

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 40-2020

APPROVING THE SECOND, OF TWO, FIVE-YEAR EXTENSIONS OF RESIDENTIAL A AND C CERTIFICATES AS AUTHORIZED UNDER THE PROPERTY OWNER AND OCCUPANT PREFERENCE PROGRAM (CERTIFICATE OF PREFERENCE PROGRAM)

WHEREAS, In 1969, the California Legislature amended the Community Redevelopment Law (“CRL”) to require redevelopment agencies to provide low and moderate income households displaced by a redevelopment project with a priority in the renting and buying of affordable housing units that the agency develops. This “priority” is codified at Section 33411.3 of the California Health and Safety Code and requires a redevelopment agency to give “priority in renting or buying” to displaced, low and moderate income households “whenever all or any portion of a redevelopment project is developed with low- or moderate-income housing units and whenever any low- or moderate-income housing units are developed with any agency assistance” (the “Statutory Priority”). To qualify, the low- or moderate-income household must meet the income eligibility requirements under the CRL and have been “displaced by the redevelopment project;” and,

WHEREAS, The Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) implemented the Statutory Priority in a variety of ways, including specific requirements in redevelopment plan documents for certain project areas and in a Property Owner and Occupant Preference Program that covered other redevelopment project areas (“Certificate of Preference Program”); and,

WHEREAS, The Redevelopment Agency amended the Certificate of Preference Program on several occasions. See Resolution No. 76-78 (April 18, 1978); Resolution No. 253-98 (Dec. 8, 1998), and Resolution No. 57- 2008 (June 3, 2008). Under Resolution No. 57-2008, the Redevelopment Agency Commission authorized, among other things, an extension of the time limit for certain residential certificates (which under previous rules expired two years after the expiration of a particular project area) by an additional 15 years subject to Commission review and approval at or before the fifth year and the tenth year of the extended term; and,

WHEREAS, The Redevelopment Agency issued, consistent with Resolution No. 57-2008, revised rules for the Certificate of Preference Program effective October 1, 2008. These rules remain in effect. Under these rules, the Redevelopment Agency issued Residential A Certificates to those displaced persons who were heads of household at the time of displacement and issued Residential C Certificates to those members of the displaced household that were not heads of household, e.g. minor children. (A copy of the Certificate of Preference Program is included as Exhibit A to this Resolution.); and,

- WHEREAS, Regarding the extension of certain certificates, Section II.F. 1. of the Certificate of Preference Program provides that “Residential A and C Certificates shall be valid [if an income-eligible certificate holder has not previously received a priority in affordable housing] until seven years after completion of an Urban Renewal Project Area (i.e., Jan. 1, 2016), unless the Agency Commission approves five year extensions of these Certificates. The Agency shall not approve more than two five-year extensions;” and,
- WHEREAS, The Certificate of Preference Program defines a Urban Renewal Project Area as either the Western Addition A-2 or Hunters Point (i.e., Area A of the Bayview Hunters Point Project Area) Redevelopment Project Areas; and,
- WHEREAS, The Board of Supervisors of the City and County of San Francisco required, by Ordinance No. 232-08 (Oct. 30, 2008), all affordable housing programs funded and developed by the City and County of San Francisco to give a preference to displaced households under the terms of the San Francisco Redevelopment Agency’s Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008. These affordable housing programs are separate from those funded and developed by the Redevelopment Agency and are under the jurisdiction of the Mayor’s Office of Housing (now called the “Mayor’s Office of Housing and Community Development” or “MOHCD”); and,
- WHEREAS, On February 1, 2012, state law dissolved the Redevelopment Agency and required the transfer of certain of its assets and obligations to the Successor Agency to the Redevelopment Agency, commonly known as the Office of Community Investment and Infrastructure (“Successor Agency” or “OCII”), Cal. Health & Safety Code §§ 34170 et seq. (“Redevelopment Dissolution Law”); and,
- WHEREAS, On May 6, 2014, OCII entered into a Memorandum of Understanding with the Mayor’s Office of Housing and Community Development (“MOHCD”) whereby MOHCD assists OCII in the implementation of the Final and Conclusive Enforceable Obligations by marketing the affordable housing, which includes the application of the Certificate of Preference Program; and,
- WHEREAS, Under the terms of the Certificate of Preference Program, Residential A and C certificates will expire on January 1, 2021 unless the Successor Agency Commission authorizes the second of two five-year Certificate of Preference Program extensions; and,
- WHEREAS, Authorization of the amendments to the Certificate Program is an organizational or administrative activity of government that will not result in any direct or indirect physical changes in the environment, and is, therefore, not a project as defined by the California Environmental Quality Act (“CEQA”) Guidelines Section 15378(b)(5) and is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3); now therefore be it

RESOLVED, The Commission on Community Investment and Infrastructure, acting as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, hereby extends, until January 1, 2026, Residential A and C Certificates that have not been fully exercised.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of December 1, 2020.

