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October 30, 2002

Law and Legislative Committee  
Sacramento, California

Honorable Members in Session:

SUBJECT: Housing Preservation Ordinance

**LOCATION & COUNCIL DISTRICT**

Citywide, all Districts

**RECOMMENDATION**

This report recommends the Law and Legislative Committee instruct the City Attorney's office to draft a local Preservation Ordinance establishing noticing requirements for owners of federally subsidized housing projects who opt to terminate their federal assistance. In so doing, the City Attorney's Office should establish noticing provisions consistent with California Government Code 65863.10 and establish provisions that specify the consequences if the requirements are not adhered to.

**CONTACT PERSONS**

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Jeree Glasser, Housing Finance Analyst, 440-1399 ext. 1421

**FOR LAW AND LEGISLATIVE COMMITTEE MEETING:**

November 7, 2002

**SUMMARY**

Owners of federally subsidized multifamily developments have the right to prepay their Federal Housing Administration (FHA) mortgages and/or not renew their 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. 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. It has been the experience of the Sacramento Housing and

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Redevelopment Agency as well as many of its development partners that owners are not adhering to these noticing requirements. Accordingly, the purpose of the proposed Preservation Ordinance is to adopt noticing requirements that the City has the power to enforce. This would create a mechanism encouraging city owners to adhere to the noticing requirements and stipulating locally enforced penalties if they do not. This will ensure affected tenants are provided with their legally entitled notice and enable qualified entities to submit bids to purchase projects that are converting.

### **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. The enhanced vouchers differ from HCVs in two major ways:

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

Numerous issues have arisen as a result of this direct subsidy to tenants. The most pressing are: 1) not all tenants receive vouchers because either they are not income-qualified or they leave before they are qualified; and 2) in a tight rental market, tenants who choose to move from their converted buildings have faced problems finding apartments whose owners accept vouchers.

In summary, Congress has allowed owners of assisted developments to convert their project-based assistance to tenant-based assistance subject to yearly renewal at their discretion. In so doing they have threatened the stock of permanent affordable housing and have not allocated any resources to state and local governments, other than enhanced vouchers, to ensure the long-term affordability restrictions.

There is little that can be done to change the rights of property owners to discontinue their federal subsidies. But the State of California has enacted Government Code Section 65863.10 to aid in the protection of tenants affected by a conversion and to encourage the sale of such

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projects to affordable housing developers. This code outlines specific noticing requirements to which owners must adhere if they make the decision to terminate their federal subsidies (See Attachment I). More specifically, the code outlines that an owner:

- Provide tenants, the Mayor or 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 HCD's Qualified Entity List within the project's area.
- For 180 days after the first notification, owners can accept offers only from qualified entities.
- For the next 180 days, owners can accept offers from anyone BUT must give qualified entities that have submitted offers opportunity to match an accepted offer which would convert the project to market rate housing.
- If an owner accepts an offer from a non-qualified entity, it must notify all qualified entities that have made bona fide offers.

When analyzing the effect of the State law, it is important to do so from the perspective of the affected tenants. Eight of the 20 HUD-assisted projects in the City of Sacramento, having a total of 268 units, have lost their project-based affordability restrictions. As described above, income-eligible tenants in these buildings should be issued vouchers. Of the total 268 units, 190 enhanced vouchers have been issued, leaving 78 families that did not receive vouchers. According to Housing Authority staff, it is very infrequent that a resident does not have a qualifying income because the income thresholds are set at 80 percent of area median income (AMI). It is more frequent that tenants leave a building before they begin the income-eligibility process and as a result receive no form of subsidy. The reason for the early departure varies from tenant to tenant, but there is little incentive to leave an assisted project unless there is miscommunication or fear regarding the upcoming conversion. The fact that tenants have left converted projects prior to the date that they are qualified for vouchers indicates again the need for state noticing requirements to be enforced so that tenants receive uniform, clear, and accurate information regarding the conversion process. Please see Attachment II for the list of At-Risk Properties in the City.

In addition to analyzing the effects of the state law from the tenants' perspective, it is also important to investigate how the law has affected the qualified entities entitled to receive notice and to submit bids for these affected properties. Of the projects that have converted in the city,

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qualified entities have not historically received the legally required notices outlined by State law. Specifically, one of the Agency's non-profit corporations, Norwood Housing Corporation, a qualified entity, has never received proper notice regarding a project conversion since the law was instituted. In addition, other local non-profits such as Mercy Housing, Community Housing Opportunity Corporation, Legal Services of Northern California, and the California Coalition for Rural Housing site similar experiences. Without this vital notice, qualified entities do not have the opportunity to submit offers. And without the opportunity to submit offers, formerly subsidized projects are not likely to be transferred to an entity willing to maintain its project-based affordability restrictions.

