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AGENDA REPORT

TO: Members of the City Council

FROM: Council President Lynette Gibson
McElhane

SUBJECT: Amending Oakland's Preference
Policy For Affordable Housing

DATE: May 24, 2016

RECOMMENDATION

The City Council Adopt An Ordinance Amending The Oakland Municipal Code To Adopt (1) A Preference Policy For Neighborhood Residents, Oakland Residents And Workers, And Displaced Households In Applying For Multifamily Affordable Housing Funded By The City, and (2) An Oakland Residency Or Worker Requirement For Participants In The City's First-Time Homebuyer Mortgage Assistance Program to address displacement of Oakland families

EXECUTIVE SUMMARY

In response to findings and recommendations in the Housing Equity Roadmap, this ordinance will combat displacement by amending the current affordable housing preference system to:

- Create a right-to-return for Oaklanders displaced by a no-fault eviction
- Establish a neighborhood preference for Oaklanders who live in the same Council District as the housing development; and
- Restrict mortgage assistance programs to those who live or work in Oakland to ensure that City funds help Oaklanders buy their first home.

BACKGROUND / LEGISLATIVE HISTORY

Current City policy establishes preferences in allocating affordable housing units built with City funds invested under the City's Notice of Funding Availability (NOFA) for affordable housing. Resolution No. 81232 C.M.S. and the governing regulations (see Attachment A) establish two tiers of preferences for rental: 1) the first preference applies to residents displaced because of a City-sponsored project or City code enforcement activity, and, 2) the second preference applies to people who either live or work in Oakland. The City also offers several mortgage assistance programs that assist low and moderate-income first time homebuyers to purchase a home in the

City of Oakland.¹ These programs are offered on a first-come first-served basis and there is no Oakland residency or worker preference or requirement for participants in these programs.

POLICY PROPOSAL

The City Council has committed in the Rent Moratorium (Ordinance No. 13360 C.M.S.) and the Housing Equity Roadmap (policy framework adopted 9/30/15) to prevent the displacement of long-tenured communities. Re-housing residents who have lost their housing through foreclosures, evictions or are at risk of involuntary displacement is a critical anti-displacement strategy. As written in the Housing Equity Road Map:

“When we lose our long-time residents who have been the heart and memory of our neighborhoods and city, part of the soul of Oakland is lost.” (Page 10)

This Local Preference legislation improves the City's anti-displacement efforts by refining the preference policy for allocating City-funded affordable housing and establishes an Oakland residency/worker requirement for first-time homebuyer mortgage assistance program. The Local Preference legislation helps combat displacement and preserves Oakland's diversity by creating a priority for Oakland's long tenured residents who are at risk to remain and for those who have been displaced to return. The policy helps support neighborhood stability, economic diversity and pathways from poverty by providing a pathway to homeownership for Oaklanders.

The following chart illustrates the how this ordinance proposes to change the current preference system for allocating affordable housing units:

Order	Current Policy	Proposed Amendments
First	Residents displaced by: <ul style="list-style-type: none"> • City development projects, or • City code enforcement actions. 	Residents displaced by: <ul style="list-style-type: none"> • City development projects, • City code enforcement actions, or • Any “no fault” eviction from a unit in Oakland that has occurred in the past 8 years.
Second	People who live or work in Oakland.	People who currently live in the same Council District as the affordable housing development.
NEW Third	N/A	People who live or work in Oakland

Policy Proposal - Scope

These policies would apply to all rental and ownership affordable housing projects of five (5) or more units that receive any City funding, after the effective date of this ordinance. This expands the scope of the current policy to all City funded projects and not just those which have received

¹ These programs currently include the First Time Homebuyer Mortgage Assistance Program, the Shared Appreciation Mortgage program, and the CalHome Program.

NOFA funding. These policies would not apply if and to the extent that other funding sources for a project prohibit the preference.²

Policy Proposal – Right of Return

This legislation expands the definition of 'displaced' to create a "right of return" for Oaklanders displaced through a "no fault" eviction in the past eight years.

A "no fault" eviction is defined as any eviction pursuant to an eviction notice that does not state cause and that gives the tenant a notice period of 30 days or longer (which is required for any eviction that does not state a cause). These would include units covered by the Just Cause Ordinance where the tenant has been displaced by a 'no fault' eviction such as: evictions due to owner move-ins, owner removal of units from the market under the Ellis Act or owner repairs. This definition also covers any no fault eviction notice for units not covered by the Just Cause Ordinance.