Commission Secretary

Exhibit A: Property Owner and Occupant Preference Program (Certificate of Preference Program)

EXHIBIT A

PROPERTY OWNER AND OCCUPANT PREFERENCE PROGRAM

(CERTIFICATE OF PREFERENCE PROGRAM)

**OF THE REDEVELOPMENT AGENCY
OF THE
CITY AND COUNTY OF SAN FRANCISCO**

**As amended and restated pursuant to
Agency Resolution No. 57-2008 (June 3, 2008)**

Effective October 1, 2008

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	RESIDENTIAL CERTIFICATE OF PREFERENCE PROGRAM.	3
A.	Purpose.....	3
B.	Definitions.....	3
1.	“Agency-Assisted Housing Units”	3
2.	“Certificate” or “Certificate of Preference”	3
3.	“Displaced Person”	3
4.	“Residential A Certificate Holder”	4
5.	“Residential C Certificate Holder”	4
6.	“Residential G Certificate Holder”	4
7.	“Residential Certificate”	4
8.	“Residential Certificate of Preference Holder”.....	4
9.	“Site Occupant Record”	4
10.	“Urban Renewal Project Area”	5
11.	“Used”	5
C.	Use of Residential Certificates.....	5
D.	Exercising Certificate Opportunities.....	6
E.	Application of Residential Certificate Program to a Particular Project.	6
F.	Duration of the Effectiveness of the Residential Certificate.	7
III.	BUSINESS CERTIFICATE OF PREFERENCE PROGRAM.....	7
A.	Purpose.....	7
B.	Definitions.....	8
1.	“Business Occupant”	8
2.	“Business Certificate of Preference Holder”	8
3.	“Certificate” or “Certificate of Preference”	8
4.	“Displaced Business”	8
C.	Use of Business Certificates.	9
1.	Agency-Owned Property.	9
2.	Rehabilitated Structures.	9
3.	Privately-Owned Commercial Space.....	10
4.	Priority of Business Certificates.	10
D.	Timing of Eligibility Determination.	10
E.	Use of Business Certificates by Partnerships or Corporations.	11
F.	Limitations on Use of Certificate.....	11
G.	Exceptions to Preference.....	11
H.	Duration of the effectiveness of the Certificate.	12
IV.	APPLICATION FOR AND NON-TRANSFERABILITY OF CERTIFICATES.....	12

V.	REVIEW AND APPEALS PROCEDURE.....	12
A.	Persons and Entities Entitled to Reconsideration (“Complainants”).....	12
B.	Informal Settlement.	12
C.	Procedures to Obtain Administrative Review.....	13
D.	Hearing Officer.	13
E.	Scheduling of Hearing.	13
F.	Postponements.	13
G.	Absence of Parties.....	14
H.	Conduct of Hearing.....	14
I.	Burden of Proof.....	15
J.	Stipulations.	15
K.	Record of Proceedings.	15
L.	Personal Appearances and Representation by Agent.....	15
M.	Decisions of the Hearing Officer.	15
VI.	OUTREACH.	15
VII.	REPORTING.	15
VIII.	PRIOR CERTIFICATES; EFFECTIVE DATE OF PROGRAM.....	16
IX.	AMENDMENTS TO CERTIFICATE PROGRAM.....	16

I. INTRODUCTION.

The Redevelopment Agency of the City and County of San Francisco (“Agency”) initially established a preference program for displaced residents and businesses in the 1960’s when the Agency was implementing its federally-funded urban renewal program.¹ The Agency created a program whereby displaced residents and businesses of certain project areas received “Certificates of Preference” and were thus entitled to a priority in the renting or buying of Agency-owned or approved property. The preference was in addition to other relocation benefits (i.e., fair market value for acquired property, relocation assistance, replacement housing units) that the displacees may have received; it was also subject to otherwise applicable eligibility requirements that the Agency imposed on the renting or buying of the property.

