

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB18-1089

SERIES OF 2018

COMMITTEE OF REFERENCE:

AS AMENDED 10-15-18

Safety, Housing, Education & Homelessness

A BILL

For an ordinance amending Title 27 of the Revised Municipal Code of the City and County of Denver to revise definitions and procedures set forth therein for greater clarity and to extend the minimum affordability period for properties that receive city subsidies from twenty years to sixty years.

WHEREAS, it is the policy of the City and County of Denver 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 possible; and

WHEREAS, to better support the stability of low- and moderate-income residents living in income-restricted housing, and to align the City of Denver's minimum affordability period with best practices seen in high-cost cities nationally, the City Council has determined that an increase in the minimum covenant length associated with a City subsidy from twenty years to sixty years is appropriate and desirable; and

WHEREAS, the City Council has determined that certain other amendments to Chapter 27 are advised to enhance the clarity and transparency of the ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Section 27-46, D.R.M.C. shall be amended by deleting the language stricken and adding the language underlined below, to read as follows:

"Sec. 27-46. - Definitions.

(a) **Affordability restrictions. Restrictions placed upon a property that (i) limit the use and/or occupancy of all or part of the units on the property to households with incomes below a certain level or (ii) limit the rent that can be charged for such units to below-market rates. Affordability restrictions may be imposed by deed restriction, covenant, contract, or other manner.**

(b) **Affordable housing.** The term "affordable housing," "affordable ~~housing~~ rental housing" or "housing affordable to rental households" means that the rent is structured so that the targeted tenant population pays no more than thirty (30) percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to eighty (80) percent of ~~AMI~~**area MFI**.

1 (c) AMI or area median income. The median household income within the City and
2 County of Denver, as determined by the Department of Housing and Urban Development and
3 published annually by the Colorado Housing and Finance Authority.

4 (bd) *City subsidy.* Locally controlled public funds administered by the **HANDOED**, or
5 another city agency, allocated for the purpose of creating or preserving affordable rental housing ~~to~~
6 ~~households below eighty (80) percent of MFI.~~ City subsidies may be provided to developers
7 through direct financial assistance such as low interest or deferred loans, grants, equity gap
8 investments, credit enhancements or loan guarantees, or other mechanisms.

9 (ce) *City subsidy projects.* Privately owned properties ~~of that include~~ five (5) or more units
10 ~~which receive~~ receiving funding from or through a city subsidy ~~after the effective date of this~~
11 ~~article through programs designed to create or preserve rental housing affordable at or below~~
12 ~~eighty (80) percent of MFI.~~

13 (f) Federal financial assistance. Financial assistance received from or as a result of
14 federal programs that aim to support creation, preservation or rehabilitation of affordable
15 housing or long-term affordability of housing, including project-based rental subsidies under
16 Section 8 of the United States Housing Act, and assistance provided under or as a result of
17 Section 221(d)(3), Section 236, section 202, section 101, and Sections 514, 515 and 521 of the
18 National Housing Act or Section 42 of the Internal Revenue Code.

19 (dg) *Federal preservation projects.* ~~Properties having project-based rental assistance~~
20 ~~contracts for some or all of the units (such as section 8 and project rental assistance~~
21 ~~contracts) including those developed under a variety of HUD mortgage assistance and~~
22 ~~interest rate reduction programs. Federal preservation projects also include properties with~~
23 ~~ten (10) or more units with federally-funded loans, contracts, or insurance. A rental housing~~
24 ~~project that has affordability restrictions in place on five (5) or more rental units as a result~~
25 ~~of having received federal financial assistance.~~ An updated list of all known federal preservation
26 projects will be maintained by OED and will be made available ~~to the public~~ upon request.
27 Omission from such list shall not affect the applicability of this ordinance to a federal preservation
28 project.

29 (g) ~~HAND.~~ ~~The housing and neighborhood services division of the City and County~~
30 ~~of Denver.~~

31 (fh) *HUD.* The United States Department of Housing and Urban Development.

32 (g) ~~Involuntary displacement. Tenants of federal preservation projects are~~
33 ~~considered to be involuntarily displaced if:~~

~~(1) They are served a notice to vacate the property for reasons other than just cause as defined herein;~~

~~(2) They are not offered a one (1) year lease under their tenant based voucher by the property owner; or~~

~~(3) They are offered a one (1) year lease under their tenant based voucher, but are required to pay as rent and utilities an amount greater than the tenant contribution to rent (and utilities) in effect under the project-based section 8 contract, and they then choose to move from the property rather than enter into a lease under the voucher. This form of displacement may be referred to as "economic displacement."~~

~~(h) 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.~~

~~(i) Local financial assistance. Financial assistance received from or through a state or local public entity to support creation or preservation of affordable housing, including city subsidies, subsidies from the Denver Urban Renewal Authority, the State of Colorado or the Colorado Housing and Finance Authority ("CHFA"), bond financing issued by the City and County of Denver or the Colorado Housing and Finance Authority, and projects that utilized low income housing tax credits (LIHTC) administered by CHFA.~~

