MEMORANDUM

TO: OCII Commissioners
FROM: Tiffany Bohee, Executive Director

SUBJECT: Authorizing a preference in Successor Agency affordable housing to Displaced Tenants who have received Ellis Act Housing Preference Certificates from the Mayor’s Office of Housing and Community Development to the extent that the preference is consistent with the Successor Agency’s enforceable obligations, Redevelopment Plans, and applicable law

EXECUTIVE SUMMARY

The Ellis Act Displacement Emergency Assistance Ordinance was passed into law by the City and County of San Francisco (the “City”) on December 18th, 2013. The legislation requires a new preference in all City Affordable Housing Programs for tenants who are displaced due to withdrawal of their housing unit from the rental market, as allowable under the State Ellis Act. The legislation responded to concern over an increase in these Ellis Act Evictions that paralleled rising market-rate housing prices in 2013.

The Mayor’s Office of Housing and Community Development (“MOHCD”) is tasked with implementing the preference for Ellis Act evictees through the Ellis Act Housing Preference (“EAHP”) Program. MOHCD staff is responsible for verifying the eligibility of Ellis Act evictees and issuing the evictees EAHP certificates, and monitoring the inclusion of the preference in the marketing, sales, and leasing of City assisted affordable housing units. EAHP Certificate Holders then receive a preference in City assisted affordable housing for up to 20% of the newly constructed affordable units for projects with at least 5 affordable units, and only after preferences provided through the Certificate of Preference Program.

The EAHP Program does not currently apply to OCII sponsored housing, therefore MOHCD has requested that the Commission consider adopting a preference for EAHP Certificate Holders for OCII affordable housing units. Staff has reviewed the EAHP Program as implemented by MOHCD and recommends that OCII incorporate preferences for EAHP Certificate Holders in OCII assisted housing projects, subject to consistency with applicable Fair Housing Laws, Redevelopment Plan requirements, and OCII enforceable obligations, in the following manner: (1) the EAHP Certificate Holders would be given preference for up to 20% of the newly constructed affordable units for projects with at least 5 affordable units, (2) EAHP Certificate Holders would receive a preference after the Certificate of Preference program and any other specific preferences required by enforceable obligations, but immediately before any preference for San Francisco residents and workers, (3) the EAHP would be included in the applicable funding and/or development agreements to be approved by the Commission, and (4) MOHCD would be responsible for determining eligibility of, and issuing certificates to, eligible Ellis Act evictees.
Staff recommends applying the preference on all future OCII affordable housing units that have not yet received final development and/or disposition approvals. OCII subsidized and inclusionary housing projects that have previously received development approvals would not be required to implement the EAHP Program, unless such a preference was contemplated in the loan agreements or other project documents (which is the case certain recent OCII subsidized projects approved by the Commission within the last month).

Staff recommends adopting a resolution implementing the EAHP for OCII assisted affordable housing developments, subject to applicable Fair Housing Laws, Redevelopment Plan requirements, and enforceable obligations.

DISCUSSION

Background

The City and County of San Francisco ("City") faces a severe affordable housing crisis. The average rent for one bedroom units is $2,897 and for two bedroom units is $3,898. See Rent Trend Data in San Francisco, available at http://www.rentjungle.com/average-rent-in-san-francisco-rent-trends. The San Francisco Association of Realtors reports that the 2014 median sales price for a single family dwelling is $1,049,000 and for a condominium unit is $940,000. SF Association of Realtors, Monthly Indicators (May 2014). See also “S.F. Homes Reach 7-figure Milestone for Median Price,” San Francisco Chronicle at A8 (July 17, 2014) (reporting an average rent of $3,229 and a median price of homeownership units of $1 million), available at http://www.sfgate.com/default/article/1-million-city-S-F-median-home-price-hits-7-5626591.php