The Certificate of Preference Program has special significance in the Western Addition A-2 and Hunters Point Redevelopment Project Areas, which were subject to massive urban renewal programs that the federal government funded and that involved the widespread clearance and relocation of communities.² These programs were replicated across the country and caused wide-spread social, economic, cultural, political, and emotional upheaval that has been documented in the affected communities.³ In light of the unique social and individual losses associated with urban renewal, the Agency provides enhanced preferences to those who were directly or indirectly affected by the redevelopment activities in the Western Addition A-2 and Hunters Point Redevelopment Project Areas.

The Agency has statutory obligations under the California Community Redevelopment Law to provide preferences to low- and moderate-income displacees in Agency-assisted housing and to businesses for the purposes of reentering the project area.⁴ The Agency has fulfilled these obligations through this Certificate of Preference Program and through separately-adopted business re-entry policies that are part of redevelopment plan approvals.⁵ Historically, the Certificate of Preference Program has applied only in the Western Addition A-2,

¹ See Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2, Agency Resolution No. 136-63 (Oct. 22, 1963); Property Owner and Occupant Preference Policy for Reestablishment in the Western Addition Redevelopment Project A-2, Agency Resolution No. 103-67 (July 25, 1967).

² The Agency redeveloped other older project areas that relied on urban renewal funds and that involved widespread acquisition and clearance of property, but some of these project areas have long expired, e.g., the Western Addition A-1 Redevelopment Project Area, or are subject to separate relocation policies that did not rely on the Certificate of Preference Program, e.g., Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965).

³ See generally M. Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It (Ballantine Books 2004).

⁴ California Health and Safety Code, Section 33339.5 (Reentry in business in redeveloped areas); California Health and Safety Code, Section 33411.3 (Availability of low- and moderate-income units to displaced persons of low- and moderate-income).

⁵ See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit 1.

Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), Stockton-Sacramento, and Bayview Industrial Triangle Redevelopment Project Areas,⁶ although the Rincon Point-South Beach Redevelopment Project Area also has its own Certificate of Preference Program.⁷ In other redevelopment project areas, the Agency did not use the Certificate of Preference Program, but implemented the separately-adopted business re-entry policies and directly relied on the statutory obligations to provide preferences to lower income displaced residents. Accordingly, the Certificate of Preference Program is only one means by which the Agency has fulfilled its statutory obligations to provide displaced persons with a priority in the renting or buying of property.

This Property Owner and Occupant Preference Program, as amended and restated, (“Amended and Restated Program”) codifies and clarifies recent amendments that the Agency Commission authorized in Agency Resolution No. 57-2008 (June 3, 2008).⁸ These amendments include extending the duration of certain residential certificates, expanding the housing opportunities for certain displacees who did not receive certificates at the time of displacement because they were not then eligible, e.g., minor children and adults who were not heads of the household, revising the appeals process when the Agency denies a certificate, providing an enhanced education and outreach program to identify displacees, and reaffirming existing policies that only persons displaced by Agency action are eligible for a certificate and that a displacee may establish eligibility even though his or her name does not appear on Agency records. In addition, the Agency Commission authorized Agency staff to continue exploring the future expansion of the certificate program to certain persons who did not live in the household at the time of displacement, but who may be the grandchildren of the original displaced heads of household, i.e., children of the persons who were children themselves at the time of displacement. The Agency Commission did not authorize an immediate expansion of the certificate program to include these “grandchildren;” rather it directed Agency staff to continue investigating, among other things, the feasibility of expanding eligibility in light of the supply of affordable housing and the ability of the Agency to meet existing demand. When Agency staff completes its review of the issues associated with the “grandchildren” expansion, it will make appropriate amendments to the program.

This Amended and Restated Program is divided into two separate sections: a program of preference for residential displacees and another program for business displacees. The residential program applies to all existing project areas, but has special provisions for certain project areas affected by urban renewal. The business program applies only to certain existing project areas that do not have a

⁶ The Stockton-Sacramento Redevelopment Project Area expired in 2004; under the terms of the then-existing Property Owner and Occupant Preference Program, certificates of preference from that project area expired two years later in 2006.