This history provides a telling account of the ineffectiveness of Section 65863.10. When combined with the explosion of rents at the low end of the market, it is evident that the enforcement of the current law is essential and that local government is in the best position to do so. Thus, 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 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.

A number of other municipalities across the country have enacted preservation ordinances. Some of these ordinances place additional requirements upon owners of converting buildings. The City of Portland, Oregon, for example, provides city-funded relocation benefits to displaced residents. In addition, the ordinance protects the tenancy of the affected residents for 180 days after termination of federal subsidy if the City has paid or arranged to pay the owner the monthly subsidy to which they were entitled under the past contract.

San Francisco's preservation ordinance includes provisions that outline an 18-month noticing period, requires owners to sell their projects to qualified entities if these entities submit offers that constitute a fair market return to the owner, and requires owners to pay benefits to displaced tenants not in excess of \$5,250. The effectiveness of the ordinance can, in part, be attributed to the city's rent control program, which limits rent increases in HUD project conversions to existing contract rents, thereby eliminating the incentive to sell. The ordinance's effectiveness can also be attributed to the implementation of San Francisco's Program for Preserving HUD-Assisted Housing. This program utilizes an incentive program the U.S. Department of Housing and Urban Development (HUD) has established to encourage owners to maintain their buildings as affordable. If owners decide to sell, the City purchases the building at fair market value. The city, in turn, seeks proposals from nonprofit developers to acquire and rehabilitate the project (improvements only), retains the land, and charges lease payments that are used to guarantee a portion of the project's debt. These practices are not a part of the city's preservation ordinance, but rather the successful financing response of the city to the unique opportunities presented by rent control.

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The Agency's staff believes that noticing requirements and enforcement mechanisms will create the most effective means to preserve the affordability of HUD-subsidized projects in Sacramento that could convert to market rate. Please see Attachment III for a draft the preservation ordinance proposed by the City Attorney's office.

Council Member Dave Jones has drafted an ordinance with a number of other provisions, including noticing requirements, which are very briefly summarized below:

- Applies to owners of properties with any state or federal housing subsidy including Low Income Housing Tax Credits, Project-based Section 8, and federal mortgage assistance programs;
- Regulates an owner's sales price, based on a formula that considers the return on the value of actual cash invested in the property, adjusted for inflation;
- Requires that owners accept an offer to purchase from a qualified entity, which is defined as a government entity or a 501(c)(3) nonprofit corporation, tenant association, or limited partnership with a nonprofit public benefit corporation as general partner;
- Begins noticing provisions 18 months prior to the termination of a subsidy contract or termination of rental assistance;
- Disallows eviction of a tenant (other than for just cause) for 180 days after expiration of the HUD contract, when rent exceeds 30 percent of a tenant's income ("involuntary or economic displacement");
- Places responsibility on the owner to pay relocation benefits for four years, up to \$5,250, for a displaced tenant, or to provide a replacement housing unit;
- Requires that the Sacramento Housing and Redevelopment Commission hold a public hearing after SHRA has been noticed that a property owner intends to terminate or prepay its federal assistance, for the purpose of advising City Council on any action to prevent the loss of the project-based assistance; and
- Grants enforcement power to the City and other interested parties through injunctive relief.

Because of the breadth of Council Member Jones' recommendations, staff suggests that discussions with stakeholders be held on these recommendations, with a report-back to the Law and Legislative Committee within two months for further direction. In the meantime, in order not to delay the implementation of the important noticing requirements, staff recommends that

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the attached ordinance drafted by the City Attorney's office, providing local noticing requirements and their enforcement, be supported at this time.

Although local noticing requirements are a vital step, many other activities need to take place in a comprehensive and strategic approach to preservation.

This approach includes maintaining a current list of at risk projects, sending material to owners regarding State (and local) noticing requirements, explaining financial programs that are available to aid owners in maintaining their project's affordability, conducting outreach to property management associations regarding preservation, organizing and facilitating tenant outreach as soon as the notices are received by the tenants, and qualifying tenants for enhanced vouchers if project-based assistance is not maintained.

The successful implementation and enforcement of a Preservation Ordinance 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, when combined with the other proactive pragmatic measures defined above, a positive step toward the preservation of the at-risk units.

### FINANCIAL CONSIDERATIONS

There are no financial considerations associated with this project.

