

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2015

COUNCIL BILL NO. CB15-0571
COMMITTEE OF REFERENCE:
4 Safety and Well-being

5 **A BILL**

6 **For an ordinance amending Article III of Chapter 27 of the Revised Municipal**
7 **Code of the City and County of Denver regarding Preservation of Affordable**
8 **Housing.**

9
10 **WHEREAS**, it is the policy of the City and County of Denver that publicly assisted rental
11 housing affordable to low and moderate income persons and households should be preserved as a
12 long-term resource to the maximum extent practicable; and

13 **WHEREAS**, tenants of such properties should receive protections to facilitate securing new
14 housing should the affordable units be converted to market rate units or otherwise be lost as a
15 resource for low and moderate income housing; and

16 **WHEREAS**, the City Council has now determined that amendments to Chapter 27 are
17 advised to further the goal of preserving affordable housing units.

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

20 **Section 1.** Section 27-46, (Definitions), of Article III (Preservation of Affordable Housing), of
21 Chapter 27 (Housing) of the Denver Revised Municipal Code, shall be amended to add the
22 underscored words and delete the stricken words, as follows:

23
24 **“Sec. 27-46. Definitions.**

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

30 (b) *City subsidy.* Locally controlled public funds administered by the HAND ~~housing~~
31 ~~and neighborhood development~~, or other city agency, allocated for the purpose of creating
32 or preserving affordable rental housing to households below eighty (80) percent of MFI
33 ~~median family income~~. City subsidies may be provided to developers through direct financial

1 assistance such as low interest or deferred loans, grants, equity gap investments, credit
2 enhancements or loan guarantees, or other mechanisms.

3 (c) *City subsidy projects.* Privately owned properties of five (5) or more units which
4 receive funding from or through a city subsidy after the effective date of this article through
5 programs designed to create or preserve rental housing affordable at or below eighty (80)
6 percent of MFI ~~area median family income~~.

7 (d) *Federal preservation projects.* Properties having project-based rental assistance
8 contracts for some or all of the units (such as section 8 and project rental assistance
9 contracts) including those developed under a variety of HUD mortgage assistance and
10 interest rate reduction programs. Federal preservation projects also include properties with
11 ten (10) or more units with federally-funded loans, contracts, or insurance. An updated list of
12 all known federal preservation projects will be maintained and available to the public upon
13 request.

14 (e) HAND HANDS. The housing and neighborhood services division of the City and
15 County of Denver.

16 (f) *HUD.* The United States Department of Housing and Urban Development.

17 (g) *Involuntary displacement.* Tenants of federal preservation projects are considered
18 to be involuntarily displaced if:

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

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

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

28 (h) *Just cause eviction.* Evictions for serious or repeated violations of the terms and
29 conditions of the lease or occupancy agreement, violation of applicable federal, state or
30 local law, or other good cause.

1 (i) *Local preservation projects.* Properties with ten (10) or more rental units which
2 received financial assistance from one or another local entity, to create or preserve housing
3 serving households below eighty (80) percent of ~~MFI median family income~~ which have
4 affordability restrictions that are still in force as of the effective date of this article. Financial
5 assistance programs include subsidies from the City and County of Denver, Denver Urban
6 Renewal Authority, the State of Colorado or the Colorado Housing and Finance Authority
7 (“CHFA”), or which have received bond financing issued by the City and County of Denver
8 or the Colorado Housing and Finance Authority. “Local preservation projects” also include
9 projects with Low Income Housing Tax Credits (LIHTC) administered by CHFA. An updated
10 list of all known local preservation projects will be maintained by HAND ~~HNDS~~ and will be
11 made available upon request.

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

14 (k) *MFI.* Median family income for the Denver metropolitan statistical area as defined
15 by HUD as adjusted for inflation and published periodically.

16 (l) *Moderate income.* Moderate income individuals, households or tenants are those
17 with a gross household income below eighty (80) percent of the ~~MFI area median family~~
18 ~~income~~.

19 (m) *Opt out.* An owner's non-renewal of an available project-based section 8 contract in
20 a federal preservation project. Owners may consider "opting out" when they contemplate
21 conversion to open market rental housing, other housing or commercial uses, or a sale of
22 the property. “

23 **Section 2.** Section 27-47, (Federal preservation projects –Notice and purchase
24 opportunities), of Article III (Preservation of Affordable Housing), of Chapter 27 (Housing) of the
25 Denver Revised Municipal Code, shall be amended to add the underscored words and delete the
26 stricken words, as follows:

27
28 **“Sec. 27-47. Federal preservation projects –Notice and purchase opportunities.**

29 (a) Owners of federal preservation projects must provide the city and each building
30 tenant with a one (1) year's notice of a pending HUD section 8 contract expiration.

1 (b) Owners of federal preservation projects who have decided to "opt out" must
2 provide to the city and each affected building tenant a notice of one year ~~two hundred ten~~
3 ~~(210) days~~ of intent to do so if the owner is opting out of a long-term contract, or ~~and one~~
4 ~~hundred fifty (150) days~~ if the owner is opting out of a one-year extension to a long-term
5 contract. Owners of a federal preservation project who have decided to pursue a sale of
6 such federal preservation project shall also provide to the City and each affected building
7 tenant a notice of ninety (90) days of its intent to do so. The notice shall specify:

8 (1) Whether the owner or intended buyer intends to withdraw the property from the
9 section 8 program;

10 (2) Whether the owner or intended buyer intends to convert the participating property
11 to a nonparticipating use; ~~and~~

12 (3) Whether the owner or intended buyer is involved in negotiations with HUD
13 regarding an extension of an expiring contract; and -

14 (4) For a sale, the intended date of sale or transfer.