⁷ Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980).

⁸ Agency Resolution No. 57-2008 is attached as Exhibit 2.

separately-adopted business re-entry policy, namely the Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), and Bayview Industrial Triangle Redevelopment Project Areas. In all other project areas, separate re-entry policies remain in effect and are not affected by this Amended and Restated Program.

II. RESIDENTIAL CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain preferences in consideration for housing to persons displaced by Agency action or action on behalf of the Agency.
2. To give enhanced preferences in consideration for housing opportunities to those persons affected by urban renewal programs in the Western Addition A-2 and Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan (the “Urban Renewal Project Areas”).
3. To implement, for all project areas, statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33411.3) requiring the Agency to give priority to displaced low- and moderate-income households in Agency-assisted housing and in other housing for low- and moderate-income households.
4. To supplement other rights and benefits that may be available to displaced persons, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

B. Definitions.

1. “Agency-Assisted Housing Units” means those units that the Agency must make available to displaced persons under Section 33411.3 of the Health and Safety Code, i.e., low- or moderate-income housing units developed (i) with any Agency assistance, (ii) pursuant to Section 33413 of the Health and Safety Code, or (iii) in any redevelopment project area.
2. “Certificate” or “Certificate of Preference” is Agency documentation that a person or business is eligible for a preference described in this Program.
3. “Displaced Person” means a person who was a legal occupant of a building and who permanently moved him or herself from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of

the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced person also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

4. “Residential A Certificate Holder” means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate of Preference based either: (i) on his or her status as a head of household at the time of displacement, or (ii) on his or her intent to live separate and apart from the household after displacement; and whose name appears on Agency records, e.g., the Site Occupant Record.
5. “Residential C Certificate Holder” means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate based on his or her residency in a household at the time of Agency displacement, but who was ineligible for a Residential A Certificate of Preference. To qualify for a Residential C Certificate, the person’s name must appear on the Agency’s Site Occupant Record for a dwelling unit or the person must be able to prove, to the reasonable satisfaction of the Agency, that he or she resided in the household at the time of displacement.
6. “Residential G Certificate Holder” means a Displaced Person a) who is the head of household or who demonstrates to the reasonable satisfaction of the Agency that he or she intends to live separate and apart from the household after displacement; b) who lived in the City and County of San Francisco other than an Urban Renewal Project Area at the time of displacement; and c) who has not been provided by the Agency with permanently affordable replacement housing in an Agency-Assisted Housing Unit.
7. “Residential Certificate” means Agency documentation that a person is eligible for a Residential A, C, or G Certificate.
8. “Residential Certificate of Preference Holder” or “Residential Certificate Holder” means all classes of residential certificate holders, i.e., Residential A, C, and G Certificate Holders.
9. “Site Occupant Record” means the Agency’s record of the occupants of a building at the time of Agency displacement. The Agency or a designated agent of the Agency is responsible for

completing the Site Occupancy Record (“SOR”) for each displaced household.

10. “Urban Renewal Project Area” means the Western Addition A-2 or Hunters Point (i.e., Area A of the Bayview Hunters Point Redevelopment Project Area) Redevelopment Project Areas.
11. “Used” means a) in the case of a rental or purchase of a cooperative share, means the execution of a lease or rental agreement; or b) in the case of a purchase, the execution of a deed by the Agency or a third party pursuant to an agreement with the Agency requiring priority in sales to Certificate Holders.

C. Use of Residential Certificates.

A Residential Certificate entitles a Displaced Person, in accordance with the California Health and Safety Code Section 33411.3, to receive a priority in the renting or buying of an Agency-Assisted Housing Unit, subject to the following conditions:

1. The Displaced Person must meet the income eligibility and other requirements for the Agency-assisted housing unit.
2. Residential Certificate Holders are eligible to use a Certificate to receive a priority: 1) in the renting of, or buying of a cooperative share in, Agency-Assisted Housing Unit; and 2) in the buying of an Agency-Assisted Housing Unit. All classes of Residential Certificate Holders thus have the opportunity to exercise the Certificate twice: once for a rental or cooperative share opportunity and again for a homeownership opportunity, provided, however, that a person who is otherwise eligible for a Residential G Certificate Holder is not eligible for a Certificate if the Agency has provided the displaced household with affordable housing in an Agency-Assisted Housing Unit.
3. Residential Certificate Holders have the above-described preferences for the renting or buying of Agency-Assisted Housing Units in the following descending order of priority, provided, however, that a redevelopment plan or Agency Commission action may change this order of priority for a particular project area or project:
 - a. A Displaced Person with the earliest date of displacement.