### POLICY CONSIDERATIONS

Establishing a preservation ordinance that:

- 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.

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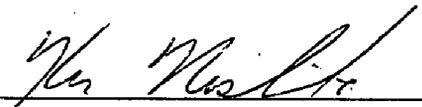
**ESBD CONSIDERATIONS**

No goods and services will be purchased.

Respectfully submitted,

*Cassandra H.B. Jenney*  
for ANNE M. MOORE  
Executive Director

Transmittal approved,

  
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ROBERT P. THOMAS  
City Manager

State Noticing Requirements

65863.10.As amended by California  
Statutes 2000, Chapter 666 (Senate Bill 1572).

(a) As used in this section, the following terms have the following meaning:

(1) "Affected public entities" means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chairperson of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) "Affected tenant" means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) "Assisted housing development" means a multifamily rental housing development that receives governmental assistance under any of the following federal programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701g).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(4) "City" means a general law city, a charter city, or a city and county.

(5) "Prepayment" means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in subparagraph (B) of paragraph (3) that would have the effect of removing the current low-income affordability restrictions contained in the applicable laws and the regulatory agreement.

(6) "Termination" means an owner's decision not to extend or renew its participation in a federal subsidy program for an assisted housing development described in subparagraph (A) of paragraph (3), either at or prior to the scheduled date of the expiration of the contract, or a decision to terminate the rental restrictions for an assisted housing development described in subparagraph (E) of paragraph (3), that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(b) (1) At least 12 months prior to the anticipated date of

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termination of a subsidy contract, termination of rental

restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(C) The anticipated date of the termination or prepayment of the federal program, and the identity of the federal program described in subdivision (a).

(D) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(E) A statement of the possibility that the housing may remain in the federal program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's offer.

(F) A statement that other governmental assistance may be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(G) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract or prepayment.

(H) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice need not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal program, and the identity of the federal program, as described in subdivision (a).

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(B) The current rent and anticipated new rent for the unit on the

date of the prepayment or termination of the federal program.

(C) A statement that a copy of the notice will be sent to the city or county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's offer.

(E) A statement of the owner's intention to participate in any current replacement federal subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. "Significant changes" shall include, but not be limited to, any changes to the date of termination or prepayment or the anticipated new rent.

(e) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(f) For purposes of this section, service of the notice to the

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affected tenants, the city or county, the city and county, the

appropriate local public housing authority, if any, and the Department of Housing and Community Development by the owner pursuant to subdivisions (b), (c), and (d) shall be made by first-class mail postage prepaid.

(g) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(h) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(i) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section.

(j) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

(k) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

65863.11.As amended by California Statutes  
2000, Chapter 666 (Senate Bill 1572).

(a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" mean a multifamily rental housing development as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(6) "Very low income" means having an income as defined in Section 50052.5 of the Health and Safety Code.

(7) "Local nonprofit organizations" means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, that have as their principal purpose the ownership, development, or management of

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housing or community development projects for persons and families of

low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community-based and have a proven track record of local community service.

(8) "Local public agencies" means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) "Regional or national organizations" means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

(10) "Regional or national public agencies" means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) "Use restriction" means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, that carry on as a business for profit.

(13) "Department" means the Department of Housing and Community Development.

(14) "Offer to purchase" means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivision (h).

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development in a manner that would result in either (1) a discontinuance of its use as an assisted housing development, or (2) the termination of any low-income use restrictions that apply to the development, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the

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development, in compliance with subdivision (h).

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

- (1) The tenant association of the development.
- (2) Local nonprofit organizations and public agencies.
- (3) Regional or national nonprofit organizations and regional or national public agencies.
- (4) Profit-motivated organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

- (1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.
- (2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to

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subdivision (b) or (c), the owner shall first give notice of the

opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (q), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(2) If the owner already has a bona fide offer to purchase from an entity prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall not be required to comply with this subdivision. However, the owner shall notify the department of this exemption and provide the department a copy of the offer.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (d) has the right to purchase the development under this section.

(3) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, itemized lists of monthly operating expenses, capital improvements as determined by the owner made within each of the two preceding calendar years, the amount of project reserves, and copies of the two most recent financial and physical inspection reports on the development, if any, filed with the federal, state, or local agencies.

(4) A statement that the owner will make available to each of the entities listed in subdivision (d), within 15 business days of a request therefor, the most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10, and a statement of the vacancy rate at the development for each of the two preceding calendar years.

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination of prepayment.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization,

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public agency, or profit-motivated organizations or individuals and

shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). During the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, an owner shall accept a bona fide offer to purchase only from a qualified entity. During this 180-day period, the owner shall not accept offers from any other entity.

