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Community Type- applicable to:	Urban; Suburban
Title:	Preservation of Affordable Housing Ordinance
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Abstract

Denver, Colorado's Preservation of Affordable Housing Ordinance provides notice to the city and tenants when transitions from current assistance programs and/or affordable housing uses are planned. As well as provides purchase opportunities for the city to attempt to preserve the affordable housing. This ordinance also provides public financing assistance from the city to ensure the long-term affordability of affordable housing.

Resource

ARTICLE III. PRESERVATION OF AFFORDABLE HOUSING¹

Sec. 27-45. Intent.

The intent of this article is to protect the availability of publicly assisted affordable housing for low and moderate income households by: providing for notice to the city and tenants when transitions from current assistance programs and/or affordable housing uses are planned; providing purchase opportunities for the city to attempt to preserve the affordable housing while respecting ownership interests of building owners; and ensuring long-term affordability in future projects that the city assists with public financing designed to create or preserve affordable housing.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05)

Sec. 27-46. Definitions.

The following words and phrases, as used in this article III, have the following meanings:

- (a) *Affordability restrictions.* Restrictions placed upon a property that (i) limit the use and/or occupancy of all or part of the units on the property to households with incomes below a certain level or (ii) limit the rent that can be charged for such units to below-market rates. Affordability restrictions may be imposed by deed restriction, covenant, contract, or other manner.
- (b) *Affordable housing.* The term "affordable housing," "affordable rental housing" or "housing affordable to rental households" means that the rent is structured so that the targeted tenant population pays no

¹Editor's note(s)—See Editor's note at chapter 12, article V.

more than thirty (30) percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to eighty (80) percent of AMI.

- (c) *AMI or area median income.* The median household income within the City and County of Denver, as determined by the Department of Housing and Urban Development and published annually by the Colorado Housing and Finance Authority.
- (d) *City subsidy.* Locally controlled public funds administered by the HOST, or another city agency, allocated for the purpose of creating or preserving affordable rental housing. City subsidies may be provided to developers through direct financial assistance such as low interest or deferred loans, grants, equity gap investments, credit enhancements or loan guarantees, or other mechanisms.
- (e) *City subsidy projects.* Privately owned properties that include five (5) or more units receiving funding from or through a city subsidy.
- (f) *Federal financial assistance.* Financial assistance received from or as a result of federal programs that aim to support creation, preservation or rehabilitation of affordable housing or long-term affordability of housing, including project-based rental subsidies under Section 8 of the United States Housing Act, and assistance provided under or as a result of Section 221(d)(3), Section 236, section 202, section 101, and Sections 514, 515 and 521 of the National Housing Act or Section 42 of the Internal Revenue Code.
- (g) *Federal preservation project.* A rental housing project that has affordability restrictions in place on five (5) or more rental units as a result of having received federal financial assistance. An updated list of all known federal preservation projects will be maintained by HOST and will be made available upon request. Omission from such list shall not affect the applicability of this ordinance to a federal preservation project.
- (h) *HOST.* The Department of Housing Stability of the City and County of Denver.
- (i) *HUD.* The United States Department of Housing and Urban Development.
- (j) *Local financial assistance.* Financial assistance received from or through a state or local public entity to support creation or preservation of affordable housing, including city subsidies, subsidies from the Denver Urban Renewal Authority, the State of Colorado or the Colorado Housing and Finance Authority ("CHFA"), bond financing issued by the City and County of Denver or the Colorado Housing and Finance Authority, and projects that utilized low income housing tax credits (LIHTC) administered by CHFA.
- (k) *Local preservation project.* A rental housing project that has affordability restrictions in place on five (5) or more rental units as a result of having received local financial assistance. An updated list of all known local preservation projects will be maintained by HOST and will be made available upon request. Omission from such list shall not affect the applicability of this ordinance to a local preservation project.
- (l) *Long-term affordability restrictions.* A local preservation project or a federal preservation project that is subject to affordability restrictions for a minimum of ninety-nine (99) years in a form satisfactory to HOST.
- (m) *Opt out.* An owner's (i) non-renewal of an available option to extend any contract under which federal financial assistance was provided for the project or (ii) prepayment of a federally-subsidized loan or mortgage if such prepayment results in termination of federal affordability restrictions.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05; Ord. No. 571-15, § 1, 9-14-15; Ord. No. 1089-18, § 1, 10-22-18; Ord. No. 47-20, § 1, 3-16-20)