- b. A Displaced Person seeking to use a Certificate for a housing development in the Project Area from which the person was displaced.
 - c. A Displaced Person seeking to use a Certificate for a housing development either in a Project Area from which the person was not displaced or in any other part of the City.
 - 4. The Certificate entitles the holder to preferential consideration only; the Residential Certificate Holder must still meet the otherwise applicable selection criteria on which the owner/agent shall make the final decision.
- D. Exercising Certificate Opportunities.
 - 1. As described in Section II.C.2 above, a Residential Certificate Holder has two opportunities to exercise a Certificate: once for rental or cooperative share opportunity and again for a homeownership opportunity. If the Residential Certificate Holder is successful in obtaining a unit through the use of the Certificate, he or she exercises (i.e., extinguishes) the right to use the Certificate for that particular type of housing, but may still use the certificate for a different tenure type.
 - a. In the case of a rental or cooperative share opportunity, to exercise a Residential Certificate means to secure successfully a tenancy in, or the purchase of a cooperative share in, an Agency-Assisted Housing Unit, as shown by the execution of a lease or other evidence of occupancy.
 - b. In the case of a homeownership opportunity, to exercise a Residential Certificate means to execute a deed and the closing of escrow for an Agency-Assisted Housing Unit.
 - 2. A Residential G Certificate is exercised if the Agency provides the Residential Certificate Holder with affordable housing in an Agency-Assisted Housing Unit.
- E. Application of Residential Certificate Program to a Particular Project.

The Agency shall require that developers and property managers of Agency-Assisted Housing Units extend preferences to Residential Certificate Holders upon initial occupancy of a housing project or upon the vacancy of previously-occupied units in the project. The terms and conditions by which the developer or property manager will implement

these preferences shall be consistent with this Amended and Restated Program and shall appear in the affirmative marketing plan or similar documents for the project.

F. Duration of the Effectiveness of the Residential Certificate.

A Residential Certificate remains effective until the Residential Certificate Holder has completely exercised his or her Certificate as described in Section II. D; provided, however, that Certificates that have not been fully exercised have the following time limitations:

1. The Residential A and C Certificates shall be valid until seven years after completion of an Urban Renewal Project Area (i.e., Jan. 1, 2016), unless the Agency Commission approves five year extensions of these Certificates. The Agency shall not approve more than two five-year extensions.
2. The Residential G Certificate shall be valid until five years after the Agency displacement.

III. BUSINESS CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain re-entry preferences in consideration for business opportunities to businesses displaced by Agency action or action on behalf of the Agency.
2. To implement, for those project areas without separately-adopted business re-entry policies,⁹ statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33339.5) requiring the Agency to extend reasonable preferences to persons who were engaged in business in a redevelopment project area to reenter in business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan.
3. To supplement other rights and benefits that may be available to displaced businesses, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

⁹ Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Project Area), and the Bayview Industrial Triangle Redevelopment Project Areas.

B. Definitions.

1. “Business Occupant” means: 1) the owner or renter of a building that was situated on real property in the Western Addition A-2, Hunters Point, or Bayview Industrial Triangle Redevelopment Project Areas and that was acquired by the Agency after the date of (i) the adoption of the redevelopment plans or (ii) the receipt of funds for acquisition of property for these project areas, whichever date occurred earlier; or 2) a tenant engaged in business in a building whose owner entered into an Owner Participation Agreement with the Agency to extensively rehabilitate the property and the tenant received the Agency’s Notice of Displacement that was required under the then-applicable federal regulations. Acquisition by the Agency includes both purchase and acquisition by eminent domain/condemnation.
2. “Business Certificate of Preference Holder” means a Business Occupant who was engaged in business in a building at the time the Agency acquired the property. To be eligible for a Business Certificate of Preference, a property owner must have been the owner of record that executed the grant deed to the Agency or the owner of record in the eminent domain at the time the Agency acquired the property. If the property owner was a corporation, partnership or other legal entity, the Certificate will be listed in the corporation or the partnership’s name. If there was more than one owner of record, only one certificate will be issued.
3. “Certificate” or “Certificate of Preference” is Agency documentation that a person or business is eligible for a preference described in this Program.
4. “Displaced Business” means a person who was a legal occupant of a building and who permanently moved his or her business from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced business also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