(j) When a bona fide offer to purchase has been made to an owner, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide offer to purchase, or the acceptance or rejection of the offer.

(l) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p):

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the

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name of the owner as grantor, and may be relied upon by good faith

purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination or removal of government assistance. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right-of-first-refusal under this section, that has been adversely affected by an owner's failure to comply with this section.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale, or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination of any low-income use restrictions which apply to the development.

(r) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

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65863.13 As added by California  
Statutes 2001, Chapter 117 (Senate Bill 429).

(a) An owner shall not be required to provide a notice prior to prepayment as required by Section 65863.10 if, upon prepayment, all of the following conditions are contained in a regulatory agreement that has been recorded against the property:

(1) No tenant who resides in the development on the effective date of prepayment shall be involuntarily displaced on a permanent basis as a result of the prepayment, unless the tenant has breached the terms of the lease.

(2) The owner shall accept and fully utilize all renewals of project-based assistance under Section 8 of the United States Housing Act of 1937, if available, and if that assistance is at a level to maintain the project's fiscal viability. The property shall be deemed fiscally viable if the rents permitted under the terms of the assistance are not less than the regulated rent levels established pursuant to subparagraph (A) of paragraph (6).

(3) The owner shall accept all enhanced Section 8 vouchers, if the tenants receive them, and all other Section 8 vouchers for future vacancies.

(4) The owner shall not terminate a tenancy at the end of a lease term without demonstrating a breach of the lease.

(5) The owner may, in selecting eligible applicants for admission, utilize criteria that permit consideration of the amount of income, as long as the owner adequately considers other factors relevant to an applicant's ability to pay rent.

(6) (A) For units that have project-based Section 8 assistance upon the effective date of prepayment and subsequently become unassisted by any form of Section 8 assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of Section 8 assistance is or becomes available, rent and occupancy levels shall be set in accordance with federal regulations for the Section 8 program.

(B) For unassisted units and units that do not have project-based Section 8 assistance upon the effective date of prepayment and subsequently remain unassisted or become unassisted by any form of Section 8 assistance, rents shall not exceed the greater of (i) 30 percent of 50 percent of the area median income, or (ii) for projects insured under Section 241(f) of the National Housing Act, the regulated rents, expressed as a percentage of area median income. If any form of Section 8 assistance is or becomes available, rent and occupancy levels will be set in accordance with federal regulations governing the Section 8 program.

(b) As used in this section, "regulatory agreement" means an agreement with a governmental agency for the purposes of any governmental program, which agreement applies to the development that would be subject to the notice requirement in Section 65863.10.

(c) Section 65863.11 shall not apply to any development for which the owner is exempt from the notice requirements of Section 65863.10 pursuant to this section.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted

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statute, that is enacted before January 1, 2011, deletes or extends

that date.

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# ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**AN ORDINANCE ADDING CHAPTER 5.148 TO 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.**

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO THAT:**

**Section 1:**

Chapter 5.148 is added to Title 5 of the City Code to read as follows:

**CHAPTER 5.148 AFFORDABLE HOUSING PRESERVATION**

**5.148.010 Policy**

It is the policy of the City of Sacramento that publicly assisted rental housing affordable to low and moderate income persons and households should be preserved as a long-term resource to the maximum extent practicable.

**5.148.020 Intent**

The intent of this Chapter is to protect the availability of publicly assisted affordable housing for low and moderate income households by providing for notice to the Sacramento Housing and Redevelopment Agency and tenants when transitions from current federal project-based assistance programs are planned and providing purchase opportunities for the Sacramento Housing and Redevelopment Agency

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or other affordable housing organizations or entities to attempt to preserve the affordable housing while respecting ownership interests of building owners.

5.148.030 Definitions

A. "Affordable housing." The term "affordable housing" means that the rent is structured so that the targeted tenant population pays no more than 30% percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80% percent of median income applicable to Sacramento County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

B. "Federal Preservation Projects." Properties having project-based rental assistance contracts for some or all of the units (such as Section 8 and Project Rental Assistance Contracts) including those developed under a variety of HUD mortgage assistance and interest rate reduction programs. Federal preservation projects include properties with loans, contracts, or insurance under the following federal subsidy programs: section 221(d)(4) with project-based Section 8; Section 202; Section 236(J)(1); Section 221(D)(3) BMIR; Section 221(D)(3) MIR; Section 811; Project based Section 8 contracts administered through HUD, the State of California, or the SHRA; Project Rental Assistance Contracts (PRAC); LHPRHA capital grant program; and Section 241(f) preservation grant. An updated list of all known Federal Preservation Projects will be maintained and available upon request to the public.

