OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

103-0062019-002

Agenda Item **No. 5(d)**
Meeting of April 16, 2019

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Authorizing the Executive Director to Apply the Preferences in City Affordable Housing Programs, as amended from time to time, to Affordable Housing Approved by the Successor Agency to the extent consistent with the Successor Agency's Enforceable Obligations, Redevelopment Plans, and Other Applicable Law

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EXECUTIVE SUMMARY

Chapter 47 of the San Francisco Administrative Code establishes preferences in the City's Affordable Housing Programs (the "City Housing Preferences"), which are applicable only to affordable housing administered or funded by the Mayor's Office of Housing and Community Development ("MOHCD Housing"). Recently, the California Department of Housing and Community Development ("HCD") approved and clarified the application of certain City Housing Preferences to MOHCD Housing that receives state funding. The Office of Community Investment and Infrastructure ("OCII") is not subject to Chapter 47 of the San Francisco Administrative Code, but instead has implemented preferences required under state law for persons displaced by redevelopment activities, Cal. Health & Safety Code § 33411.3, and other preferences required under redevelopment plans and enforceable obligations. The proposed resolution would authorize the application of the City Housing Preferences in OCII-assisted affordable housing to the extent that those preferences are consistent with redevelopment plans, enforceable obligations, and applicable law.

Staff recommends approval of the resolution authorizing the Executive Director to apply the City Housing Preferences to OCII-assisted affordable housing to the extent consistent with OCII's existing obligations.

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BACKGROUND

The high cost of housing in San Francisco has created significant market pressures leading to the displacement of lower income tenants from housing units with below-market rents. The San Francisco Planning Department reports that “San Francisco and the Bay Area are currently in the midst of a housing affordability crisis unprecedented in their history. Increases in housing prices and displacement pressures have been a long-term trend, driven by policy decisions first established decades ago and amplified by regional and national economic trends.” Planning Department, San Francisco Housing Needs and Trends Report at page 1 (Final Report, July 2018). Many of the persons displaced from their existing housing are unable to find alternative housing in San Francisco that they can afford and are thus forced to leave the City, creating significant hardships for the displacees and undermining the City’s diversity. In an effort to mitigate the harm of displacement, the City has adopted, in recent years, a series of preference programs to give priority to certain displaced persons and other persons in MOHCD Housing.

In 2008, the Board of Supervisors of the City and County of San Francisco (the “Board of Supervisors”) adopted, by Ordinance No. 232-08 (Oct. 30, 2008), the Redevelopment Agency’s Certificate of Preference program for application in MOHCD Housing and thus established a priority for low- and moderate-income persons displaced by the Former Agency’s projects. Prior to the adoption of Ordinance No. 232-08, the preference for redevelopment displacees only applied in affordable housing funded by the Redevelopment Agency, which had, during the urban renewal era of the 1950’s and 60’s, displaced thousands of households.

The Redevelopment Agency first established a preference for displacees, also known as the “Certificate of Preference Program,” in 1967 and refined it over the years into a comprehensive set of standards and procedures contained in the Property Owner and Occupant Preference Program (Oct. 1, 2008) (Agency Resolution No 57-2008 (June 3, 2008) (the “COP Program”). The basic eligibility for the COP Program is based on the state statutory authority in Section 33411.3 of the California Health and Safety Code (providing that whenever a redevelopment agency funded affordable housing, it had to give priority in renting and buying to households of low or moderate income displaced by redevelopment projects). The City’s 2008 adoption of Ordinance No. 232-08 extended the COP Program to City-assisted affordable housing that had received no redevelopment funding.

In addition to the COP Program, the Redevelopment Agency also adopted, prior to its dissolution in 2012, other affordable housing preferences that became obligations of OCII as the Successor Agency. The existing OCII preferences include the preferences in the Bayview Hunters Point and Phase 2 of the Hunters Point Shipyard Project Areas (“BVHP-HPS2) for rent burdened, assisted housing residents and public housing or project-based Section 8 residents and for San Francisco residents and workers. (Together, the COP Program and the BVHP-HPS2 preferences are referred to as the “Existing OCII Preferences”). The BVHP-HPS2 preferences are codified in the Bayview Hunters Point Redevelopment Plan (Section 1.76) and in the Disposition and Development Agreement for Candlestick Point-Hunters Point Shipyard Phase 2 (“DDA”) (Section 6.2 of the Below-Market Rate Housing Plan), which the California Department of Finance has finally and conclusively approved as a continuing enforceable obligation of OCII.