C. Use of Business Certificates.

The Business Certificate Program applies only to the Western Addition A-2, Hunters Point, and Bayview Industrial Triangle Redevelopment Project Areas. Other redevelopment project areas have separate business re-entry and preference policies that implement Section 33339.5 of the California Health and Safety Code.¹⁰

1. Agency-Owned Property.

The Agency may offer property that it owns for purchase and development. The Agency selects developers of such parcels based on the extent to which the proposed development serves the needs of the Project Area and the City and County of San Francisco and satisfies the requirements of the request for proposals/ qualifications, if any. The Agency may extend preferences to Business Certificate Holders who were displaced from the project area in which the Agency-owned property is located. The major factors for evaluating proposals will include:

- a. Economic feasibility of the proposal.
- b. The financial capacity of the developer and the demonstrated ability of the development design team.
- c. The ability of the developer to proceed expeditiously with development of the site.
- d. Architectural quality and degree of compliance with design objectives of the offering.
- e. Other factors included in the offering.

When the Agency determines that proposals from applicants with Business Certificates and from those without Business Certificates are substantially equivalent, the Agency shall give preference to the proposal associated with the Business Certificate.

2. Rehabilitated Structures.

In the event the Agency acquires structures for rehabilitation, the Agency may sell these structures to the Business Certificate Holder who has the highest qualified bid, who complies with the terms of offering, and who was displaced from the project area in which the rehabilitated structure was located; provided, however that these

¹⁰ See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit 1.

Business Certificate Holders will not receive a preference in bidding on a residential rehabilitation offering unless there are at least two units and the property will be used to engage in business; and provided further that a Business Certificate of Preference Holder may not use priority to bid on rehabilitation offering if the intended use is for private residency.

3. Privately-Owned Commercial Space.

A Business Certificate only entitles the Business Certificate Holder who desires to rent business space from a private property owner to a preferential consideration if the space meets the requirements of the redevelopment plan and if the Agency has required the owner to provide a preference to Business Certificate Holders who were displaced from the project area in which the privately-owned commercial space is located. The owner of the business space makes the final determination on the business mix, rental rates and terms and conditions.

4. Priority of Business Certificates.

Business Certificate Holders have the above-described preferences; provided, however, that a redevelopment plan or Agency Commission action may change or eliminate the priority for a particular project area or project; and provided further that in situations where the Agency or private property owner receives applications from multiple Business Certificate Holders having equal qualifications, the Business Certificate Holder with the earliest date of displacement from the project area in which the business opportunity is located will receive priority.

D. Timing of Eligibility Determination.

When a Business Certificate is to be used for priority in preferential offerings, eligibility must be established and a certificate issued prior to the bid opening or the specified deadline for the development proposal.

E. Use of Business Certificates by Partnerships or Corporations.

1. A partnership or corporation in which a Business Certificate Holder has an ownership interest, may use the Certificate in the purchase of property provided:
 - a. The Business Certificate Holder owns outright, fifty-one percent (51%) or more of the partnership or corporation. If two or more Certificate Holders have an ownership interest in the partnership or corporation, the total percentages of ownership held by all the certificate holders must be at least 51%. In the event such partnership or corporation uses the certificate, each certificate holder, regardless of percentage of ownership, shall be deemed to have exercised his or her certificate.
 - b. The fifty-one percent (51%) or more ownership interest was not funded by a loan from the partnership, corporation, or any member or shareholder thereof and the Business Certificate Holder so declares in writing under penalty of perjury if required by the Agency.
 - c. The Business Certificate Holder must sign a non-collusion affidavit if persons other than Business Certificate Holders own the partnership or corporation.
 - d. The Business Certificate Holder shall not intend to sell his or her interest in the corporation or partnership at the time the Certificate is used and the Certificate Holder shall so declare in writing under penalty of perjury, if required by Agency.
 - e. The Business Certificate Holder shall not sell his or her interest in the corporation or partnership unless the Agency has issued a certificate of completion of new improvements and/or rehabilitation and the transfer or assignment complies with Agency anti-speculation restrictions or other conditions limiting transfer.

