

**RESOLUTION NO. 2004-661**

**ADOPTED BY THE SACRAMENTO CITY COUNCIL**

**ON DATE OF AUG 10 2004**

**APPROVAL AND ADOPTION OF THE PROGRAM FOR PRESERVING  
FEDERALLY-ASSISTED HOUSING IMPLEMENTING CITY CODE CHAPTER 5.148  
AND DELEGATION OF RELATED AUTHORITY TO SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY**

WHEREAS, the City of Sacramento, a political subdivision of the State of California has adopted Chapter 5.148 of Title 5 of the City Code Pertaining To The Giving Of Notice To The Sacramento Housing And Redevelopment Agency Regarding The Expiration Or Cancellation Of Certain Project-Based Rental Assistance Contracts And The Preservation Of Affordable Housing ("Ordinance"); and

WHEREAS, the Ordinance authorizes the development by the Sacramento Housing and Redevelopment Agency ("Agency") of regulations as necessary to implement the provisions of the Ordinance;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SACRAMENTO:

Section 1. The City approves and adopts the Program for Preservation of Federally Assisted Housing ("Program") attached as Exhibit 1 to this Resolution, subject to its adoption by the Agency.

Section 2. The City authorizes the Agency to implement the Program in accordance with the Ordinance, on behalf of itself and the City.

Section 3. The City, for itself and the Agency, authorizes any future amendments to the Program to be approved and adopted by the Sacramento Housing and Redevelopment Commission; provided that such amendments are consistent with the Ordinance and its intended purposes as stated in the staff report that accompanies this resolution.



MAYOR

ATTEST:



CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-661 (32)

DATE ADOPTED: AUG 10 2004



6.1

July 7, 2004



City Council  
Sacramento, California

Honorable Members in Session:

SUBJECT: ADOPTION OF HOUSING PRESERVATION ORDINANCE

**LOCATION & COUNCIL DISTRICT** – Citywide

**RECOMMENDATION**

Staff recommends the City Council adopt the Preservation Ordinance. In addition, Staff recommends the adoption of the attached resolution which authorizes the Executive Director or her designee to adopt the Preservation Program Guidelines drafted by the Sacramento Housing and Redevelopment Agency to implement the ordinance's provisions.

**CONTACT PERSONS**

Beverly Fretz-Brown, Director of Policy and Planning, 440-1330  
Jeree Glasser, Housing Finance Analyst, 440-1399 ext. 1421

**FOR COUNCIL MEETING OF** - August 10, 2004

**SUMMARY**

Owners of federally subsidized multifamily developments have the right to prepay their Federal Housing Administration (FHA) insured mortgages and/or not renew their HUD project-based Section 8 housing assistance contracts. After prepaying and/or terminating Section 8, the accompanying rent and tenancy restrictions are lifted, allowing owners to convert their developments to market rate housing. The California State legislature in 2001 enacted legislation requiring owners converting their projects to notify tenants, state and local governments, and "qualified entities," defined as non-profit, for profit, or public agencies that agree to maintain the affordability restrictions in place at the time of the notice. In the City of Sacramento, some owners have not fully complied with the State noticing requirements and a limited number of projects have been converted to market rate. In response to these occurrences, the City of Sacramento requested that the Agency, in conjunction with the City Attorney's Office,

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investigate the possibility of drafting an ordinance that would reinforce the State's noticing requirements and help maintain the affordability of the at-risk housing.

On November 7, 2002, the Agency brought forward a report recommending the adoption of a Preservation Ordinance drafted by the City Attorney. At that time, at the request of Council Member Dave Jones, the Council agreed to postpone action until differences between housing advocates, the Agency and City could be further discussed. Since that time the Agency has organized a number of stakeholder meetings that have resulted in a recommended ordinance and implementing program.