Policy Proposal – Local Preference

This legislation reserves 30% of new affordable housing units for a local preference. This preference applies to residents who live in the same Council district to help keep low-income residents housed in their own neighborhoods. Legal and administrative constraints require this 'local preference' to only apply to 30% of affordable housing units, and only for initial sales or rentals. All other preferences apply to all available affordable housing units including initial sales or rentals of units and units that are resold or turn over tenancies. These constraints are due to:

- **Fair housing implications:** any housing policy that has a significant disparate impact on a protected class, such as race or ethnicity, may be subject to legal challenge under state and federal fair housing laws. A statistical analysis summarized in 'Attachment B: Fair Housing Analysis' found that applying the neighborhood preference to only 30% of available affordable housing units would not trigger a significant disparate impact on any racial or ethnic group. Increasing this percentage could disproportionately privilege a racial or ethnic group in at least one council district and so could potentially run afoul of fair housing laws.
- **Administrative constraints:** each individual affordable housing owner manages the waiting list and application process for the affordable housing units in their building. The City would impose these preference requirements through the regulatory agreements or affordability agreement with these owners, which the owners would then be required to implement. Since there is no city-wide application list for affordable housing units, it would be infeasible to require individual owners to maintain an ongoing minimum proportion of their residents to have originally come from the neighborhood. However, it is feasible for an organization in conjunction with City staff to implement the neighborhood preference when tenants or homebuyers are selected for the initial rental or sale of units in a new project.

² Regulations for state and federal housing programs in some cases include restrictions on applying local preference policies funded by those programs. For instance state regulations governing state multifamily housing programs such as the "cap and trade" housing program prohibit neighborhood-level preferences, but allow city-wide preferences as long as the preference applies to city workers as well as city residents.

Policy Proposal – Local Requirement for Mortgage Assistance Programs

This legislation creates an Oakland residency or worker requirement for first-time homebuyer programs so that scarce home ownership subsidies support Oakland tenants.

The City of Oakland operates several programs that support first-time homebuyers in purchasing a home in the City. Currently, these programs do not have any eligibility restrictions beyond the low or moderate-income requirement. This legislation will restricts these programs to only serving families with at least one member who either lives or works in Oakland.

FISCAL IMPACT

There is no fiscal impact to this legislation.

COORDINATION

The legislation was created by the Office of Council President McElhaney in close coordination with the City Attorney's Office, City Administrator's Office, and the Housing and Community Development Department.

SUSTAINABLE OPPORTUNITIES

Economic: The ordinance will allow low income residents to remain in their neighborhoods and will create a means for previously displaced residents to return closer to their jobs and social networks. This will improve the City's ability to retain workers as well as employers who wish to locate in areas with an

Environmental: The proposed ordinance will reduce carbon emissions by allowing residents to stay in their neighborhoods instead of having to relocate to cheaper market rate housing outside of Oakland and commute farther to work. In addition, reserving first-time homebuyer programs for those who live or work in Oakland will reduce congestion and car emissions by creating more paths for middle and low-income homeowners to live near where they work.

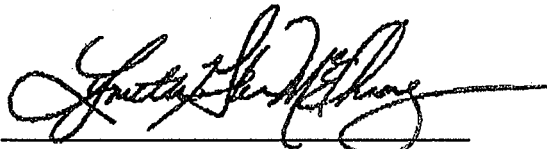
Social Equity: This ordinance creates a 'right of return' for displaced Oaklanders and advances equity by creating a preference for those who have lost access to a City they once called home.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt An Ordinance Amending The Oakland Municipal Code To Adopt (1) A Preference Policy For Neighborhood Residents, Oakland Residents And Workers, And Displaced Households In Applying For Multifamily Affordable Housing Funded By The City, And (2) An Oakland Residency Or Worker Requirement For Participants In The City's First-Time Homebuyer Mortgage Assistance Program.

For questions regarding this report, please contact Alex Marqusee, Legislative Analyst, at 510-238-7031.

Respectfully submitted,



Council President Lynette Gibson McElhaney

Prepared by:
Alex Marqusee, Legislative Analyst
Office of Council President McElhaney

Attachments:

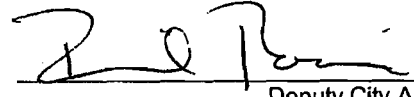
- A) Resolution No. 81232 C.M.S. and City regulations governing affordable housing preferences
- B) Attachment B: Fair Housing Analysis

Attachment A: Resolution No. 81232
C.M.S. and City regulations governing
affordable housing preferences

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CITY OF BIRMINGHAM

16 MAY 24 AM 11:23

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 81232 C.M.S.

