



AFFORDABLE HOUSING PRESERVATION ORDINANCE

Safety, Housing, Education and Homelessness Committee

**Office of Economic Development
City Attorney's Office**

October 3, 2018



Agenda

- I. Preservation Background
- II. Minimum Affordability Period
- III. Proposed Ordinance Updates
- IV. Questions and Discussion

What is preservation? Why preserve?

- **Preservation helps keep an existing affordable home available for low and moderate income households long-term**
 - Can include both rental and for-sale housing
 - Can include homes that are currently income-restricted and those that are unsubsidized or “market affordable”
- **The value of preservation:**
 - Helps maintain city’s affordable housing stock
 - Can be less expensive than new construction of affordable housing
 - Entitlement process complete, no new infrastructure typically required
 - Can help maintain character of neighborhood by preserving historic structures
 - Can reduce displacement of existing residents

Preservation Background

- **Units that have received public subsidies have a form of income restriction attached; when that restriction expires, units can be at risk of converting to market-rate housing when restrictions expire.**
 - Examples: covenant, land use restrictive agreement, rental contract
 - 1,721 units – or 8.5% of Denver’s multifamily rental housing stock – are at risk of expiring over the next five years
- **Denver does have units that are income-restricted but did not receive public subsidies, such as those created by rezoning agreements; when restrictions expire, units can be at risk of converting to market-rate housing.**
- **Unsubsidized or “market affordable” units do not have an income restriction attached, but may remain affordable due to age, location, or physical condition; owner may choose to increase price to a level that is no longer affordable to low or moderate-income households at any time.**

Our Preservation “Toolbox”

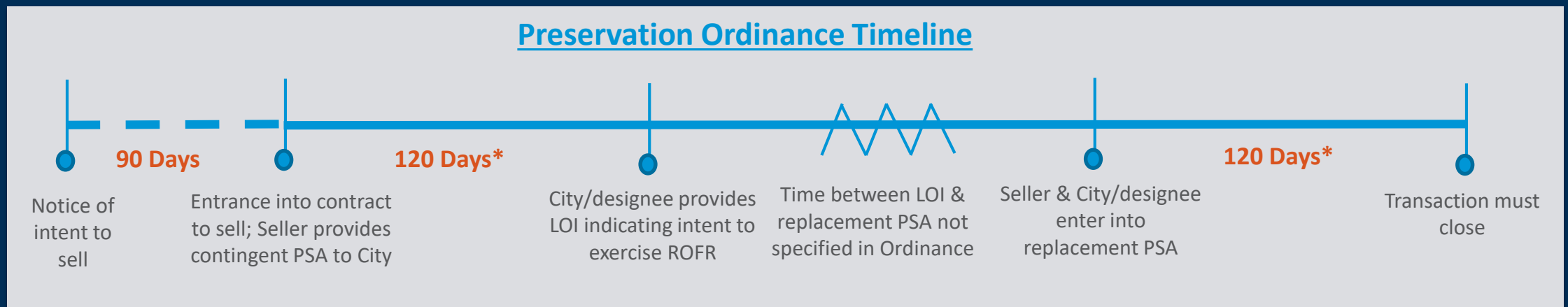
The city currently has these primary tools to support the preservation of Denver’s income-restricted and unsubsidized housing stock:

- 1. Preservation Ordinance (only for income-restricted rentals)**
 - Notification requirements
 - Right of first refusal
- 2. Gap Financing:**
 - Loan products for acquisition and renovation
 - Typically accompanied by a new income-restriction
- 3. Property Tracking:**
 - Strong coordination with CHFA, DOH and HUD to update inventory of income-restricted units
- 4. Outreach to Managers and Owners of Income-Restricted Properties:**
 - Phone and mail outreach to owners of properties with restrictions expiring in under five years
 - Provide information on preservation ordinance requirements and financing products
- 5. Right of First Refusal on For-Sale:**
 - City has ROFR on the sale of for-sale housing restricted through the IHO

Preservation Ordinance Overview

The Preservation Ordinance provides the city with notice when sale of an income-restricted property is planned and offers the city or its designee the right of first refusal when income-restricted properties are sold.