### **COMMISSION ACTION**

At its meeting July 7, 2004, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolutions. The votes were as follows:

AYES: Burns, Burruss, Coriano, Gore, Hoag, McCarty, Piatkowski, Simon

NOES: None

ABSENT: Farley, Harland, Stivers

### **BACKGROUND**

Beginning in the mid-1960s, the federal government provided low-interest rate financing and rental subsidies to developers that led to the production of affordable units. In the late 1970s and early 1980s, many of these projects received additional federal subsidies in the form of Section 8 contracts attached to the development (project-based Section 8). These contracts typically spanned somewhere between 15 and 20 years. As these contracts expire, owners are not required to renew them. In the absence of federal subsidy, the regulatory restrictions previously governing rent and tenancy requirements are lifted and an owner is able to convert his/her project to market rate. Income-eligible tenants affected by the conversion are eligible for "enhanced" vouchers. These vouchers are similar to Housing Choice Vouchers (HCV) by providing tenants initially with a one-year lease that is subject to annual renewal in the same manner as conventional vouchers. However, the enhanced vouchers differ from HCVs in two major ways:

1. The rent limitations can exceed fair market rent (FMR) levels, allowing tenants to remain within the converted building if the new rent is based on market comparability.

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2. All individuals earning less than or equal to 80 percent of the area median income can qualify for an enhanced voucher, a much higher income level overall than the conventional voucher.

This direct subsidy to tenants has created several issues. Most pressing is that not all tenants receive vouchers. Tenants may leave before they are income-qualified. If they do leave with a voucher; they may face problems finding apartment owners who will accept vouchers.

In summary, Congress has allowed owners of assisted developments to convert their project-based assistance to tenant-based assistance subject to annual Congressional renewal. This action has threatened the stock of permanent affordable housing by allowing formerly regulated units to be converted to market rate. Congress has not allocated any resources to state and local governments, other than enhanced vouchers, to ensure the long-term supply of affordable housing.

While states cannot prevent an owner from discontinuing federal subsidies, many have adopted additional noticing requirements to encourage the owners of these units to sell to affordable housing developers. California's program found in Government Code Section 65863.10 65863.11, and 65863.13 requires the following actions of an owner who has opted to terminate federal subsidies: (See also Attachment I)

- provide tenants, the Mayor or the Chairperson of the Board of Supervisors, the Public Housing Authority, and the State Department of Housing and Community Development (HCD) with a 12-month first notice, 12 months prior to mortgage prepayment or termination of Section 8 contracts;
- provide a second notice of termination and prepayment including specifics regarding time, change in rent, etc., six months after the first notice was issued;
- send a letter to all qualified entities listed on the State Department of Housing and Community Development's Qualified Entity List within the project's area;
- for 180 days after the first notification, owners can accept offers only from qualified entities; and
- for the next 180 days, owners can accept offers from anyone BUT must give qualified entities that have submitted offers an opportunity to match an accepted offer which would convert the project to market rate housing.

Noticing is an extremely important provision when affordable housing may be lost. It gives qualified entities advanced notice and the right to make purchase offers. It also

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provides local housing authorities and nonprofit organizations time to contact tenants to inform them of the sale process and the value of the enhanced vouchers, should the project-based assistance not be renewed. From experience with previous conversions, Housing Authority staff believe that tenants who leave assisted apartments prior to income qualification for vouchers are doing so out of uncertainty, miscommunication, or fear. Please see Attachment II for the list of At-Risk Properties in the City.

Unfortunately, the noticing under the state law has not been effective. Sporadic receipt and distribution of the notices of an intent to convert HUD-subsidized developments have led to missed opportunities by qualified entities to submit offers. And without the opportunity to submit offers prior to the open market, owners of formerly subsidized projects are not likely to sell to an entity willing to maintain its project-based affordability restrictions. Therefore, to protect the rights of tenants and other involved parties, the Agency recommends that a preservation ordinance be drafted that establishes local noticing requirements consistent with Government Code Section 65863.10, 65863.11, and 65863.13 and establishes enforceable consequences if owners do not adhere to the ordinance. This will provide affected tenants with their legally entitled notice and enable qualified entities to submit bids to purchase projects that are converting.