A RESOLUTION ADOPTING AN OAKLAND RESIDENT AND OAKLAND WORKER PREFERENCE POLICY FOR AFFORDABLE HOUSING DEVELOPMENTS FUNDED THROUGH THE CITY'S NOTICE OF FUNDING AVAILABILITY PROCESS

WHEREAS, the City funds affordable housing developments through a Notice of Funding Availability ("NOFA") process; and

WHEREAS, giving a preference to Oakland residents to rent or buy units in these developments is necessary and justified because such a preference will remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City caused by City affordable housing development programs, would provide an opportunity for existing Oakland residents to afford the housing provided by the City and stay in Oakland and benefit from the impacts of City redevelopment and community development efforts, and would encourage neighborhood stability by providing a means for residents who have been active in a community to remain in the community in the face of increasing market rate rents and housing prices; and

WHEREAS, giving a preference to Oakland workers to rent or buy units in these developments is necessary and justified because such a preference will encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and will encourage businesses to locate in Oakland to take advantage of the affordable housing opportunities available to their workers; and

WHEREAS, such a preference policy will not have a significant disparate impact on any class of people protected by fair housing laws; now, therefore, be it

RESOLVED: That the City Council hereby adopts a policy that Oakland residents and Oakland workers shall be given a preference to buy or rent affordable housing units assisted by City funds provided through the NOFA process, provided that the residency and worker preferences shall be non-durational and shall be applied only if and to the extent that other funding sources for the project permit such preferences; and be it

FURTHER RESOLVED: That applicants for units who are working in Oakland, have been notified that they are hired to work in Oakland, or are active participants in education or job training programs in Oakland shall be considered Oakland workers for purposes of this policy; and be it

FURTHER RESOLVED: That this policy shall be applied to projects funded under the 2007-08 NOFA process and all future NOFAs; and be it

FURTHER RESOLVED: That the City Council hereby appoints the City Administrator and his or her designee to adopt rules and regulations for the preference policy consistent with this Resolution, administer the policy, and take any other action with respect to the policy consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 15 2008, 2008

PASSED BY THE FOLLOWING VOTE:

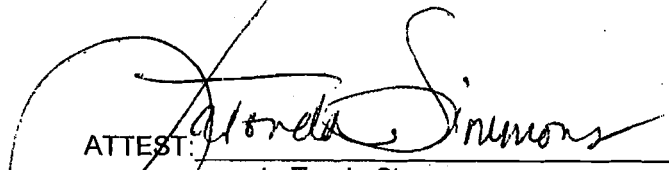
AYES- BROOKS, ~~BRUNNER~~, CHANG, ~~KERNIGHAN~~, NADEL, QUAN, REID, AND PRESIDENT - 6
DE LA FUENTE

NOES- 0

ABSENT- Brunner- 1

ABSTENTION- 0

Excused- Kernighan- 1

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Oakland Resident and Worker Preference Policy for Affordable Housing

I. Housing Preference

The following regulations have been created to provide more detailed specifications for the implementation of the City of Oakland (“City”) and Redevelopment Agency of the City of Oakland (“Agency”) policy regarding preference for occupancy in City or Agency assisted affordable housing.

On April 15, 2008, the City and Agency adopted policies granting preference to Oakland residents and Oakland workers to buy or rent affordable housing units assisted by City/Agency funds provided through the 2007-08 Notice of Funding Availability (“NOFA”) process and all future NOFAs¹. In addition, the City/Agency have a long-standing policy to give occupancy preference to households that were displaced as a result of City/Agency public projects or by City code enforcement activities.

This policy applies to all developers, owners and their agents, successors and assigns (“owners”) responsible for selling or leasing affordable housing units sponsored and/or supported by the City/Agency through the NOFA process in whole or part.

While Oakland residents and workers will be placed in a priority position on the wait list for available units, residency/employment status is not a requirement for occupancy, and all individuals and households may apply. Households comprised of applicants who do not reside or work within Oakland may occupy said units if there are no eligible Oakland residents or workers on the wait list for occupancy.

The following priority order will be utilized whenever applicable ownership or rental affordable housing units are made available to applicants in income eligible households:

- ♦ First Preference – Households containing at least one adult member who was displaced as a result of City/Agency public projects, or by City code enforcement activities.
- ♦ Second Preference – Households containing at least one adult member who qualifies either as a City of Oakland resident or worker.
- ♦ Third Preference – All other households.

Applications for units covered by this policy are to be processed in the order of the above preference groups, following a lottery for each group. Applicants can only be assigned to one preference group and will not receive a higher preference status for both living and working within Oakland.

The City/Agency may modify the preference categories from time to time by giving written notice to owners of such modifications, and owners shall adhere to such preference categories starting no later than ten (10) days following receipt of such notice.