F. Limitations on Use of Certificate.

Business Certificate Holders may only use the Certificate. The Business Certificate of Preference cannot be used by any other person than the named recipient.

G. Exceptions to Preference.

The Agency may authorize an offering or commercial space that does not give priority to Certificate Holders, but the authorization must clearly state

that the Agency will not require preferences to holders of Business Certificates. However, persons who have, or are eligible to have, a certificate and who are successful in responding to a special disposition offering, either individually, jointly, or as members of a partnership or corporation, will be deemed to have exercised their certificate if they hold the minimum percentage of ownership specified in the special disposition.

H. Duration of the effectiveness of the Certificate.

Business Certificates shall be valid until two years after the completion of the Project Area from which the business was displaced.

IV. APPLICATION FOR AND NON-TRANSFERABILITY OF CERTIFICATES.

Application for all Certificates of Preference must be made to the Agency. A Certificate is not transferable voluntarily, by inheritance, by operation of law, or otherwise. A Certificate applicant is not entitled to certificate priorities until a Certificate has actually been issued. When a Certificate is requested and proof of eligibility cannot be established by Agency records, the burden shall be upon the applicant to supply the Agency with the necessary documentation.

V. REVIEW AND APPEALS PROCEDURE.

- A. Persons and Entities Entitled to Reconsideration (“Complainants”). A person or business who is denied a Certificate of Preference may seek reconsideration of the Agency’s decision within thirty days of receipt of the Agency’s written determination of denial by filing a written statement explaining the basis for the person’s eligibility for a Certificate of Preference. If a person has not received a written determination from the Agency within a reasonable period of time following the filing of an application for a Certificate of Preference, that person may also file for a reconsideration under this Section.
- B. Informal Settlement. The Agency shall schedule, within sixty (60) days of receipt of a request for reconsideration, an informal settlement meeting with the complainant to consider the request for reconsideration. At the meeting, the complainant shall personally present, to the Agency, any documentation or other information justifying the person’s eligibility for a Certificate of Preference under these Rules. The purpose of the meeting is to discuss the matter informally and attempt to settle without an appellate hearing. The Agency will prepare a summary of such informal discussion (the “Summary Statement”) no later than thirty (30) days from the date of the last meeting. The Summary Statement will specify the names of the participants, dates of meeting, the Agency’s decision regarding the complainant’s eligibility for a Certificate of Preference, and will specify the procedure by which an appellate hearing may be obtained if the

complainant is not satisfied. The Summary Statement shall either be delivered personally to the complainant or sent by regular mail to the complainant's address or such other address as the complainant specifies.

- C. Procedures to Obtain Administrative Review. A person that has received a Summary Statement affirming the Agency's denial of a Certificate of Preference may petition for administrative review ("Petitioner"). The Petitioner must submit a written request for administrative review to the Agency's Deputy Executive Director of Housing or his or her designee within fourteen (14) days from the date of the Summary ("Petition"). The Petition must provide the specific facts on which the complainant relies to establish eligibility for a Certificate of Preference.
- D. Hearing Officer. A neutral hearing officer shall conduct the administrative review. The hearing officer may not be a person who approved the decision to deny the Certificate of Preference or a subordinate of that person. As of the date of these amended rules, the Agency intends to use the Administrative Law Judges of the San Francisco Residential Rent Stabilization and Arbitration Board to review these matters.
- E. Scheduling of Hearing. The Hearing Officer shall hold the hearing within forty-five (45) days of the date of the filing of the Petition. The Agency shall ensure that written notice, by mail, of the date, time and place of the hearing is given at least ten (10) days prior to the date of the hearing. This notice shall also include these procedures governing the hearing.
- F. Postponements.
 - (a) The Hearing Officer may grant a postponement of a hearing only for good cause and in the interest of justice.
 - (b) "Good cause" shall include, but is not limited, to the following:
 - (1) the illness of a party, an attorney or other authorized representative of a party, or a material witness of a party;
 - (2) verified travel outside of San Francisco scheduled before the receipt of notice of the hearing; or,
 - (3) any other reason which makes it impractical to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans which cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause."

(c) Parties may agree to a postponement at any time. Where the parties have agreed to a postponement, the Hearing Officer shall be notified in writing at the earliest date possible.