**PRESERVATION ORDINANCE PROVISIONS:** The proposed preservation ordinance represents numerous agreements between housing advocates, the city attorney's office, and SHRA. The ordinance's significant provisions are as follows:

- applies to all properties with any federal housing subsidy including Low Income Housing Tax Credits;
- requires one-year termination notice be sent to SHRA as well as all the other federally and state mandated entities;
- requires that 180-day notice be sent to SHRA if owner intends to terminate restrictions;
- disallows eviction of a tenant for 180 days after expiration of the assistance, when rents exceed 30% of tenant's income, only if the City or the Agency have agreed to pay the incremental difference in rents;
- grants enforcement to the City and other interested parties through injunctive relief;

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- disallows owners to accept purchase offers from non-qualified entities during the first 180 days of the noticing period;
- specifies that if an owner does not accept an offer from a qualified entity in the first 180 days and enters into a purchase and sale agreement with a non-qualified entity thereafter, the purchase and sales agreement must be sent to the Agency. The Agency in turn will mail it out to qualified entities. Within 60 days after SHRA's receipt of the Contingent Sales Agreement (CSA), if a qualified entity offers to purchase the project on terms substantially identical to the terms in the CSA, the owner must sell to the qualified entity; and
- specifies that if an owner enters into a purchase and sale agreement with a non-qualified entity and there are substantial deviations in the terms of the sales agreement from the Contingent Sales Agreement submitted to the Agency, the owner must submit the new terms to the Agency. Within 60 days after SHRA's receipt of the new Contingent Sales Agreement, if a qualified entity offers to purchase the project on terms substantially identical to the terms in the new Contingent Sales Agreement, the owner must sell to the qualified entity.

**Meeting with Owners.** In addition to meeting with advocates for low-income housing, the Agency also held a meeting with a group of property owners and management agents who will be affected by the ordinance. The purpose of this meeting was to gain an understanding of how the ordinance would impact owners and to solicit suggestions for improvement. In general the representatives at the meeting supported the city's effort to encourage owners to adhere to the established state noticing requirement but questioned why the state regulations were not being enforced. It was suggested that the City be exempted from the State law.

**Preservation Program.** To implement the ordinance, the Agency has drafted a program to provide for the adequate and timely dissemination of information to affected parties and the public, describe the conditions prompting the recording of notices and the filing of liens, and outline the procedures facilitating the orderly transition of preservation projects sold to qualified entities or other parties. Please see Attachment III.

The successful implementation and enforcement of a Preservation Ordinance and the Agency's Preservation Program would result in tenants receiving ample notice regarding the conversion of their residences and would ensure that all qualified entities are able to submit fair market offers for consideration by the converting owner. The Agency views this as a positive step toward the preservation of the at-risk units.

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### FINANCIAL CONSIDERATIONS

SHRA will implement this ordinance and the accompanying guidelines. It is anticipated that each project will require approximately 30-40 hours of staff time on average.

### POLICY CONSIDERATIONS

The proposed preservation ordinance accomplishes the following:

- Outlines the noticing requirements applicable to those terminating their federal housing subsidies consistent with California Government Code 65863.10,
- Creates an incentive for owners to comply with requirements; and
- Establishes consequences if owners do not comply.

Adoption of the ordinance and Preservation Program carry out a housing strategy of the City's Housing Element and are consistent with the protection of affordable housing found in the City's Consolidated Plan 2002-2007.

### ENVIRONMENTAL REVIEW

The proposed actions are exempt from environmental review under the California Environmental Quality because the noticing and sales restriction requirements are not considered to be a "project" subject to environmental review pursuant to the CEQA Guidelines Section 15378(a) and (b)(2). This proposed actions are not a federal undertaking so NEPA does not apply.

### M/WBE CONSIDERATIONS

The items discussed in this report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully submitted,

  
for ANNE M. MOORE  
Executive Director

Transmittal approved,

  
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ROBERT P. THOMAS  
City Manager

## PROGRAM FOR PRESERVING FEDERALLY-ASSISTED HOUSING

### CITY OF SACRAMENTO AND SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

The City of Sacramento's Housing Preservation Ordinance, adopted by the City Council on March 10, 2015, authorizes the Sacramento Housing and Redevelopment Agency (SHRA, also "the agency") to develop a program to carry out the provisions of the ordinance. The purpose of the ordinance is to preserve the affordability to low and moderate income households of currently available federally insured and assisted housing in the City of Sacramento and avoid the involuntary displacement of tenants residing in this federally insured and assisted housing.