¹ City Council Resolution No. 81232 and Redevelopment Agency Resolution No. 2008-0036, April 15, 2008.

The preference is to be applied only if and to the extent that other funding sources for the project permit the preference². Other sources of funding may limit the ability of the City/Agency to require preferences.

II. Determination of Eligibility

A. Displacee:

1. *Definition of displacee*

To qualify as an applicant who is a displacee, the applicant's household must include at least one adult member whose principal place of residence was within the City of Oakland until they were displaced as a result of City/Agency public projects, or by City code enforcement activities.

2. *Evidence of eligibility for preference*

The City/Agency shall provide the property owner with information verifying former residency and displacement as a result of City/Agency public projects, or by City code enforcement activities.

B. Oakland Resident:

1. *Definition of Oakland resident*

To qualify as an applicant who is a resident of the City of Oakland, the applicant's household must include at least one adult member whose principal place of residence is within the City of Oakland as of the date of application.

2. *Evidence of eligibility for preference*

In order to verify residency, the applicant must:
provide **two** of the following

- ♦ Driver's License with local address,
- ♦ Copy of current utility bill in applicants name with local address,
- ♦ Copy of applicants current rental/lease agreement reflecting local address,
- ♦ Copy of applicants automobile and/or renters or homeowners insurance policy for residence insured in Oakland with local address, or
- ♦ Voter Registration.

The owner, developer, or leasing agent of each housing development will be required to verify residency by collecting the required documentation.

3. *Duration of residency*

There is no minimum residency period to qualify for the residency preference (i.e., all Oakland residents are eligible for the preference regardless of the length of time of residency)³.

² City Council Resolution No. 81232 and Redevelopment Agency Resolution No. 2008-0036, April 15, 2008.

³ *Ibid.*

C. Oakland Worker:

1. Definition of Oakland worker

Work is defined for purposes of this policy as owning or operating a business located within the City of Oakland, employment for wages or salary for an employer located within the City of Oakland, contract employment where the actual work is conducted within the City of Oakland, or commission work where the applicant's principal location from which he/she works is located within the City of Oakland. Even if the work causes the applicant to be in Oakland frequently, the applicant does not qualify as an Oakland worker if the business is not located in Oakland. An adult applicant who is an active participant in an education or job training program located within the City of Oakland is also eligible for the Oakland worker preference.

To qualify as an applicant who is employed within the City of Oakland the applicant responsible for renting or purchasing the affordable housing unit must demonstrate that both of the following criteria have been met:

a. Location of work

At least one adult family member in the household must either:

- ♦ Already work in Oakland,
- ♦ Have been notified that they are hired to work in Oakland, or
- ♦ Be an active participant in an education or job training program located in Oakland⁴.

b. Hours of work/education/training

The family member must be employed, hired to be employed, or actively participating in an education or job training program within the City of Oakland an average of at least 20 hours per week.

2. Evidence of eligibility for preference

In order to verify eligibility for this preference the applicant must provide **two** of the following:

- ♦ Last three pay stubs with the name and address of the company printed on them,
- ♦ W-2 forms,
- ♦ Employer certification on company letterhead,
- ♦ Job offer letter on company letterhead,
- ♦ Tax returns (for self-employed),
- ♦ City of Oakland business license (for self-employed), or
- ♦ Other evidence as proof of employment at a business location or participation in an education or job training program within the City of Oakland.

The owner, developer, or leasing agent of each housing development will be required to verify employment by collecting the required documentation.

⁴ City Council Resolution No. 81232 and Redevelopment Agency Resolution No. 2008-0036, April 15, 2008.

3. Duration of employment

There is no minimum length of work in Oakland to qualify for the worker preference (i.e., all Oakland workers are eligible for the preference regardless of the length of time that the applicant has worked in the Oakland job)⁵.

III. Certification

Applicants will be required to sign a Certification of Eligibility form at the time of application stating that the information provided on their application regarding displacement, local residency and/or employment is true and that providing false information will permanently disqualify them from participation in any of the City's/Agency's affordable housing programs.

Owners of assisted housing must retain such documentation for at least five (5) years from date of initial occupancy, and must make such documentation available to the City/Agency upon request.

IV. Re-verification

Owners must re-verify application eligibility for preferences if, at the time of tenant/purchaser selection, the original verification/certification is more than 90 days old.

V. Evictions

Applicants who fraudulently claimed to qualify at the time of their application may be subject to eviction.

VI. Implementation of Policy

The City/Agency Administrator and his or her designee have been appointed to adopt rules and regulations for the preference policy consistent with the City Council and Redevelopment Agency Resolutions, administer the policy, and take any other action with respect to the policy consistent with the Resolutions and their basic purpose⁶.