~~(ii) Local preservation projects. Properties with ten (10) or more rental units which received financial assistance from one or another local entity, to create or preserve housing serving households below eighty (80) percent of MFI which have affordability restrictions that are still in force as of the effective date of this article. Financial assistance programs include subsidies from the City and County of Denver, Denver Urban Renewal Authority, the State of Colorado or the Colorado Housing and Finance Authority ("CHFA"), or which have received bond financing issued by the City and County of Denver or the Colorado Housing and Finance Authority. "Local preservation projects" also include project with low income housing tax credits (LIHTC) administered by CHFA. A rental housing project that has affordability restrictions in place on five (5) or more rental units as a result of having received local financial assistance. An updated list of all known local preservation projects will be maintained by HANDOED and will be made available upon request. Omission from such list shall not affect the applicability of this ordinance to a local preservation project.~~

~~(j) Low income. Low income individuals, household or tenants are those with a gross household income below fifty (50) percent of the MFI.~~

1 (k) ~~MFI. Median family income for the Denver metropolitan statistical area as defined~~
2 ~~by HUD as adjusted for inflation and published periodically.~~

3 ~~(l) Moderate income. Moderate income individuals, households or tenants are those~~
4 ~~with a gross household income below eighty (80) percent of the MFI.~~

5 (k) OED. The Office of Economic Development of the City and County of Denver.

6 (m) Opt out. An owner's (i) non-renewal of an available project-based section 8
7 contract in a federal preservation project option to extend any contract under which federal
8 financial assistance was provided for the project or (ii) prepayment of a federally-subsidized
9 loan or mortgage if such prepayment results in termination of federal affordability
10 restrictions. Owners may consider "opting out" when they contemplate conversion to open
11 market rental housing, other housing or commercial uses, or a sale of the property."

12 Section 2. Section 27-47, D.R.M.C. shall be amended by deleting the language stricken
13 and adding the language underlined below, to read as follows:

14 "Sec. 27-47. - Federal preservation projects—Notice and purchase opportunities.

15 (a) Owners of federal preservation projects must provide the city and each building tenant
16 with ~~a one (1) year's notice of a pending HUD section 8 contract expiration~~the
17 following notices:

18 (1) One (1) year's advance notice of expiration of (i) a contract under which
19 federal financial assistance was provided, and (ii) any affordability restrictions.

20 (2) One (1) year's advance notice of owner's intent to "opt out"; and

21 (3) Ninety (90) days' advance notice of its intent to pursue a sale of such
22 federal preservation project

23 (b) ~~Owners of federal preservation projects who have decided to "opt out" must~~
24 ~~provide to the city and each affected building tenant a notice of one (1) year of intent to do~~
25 ~~so if the owner is opting out of a long-term contract, or if the owner is opting out of a one-~~
26 ~~year extension to a long-term contract. Owners of a federal preservation project shall also~~
27 ~~provide to the city and each affected building tenant a notice of ninety (90) days or its intent~~
28 ~~to do so. The notice~~Notices required by subsection (a) above shall specify:

29 (1) Whether the owner or intended buyer intends to withdraw the property from the
30 ~~section 8~~federal financial assistance program;

31 (2) ~~Whether the owner or intended buyer intends to convert the participating~~
32 ~~property to a nonparticipating use;~~

1 **(3)** Whether the owner or intended buyer is involved in negotiations with HUD
2 regarding an extension of ~~an expiring contract~~**affordability restrictions**; and

3 **(43)** For a sale, the intended date of sale or transfer.

4 (c) Owners of federal preservation projects who have decided to "opt out" or sell the federal
5 preservation project must consent to reasonable inspection of the property and inspection of the
6 owner reports on file with HUD, the State of Colorado, or the city. These inspections are designed
7 to facilitate the city's ability to assess the fair market value of the property and evaluate status of the
8 tenants, viability of transfer and/or continuation of a section 8 agreement with HUD and other
9 pertinent information.

10 (d) To the extent allowed by HUD, owners of federal preservation projects must maintain
11 an available HUD section 8 contract in good standing during the notice periods identified in this
12 chapter as well as any condemnation proceeding commenced.

13 (e) Owners of federal preservation projects must refrain from taking any action, other than
14 notifying HUD of the owner's intention to not renew the contract, that would preclude the city or its
15 designee from succeeding to the contract or negotiating with the owner for purchase of the property
16 during the notice periods identified in this article as well as any condemnation proceeding
17 commenced.