However, the right of first refusal **is only applicable when income-restricted properties are sold**; it does not apply after the expiration of an income restriction.



Lessons Learned

Based on last three years of implementation of the Preservation Ordinance, lessons learned include:

- Ordinance definitions lacks clarity on the applicability to certain projects
- Circumstances where notice to the city and tenants prior to a planned sale or expiration of a restriction are ambiguous and need more specificity
- Some key terms from the ordinance are not defined (ex: “economically substantially identical”)
- Timelines required by the ordinance leave gaps that create a lack of predictability for property owners
- Clarity on the city’s priorities in evaluating transactions under the ordinance can provide more transparency for property owners (ex: focus on preserving properties with fewer than 15 years left on the restriction)

OED and CAO Recommendations

- **Staff recommends that the City make minor updates to the Preservation Ordinance that clarify and streamline requirements**
- **In addition, staff recommends the adoption of rules and regulations to support implementation of the Preservation Ordinance**



MINIMUM AFFORDABILITY PERIOD

Why discuss extending the minimum affordability period?

- **Feedback during development of five-year housing plan:**
 - Housing Plan should focus on longer-term affordability across all housing investments
 - Denver should pursue housing that is affordable in perpetuity
- ***Housing an Inclusive Denver* recommendations & key actions:**
 - Explore extending minimum affordability period for projects receiving City subsidies to promote long-term preservation
 - Have minimum affordability period supported by term sheets that also promote long-term affordability

Why discuss extending the minimum affordability period?

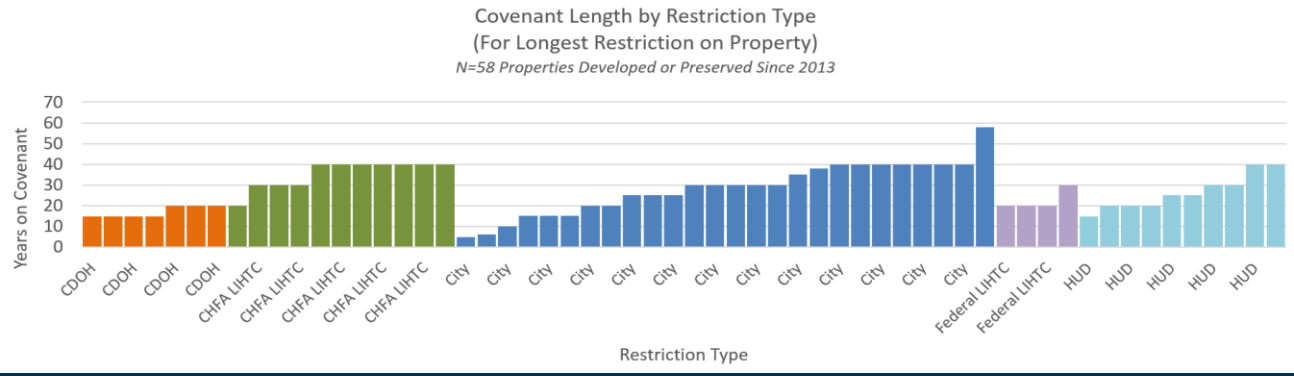
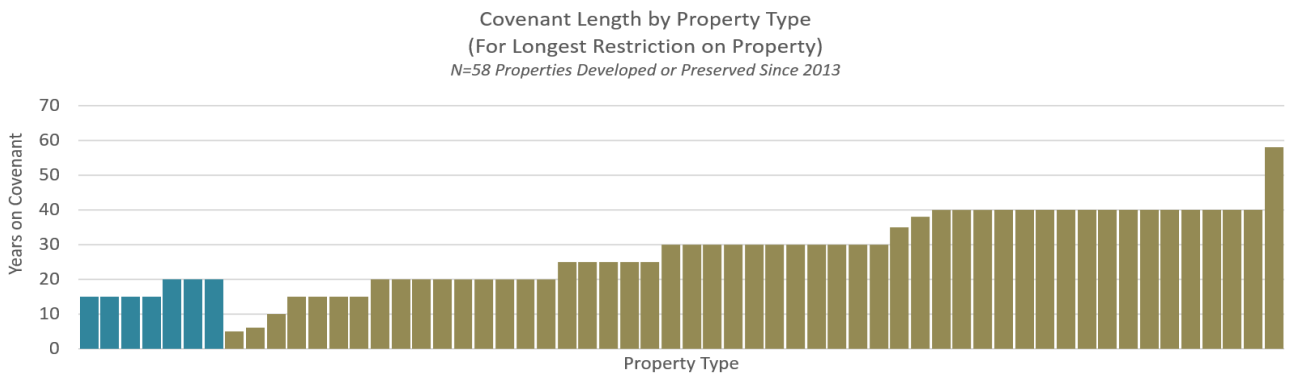
- Long-term affordability of **rental housing** can prevent conversion of multi-family rental developments to market rate housing, stabilizing low- and moderate-income households and preventing displacement and/or homelessness
- Current minimum affordability period allowable for multifamily rental housing under Preservation Ordinance is 20 years; administratively, OED often restricts for 30-40 years