VII. Marketing and Management Plans

Preliminary and final marketing and management plans must include provisions for notice of such preferences and how they will be administered.

VIII. Priority Ranking; Selection of Qualified Applicant

Before selecting applicants for units, the owner, developer, or leasing agent of each housing development is required to verify whether applicants qualify for the preference by collecting the required documentation. Regardless of the specific method used for establishing waiting lists,

⁵ City Council Resolution No. 81232 and Redevelopment Agency Resolution No. 2008-0036, April 15, 2008.

⁶ *Ibid.*

qualified applicants who meet the definition of a displacee, Oakland resident or Oakland worker must be offered units before applicants who do not meet the definition.

IX. Compliance Monitoring

A report of compliance must be submitted to the City at completion of initial lease up or sale. Compliance will then be monitored as part of the City's/Agency's regular monitoring and will be included on monitoring forms for each new tenant. Owners must retain documentation for each tenant/purchaser for five (5) years from the date of initial occupancy.

X. Penalties for Non-Compliance

Owners or developers who fail to grant preferences to displacees, Oakland residents and Oakland workers in violation of this policy shall be considered in breach of their contractual obligations under the loan agreement and the regulatory agreement or affordability agreement with the City/Agency for the project. The City/Agency reserves the right to pursue any of its remedies under the loan documents in the event of such breach.

APPROVED:

City Administrator

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Attachment B: Fair Housing Analysis

Executive Summary

This statistical analysis finds that applying a neighborhood preference policy to up to 30% of new affordable housing units is not predicted to result in a significant disparate impact on any racial or ethnic group. Increasing this percentage could disproportionately privilege a racial or ethnic group in at least one Council District and potentially run afoul of fair housing laws.

Background

Disparate impact¹ is a legal doctrine under the federal and California fair housing acts which states that a policy may be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy. In a disparate impact case, a person can challenge practices that have a “disproportionately adverse effect”² on those protected by the fair housing acts and are “otherwise unjustified by a legitimate rationale.”³

A neighborhood preference policy may violate the disparate impact doctrine if it significantly and adversely impacts a racial or ethnic group. This may happen if the proportion of a racial minority group in one Council District is very different than for the City as a whole. For instance, if the City were to impose a 100% neighborhood preference for affordable housing – meaning that neighborhood residents were given priority for all new affordable housing units in their neighborhood – this would potentially result in a significant disparate impact. In this hypothetical, if Council District A is comprised of only 5% African Americans and 95% White residents and the City as a whole is split evenly between African Americans and White residents, then a 100% local preference would adversely impact African American residents relative to White residents. This occurs since we would expect that only 5% of the affordable housing units in that District would go to African American residents even though African Americans are half of the City-wide population.

This analysis formalizes this thought experiment with real data through two court validated methodologies.

Methodology

This analysis relies on two separate court-informed methodologies to predict whether any racial minority will be disparately impacted by a policy that gives preference for a certain proportion of new affordable housing units to residents who reside in the same Council District as the development. Both tests are used to determine adverse or disparate impact on a particular racial or ethnic group by comparing their expected outcomes to those of the District’s majority racial group.

¹ For more information on the disparate impact doctrine, please see the National Fair Housing Alliance’s discussion at: <http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact/tabid/4264/Default.aspx>

² http://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf

³ http://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf

The 'Four-Fifths Test' is used by some courts to determine if there is adverse impact, or substantially different rate of selection, which results in a disadvantage for a particular race, sex, or ethnic group. Courts have developed the four-fifths test, or 80 percent of the selection rate, as the threshold for ensuring that specific populations are not adversely impacted. This test calculates if the preference would lead to a selection rate for the minority group that is less than 80% of the selection rate for the majority group. Mathematically:

$$\text{Four-Fifths Test} = \frac{\frac{\# \text{ of minority group expected to receive units}}{\# \text{ of minority applicants}}}{\frac{\# \text{ of majority group expected to receive units}}{\# \text{ of majority applicants}}}$$

Any ratio of selection rates that is below 80% is understood as indicating the potential for disparate impact.

The 'Standard Deviation Analysis', also known as a Z-score test, converts the probability of a difference in different selection rates into a metric of standard deviations. The test assesses the probability of discriminatory outcome by statistically evaluating the difference between observed and expected values. Mathematically, the Z score for each racial-ethnic group is calculated as:

$$Z = \frac{\text{Expected Occupancy with Local Preference} - \text{Expected Occupancy without Local Preference}}{\text{Standard Deviation of Group City Wide}}$$

Any result of greater than three standard deviations could indicate a probable adverse impact.

