

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 09-2019

Adopted April 16, 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 approximately 5000 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