Process for evaluating longer-term affordability

- Analyzed Denver's current portfolio of affordable units across all restricting agencies (OED, HUD, CDOH, CHFA)
- Performed research on other high-cost peer cities to determine best practices in minimum affordability periods
- Conducted large group and targeted stakeholder outreach, including:
 - Non-profit and for-profit developers of affordable housing
 - Finance experts, including tax credit investors and lenders
 - Housing Advisory Committee and subcommittees
 - Anti-Displacement Policy Network partners

Average Length of Affordability

Takeaway: Average covenant length across Denver’s portfolio of rental housing is 29 years.



Development Type	Average Covenant Length in Years*	# Properties
Acq/Rehab	26	20
Covenant Extension	15	4
New Construction	30	34

*For longest restriction on property

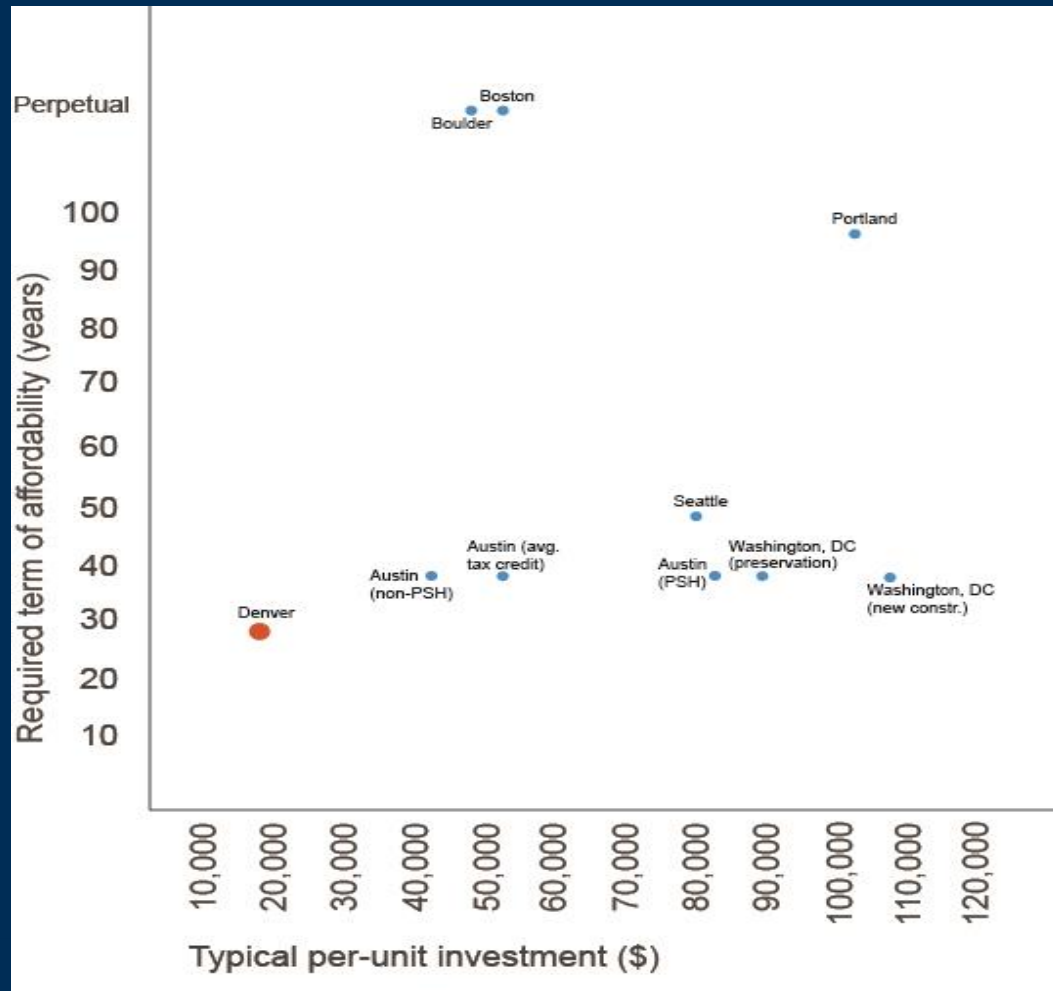
Property Type	Average Covenant Length in Years*	# Properties
Sale	17	7
Rental	29	51