DISCUSSION

In 2013, the Board of Supervisors adopted, by Ordinance No. 277-13 (Dec. 18, 2013), a preference in MOHCD Housing for certain tenants who are displaced when their landlord removes the rental unit from the rental housing market, as authorized under the Ellis Act, Cal. Gov't Code §§ 7060 et seq. (the "Ellis Act Housing Preference" or "EAHP"). Although Ordinance No. 277-13 did not apply to OCII affordable housing, OCII incorporated, on a project-by-project basis, the EAHP into the Existing OCII Preferences. Resolution No. 64-2014 (August 4, 2014) (applying the EAHP "on a project-by-project basis to ensure consistency with other preferences and obligations that may apply to a particular OCII Assisted Project").

On December 1, 2015, the Board of Supervisors adopted Ordinance No. 204-15 (Dec. 3, 2015) that amended the EAHP to give a preference in MOHCD Housing to tenants who are displaced because of an owner move-in ("OMI") authorized under the rent control law. Furthermore, Ordinance No. 204-15 established, in 40 percent of any units in newly-constructed MOHCD Housing, a neighborhood preference for those applicants living within a Supervisorial District in which the affordable housing project is being built or within ½ mile of the project (the "Neighborhood Preference").

On August 2, 2016, the Board of Supervisors adopted Ordinance No. 164-16 (Aug. 10, 2016) that, in MOHCD Housing, expanded the preference for displaced tenants to include those San Francisco tenants displaced by the fire-related destruction of their unit (together the Ellis Act, OMI, and fire-related displacees are referred to as the "Displaced Tenants"). Ordinance No. 164-16 also established a preference for persons who live or work in San Francisco after application of the other preferences.

The City Housing Preferences establish the following order of priority: 1) to COP Holders for 100 percent of all units in newly-constructed and previously-occupied units; 2) to Displaced Tenants for 20 percent of newly-constructed and previously-occupied units; 3) to applicants who qualify for the Neighborhood Preference for 40 percent of the units in newly-constructed units only; and 4) to applicants who live or work in San Francisco for 100 percent of the remaining units after application of the prior preference in both newly-constructed and previously-occupied units San Francisco Administrative Code § 47.3.

Implementation of the City Housing Preferences has raised concerns with federal and state funders of affordable housing because of the potential for a racial discriminatory effect and for the concentration of certain racial and ethnic groups in areas of the City that had a history of segregation. The U.S. Department of Housing and Urban Development does not permit the use of the Neighborhood Preference in federally-funded affordable housing. See generally T. Iglesias, Threading the Needle of Fair Housing Law in a Gentrifying City with a Legacy of Discrimination, 27 Journal of Affordable Housing and Community Development Law (2018). Recently, the California Department of Housing and Community Development approved the use of the Neighborhood Preference in state-funded affordable housing with the conditions that it apply only to 25 percent of the units in newly-constructed buildings and that HCD may seek additional justification for the application of the preference in particular projects. See Letter, R. Seeley, HCD, to K. Nagayama, Deputy City Attorney (Jan. 18, 2019).

In light of the recent guidance provided by HCD, OCII now wishes to incorporate the City Housing Preferences into the OCII affordable housing program and authorize the Executive Director, on a project-by-project basis and in cooperation with the MOHCD, to apply the City Housing Preferences to the extent that they are consistent with the Existing OCII Preferences, enforceable obligations, and applicable law. Under this approach, OCII would first apply any OCII Existing Preferences and then apply the City Housing Preferences to the remaining units. Where an affordable housing project is not subject to the OCII Existing Preferences, OCII would apply the City Housing Preferences, subject to the limitations imposed by federal or state funding sources, if any.

Finally, OCII's application of the City Housing Preferences will be facilitated by the role of MOHCD in OCII's marketing program for its newly-constructed affordable housing. Under Redevelopment Dissolution Law, OCII must transfer its affordable housing assets to MOHCD upon the completion of the housing projects. As a result OCII and MOHCD work closely together on affordable housing development. The two agencies entered into a Memorandum of Understanding, approved by OCII Resolution No. 33-2014 (May 6, 2014), whereby MOHCD agreed, among other things, to provide marketing services for OCII affordable housing. MOHCD has specialized resources and staffing to assist OCII in the marketing of units and to harmonize the various requirements under the OCII Existing Preferences, the City Housing Preferences, and applicable law.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The proposed resolution authorizing OCII to apply the City Housing Preferences is not subject to the California Environmental Quality Act ("CEQA") since there is no possibility such approval may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).

CONCLUSION

For the reasons described above, OCII staff recommends approval of the resolution authorizing the application of the City Housing Preferences, on a project-by-project basis, subject to applicable enforceable obligations, redevelopment requirements, and applicable law.

(Originated by James B. Morales, Deputy Director and General Counsel)

Nadia Sesay
Executive Director