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

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

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

29 (f) In addition to any other times, during the notice periods identified in this article, the
30 city may pursue preservation of the project through negotiation for purchase or through

1 condemnation. In addition, the City shall have the right of first refusal to purchase the
2 federal preservation project. Owners of federal preservation projects who have decided to
3 sell the federal preservation project shall provide a right of first refusal to the city or its
4 designee, and any such purchase and sale agreement entered into by the owner of federal
5 preservation project shall be contingent upon the right of first refusal of the city or its
6 designee to purchase the federal preservation project. The owner of the federal
7 preservation projects shall provide the contingent sales agreement to the city or its designee
8 upon its execution. Upon receipt of the contingent sales agreement, the city shall have 120
9 days to notify the owner of the federal preservation project of its or its designee's intent to
10 purchase the federal preservation project or its intent to facilitate the purchase of the federal
11 preservation project by its designee, an entity willing to preserve the affordability of the
12 housing provided in the federal preservation project. If the city or its designee is willing to
13 purchase the federal preservation project on terms that are economically substantially
14 identical to the terms of the contingent purchase and sale agreement and shall agree to
15 close within 120 days from the date the city or its designee and the owner sign a purchase
16 and sale agreement, the owner shall sell the federal preservation project to the City or its
17 designee on those terms."

18 **Section 3.** Section 27-49, (Local preservation projects-Tenant and city notice provisions), of
19 Article III (Preservation of Affordable Housing), of Chapter 27 (Housing) of the Denver Revised
20 Municipal Code, shall be amended to add the underscored words and delete the stricken words, as
21 follows:

22
23 **“Sec. 27-49. Local preservation projects-Tenant and city notice provisions.**

24 (a) When the owner of a local preservation project takes action which will make the
25 affordable housing no longer affordable, including any sale of the local preservation project,
26 whether the affordability requirements which were established under prior agreement with
27 the city or state have expired or are still in effect, the owner must provide a notice of ninety
28 (90) days to the city. The notice shall meet standards developed by HAND HNDS. During
29 the 90-day notification period, the owner may not sell or contract to sell the property, but
30 may engage in discussions with other interested parties. ~~Within this period, the city or its~~
31 ~~designee may make an offer to purchase or attempt to coordinate a purchase by an owner~~
32 ~~committed to maintaining affordability.~~

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

5 (c) Owners of local preservation projects who have decided to sell the local
6 preservation project shall provide a right of first refusal to the city or its designee, and any
7 such purchase and sale agreement entered into by the owner of local preservation projects
8 shall be contingent upon the right of first refusal of the city or its designee to purchase the
9 local preservation project. The owner of the local preservation project shall provide the
10 contingent purchase and sale agreement to the city or its designee upon its execution. Upon
11 receipt of the contingent purchase and sale agreement, the city shall have 120 days to
12 notify the owner of the local preservation project of its or its designee's intent to purchase
13 the local preservation project or its intent to facilitate the purchase of the local preservation
14 project by its designee, an entity willing to preserve the affordability of the housing provided
15 in the local preservation project. If the city or its designee is willing to purchase the local
16 preservation project on terms that are economically substantially identical to the terms of the
17 contingent purchase and sale agreement and shall agree to close within 120 days from the
18 date the city and the owner sign a purchase and sale agreement, the owner shall sell the
19 local preservation project to the city or its designee on those terms."

20 **Section 4.** Section 27-50, (City subsidy properties-Long term affordability requirements), of
21 Article III (Preservation of Affordable Housing), of Chapter 27 (Housing) of the Denver Revised
22 Municipal Code, shall be amended to add the underscored words and delete the stricken words, as
23 follows:

24 **"Sec. 27-50. City subsidy projects-Long term affordability requirements.**

25 (a) City subsidy projects ~~Properties that in the future request and receive a city~~
26 ~~subsidy from HNDS or other city agency for the purpose of creating or preserving rental~~
27 ~~housing affordable to households below eighty (80) percent of median family income,~~ will be
28 subject to a minimum of 20-year affordability contract requirements.

29 (b) All city agencies administering affordable rental housing subsidy programs will be
30 responsible for implementing this section. As the primary agency charged by the city to
31 negotiate and confer affordable housing subsidies, HAND ~~HNDS~~ will develop implementing
32 strategies consistent with the 20-year affordability principles contained in this section."

1 **Section 5.** Section 27-51, (Compliance and enforcement), of Article III (Preservation of
2 Affordable Housing), of Chapter 27 (Housing) of the Denver Revised Municipal Code, shall be
3 amended to add the underscored words and delete the stricken words, as follows:

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

5 (a) HAND ~~HNDS~~ shall develop and implement procedures, through the promulgation
6 of rules and regulations, to enforce the provisions of this article. Such procedures should
7 include, where feasible, record notice of the applicability of this code to affected properties,
8 filing a lien to enforce the provisions of this code, and developing civil penalties or other
9 enforcement provisions necessary or appropriate to enforce this article.

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

12
13 COMMITTEE APPROVAL DATE: August 18, 2015

14 MAYOR-COUNCIL DATE: August 25, 2015

15 PASSED BY THE COUNCIL: _____, 2015

16 _____ - PRESIDENT

17 APPROVED: _____ - MAYOR _____, 2015

18 ATTEST: _____ - CLERK AND RECORDER,
19 EX-OFFICIO CLERK OF THE
20 CITY AND COUNTY OF DENVER

21 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2015; _____, 2015

22 PREPARED BY: Jennifer Welborn, Assistant City Attorney DATE: August 27, 2015

23 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
24 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
25 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
26 3.2.6 of the Charter.

27 D. Scott Martinez, City Attorney for the City and County of Denver

28 BY: _____, Assistant City Attorney DATE: _____, 2015