The major provisions of the ordinance require owners of federally assisted projects who have decided to prepay their mortgages, fail to renew their project-based Section 8 contract or other federal subsidy or otherwise terminate the existing use restrictions applicable to the project, to 1) notify the Sacramento Housing and Redevelopment Agency of their intent to do so; 2) provide information on the project to SHRA and Qualified Entities; and 3) offer a Right of First Refusal to Qualified Entities in the event of an agreement of sale to a party that is not a Qualified Entity.

The SHRA Preservation Program will provide for the adequate and timely dissemination of information to affected parties and the public, describe the conditions prompting the recording of notices and the filing of liens, and outline the procedures facilitating the orderly transition of Preservation Projects sold to Qualified Entities or other parties.

#### Communication

1. Information on loan programs and other local and state resources that may be used by owners or buyers of preservation projects to maintain their affordability.
  - a. SHRA shall periodically, but not less frequently than annually, provide owners and potential buyers of Preservation Projects information on loan products and other resources available through the agency, the city of Sacramento and the State of California for the acquisition, rehabilitation, and/or refinancing of such properties.
  - b. SHRA will notify each owner of a federal preservation project within the city of the requirements of the Housing Preservation Ordinance.
  - c. SHRA will develop and maintain a list of Qualified Entities, who demonstrate to SHRA the following;

- a history of providing safe and sanitary affordable housing services
- sufficient capacity to provide such housing, demonstrated through the adequacy of fiscal and administrative resources
- a history of encouraging and facilitating resident participation while providing affordable housing services
- a history of sound fiscal management of affordable housing
- adoption of and compliance with standards of financial accountability in conformity with state and/or federal law
- nonprofit organizations must have a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as evidenced by a 501(c)(3) Certificate from the IRS, and
- nonprofit organizations under this ordinance must not be sponsored, created, controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization.

2. Information to Qualified Entities:

a. Upon receipt of a one-year notice of anticipated Prepayment, termination of a subsidy contract or termination of rental restrictions, SHRA will make available to Qualified Entities the following information on the project provided by the owner, as required by the ordinance: current rent roll and a statement of the current income and operating expenses.

b. Upon receipt of a 180-day notice from owners who have decided not to renew their project-based Section 8 contract, prepay their HUD-assisted mortgage and/or terminate existing use restrictions, SHRA will make available to Qualified Entities information on the owner's intent to withdraw the property from the program and whether the owner is involved in negotiations with HUD on extending an expiring contract.

c. Upon receipt of copy of a Contingent Sales Agreement from the owner, SHRA will make it immediately available to Qualified Entities.

3. Notice to Potential Purchasers (Non-Qualified Entities)

Upon receipt of the 180-day notice from owners who have decided not to renew a project-based Section 8 contract, prepay a HUD-insured and subsidized mortgage, and convert the property to a non-participating use, SHRA shall record a notice describing the Right of First Refusal provisions of the ordinance. The notice will include, but not be limited to, a description of the requirement for a Contingent Sales Agreement, its becoming a public record, its availability to Qualified Entities, and the time period for the owner to receive conforming offers.

4. Information to the Sacramento Housing and Redevelopment Commission

SHRA will analyze the feasibility of acquiring preservation projects and provide that analysis to the Sacramento Housing and Redevelopment Commission for its consideration during the notice periods established by the ordinance.

### **Oversight and Enforcement**

1. SHRA will undertake reasonable inspection of the preservation properties that have decided to opt out and inspect owner reports on file with HUD. SHRA will notify Qualified Entities of the availability of this information.
2. SHRA will monitor the sale of a preservation property pursuant to the terms of the Contingent Sales Agreement in the event that a Qualified Entity has not offered a conforming offer. Any substantial deviation from the terms of the Contingent Sales Agreement will require the owner to submit a copy of the new terms of sale in a contingent sales agreement to SHRA, which shall in turn make it available to Qualified Entities.
3. SHRA will consult with the City of Sacramento on whether either entity will pay tenant subsidies for a 180-day period that the owner received immediately prior to the expiration of the Section 8 project-based contract or the termination of rental restrictions due to prepayment of a federally subsidized loan. Such subsidy shall not substitute for any "enhanced voucher" offered to income-eligible tenants.

