

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2018

COUNCIL BILL NO. CB18-XXX
COMMITTEE OF REFERENCE:
4 Safety, Housing, Education & Homelessness

5 A BILL

6 For an ordinance amending Article I, In General, and Article III, Preservation of
7 Affordable Housing, of Title 27 of the Revised Municipal Code of the City and
8 County of Denver to revise definitions and procedures set forth therein for
9 greater clarity.

10 WHEREAS, ***.

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

13 Section 1. A new Section 27-1, D.R.M.C. shall be added, to read as follows:

14 “Sec. 27-1. – City Authority

15 **[TENTATIVE LANGUAGE / UNDER REVIEW: The City’s authority with regard to**
16 **affordable housing shall include, without limitation, the authority to acquire, develop,**
17 **redevelop, rehabilitate, [operate] and maintain all or any portion of any real property located**
18 **within City boundaries for or as affordable housing and to retain ownership and possession**
19 **of any such real property. The City’s authority shall further include the authority to lease,**
20 **license, sell, or convey all or any portion of its real property and to provide financial support**
21 **to any governmental or non-governmental entity, including without limitation the Denver**
22 **Housing Authority, and any non-profit or for-profit developer, for current or future use in**
23 **furtherance of affordable housing or any other related purpose.]”**

24 Section 2. Section 27-46, D.R.M.C. shall be amended by deleting the language stricken and
25 adding the language underlined below, to read as follows:

26 “Sec. 27-46. - Definitions.

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

32 (b) *Affordable housing.* The term "affordable housing," "affordable ~~housing~~–rental
33 housing" or "housing affordable to rental households" means that the rent is structured so that the
34 targeted tenant population pays no more than thirty (30) percent of their gross household income for

1 rent and utilities. The targeted tenant populations referred to in this section include households up
2 to eighty (80) percent of ~~AMI~~area MFI.

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

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

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

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

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

31 **(g) HAND.** ~~The housing and neighborhood services division of the City and County~~
32 ~~of Denver.~~

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

1 ~~(g) — *Involuntary displacement.* Tenants of federal preservation projects are~~
2 ~~considered to be involuntarily displaced if:~~

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

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

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

12 ~~(h) — *Just cause eviction.* Evictions for serious or repeated violations of the terms and~~
13 ~~conditions of the lease or occupancy agreement, violation of applicable federal, state or local~~
14 ~~law, or other good cause.~~

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

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

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

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

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

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

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

14 **Section 3.** Section 27-47, D.R.M.C. shall be amended by deleting the language stricken
15 and adding the language underlined below, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 willing to purchase the federal preservation project on terms that are economically substantially
2 identical to the terms of the contingent purchase and sale agreement and shall agree to close within
3 one hundred twenty (120) days from the date the city or its designee and the owner sign a purchase
4 and sale agreement, the owner shall sell the federal preservation project to the city or its designee
5 on those terms.”

6 **Section 4.** Section 27-49, D.R.M.C. shall be amended by deleting the language stricken
7 and adding the language underlined below, to read as follows:

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

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

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

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

1 COMMITTEE APPROVAL DATE: _____

2 MAYOR-COUNCIL DATE: _____

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: _____

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

16 Kristin M. Bronson, Denver City Attorney

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18 BY: _____, Assistant City Attorney DATE: _____