

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 09-2019

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

WHEREAS, The Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure or OCII, is funding and developing affordable housing projects related to enforceable obligations that the Redevelopment Agency ("Former Agency") entered into prior to its dissolution and that the California Department of Finance has determined to be continuing obligations of OCII; and,

WHEREAS, OCII has the remaining obligation to approve and/or fund over 6000 units of affordable housing under the following enforceable obligations: the Mission Bay South Owner Participation Agreement, the Disposition and Development Agreement ("DDA") for Hunters Point Shipyard ("HPS") Phase 1, the DDA for Candlestick Point-HPS Phase 2 and the Transbay Implementation Agreement (the "OCII Affordable Housing"); and,

WHEREAS, OCII Affordable Housing is subject to certain housing preferences established by state law, redevelopment plan, and contract. The existing OCII preferences include only the following: (1) the preference for persons displaced by redevelopment projects, Cal. Health & Safety Code § 33411.3; the Property Owner and Occupant Preference Program (Oct. 1, 2008) (Agency Resolution No. 57-2008 (June 3, 2008) (the "Certificate of Preference Holder" or "COP Holder"); (2) the preferences in the Bayview Hunters Point and Phase 2 of the Hunters Point Shipyard Project Areas for rent burdened, assisted housing residents, public housing or project-based Section 8 residents, and San Francisco residents and workers (Section 1.76 of the BVHP Redevelopment Plan; Section 6.2 of the Below-Market Rate Housing Plan of the CP-HPS2 DDA); and (3) the preference for persons who are displaced when a landlord removes a rental unit from the market, Resolution No. 64-2014 (Aug. 5, 2014) (collectively these preferences are referred to as the "Existing OCII Preferences"); and,

WHEREAS, All of the Existing OCII Preferences require that the housing applicant satisfy the income-eligibility requirements for the affordable housing; and,

WHEREAS, The City and County of San Francisco ("City") faces a severe affordable housing crisis. Planning Department, San Francisco Housing Needs and Trends Report (Final Report, July 2018). As of January 2019, the average rent for one bedroom units is \$3412 and for two bedroom units is \$4553. See Rent Trend Data in San Francisco, *available at* <https://www.rentjungle.com/average-rent-in-san-francisco-rent-trends>. (last visited February 12, 2019). The 2018 median sales price for all housing types was \$1,374,800. See San Francisco Home Prices and Values, *available at* <https://www.zillow.com/san-francisco-ca/home-values/> (last visited Feb. 12, 2019). See also "The Cost of a Hot Economy in California: A Severe Housing Crisis," N.Y. Times (July 17, 2017) ("California is the toughest market for first-time home buyers and the cost of housing is

beyond reach for almost all of this state's low-income population. Despite having some of the highest wages in the nation, the state also has the highest adjusted poverty rate.”), available at <https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html> (last visited Aug. 23, 2017); and,

WHEREAS, The high cost of housing creates significant market pressures that lead to the displacement of tenants from housing units with below-market rents and imposes a significant hardship on displaced tenants who are lower income. Many of these displaced tenants are unable to find alternative housing in San Francisco that they can afford and are forced to leave the City; and,

WHEREAS, In an effort to mitigate the harm of displacement, the City has adopted a series of preference programs in recent years to give priority to certain displaced persons in affordable housing administered or funded by the Mayor's Office of Housing and Community Development (“MOHCD Housing”); and,

WHEREAS, 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 Former 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. Eligibility is based on the criteria under Section 33411.3 of the California Health and Safety Code and the Property Owner and Occupant Preference Program (Oct. 1, 2008) (adopted by Agency Resolution No 57-2008 (June 3, 2008)); and,

WHEREAS, 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) (resolved that the EAHP applies “on a project-by-project basis to ensure consistency with other preferences and obligations that may apply to a particular OCII Assisted Project); and,

WHEREAS, 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”). In adopting Ordinance No. 204-15, the Board of Supervisors made findings, among others, that the preferences would ameliorate the effects of gentrification and displacement; and,