Data

The statistical tests use data from the American Community Survey 2008-2012 five year sample. This particular data set is known as the 'CHAS' (Comprehensive Housing Affordability Strategy) data and is based on custom tabulations that the Census Department periodically provides to the U.S. Department of Housing and Urban Development (HUD). The data are available to the public through HUD's website and provide estimates of the number of households in each census tract cross-tabulated by racial-ethnic groups, income levels as expressed by HUD's area median income calculations, and the number of problems experienced by households such as a lack of kitchen or plumbing, overcrowding, or cost burden.

Results

The following table presents the results of the disparate impact analysis. The table presents the number of Council Districts where the City-wide population of a racial minority would be adversely impacted by a neighborhood preference policy. The analysis is presented at five possible percentages for the neighborhood preference.

Table: Evaluation of Possible Neighborhood Preference Percentages

Percentage of Units Reserved for	Four-Fifths Analysis	Standard Deviation Analysis
----------------------------------	----------------------	-----------------------------

Local Preference		
10%	0	0
20%	0	0
30%	0	0
40%	4 (57%)	2 (29%)
50%	6 (85%)	4 (57%)

Conclusion:

The above analysis suggests that a neighborhood preference policy that dedicates more than 30% of new affordable housing units to residents of the local Council District may result in a significant disparate impact under fair housing laws.

16 MAY 24 AM 11:23

INTRODUCED BY COUNCIL PRESIDENT LYNETTE GIBSON MCELHANEY

Approved as to form and legality

City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADOPT (1) A PREFERENCE POLICY FOR NEIGHBORHOOD RESIDENTS, OAKLAND RESIDENTS AND WORKERS, AND DISPLACED HOUSEHOLDS IN APPLYING FOR MULTIFAMILY AFFORDABLE HOUSING FUNDED BY THE CITY, AND (2) AN OAKLAND RESIDENCY OR WORKER REQUIREMENT FOR PARTICIPANTS IN THE CITY'S FIRST-TIME HOMEBUYER MORTGAGE ASSISTANCE PROGRAM

WHEREAS, in 2008, the City Council passed a resolution adopting an Oakland resident and worker preference policy to rent or purchase units in affordable housing projects funded through the City's Notice of Funding Availability process, Resolution No. 81232 C.M.S.; and

WHEREAS, in enacting this policy, Council found that the Oakland resident preference was necessary and justified in order to remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City, that the policy would provide an opportunity for existing Oakland residents to afford the housing provided by the City and stay in Oakland and benefit from the impacts of the City's redevelopment and community development efforts, and that the policy would encourage neighborhood stability by providing a means for residents who have been active in a community to remain in their community in the face of increasing market rate rents and housing prices; and

WHEREAS, Council further found that the Oakland workers preference was necessary and justified in order to encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and to encourage businesses to locate in Oakland to take advantage of the affordable housing opportunities available to their workers; and

WHEREAS, Council further found that the preference policy would not have a significant disparate impact on any class of people protected by fair housing laws; and

WHEREAS, the City has also had a long-standing policy to give preference for affordable housing units to households that were displaced by the City's code enforcement activities and public projects; and

WHEREAS, a preference for all displaced residents that includes no-fault evictions in addition to those displaced by code enforcement activities and public projects will expand on the purposes of the current preference for displaced residents to create a means for residents to return to their communities to improve neighborhood stability and to mitigate the impacts of gentrification and reduced availability of affordable rental housing; and

WHEREAS, a limited preference for existing neighborhood residents in the selection of applicants for affordable housing will expand on the purposes of the current Oakland resident preference to remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City and allow neighborhood residents to benefit from the impacts of the City's redevelopment and community development efforts, as well as encourage greater neighborhood stability; and

WHEREAS, a limited preference for existing neighborhood residents will further provide an opportunity to neighborhood residents that are living in inadequate housing conditions to move into quality affordable housing units without being forced to live far from their neighborhood and preserve their continued ties to established community institutions and services, including schools, after-school programs, community businesses, community centers, and health care providers, which will preserve and enhance the quality of life for these residents; and

WHEREAS, based on the results of a statistical analysis of the impacts based on race and ethnicity of instituting a neighborhood preference policy in Oakland, the limited preference for existing neighborhood residents established under this policy would not have a significant disparate impact on any class of people protected by fair housing laws; and

WHEREAS, a preference for households displaced by City code enforcement activities, public projects, or no fault evictions, in the selection of applicants for affordable housing is necessary to mitigate the effects of displacement and the loss of housing, and achieve the important public purpose of increasing opportunities for displaced residents to continue to live in Oakland in the face of decreasing rental housing resources; and