(d) Requests for postponement of a hearing must be made in writing at the earliest date possible, with supporting documentation attached. The person requesting a postponement should notify the other parties of the request and provide them with any supporting documentation.

G. Absence of Parties.

If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Hearing Officer may, as appropriate: continue the case, decide the case on the record in accordance with these rules; dismiss the case with prejudice; or proceed to a hearing on the merits.

H. Conduct of Hearing.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If a party does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. In the absence of a timely and proper objection, relevant hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which timely and proper objection is made is admissible for all purposes, including as the sole support for a finding, if (a) it would otherwise be admissible under the rules of evidence applicable in a civil action or (b) the Hearing Officer determines, in his or her discretion, that, based on all the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

- I. Burden of Proof. In any proceeding before the Hearing Officer, the Petitioner shall have the burden of proving that he or she meets the eligibility requirements for a Certificate of Preference under these Rules.
- J. Stipulations. The parties, by stipulation in writing filed with the Hearing Officer, may agree upon the facts or any portion thereof involved in the hearing. The parties may also stipulate as to the testimony that would be given by a witness if the witness were present. The Hearing Officer may require additional evidence on any matter covered by stipulation.
- K. Record of Proceedings. All proceedings before the Hearing Officer shall be recorded by tape or other mechanical means.
- L. Personal Appearances and Representation by Agent. In any proceeding before the Hearing Officer, each party may appear personally or by an attorney, or by a representative designated in writing by the party, other than an attorney.
- M. Decisions of the Hearing Officer. The Hearing Officer shall make written findings of fact and a written decision as to whether the Petitioner is eligible for a Certificate of Preference. A copy of the decision will be sent to the Petitioner and the Agency.
 - (a) The decision of the Hearing Officer to issue a Certificate of Preference shall be binding on the Agency, and the Agency shall promptly issue a Certificate of Preference consistent with the Hearing Officer's decision.
 - (b) A decision by the Hearing Officer that the Petitioner is not entitled to a Certificate of Preference shall not affect any rights the Petitioner may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

VI. OUTREACH.

The Agency shall provide outreach to persons who are potentially eligible Residential Certificate Holders. The Agency shall also provide education to Residential Certificate Holders on how to exercise a Certificate and information on location of the opportunities to exercise a Certificate for rental or ownership housing.

VII. REPORTING.

Agency staff shall annually report to the Agency Commission on the status of the Residential Certificate Program including but not limited to the number of outstanding certificates, the number of Residential Certificate Holders for which the Agency currently has addresses, the number of new certificates issued, and the number of Residential Certificate Holders exercised in the past 12 months to purchase or rent new housing.

VIII. PRIOR CERTIFICATES; EFFECTIVE DATE OF PROGRAM.

- A. All non-exercised, validly issued Certificates issued prior to the effective date of this program shall be honored. However, this Amended and Restated Program shall govern the manner of exercising and prioritizing.
- B. The effective date of this Amended and Restated Program is October 1, 2008.

IX. AMENDMENTS TO CERTIFICATE PROGRAM.

The Agency Commission or the Executive Director may amend, from time to time, this Amended and Restated Certificate Program.

LIST OF SEPARATELY-ADOPTED BUSINESS PREFERENCE AND
RE-ENTRY POLICIES

Business Occupant Re-Entry Policy, Bayview Hunters Point Redevelopment Project, Agency Resolution No. 34-2006 (March 7, 2006);

Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Transbay Redevelopment Project, Agency Resolution No. 17-2005 (Jan. 25, 2005);

Amended Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business occupants for the South of Market Redevelopment Project, Agency Resolution No. 150-2005 (Oct. 4, 2005);

Business Reentry Preference Program for the Mission Bay North Redevelopment Project Area, Agency Resolution No. 187-98 (Sept. 17, 1998);

Business Reentry Preference Program for the Mission Bay South Redevelopment Project Area, Agency Resolution No. 192-98 (Sept. 17, 1998);

Business Occupant Re-Entry Preference Program, Hunters Point Shipyard Redevelopment Project, Agency Resolution No. 93-97 (June 17, 1997);

Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980);

Rules for Business Preference and Reentry for the Butchertown Redevelopment Project (“India Basin”), Agency Resolution No. 238-1968 (Dec. 10, 1968)

Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965)