Sec. 27-47. Federal preservation projects—Notice and purchase opportunities.

- (a) Owners of federal preservation projects must provide the city and each building tenant with the following notices:
 - (1) One (1) year's advance notice of expiration of (i) a contract under which federal financial assistance was provided, and (ii) any affordability restrictions;
 - (2) One (1) year's advance notice of owner's intent to "opt out"; and
 - (3) Ninety (90) days' advance notice of its intent to pursue a sale of such federal preservation project.
- (b) Notices required by subsection (a) above shall specify:
 - (1) Whether the owner or intended buyer intends to withdraw the property from the federal financial assistance program;
 - (2) Whether the owner or intended buyer is involved in negotiations with HUD regarding an extension of affordability restrictions; and
 - (3) For a sale, the intended date of sale or transfer.
- (c) Owners of federal preservation projects who have decided to "opt out" or sell the federal preservation project must consent to reasonable inspection of the property and inspection of the owner reports on file with HUD, the State of Colorado, or the city. These inspections are designed to facilitate the city's ability to assess the fair market value of the property and evaluate status of the tenants, viability of transfer and/or continuation of a section 8 agreement with HUD and other pertinent information.
- (d) To the extent allowed by HUD, owners of federal preservation projects must maintain an available HUD section 8 contract in good standing during the notice periods identified in this chapter as well as any condemnation proceeding commenced.
- (e) Owners of federal preservation projects must refrain from taking any action, other than notifying HUD of the owner's intention to not renew the contract, that would preclude the city or its designee from succeeding to the contract or negotiating with the owner for purchase of the property during the notice periods identified in this article as well as any condemnation proceeding commenced.
- (f) In addition to any other times, during the notice periods identified in this article, the city may pursue preservation of the project through negotiation for purchase or through condemnation.
- (g) Owners of federal preservation projects who have decided to sell the federal preservation project shall provide a right of first refusal to the city or its designee, and any such purchase and sale agreement entered into by the owner of federal preservation project shall be contingent upon the right of first refusal of the city or its designee to purchase the federal preservation project. The owner of the federal preservation projects shall provide the contingent sales agreement to the city or its designee upon its execution. Upon receipt of the contingent sales agreement, the city shall have one hundred twenty (120) days to notify the owner of the federal preservation project of its or its designee's intent to purchase the federal preservation project or its intent to facilitate the purchase of the federal preservation project by its designee, an entity willing to preserve the affordability of the housing provided in the federal preservation project. If the city or its designee is willing to purchase the federal preservation project on terms that are economically substantially identical to the terms of the contingent purchase and sale agreement and shall agree to close within one hundred twenty (120) days from the date the city or its designee and the owner sign a purchase and sale agreement, the owner shall sell the federal preservation project to the city or its designee on those terms.
- (h) Federal preservation projects subject to long-term affordability restrictions shall not be subject to the requirements of this section.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05; Ord. No. 571-15, § 2, 9-14-15; Ord. No. 1089-18, § 2, 10-22-18; Ord. No. 47-20, § 2, 3-16-20)

Sec. 27-48. Federal preservation projects—Civil fines.