*For longest restriction on property

Restriction Type	Average Covenant Length in Years*	# Properties
CDOH	17	7
CHFA	35	11
City	29	26
Fed LIHTC	23	4
HUD	27	10

*For longest restriction on property

How do peer cities fund rental housing?



Takeaway:

- Other high-cost communities have longer affordability periods than Denver, between 40-50 years up to perpetual or 99 year affordability
 - All secure affordability with covenants
 - All gap financiers (exception Boulder)
 - Most focus efforts on tax-credit projects
 - Some place higher value on Permanent Supportive Housing (Austin) and greater numbers of bedrooms (Seattle)
 - Some offer different values for preservation and new construction
 - All have maintenance and inspection requirements

OED Recommendation

- To balance public/stakeholder feedback that long-term affordability is a tool to stabilize residents at risk of displacement and to promote inclusive communities with the financial needs of developers building affordable housing, **staff is recommending an increase of the minimum affordability period from 20 to 60 years.**

FAQs

Will an increase in covenant length to 60 years impact project financing?

OED has sought feedback from the financing community and confirmed that an increase to 60 years will not impact developers ability to access LIHTC equity or private debt.

Will housing developments be able to access rehabilitation financing from OED in the future?

While the city cannot make a guaranteed forward commitment to specific projects, OED anticipates that housing developers will return to OED for additional financing to support renovation costs in the future.

How will the City address potential future changes in market conditions?

OED staff are exploring the addition of language to our form of covenant that would allow certain elements of a project to be adjusted, should a project require it, in the future (ex: income levels associated with covenant).

FAQs

Will other funders match OED's covenant length?

The State Division of Housing has confirmed that it will match the length of the City's covenant if it is extended to 60 years.

Will a longer term covenant impact the value of a property?

Properties subject to an income restriction do appraise differently than those without a restriction, however, the restriction ensures that low income residents will have a stable and affordable home – the primary goal of the city's investments. Properties with expired restrictions can be sold for a profit to market rate developers, often resulting in the displacement of vulnerable residents and the loss of affordable units in strategic locations.



PROPOSED ORDINANCE UPDATES

Proposed Preservation Ordinance Updates

- **The Bill would insert language into the Preservation Ordinance clarifying the City and County of Denver's ability to acquire, develop, operate, and maintain residential property independently and to sell or lease property as it chooses. This explicitly asserts the City's authority in this regard and clarifies any perceived ambiguity under CRS 29-4-107.**
- **The Bill would amend the Ordinance to provide definitions of terms used within the Ordinance not previously defined, and to further clarify certain definitions already existing in the Ordinance.**
- **The Bill would amend the Ordinance to make required notice periods consistent for locally- and federally-subsidized projects.**
- **The Bill would revise the City's minimum affordability period accompanying OED investment from 20 years to 60 years.**