The high cost of housing creates incentives for the owners of rental property to evict tenants from housing units with below-market rents, particularly those units that are rent controlled. Under San Francisco’s Residential Rent Stabilization and Arbitration Ordinance, there is no limit on the amount of rent a landlord may first charge when initially renting a vacant unit, but owners of residential buildings subject to rent control face limitations on the rent increases they may impose upon existing tenants. Landlords subject to the Rent Ordinance must also have "just cause" to evict an existing tenant. While there are 15 just cause reasons for eviction, most of them refer to breach of the rental agreement or other types of unacceptable tenant behavior. Of several allowable reasons for eviction that are not the tenant's fault ("No-Fault Evictions"), Owner Move-In (OMI) and Ellis Act Evictions are historically the most numerous. No-Fault Evictions rose significantly in 2013. Recently the San Francisco Rent Board issued its annual report to the Board of Supervisors which found that between March 2013 and February 2014, the Rent Board received 216 Ellis Act Notices, which is an 86% increase over the prior reporting period total of 116. See the report at http://www.sfrb.org/index.aspx?page=46. In its annual report for 2012-2013, the San Francisco Rent Board provided charts illustrating the historical trends in Ellis Act Filings since 1986 as well as a chart detailing Ellis Act Filings by zip code for Fiscal Year 2012-2013. Both charts are attached as Attachments A and B, respectively.
In response, the San Francisco Planning Commission ("Planning Commission") recommended, by Resolution No. 19029 (Nov. 21, 2013), that the Board of Supervisors approve an ordinance establishing a preference in all affordable housing programs administered or funded by the City to certain tenants evicted under the Ellis Act (see Exhibit A to the Resolution). Nonetheless, the Planning Commission Resolution, at page 2, found: "Conditions that have caused the surge in evictions in the last year can change again in the very near future. Proposed solutions to such emergency issue should allow for a timely response to the current eviction climate without creating a permanent preference for one vulnerable class of residents among others." The Planning Commission Resolution, at page 2, thus recommended that the Board of Supervisors review the EAHP within three years so that it could decide whether "to extend, modify, or cancel this system".

The Board of Supervisors approved, by Ordinance No. 277-13 (Dec. 18, 2013), attached as Exhibit B to the Resolution, the EAHP, which establishes a preference, in all City affordable housing programs, for income-eligible San Francisco tenants who on or after January 1, 2012 received notice that their landlord had filed an Ellis Act Notice and who either i) had resided in the rental unit for at least ten years or ii) had resided in the rental unit for five years if they currently have a life threatening illness or a disability ("Displaced Tenant"). Ordinance No. 277-13 also requires the Board of Supervisors to review the impact of the EAHP in a public hearing within one year and requires a subsequent hearing within three years of the EAHP’s effective date.

Program Summary

The EAHP Program implements the Ellis Act Displacement Emergency Assistance Ordinance by creating procedures and regulations for a Displaced Tenant Preference. Certain tenants who have been or may be displaced by Ellis Act Evictions that took place in 2012 or later may apply for an EAHP certificate from MOHCD. Once applications are reviewed and approved, eligible applicants are issued an EAHP certificate, which serves as official documentation of their priority status for admission to any City Affordable Housing, as defined below, for which they qualify. To date MOHCD has issued received 87 applications for EAHP certificates; of those MOCHD has awarded 70 certificates, denied 11 applications, and is processing the remaining 6 applications. MOHCD staff has provided demographic information related to the current certificate holders and is attached as Attachment C.

The EAHP is limited in the following important ways:

- The preference applies to City Affordable Housing. City Affordable Housing includes all buildings that received support from MOHCD or the former San Francisco Redevelopment Agency (SFRA) whose housing assets have been transferred to the City. City Affordable Housing also includes below market rate (BMR) rental and ownership units governed by the Inclusionary Housing Program, Condo Conversion BMR Program, Down Payment Assistance programs and former SFRA programs. The preference does not apply to most privately owned and operated housing. The preference does not apply to Public Housing
buildings (except the HOPE SF Developments) nor to Section 8 Vouchers\(^1\). The preference does not apply to projects that receive state and federal funding sources that expressly prohibit local preferences.

- Applicants must meet all other eligibility requirements for rental or purchase in order to use their EAHP certificate. City Affordable Housing is targeted to low- and moderate-income households, thus income limits always apply. In addition to income caps, many affordable housing buildings have other eligibility criteria. Possession of an EAHP certificate does not guarantee that the holder will be eligible for a City Affordable Housing unit.

- For new developments going through the initial lease-up or sale process, the EAHP priority applies to only twenty percent (20\%) of the affordable units. Buildings with four (4) or fewer affordable units are not required to provide the EAHP priority at initial lease-up or sale because 20\% of that number of units is zero. For re-rental and re-sale units, EAHP certificate preference applies to every unit that becomes available, regardless of the number of affordable units in the building. However, if the Project Sponsor fills vacancies off of an established waitlist, EAHP Certificate Holders must be on that waitlist at the time of the vacancy in order to use the certificate for that unit.