- (a) An owner who fails to comply with any of the requirements specified in this article shall pay a civil fine. The fine shall be calculated in relation to the costs and damages caused by the owner's failure to comply, up to full replacement costs of each project-based section 8 housing unit lost. Such civil fines shall be payable into a housing replacement fund to be established and managed by the city. If the civil fine is not received within the timeframes specified in this article or in rules and regulations promulgated to enforce this article, the city may commence enforcement proceedings.
- (b) Any fines received shall be used only for creating replacement affordable housing.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05)

Sec. 27-49. Local preservation projects—Tenant and city notice provisions.

- (a) When the owner of a local preservation project takes action which will make the affordable housing no longer affordable or has decided to pursue a sale of the local preservation project, the owner must provide ninety (90) days' advance notice to the city. The notice shall meet standards developed by HOST. During the ninety (90) day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties.
- (b) Owners of local preservation projects who have decided to take action described in section 27-49(a), must provide a written notice of ninety (90) days to tenants. This shall be in addition to the notice to be provided to the city under section 27-49(a). During this notice period the owner may not initiate a no cause eviction.
- (c) Owners of local preservation projects who have decided to sell the local preservation project shall provide a right of first refusal to the city or its designee, and any such purchase and sale agreement entered into by the owner of local preservation projects shall be contingent upon the right of first refusal of the city or its designee to purchase the local preservation project. The owner of the local preservation project shall provide the contingent purchase and sale agreement to the city or its designee upon its execution. Upon receipt of the contingent purchase and sale agreement, the city shall have one hundred twenty (120) days to notify the owner of the local preservation project of its or its designee's intent to purchase the local preservation project or its intent to facilitate the purchase of the local preservation project by its designee, an entity willing to preserve the affordability of the housing provided in the local preservation project. If the city or its designee is willing to purchase the local preservation project on terms that are economically substantially identical to the terms of the contingent purchase and sale agreement and shall agree to close within one hundred twenty (120) days from the date the city and the owner sign a purchase and sale agreement, the owner shall sell the local preservation project to the city or its designee on those terms.
- (d) Local preservation projects subject to long-term affordability restrictions shall not be subject to the requirements of this section.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05; Ord. No. 571-15, § 3, 9-14-15; Ord. No. 1089-18, § 3, 10-22-18; Ord. No. 47-20, §§ 3, 4, 3-16-20)

Sec. 27-50. City subsidy projects—Affordability requirements.

- (a) City subsidy projects will be subject to affordability restrictions for a minimum of sixty (60) years.

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- (b) All city agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the city to negotiate and confer affordable housing subsidies, HOST will develop implementing strategies consistent with the sixty-year affordability principles contained in this section.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05; Ord. No. 571-15, § 4, 9-14-15; Ord. No. 1089-18, § 4, 10-22-18; Ord. No. 47-20, § 5, 3-16-20)

Sec. 27-51. Compliance and enforcement.

- (a) HOST shall develop and implement procedures, through the promulgation of rules and regulations, to enforce the provisions of this article. Such procedures should include, where feasible, record notice of the applicability of this Code to affected properties, filing a lien to enforce the provisions of this Code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this article.
- (b) The city attorney's office may enforce the provisions of this Code on behalf of the city in any court of competent jurisdiction or city administrative body.

The amendment to section 27-50 regarding minimum affordability periods shall be effective with regard to projects receiving a city subsidy pursuant to a contract dated on or after February 1, 2019.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05; Ord. No. 571-15, § 5, 9-14-15; Ord. No. 1089-18, § 6, 10-22-18; Ord. No. 47-20, § 6, 3-16-20)

Sec. 27-52. No restriction of powers of eminent domain; severability.

- (a) This article shall not be construed to restrict the city's existing authority to exercise powers of eminent domain through condemnation.
- (b) If any part or provision of this article, or application thereof to any person or circumstance, is held invalid, the remainder of this article and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this article are severable.

(Ord. No. 757-00, § 1, 9-25-00; Ord. No. 291-05, § 14, 5-2-05)

Secs. 27-53—27-100. Reserved.