Proposed Rules & Regulations

- **A key challenge OED faces in preserving affordable housing is that the agency learns of the property's sale when it goes under contract; with earlier information, the city can work proactively to preserve**
- **OED's proposed rules and regulations are intended to accomplish two primary goals:**
 - **To clarify existing ambiguities in language, applicability, and procedures required by the Ordinance**
 - **To incentivize the provision of information on the preservation property at an earlier point in the sale process**

Proposed Rules & Regulations

- **The rules and regulations further clarify the notice property owners must provide to the City in advance of sale of federal and local projects**
- **In addition, the rules & regulations detail due diligence information required alongside notice provision:**
 - Description of property and existing affordability restrictions
 - Financial and physical conditions statements
 - Description of action that will make the property no longer affordable
- **The rules outline a waiver of the ROFR if property is subject to perpetual affordability**
- **The rules also outline criteria that the City may use to provide an expedited waiver of its ROFR:**
 - 15+ years remaining on income-restriction
 - Buyer has committed to retaining affordability for 60+ years
- **The rules also outline penalties applicable to noncompliant property owners**

Proposed Timeline

- **October 3: Safety Committee meeting**
 - **October 9: Mayor-Council meeting**
 - **October 15: First Reading at City Council**
 - **October 22: Final Reading at City Council**
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- If approved by City Council, OED would pursue administrative process to adopt rules and regulations with goal of finalizing by end of 2018

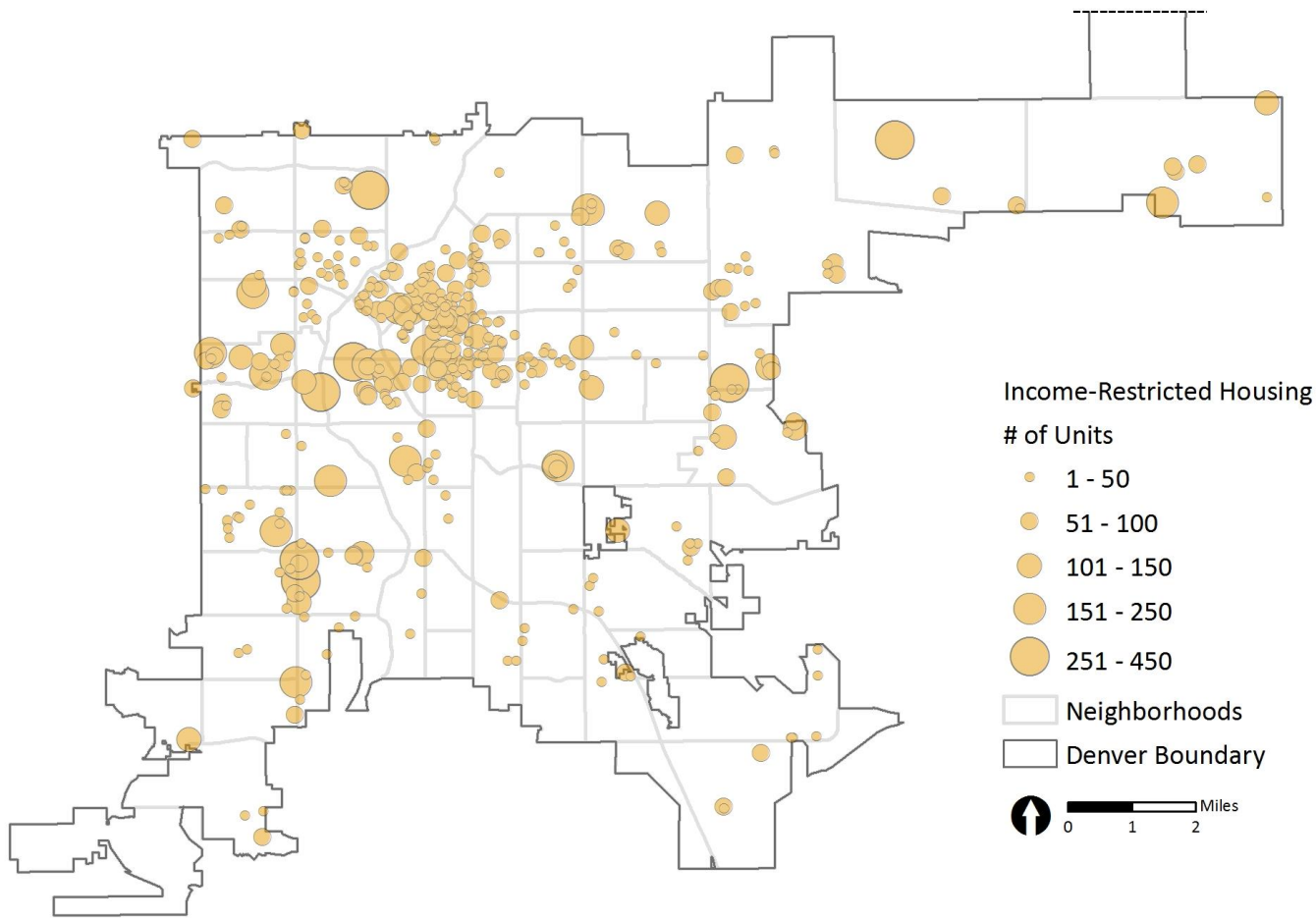
Requested Action:

Approval of resolution clarify definitions and notice requirements in the Preservation Ordinance and raise the city's minimum affordability period to 60 years.



QUESTIONS / DISCUSSION

APPENDIX



Denver's Inventory of Income-Restricted Housing:

- 21,494 total units (20,207 rental, 1,287 for-sale)

Income-Restricted Properties with Expiring Covenants Over the Next Five Years (2018-2022):

- 69 properties (59 rental, 10 for-sale)
 - 23 properties serving special populations
- 1,816 units (1,721 rental, 95 for-sale)

Preservation Ordinance - Federal vs. Local Projects

The Preservation Ordinance includes requirements that vary depending on whether the property has received federal or local subsidies.

Federal preservation projects

- Rental properties that currently receive project-based rental assistance (Section 8 or rental assistance contracts).
- Properties with 10 or more units funded by federal loans and/or insurance that was accompanied by an income-restriction.

Local preservation projects

- Properties with 10 or more rental units that have received subsidy or financing from the City and County of Denver, Denver Urban Renewal Authority, the State of Colorado, or CHFA that was accompanied by an income-restriction.

Challenges of Preservation

Challenge	Description of Challenge	Potential Solution
<i>Cost of Properties</i>	In the current market, the market price of properties may be unaffordable to a preservation-oriented buyer.	City can <u>provide additional gap financing</u> to support the preservation of affordable properties. City can work with partners to <u>develop a bridge financing tool</u> to acquire properties at risk of converting to market rate.
<i>Ordinance Applicability</i>	The Preservation Ordinance does not give the city a right to purchase when income-restrictions expire.	City can <u>increase its outreach efforts</u> to coordinate with property owners as their income-restrictions near expiration.
<i>Awareness of Nonsubsidized Property Sales</i>	Owners of income-restricted properties are required to inform OED at sale; however, OED is often unaware of the sale of unsubsidized properties.	City can <u>analyze multifamily properties as they are listed on the market</u> and work with preservation partners to facilitate purchases.
<i>Clarity of Preservation Ordinance</i>	The Preservation Ordinance contains some inconsistencies that create administrative and enforcement challenges.	To clarify ambiguities in the Ordinance, the city is currently <u>drafting minor changes to the ordinance language in addition to rules and regulations.</u>

Preservation Ordinance Requirements

	1-Yr Notice to City	1-Yr Notice to Tenants	90-Day Notice to City	90-Day Notice to Tenants	City Right to Inspect	Owner Prohibited from Sale*	City Right of First Refusal
FEDERAL	“Opt Out” of Section 8 Contract	✓	✓			✓	✓
	Expiration of Section 8 Contract	✓	✓				✓
	Sale of Property			✓	✓	✓	✓
LOCAL	Action that Makes the Property Unaffordable			✓	✓		✓
	Expiration of Covenant or LURA						
	Sale of Property						✓

* Prohibition on sales by owner is only applicable during the one-year or 90-day notice period to City.