**Program Criteria**
MOHCD is responsible for determining eligibility for the EAHP Program and issuing EAHP certificates. On April 4, 2014 MOHCD published an EAHP Program Manual, which describes how the City will implement the EAHP Program through its affordable housing programs. The eligibility standards for Displaced Tenants are described in pages 6-10 of the EAHP Program Manual, attached as Exhibit C to the Resolution. A summary of the eligibility criteria is shown below:

1. The applicant landlord initiated an eviction by filing a Notice of Intent to Withdraw (NOI) with the San Francisco Rent Board on or after January 1, 2012.

2. Prior to the date the NOI was filed, the applicant had continuously occupied the housing unit for a period of (i) at least ten years, (ii) at least five years, if the tenant can document that he or she is suffering from a life threatening illness as certified by their primary care physician, or (iii) at least five years, if the tenant can verify that he or she is Disabled.

3. The applicant is at least 18 years of age at the time their application is received by the Mayor’s Office of Housing and Community Development (MOHCD).

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\(^1\) The Ellis Act Housing Preference Program does not entitle EAHP certificate holders to a priority on the waitlist for Section 8 Vouchers. This is not meant to imply that Section 8 Voucher holders are ineligible for the EAHP certificate. Section 8 Voucher holders who have been Ellis Act Evicted and meet other EAHP Program eligibility requirements may apply for the certificate.
Implementation of the EAHP in OCII Housing Projects

Since the EAHP does not currently apply to OCII housing projects, MOHCD has requested that OCII adopt the EAHP for the affordable housing under its purview. Staff recommends that OCII implement the EAHP Preference in all future OCII assisted housing projects with at least 5 affordable units on a project-by-project basis to ensure consistency with other preferences and obligations (such as federal and state funding requirements, Redevelopment Plan requirements, enforceable obligations or any applicable laws). OCII assisted housing projects include projects receiving OCII funding or are otherwise authorized under OCII enforceable obligations (e.g. privately development housing projects with inclusionary affordable housing). The EAHP would be applied to 20% of the affordable units for projects with a minimum of 5 affordable units, and would be applied after the Certificate of Preference Program and other specific preferences required by applicable enforceable obligations but immediately before any San Francisco resident and worker preferences, and will be included in the applicable OCII development agreements, loans, and/or ground leases for the relevant projects, all of which will come before the Commission to approve, as well as in the marketing plans that OCII staff reviews and approves. Staff recommends applying the preference on all future OCII affordable housing units that have not yet received funding or development approvals (e.g. through an owner participation agreement amendment, a major phase approval, or loan approval) from the Commission would not be required to implement the EAHP Program. However the loan agreements for Alice Griffith Phases 1& 2 that were approved in July 2014 included placeholder language that would allow for the EAHP to be applied in anticipation of the Commission considering this action, therefore the EAHP would also be applied to that project.

MOHCD's role in implementing the EAHP on OCII Housing Projects

MOHCD would be responsible for determining eligibility of EAHP Certificate Holders and managing the EAHP Program as described in pages 1-12 of the EAHP Program Procedures Manual. Since OCII has already contracted with MOHCD to provide staffing to assist with the review and implementation of OCII housing marketing plans through the Memorandum of Understanding for the Implementation of OCII Affordable Housing Obligations approved May 6, 2014 (“Housing Implementation MOU”), MOHCD staff would incorporate any work related to the EAHP Program into the existing scope. Based on this approach, staff believes that the inclusions of the EAHP Program in OCII projects should be fairly seamless.

Community Review

Staff has presented an overview of the EAHP Program to the Citizen Advisory Committees (“CAC’s) for the Hunters Point Shipyard, Mission Bay, and Transbay Project Areas and described how the EAHP would be applied to OCII housing projects. All three CAC’s were supportive of the inclusion of the EAHP as an occupancy preference in OCII housing projects.
NEXT STEPS

Upon Commission approval of a resolution incorporating the EAHP in OCII housing projects, staff will work with project sponsors to incorporate the requirement into the relevant development documents, such as the loan agreements and vertical development and disposition agreements that the Commission will approve, and in the marketing plans that OCII staff will review and approve. Under the Housing Implementation MOU, MOHCD is already required to provide marketing outcome reports within 90 days of the completion of the marketing/sales of OCII housing projects that include information on applicable occupancy preferences; therefore any outcomes related to EAHP will be included in those reports. Similar to the Planning Commission and Board of Supervisors' actions, the Resolution calls for OCII to also review the application of the EAHP with three years to decide whether to extend, modify, or cancel the EAHP.

(Originated by Jeff White, Housing Program Manager, and Sally Oerth, Deputy Director)

Tiffany Bohee
Executive Director

Attachment C: MOHCD Report on EAHP Certificate Data