### **Qualifying Tenants for Enhanced Vouchers**

1. Initial information meeting.

SHRA will conduct an information meeting with tenants of a preservation project within three weeks of SHRA's receipt of the first notice of the owner's intent not to renew a project-based Section 8 contract or to prepay a HUD-insured or subsidized loan. SHRA will post the meeting notice on site, mail or deliver copies to each tenant, and communicate the purpose of the meeting with the owner and property manager. SHRA shall invite representatives of the owner, HUD, legal services, and other organizations which provide resident services.

- The purpose of the meeting will be to describe the preservation process, including the role of Qualified Entities, the rights of tenants during the one-year noticing period, and the role of "enhanced vouchers" if either the current owner or new owner terminates a project-based Section 8 contract or prepays the HUD-insured or subsidized loan.
- Translation and translated materials, including meeting notices, will be provided according to the translation needs of the residents.

- The meeting will be held at a time and date convenient to the majority of the residents. It will take place at the preservation property site or at location within one-half mile. The facility will be accessible to persons with disabilities, and suitable transportation will be arranged for mobility-impaired residents.

2. Meeting(s) to explain “Enhanced Vouchers”

- a. SHRA will conduct one or more meetings to explain the qualification and application process for “enhanced vouchers” in those cases where either the current or future owner of the Preservation Property terminates the project-based Section 8 contract and/or prepays the HUD-insured and subsidized mortgage.

The initial meeting will occur within one month of SHRA’s receiving a 180-day notice of the owner’s intent to terminate assistance. Household information will be gathered in a timely manner to meet HUD’s requirements, generally not earlier than 3-4 months prior to contract expiration.

- b. SHRA shall also conduct meetings to explain “enhanced vouchers” and the application and eligibility process to tenants where a Preservation Property has been purchased by a Qualified Entity that is not continuing project-based Section 8 assistance or whose project was not covered in whole or in part by project-based Section 8 assistance. SHRA will coordinate the meeting(s) with the Qualified Entity.

- c. Meetings will be held at the project site or at a site within one-half mile from the project that is accessible to persons with disabilities, and suitable transportation will be arranged for mobility-impaired residents. Translation and translated materials, including notices, will be provided as needed at all meetings. SHRA shall invite to these meetings representatives of the owner, HUD, legal services, and organizations that provide resident services.

- d. SHRA will make available all services given to voucher-holders under the conventional program, including lists of properties accepting vouchers and counseling opportunities.

### **Qualified Entity Meeting Requirements**

SHRA shall ensure that Qualified Entities with site control of the Preservation Property meet with residents to explain the transition, rehabilitation plans, and any impact on the residents of financing changes or the rehabilitation program. The initial meeting should be held within thirty days of executing the site control document.

1. Physical conditions

- a. Meetings will be held at a time and date convenient to the majority of the residents of the property and will be held at the project site or at a location within one-half mile. The facility will be accessible to persons with disabilities; suitable transportation will be arranged for persons who are mobility-impaired.
- b. Translation and translated materials, including meeting notices, shall be provided according to the translation needs of the residents.
- c. The Qualified Entity shall invite representatives from the owner, SHRA, HUD, Legal Services and organizations that provide resident services.

2. Content of meetings

- a. At the initial meeting, the following information will be covered:
  - Information on the Qualified Entity (e.g., ownership, experience in affordable housing, management approach, etc.)
  - Timeline for purchasing the property
  - Anticipated changes in the rent structure and, if applicable, the use of enhanced vouchers
  - Rehabilitation plans, including input from residents on the physical and security needs of the property; information on any necessity for temporary relocation
  - Plans for resident services and resident participation
- b. Subsequent meeting(s)

No later than sixty days from the completion of due diligence and acceptance of the purchase contract for the Preservation Property, the Qualified Entity shall hold a second meeting with residents that conforms to the physical conditions listed above. The meeting's content shall include the following:

- Information on any changes in, or more details on, rent structure or alternative financing plans that could affect resident payments
- Review of plans for rehabilitation and physical improvements of the property, on-site management, and resident services.