18 (f) In addition to any other times, during the notice periods identified in this article, the city
19 may pursue preservation of the project through negotiation for purchase or through condemnation.
20 ~~In addition, the city shall have the right of first refusal to purchase the federal preservation~~
21 ~~project.~~

22 **(g)** Owners of federal preservation projects who have decided to sell the federal
23 preservation project shall provide a right of first refusal to the city or its designee, and any such
24 purchase and sale agreement entered into by the owner of federal preservation project shall be
25 contingent upon the right of first refusal of the city or its designee to purchase the federal preservation
26 project. The owner of the federal preservation projects shall provide the contingent sales agreement
27 to the city or its designee upon its execution. Upon receipt of the contingent sales agreement, the
28 city shall have one hundred twenty (120) days to notify the owner of the federal preservation project
29 of its or its designee's intent to purchase the federal preservation project or its intent to facilitate the
30 purchase of the federal preservation project by its designee, an entity willing to preserve the
31 affordability of the housing provided in the federal preservation project. If the city or its designee is
32 willing to purchase the federal preservation project on terms that are economically substantially
33 identical to the terms of the contingent purchase and sale agreement and shall agree to close within

one hundred twenty (120) days from the date the city or its designee and the owner sign a purchase and sale agreement, the owner shall sell the federal preservation project to the city or its designee on those terms.”

Section 3. Section 27-49, D.R.M.C. shall be amended by deleting the language stricken and adding the language underlined below, to read as follows:

“Sec. 27-49. - Local preservation projects—Tenant and city notice provisions.

(a) When the owner of a local preservation project takes action which will make the affordable housing no longer affordable, including anyor has decided to pursue a sale of the local preservation project, ~~whether the affordability requirements which were established under prior agreement with the city or state have expired or are still in effect,~~ the owner must provide ~~a notice of~~ ninety (90) ~~days~~ days’ advance notice to the city. The notice shall meet standards developed by **HANDOED**. During the ninety- (90) day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties.

(b) Owners of local preservation projects who have decided to take action described in section 27-49(a), must provide a written notice of ninety (90) days to tenants. This shall be in addition to the notice to be provided to the city under section 27-49(a). During this notice period the owner may not initiate a no cause eviction.

(c) Owners of local preservation projects who have decided to sell the local preservation project shall provide a right of first refusal to the city or its designee, and any such purchase and sale agreement entered into by the owner of local preservation projects shall be contingent upon the right of first refusal of the city or its designee to purchase the local preservation project. The owner of the local preservation project shall provide the contingent purchase and sale agreement to the city or its designee upon its execution. Upon receipt of the contingent purchase and sale agreement, the city shall have one hundred twenty (120) days to notify the owner of the local preservation project of its or its designee's intent to purchase the local preservation project or its intent to facilitate the purchase of the local preservation project by its designee, an entity willing to preserve the affordability of the housing provided in the local preservation project. If the city or its designee is willing to purchase the local preservation project on terms that are economically substantially identical to the terms of the contingent purchase and sale agreement and shall agree to close within one hundred twenty (120) days from the date the city and the owner sign a purchase and sale agreement, the owner shall sell the local preservation project to the city or its designee on those terms.”

Section 4. Section 27-50, D.R.M.C. shall be amended by deleting the language stricken and adding the language underlined below, to read as follows:

1 **“Sec. 27-50. - City subsidy projects—Long term affordability requirements.**

2 (a) City subsidy ~~project~~projects will be subject to affordability restrictions for a minimum
3 ~~of twenty-sixty (60) years~~s affordability contract requirements.

4 (b) All city agencies administering affordable rental housing subsidy programs will be
5 responsible for implementing this section. As the primary agency charged by the city to negotiate
6 and confer affordable housing subsidies, HANDOED will develop implementing strategies consistent
7 with the twenty-sixty (60) year affordability principles contained in this section.”

8 **Section 6.** Section 27-51, D.R.M.C. shall be amended by deleting the language stricken
9 and adding the language underlined below, to read as follows:

10 **“Sec. 27-51. - Compliance and enforcement.**

11 (a) HANDOED shall develop and implement procedures, through the promulgation of rules
12 and regulations, to enforce the provisions of this article. Such procedures should include, where
13 feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce
14 the provisions of this code, and developing civil penalties or other enforcement provisions necessary
15 or appropriate to enforce this article.

16 (b) The city attorney's office may enforce the provisions of this Code on behalf of the city in
17 any court of competent jurisdiction or city administrative body.”

18 The amendment to Sec. 27-50 regarding minimum affordability periods shall be effective with
19 regard to projects receiving a city subsidy pursuant to a contract dated on or after February 1, 2019.

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21 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

1 COMMITTEE APPROVAL DATE: October 3, 2018
2 MAYOR-COUNCIL DATE: October 9, 2018
3 PASSED BY THE COUNCIL: _____
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____
10 PREPARED BY: Julie K. L. Mecklenburg, Assistant City Attorney DATE: October 11, 2018
11 Pursuant to Section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
14 3.2.6 of the Charter.
15 Kristin M. Bronson, Denver City Attorney
16 BY: _____, Assistant City Attorney DATE: _____