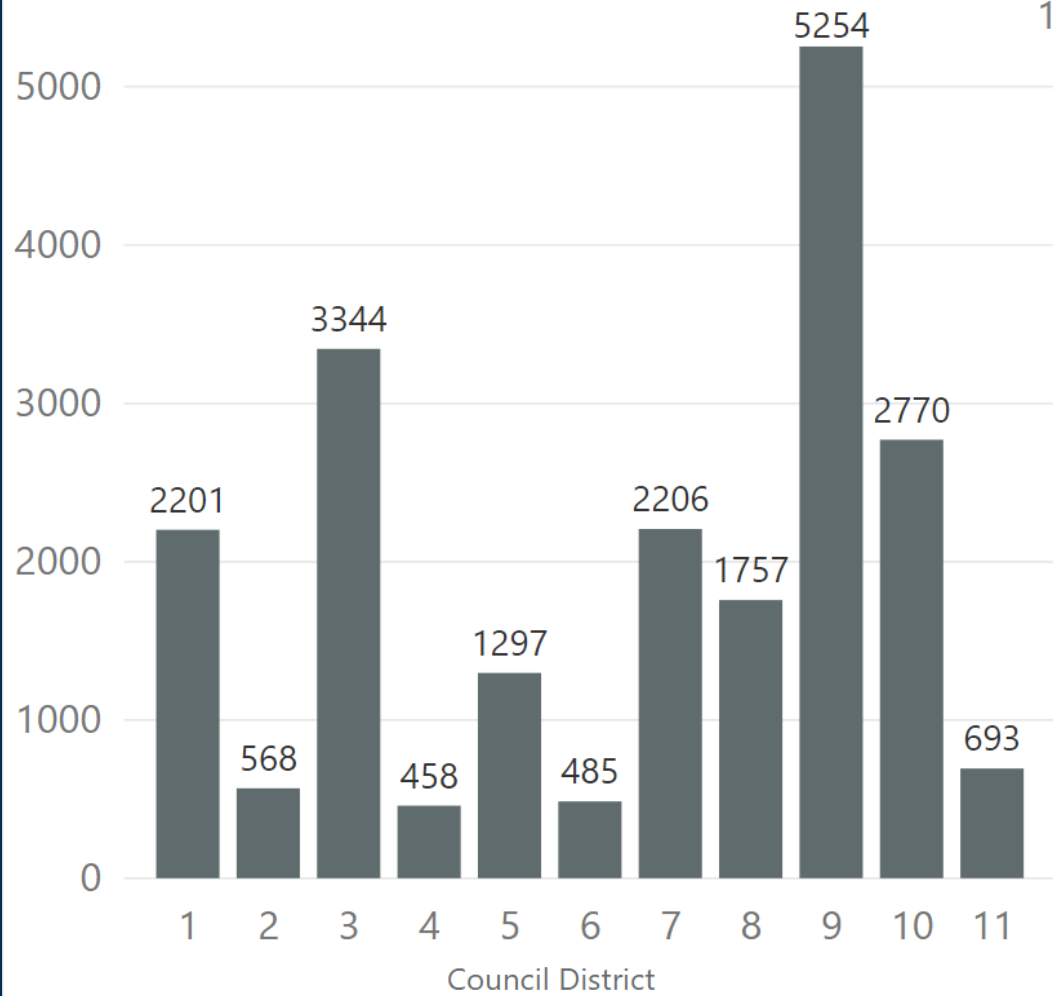
Example of Preservation – Kentucky Circle Village