WHEREAS, 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; and,

- WHEREAS, The preferences applicable to MOHCD Housing are currently codified in Chapter 47 of the San Francisco Administrative Code, attached as Exhibit A to this Resolution, (“Chapter 47”) and further described in Housing Preferences and Lottery Procedures Manual (March 9, 2018), *available at*: <http://sfmohcd.org/sites/default/files/Preferences%20Manual%20-%20%20%203.31.2017.pdf>, and on the MOHCD website at <http://sfmohcd.org/housing-preference-programs>. Chapter 47 establishes the following order of priority for its preferences: 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 (the “City Housing Preferences”); and,
- WHEREAS, Chapter 47 does not apply to OCII Affordable Housing, which is subject instead only to the Existing OCII Preferences, as required under enforceable obligations, redevelopment plans, and other applicable law; and,
- WHEREAS, On August 3, 2016, the U. S. Department of Housing and Urban Development (“HUD”) disapproved the City’s use of the Neighborhood Preference in a federally-funded housing project, but approved an “‘anti-displacement’ preference for 40 percent of the units, where residents from throughout the City are eligible for the preference and where race is not considered in the selection process.” Letter, G. Velasquez to E. Lee (Sep. 21, 2016). As a result, the City does not apply its Neighborhood Preference to MOHCD Housing receiving federal financial assistance; and,
- WHEREAS, On January 18, 2019, the California Department of Housing and Community Development (“HCD”) approved, under its Uniform Multifamily Regulations, MOHCD’s use of the Neighborhood Preference in certain state-assisted projects to the extent that the preference applies to 25% of the affordable housing units in a project. Letter, R. Seeley to K. Nagayama (Jan. 18, 2019), attached as Exhibit B to this Resolution, (referring to request made in Letter, K. Nagayama to B. Metcalf (Dec. 20, 2018), attached as Exhibit C to this Resolution). HCD determined that the Neighborhood Preference at 25% was supported by “evidence satisfactory to the Department that the preference as applied will comply with fair housing law and . . . [that] a local ordinance grants a preference to neighborhood residents who have been or are about to be displaced.” Cal. Code Regs., title 25, § 8305 (a) (3). HCD’s approval was limited to the 2019 calendar year and subject to additional review for particular projects; and,
- WHEREAS, OCII and MOHCD entered into a Memorandum of Understanding approved by Resolution No. 33-2014 (May 6, 2014) whereby MOHCD agreed to provide marketing services for OCII Affordable Housing. These services include “overseeing the lottery process and implementation of any preferences required by the enforceable obligations, including but not limited to the Certificate of Preference Program, and reviewing, approving, and denying applicants in compliance with approved Marketing Plans and [Limited Equity Program] documents if applicable” (Memorandum of Understanding, § 3 (a) (iv) at p. 6); and,

WHEREAS, OCII's use of MOHCD's marketing program for outreach and selection of residents in OCII's newly-completed affordable housing projects is desirable because MOHCD has specialized resources and staffing for marketing units and OCII is obligated under Redevelopment Dissolution Law to transfer the projects, upon their completion, to MOHCD as the City's designated Housing Successor under Redevelopment Dissolution Law and, Cal Health & Safety Code § 34176, and Board of Supervisors Resolution 11-12 (Jan. 26, 2012); and,

WHEREAS, The Board of Supervisors has recently approved MOHCD's annual report on the implementation of the City Housing Preferences, Resolution No. 135-19 (March 29, 2019); and,

WHEREAS, OCII is obligated to maintain the Existing OCII Preferences in applicable affordable housing projects, but desires to apply the City Housing Preferences to OCII Affordable Housing to the extent that these preferences are consistent with OCII's existing enforceable obligations, redevelopment plans, and fair housing laws; now therefore be it

RESOLVED, that the Office of Community Investment and Infrastructure authorizes the Executive Director to apply the City Housing Preferences (as amended from time to time) to OCII Affordable Housing; provided, however, that the Executive Director is authorized to apply the City Housing Preferences on a project-by-project basis and to modify or void some or all of the City Housing Preferences to ensure consistency with the Existing OCII Preferences, enforceable obligations, redevelopment plans, and other applicable law, including federal and state funding requirements; and be it further

RESOLVED, that the Office of Community Investment and Infrastructure rescinds Resolution No. 64-2014 (August 4, 2014) (authorizing the EAHP in OCII Affordable Housing), and replaces it with this Resolution authorizing the City Housing Preferences; and be it further

RESOLVED, that the Office of Community Investment and Infrastructure shall review, in consultation with MOHCD, the impact of City Housing Preferences on an ongoing basis.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 16, 2019.

Commission Secretary

Exhibit A: Code of Ordinances, Chapter 47 – Preference in City Affordable Programs
Exhibit B: January 18, 2019 Letter from HCD to CCSF re SF Neighborhood Preference
Exhibit C: December 20, 2018 Letter from CCSF City Attorney's Office to HCD re SF Neighborhood Preference

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.
Sec. 47.5.	Severability.

 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, Government Code Section 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. This Category 3 "Displaced Tenant" preference shall expire by operation of law on December 31, 2020, provided, however, that MOHCD may determine after December 31, 2020 that a person who applied to MOHCD under Category 3 on or prior to December 31, 2020 qualifies as a Displaced Tenant.

"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)

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. 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 232-08, Displaced Tenants, Category 1 in Ordinance 277-13, and Displaced Tenants, Category 2 and Neighborhood Residents in legislation adding this [Chapter 47](#). 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, three 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)

📖 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)

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January 18, 2019

Keith Nagayama, Deputy City Attorney
 San Francisco City Hall
 1 Dr. Carlton B. Goodlett Place, Room 234
 San Francisco, CA 94102

RE: California Department of Housing and Community Development (Department) response to request for resident preference ordinance compliance determination

Dear Mr. Nagayama:

This communication is to memorialize that the Department has reviewed the San Francisco Mayor's Office on Housing Neighborhood Resident Housing Preference (NRHP) for compliance with a portion of the requirements set forth in 25 CCR sec. 8305(a)(3) (the Local Preference Limitation). Based upon the facts and reasoning set forth below, the Department has determined that, for the 2019 calendar year, the NRHP complies with the Local Preference Limitation because there is evidence satisfactory to the Department that the preference as applied will comply with fair housing law and a local ordinance grants a preference to neighborhood residents who have been or are about to be displaced.