WHEREAS, the City has established programs to give mortgage assistance to first-time homebuyers who meet certain income restrictions; and

WHEREAS, the City wishes to restrict participation in these programs to Oakland residents and Oakland workers; and

WHEREAS, an Oakland residency requirement for first-time homebuyer programs is necessary to ensure that Oakland renters have the opportunity to achieve the benefits of homeownership in Oakland, remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City, provide an opportunity for existing Oakland residents to afford the housing provided by the City and stay in Oakland and benefit from the impacts of the City's redevelopment and community development efforts, encourage neighborhood stability by providing a means for residents who have been active in a community to remain in the community in the face of increasing market rate rents and housing prices; and

WHEREAS, an Oakland worker requirement for first-time homebuyer programs is necessary to encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and encourage businesses to locate in Oakland to take advantage of the affordable housing opportunities available to their workers; now, therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. Resolution No. 81232 C.M.S. is hereby repealed and replaced by the provisions of the Oakland Municipal Code added by this Ordinance.

SECTION 2. Chapter 15.63 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 15.63

OAKLAND RESIDENT/WORKER PREFERENCES AND REQUIREMENTS IN CITY AFFORDABLE HOUSING PROGRAMS

Article I

Preferences in Multifamily Affordable Housing Projects

15.63.010 Purposes.

The purposes of the neighborhood resident and Oakland resident preference policy for affordable housing units are to remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City, provide an opportunity for existing Oakland and neighborhood residents to afford the housing provided by the City and stay in Oakland and benefit from the impacts of the City's

redevelopment and community development efforts, encourage neighborhood stability by providing a means for residents who have been active in a community to remain in the community in the face of increasing market rate rents and housing prices, provide an opportunity to neighborhood residents that are living in inadequate housing conditions to move into quality affordable housing units without leaving the community, and preserve existing residents' continued ties to established community institutions and services, including schools, after school programs, community businesses, community centers, and health care providers. The purposes of the Oakland workers preference policy for affordable housing units are to encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and encourage businesses to locate in Oakland to take advantage of the affordable housing opportunities available to their workers. The purpose of the displacee preference policy is to mitigate the effects of displacement and the loss of housing, and achieve the important public purpose of increasing opportunities for displaced residents to return to their community in the face of reduced availability for affordable rental housing.

15.63.020 Scope.

This policy shall apply to all residential units in housing projects in the City of Oakland that meet all of the following criteria:

1. The project has five or more attached or detached units, including scattered site housing projects.
2. The units are restricted as affordable housing to occupancy by or sale to very low, low, and/or moderate income households at a restricted rent or sales price.
3. The project receives development assistance from the City for new construction or substantial rehabilitation. For purposes of this paragraph, "development assistance" means a grant, below-market rate loan, deferred loan, or a below-market rate lease or sale of real property, and "substantial rehabilitation" means rehabilitation with a level of City development assistance that exceeds 25 percent of the project's after-rehabilitated market value. Projects that receive a density bonus or other incentives from the City under the City's density bonus law shall not be covered unless the project also receives development assistance.
4. The development assistance was approved by the City Council or the City Administrator (in the case of programs in which the City Administrator has authority delegated by Council to approve funding assistance) after the date this chapter was adopted.

15.63.030 Preferences.

Owners of housing projects covered by this policy, along with their management agents, shall give preference, as applicable, to the following applicants for affordable housing units:

1. First preference: to displaced households. For purposes of this section, a “displaced household” means a household in which a least one adult member has been displaced from a housing unit in Oakland as a result of any of the following:
 - A. City code enforcement activities, if the displacement has occurred within one year prior to the date of application.
 - B. A City-sponsored or City-assisted development project, if the displacement has occurred within one year prior to the date of application.
 - C. A “no fault” eviction from a rental unit in Oakland, if the eviction was completed eight years or less prior to the date of application. For purposes of this paragraph, a “no fault” eviction means an eviction that is evidenced by an eviction notice from the property owner that does not state cause and that gives the tenant 30 days or longer notice to vacate the unit; a “no fault” eviction shall include, but not be limited to an eviction as a result of an owner move-in under Municipal Code Section 8.22.360.A.8 or 8.22.360.A.9, owner repairs under Municipal Code Section 8.22.360.A.10, or owner removal of the unit from the rental market under Municipal Code Section 8.22.360.A.11 or Municipal Code Chapter 8.22, Article III, but shall not be limited only to evictions from units that are covered by any of the above laws. This preference shall apply to the initial rental or sale of a project unit and any subsequent rental or sale of a unit during the applicable affordability period established by the City.
2. Second preference: to neighborhood residents. For purposes of this section, a “neighborhood resident” means a household with at least one adult member whose principal place of residence on the date of application is within the Council District where the project is located. This preference shall apply to 30 percent of all units in the project. This preference shall apply only to the initial rental or sale of a project unit after the City’s development assistance has been given to the project.
3. Third preference: to Oakland residents and Oakland workers. For purposes of this section, an “Oakland resident” means a household with at least one adult member whose principal place of residence on the date of application is within the City of Oakland. An “Oakland worker” means a