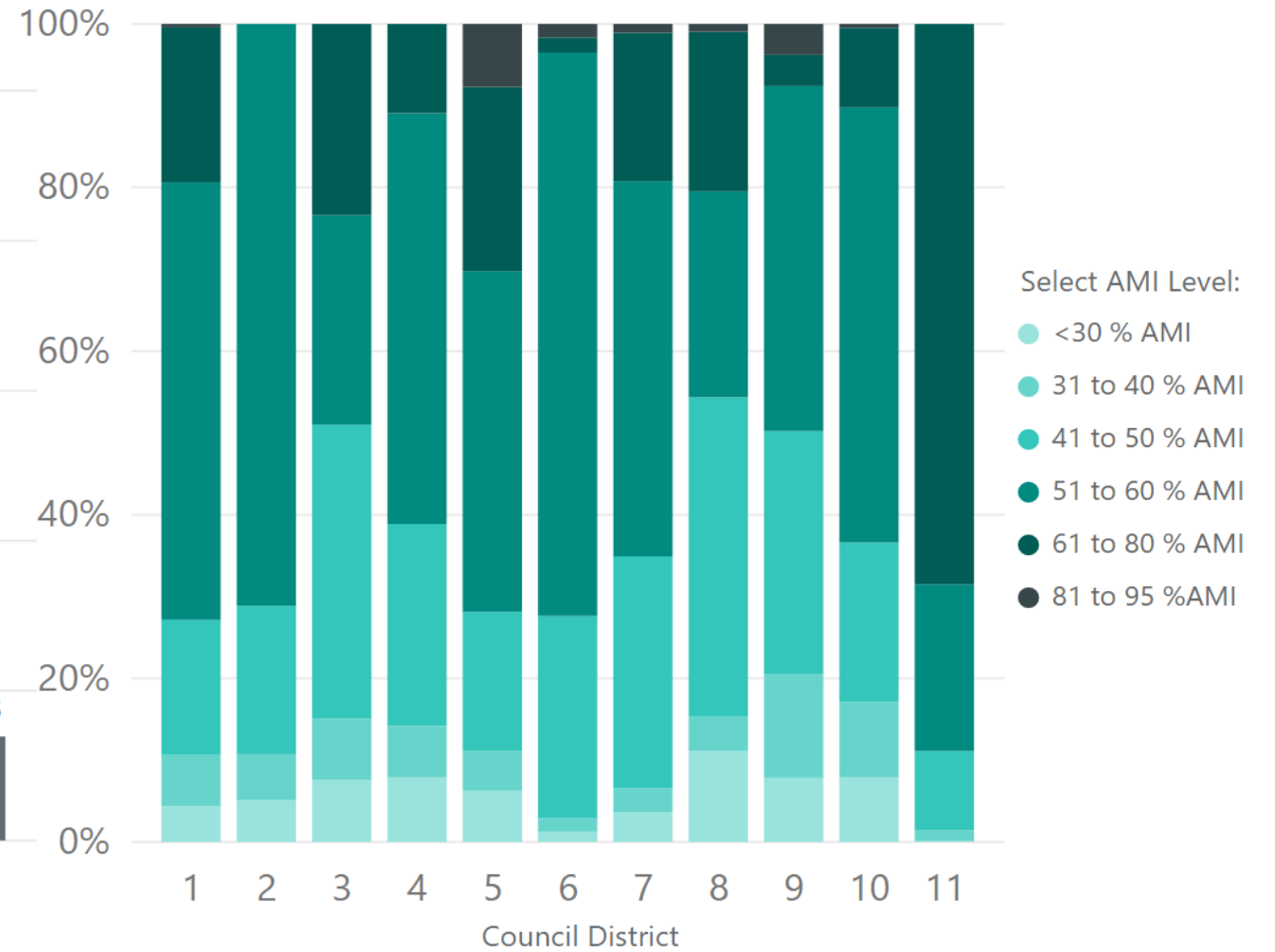
In 2016, OED partnered with CHFA, DOH, and Senior Homes of Colorado to preserve 172 affordable rental units for low and moderate income seniors at Kentucky Circle Village in the Washington Virginia Vale neighborhood of Denver.

The development's previous affordability covenant was set to expire in 2019, but OED's investment in the rehabilitation of the property will now preserve affordability through 2047.

Total Restricted Units



Restricted Units by Affordability



Preservation Ordinance Overview

Sales under Preservation Ordinance since updates in 2016

15 sales, 14 unique properties:

- 7 properties extended affordability period
- 5 properties had more than 10 years remaining on restriction
- 2 properties did not extend affordability