For reference, 25 CCR sec. 8305 (entitled "Tenant Selection") states in pertinent part:

(a) Sponsors shall select only Eligible Households as tenants of vacant Assisted Units, using procedures approved by the Department that include:

[...]

(3) prohibition of local residency preferences, except where there is evidence satisfactory to the Department that the preference as applied will comply with fair housing law and:

(A) [...], or

(B) where a local ordinance grants a preference to neighborhood residents who have been or are about to be displaced;

The Department has determined that there is sufficient evidence that the subject preference complies with fair housing law based on the facts and reasoning set forth in your letter to Ben Metcalf, dated December 20, 2018 (the "Fair Housing Letter," attached and incorporated hereto as Exhibit A). The Department also finds that a local ordinance sufficiently grants a preference to neighborhood residents who have been or are about to be displaced, as set forth in Chapter 47 of the San Francisco Administrative Code. That Chapter defines displaced tenant in Section 47.2 and provides a preference for those tenants in Section 47.3(b). (A copy of Chapter 47 is attached for reference and incorporated hereto as Exhibit B).

Please note, the Department's determinations herein are premised upon the reasoning and representations set forth above, and as contained in the incorporated exhibits. If it is later discovered that any of the foregoing were inaccurate, the Department reserves the right to alter or withdraw the conclusions set forth herein. For individual projects that intend to include the NRHP in their tenant selection criteria, the Department may require the project's proponent(s) to obtain a letter from the Mayor's Office of Housing and Community Development that the project as proposed is consistent with the fair housing authorities and analysis set forth in the Fair Housing Letter. Lastly please note that the representations and determinations set forth herein are limited to the 2019 calendar year; and the Department should be consulted again if the NRHP is requested to apply to projects seeking awards of Department funding after that timeframe.

Thank you for your hard work and careful consideration of the matters discussed herein.

Best Regards,

A handwritten signature in black ink, appearing to read "R. Seeley".

Ryan George Seeley
 General Counsel
 California Department of Housing and Community Development

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

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December 20, 2018

Ben Metcalf
Director
California Department of Housing & Community Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833

Re: San Francisco Neighborhood Preference

Dear Mr. Metcalf:

At the request of the Mayor's Office of Housing and Community Development ("MOHCD"), we write to provide you with information to support MOHCD's request for approval of a preference the City and County of San Francisco (the "City") has granted for occupying affordable housing to residents living within the Supervisorial District of such affordable housing project. The City has 11 Supervisorial Districts. The City's ordinance adopting the preference (the "City Preference") is set forth in Chapter 47 of the City's Administrative Code, which is currently in effect and has not been amended as of the date of this letter. We understand that MOHCD has asked that the California Department of Housing and Community Development ("HCD") approve the City Preference for affordable housing projects funded by HCD to the extent that preference applies to up to 25% of affordable housing units in each such project (the "Neighborhood Preference"). HCD has requested information related to MOHCD's disparate impact analysis of the Neighborhood Preference under fair housing laws.

The Fair Housing Act, as well as California's fair housing laws, declares it unlawful for any person to "make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." (42 U.S.C. § 3604(a).) In general, courts will look at both intentional discriminatory treatment and discriminatory impact:

A. In evaluating discriminatory intent, a court will generally determine whether the City acted with an intent or purpose to discriminate based on a protected class. (*Lee v. City of Los Angeles*, (9th Cir. 2001) 250 F.3d 668.) The Neighborhood Preference states non-discriminatory goals, was supported by findings related to non-discriminatory public purposes, and does not discriminate on its face against any protected group. For your convenience, the findings by the City's Board of Supervisors set forth in Section 47.1 of the Administrative Code are attached to this letter.

B. In evaluating discriminatory impact, a court will generally determine whether the Neighborhood Preference creates a significantly disproportionate discriminatory impact on a protected group. (*See Pfaff v. U.S. Dept. of Housing and Urban Development* (9th Cir. 1996) 88 F.3d 739.) Courts have reached no consensus on acceptable statistical methods or the legal threshold for determining that a disparate impact is disproportionate. MOHCD has performed a statistical analysis to determine whether the Neighborhood Preference will result in a significant disparate impact on any particular racial group based on two common statistical methods used by courts: (1) the "four-fifths" rule (*Langlois v. Abington Housing Authority* (D.Mass. 2002) 234

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F.Supp.2d 33.) and (2) the standard deviation analysis or the "z-test" (*Castenada v. Partida*, 430 U.S. 482 (1977)). According to MOHCD, the results of both analyses show that the Neighborhood Preference has not resulted in a significant disproportionate disparate impact on any particular racial group.

While we are not in a position to independently evaluate MOHCD's analysis and assumptions or predict how a court would rule if there were a challenge, we believe MOHCD's analysis and assumptions are reasonable and legally defensible. I hope you find this information helpful.

Very truly yours,

DENNIS J. HERRERA
City Attorney



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C: Mara Blitzer, Mayor's Office of Housing and Community Development