App. 8/11/2016, Eff. 9/10/2016; Ord. [287-19](#), File No. 191000, App. 12/20/2019, Eff. 1/20/2020; Ord. [137-21](#), File No. 210698, App. 8/4/2021, Eff. 9/4/2021, Retro. 1/1/2021)

SEC. 47.4. IMPLEMENTATION AND MONITORING.

(a) Certificate of Preference. If in any one fiscal year, the percent of Residential Certificate of Preference holders obtaining an affordable housing unit by taking advantage of the Certificate of Preference preference in all of the City's affordable housing programs combined exceeds 50% of the total number of units made available through the City's affordable housing programs in that year, MOHCD shall submit a report to that effect to the Board of Supervisors along with a proposed resolution to formally accept the report.

(b) Displaced Tenant and Neighborhood Preferences. MOHCD shall implement the Displaced Tenant and Neighborhood preference requirements of this Chapter 47 by developing procedures and amending its applicable regulations within 90 days of the effective date of the ordinance adding this Chapter 47. The requirements of this paragraph are directory rather than mandatory.

Within one year of the effective date of the ordinance adopting this Chapter 47 and annually thereafter, MOHCD shall submit to the Board of Supervisors a report assessing the impact of the Displaced Tenant and Neighborhood preferences along with a proposed resolution to formally accept the report. The report shall include the following data:

- (1) the Number of applicants applying under Certificate of Preference, Owner Move In, Ellis Act, and Neighborhood preferences;
- (2) the District where the applicant is currently residing;
- (3) the District where the affordable housing unit the applicant is applying to is located;
- (4) whether the applicant is selected from a lottery or other means;
- (5) whether the applicant purchased or rented a unit; and
- (6) any other pertinent information.

Within three years of the effective date of this Chapter 47, MOHCD and the Rent Board shall submit a report on the demographics and income levels of beneficiaries of the Displaced Tenant and Neighborhood preference system, along with a proposed resolution to formally accept the report.

(Added by Ord. [204-15](#), File No. 150622, App. 12/3/2015, Eff. 1/2/2016)

SEC. 47.5. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 47, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed the ordinances establishing this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

(Added by Ord. [204-15](#), File No. 150622, App. 12/3/2015, Eff. 1/2/2016)