C. "HUD." The United States Department of Housing and Urban Development

D. "Just cause eviction." Evictions for serious or repeated violations of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause.

E. "Low income." Low income individuals, households or tenants are those with a gross household income that does not exceed eighty (80) percent of median income applicable to Sacramento County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

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F. "Moderate income." Moderate income individuals, households or tenants are those with a gross household income that does not exceed 110% percent of median income applicable to Sacramento County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

G. "Opt out." An owner's non-renewal of an available project-based Section 8 contract in a Federal Preservation Project. Owners may consider "opting out" when they contemplate conversion to open market rental housing, other housing or commercial uses, or a sale of the property.

H. "Prepayment." The prepayment, prior to expiration of the full, original, stated term of the loan, of any loan secured by a Federal Preservation Project which loan was insured or subsidized at its inception by a governmental body or agency, if such prepayment would have the effect of terminating the use restrictions applicable to such project, without substitution of substantially similar use restrictions.

I. "SHRA." The Sacramento Housing and Redevelopment Agency.

5.148.040 Responsibilities

The Sacramento Housing and Redevelopment Agency will have primary responsibility for implementation of this Chapter. This responsibility will include taking any and all actions referenced herein as may be necessary for implementation of the requirements of this Chapter.

5.148.050 Notice to the SHRA and Preservation Opportunities

A. Owners of Federal Preservation Projects must provide SHRA and each affected tenant household residing in the affected Federal Preservation Project with a one year's notice of an anticipated Prepayment, termination of a subsidy contract or termination of rental restrictions. The Sacramento Housing and Redevelopment Agency will notify each owner of Federal Preservation Projects within the City of this notice requirement.

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B. Owners of Federal Preservation Projects who have decided to "opt out" must provide to the SHRA a notice of 180 days of intent to do so if the owner is opting out of a long-term contract or is opting out of a one-year extension to a long-term contract. The notice shall specify: (1) whether the owner intends to withdraw the property from the Section 8 program; (2) whether the owner intends to convert the participating property to a an extension of an expiring contract.

C. Owners of Federal Preservation Projects who have decided to "opt out" must consent to reasonable inspection of the property and inspection of the owner reports on file with HUD or the state. These inspections are designed to facilitate the SHRA's ability to assess the fair market value of the property and evaluate status of the tenants, viability of transfer and/or continuation of a Section 8 agreement with HUD and other pertinent information.

D. To the extent allowed by HUD, owners of Federal Preservation Projects must maintain an available HUD Section 8 contract in good standing during the notice periods identified in this chapter.

E. Owners of Federal Preservation Projects must refrain from taking any action, other than notifying HUD of the owner's intention to not renew the contract, that would preclude the SHRA or other potential purchaser of the project from succeeding to the contract or negotiating with the owner for purchase of the property during the notice periods identified in this Chapter.

F. In addition to any other times, during the notice periods identified in this Chapter, the SHRA may pursue preservation of the Project through negotiation for purchase.

5.148.060 Notice to Tenants

A. Owners of Federal Preservation Projects who have decided to "opt out" must provide to each affected building tenant a notice of 180 days of intent to do so if the owner is opting out of a long-term contract or is opting out of a one-year extension to a long-term contract. The notice shall specify: (1) whether the owner intends to withdraw the property from the Section 8 program; (2) whether the

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owner intends to convert the participating property to a nonparticipating use; and (3) whether the owner is involved in negotiations regarding an extension of an expiring contract.

B. Owners of Federal Preservation Projects who have decided to "opt out" may not disturb any tenancy other than for a just cause eviction, during the notice period set forth in this section.

5.148.070 Administrative Penalties

An owner who fails to comply with any of the requirements specified in this Chapter shall pay an administrative penalty. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 1.28 of this code.

5.148.080 Compliance and Enforcement

The SHRA shall develop and implement procedures to implement the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties; filing a lien to enforce the provisions of this code and other provisions necessary or appropriate to implement this code.

5.148.090 Cumulative remedies, procedures and penalties.

Unless otherwise expressly provided, the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

5.148.100 No Restriction of Powers of Eminent Domain; Severability

A. This Chapter shall not be construed to restrict the City's existing authority to exercise powers of eminent domain through condemnation as outlined in state law.

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B. If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

**PASSED FOR PUBLICATION:**

**PASSED:**

**EFFECTIVE:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
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