household with at least one adult member who is employed by an employer located within the City of Oakland, owns a business located within the City of Oakland, or participates in an education or job training program located within the City of Oakland. This preference shall apply to the initial rental or sale of a project unit and any subsequent rental or sale of a unit during the applicable affordability period established by the City.

15.63.040 Implementation of preference policy.

Although the project owner, through its management agent, shall have the primary responsibility to qualify applicants and determine eligibility for any of the above preferences, the City shall have the authority to set qualification standards and verify eligibility for any of the above preferences. This preference policy shall be included as a term in the regulatory agreement, affordability agreement, or other agreement between the City and the project developer.

15.63.050 Limitations.

This preference policy shall not require owners to approve applicants who are otherwise not qualified for renting or purchasing the unit. Preferences shall be non-durational, i.e., there shall be no minimum time period for residency or employment to qualify for the preference. This preference policy shall be applied only if and to the extent that other funding sources for the project do not prohibit the preference. This preference policy shall be applied only if and to the extent that the policy does not violate applicable law.

15.63.060 Regulations.

The City Administrator is hereby authorized to issue rules and regulations implementing the preference policy consistent with this article.

Article II

Requirements for First-Time Homebuyer Program

15.63.070 Purposes.

The purposes of an Oakland residency requirement for first-time homebuyer programs are to ensure that Oakland renters have the opportunity to achieve the benefits of homeownership in Oakland, remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City, provide an opportunity for existing Oakland residents to afford the housing provided by the City and stay in Oakland and benefit from the impacts of the City's redevelopment and community development efforts, and encourage neighborhood stability by providing a means for residents who have been active in a community to remain in

the community in the face of increasing market rate rents and housing prices. The purposes of an Oakland worker requirement for first-time homebuyer programs are to encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and encourage businesses to locate in Oakland to take advantage of the affordable homeownership opportunities available to their workers.

15.63.080 Scope.

This policy shall apply to any of the City's mortgage assistance programs for first-time homebuyers.

15.63.090 Residency Requirement

All recipients of mortgage assistance under the first-time homebuyers program must be either an Oakland resident or an Oakland worker. For purposes of this section, an "Oakland resident" shall mean a household with at least one adult member whose principal place of residence on the date of application is within the City of Oakland. An "Oakland worker" shall mean a household with at least one adult member who is employed by an employer located within the City of Oakland, owns a business located within the City of Oakland, or participates in an education or job training program located within the City of Oakland.

15.63.100 Limitations

The requirement shall be non-durational, i.e., there shall be no minimum time period for Oakland residency or employment to qualify for the program. This policy shall be applied only if and to the extent that other funding sources for the program do not prohibit the policy. This policy shall be applied only if and to the extent that the policy does not violate applicable law.

15.63.110 Regulations.

The City Administrator is hereby authorized to issue rules and regulations implementing the Oakland residency and worker policy consistent with this article.

SECTION 3. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid, such holding shall not impair or invalidate the remainder of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included.

SECTION 4. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six

members of the City Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID,
and PRESIDENT GIBSON MCELHANEY


NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California



**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO
ADOPT (1) A PREFERENCE POLICY FOR NEIGHBORHOOD
RESIDENTS, OAKLAND RESIDENTS AND WORKERS, AND
DISPLACED HOUSEHOLDS IN APPLYING FOR MULTIFAMILY
AFFORDABLE HOUSING FUNDED BY THE CITY, AND (2) AN
OAKLAND RESIDENCY OR WORKER REQUIREMENT FOR
PARTICIPANTS IN THE CITY'S FIRST TIME HOMEBUYER
MORTGAGE ASSISTANCE PROGRAM**

NOTICE AND DIGEST

This Ordinance amends the Oakland Municipal Code to establish a policy to give preference for neighborhood residents, Oakland residents and workers, and displaced households to rent or purchase units in multifamily affordable housing projects funded by the City, and a requirement that participants in the City's mortgage assistance program for first-time homebuyers be Oakland residents or workers.