

# City ownership of housing, partnership with DHA

City Attorney's Office  
Department of Housing Stability  
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## Council Inquiry

- Request for background on the city's power to own and operate housing directly and the relationship with Denver Housing Authority (DHA) to own/operate housing on our behalf
- Tools for long-term affordability by city and DHA

## Legal Framework

- The relationship between the City and DHA is primarily governed by State statutes (C.R.S. 29-101 et seq. and 29-4-201 et seq.) and two cooperation agreements
- An Amended and Restated Cooperation Agreement was entered into in 1982 and a Supplemental Cooperation Agreement in 2007
  - The 1982 Cooperation Agreement applies to DHA projects substantially completed prior to the Supplemental Cooperation Agreement
  - DHA projects completed after the Supplemental Cooperation Agreement are subject to that agreement
- The cooperation agreements are silent on what occurs with city-owned housing projects

## C.R.S. 29-4-107

"The city shall deliver possession of any housing projects constructed, acquired, or leased by it to the authority within the boundaries of which the city is included, but the title to all property comprising such housing projects shall remain in the city. The authority shall operate and maintain all such housing projects of the city and shall fix, levy, and collect such rents, fees, or other charges for the use and occupancy of such housing projects as such authority determines . . . . "

## C.R.S. 29-4-107 con't

"After the payment of the cost of operation and maintenance of such housing project, the net receipts of such project shall be paid by the authority to the city at monthly or longer intervals as the city may determine or at such intervals as shall be provided for in any agreement by the city with an obligee."

## State Statute

- State statute contains language that governs jurisdiction's ability to own and operate housing projects
- City can retain ownership of housing project, but local housing authority must operate and maintain the housing project
- If housing authority operates a city owned project, any excess profit associated with operation comes back to the city

## Value of Long-Term Affordability

- Long-term affordability is critical to development of mixed-income communities and preservation of affordable housing
- Long-term affordability also helps:
  - Utilize limited land resources to serve more households over time
  - Leverage public, private and philanthropic resources
  - Promote equitable access to housing, combat displacement, and give people the opportunity to stay in their neighborhood for generations
  - Mitigate the risk of property converting to market rate and/or high cost to preserve based on market pricing at end of restriction

## City Strategies for Long-Term Affordability

- City owned land sold to developers to meet city priorities at extremely low cost in exchange 99+ years of affordability
- Preservation Ordinance requires projects utilizing city resources to be affordable for 60+ years, includes a right of first refusal (ROFR) for city or designee prior to conversion to market rate if resources available
- Regulations incent long-term affordability by waiving ROFR if project has 99+ years of affordability
- Partnering with organizations like land trusts where long-term affordability is part of the purpose of housing development
- However, may need higher gap financing/unit for longer affordability



## Long-Term Affordability in Partnership with DHA

- Intergovernmental Agreement to pass through city's property tax to DHA to make possible the issuance of nearly \$130M in bond proceeds, approved by Council in 2018 (DHA Delivers for Denver, or "D3" Agreement)
- D3 Agreement requires:
  - Acquisition of land/property for development of supportive and very low income (<30% AMI) housing
  - Projects constructed on acquired land/property be perpetually affordable
- In practice, DHA records a 99-year ground lease on properties under D3 Agreement so they retain ownership to ensure long-term affordability

## Conclusions

- City has been able to encourage or require long-term affordability in housing projects through existing strategies
- But other partners do retain ownership of housing projects to maintain affordability for an even longer term than 99-year ground leases or similar affordability instruments used now
- Since state law governs ability for city ownership/operation of housing projects, would require further conversation and change if city were to seek to retain ownership and flexibility to partner with wider range of operators to promote long-term affordability

# Appendix



# Outcomes from D3 Agreement since 2018

## ➤ DHA Direct Pipeline (1294 Units)

- 468 Units < 30% AMI; 826 Units < 80% AMI
- 240 Units Currently Under Construction - 2021 Occupancy
- 407 Units Closing in 2020 - 2022 Occupancy
- 283 Unit Closing in 2021 - 2023 Occupancy

## ➤ Land Acquisitions - PSH (1200 Units)

- 5 Properties Acquired
- 3 Under Contract
- 1 Emergency Shelter Relief - 95 Units
- 139 Units Occupied < 30% AMI
- Minimum 480 Units < 30 AMI