

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. CB18-1089

3 SERIES OF 2018

COMMITTEE OF REFERENCE:

4 AS AMENDED 10-15-18

Safety, Housing, Education & Homelessness

5 **A BILL**

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

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

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

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

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

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

24 **“Sec. 27-46. - Definitions.**

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

30 (b) **Affordable housing.** The term "affordable housing," "affordable ~~housing~~ rental  
31 housing" or "housing affordable to rental households" means that the rent is structured so that the  
32 targeted tenant population pays no more than thirty (30) percent of their gross household income for  
33 rent and utilities. The targeted tenant populations referred to in this section include households up  
34 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           ~~(1) They are served a notice to vacate the property for reasons other than just cause~~  
2 ~~as defined herein;~~

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

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

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

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

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

32           ~~(j) *Low income.* Low income individuals, household or tenants are those with a gross~~  
33 ~~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

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

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

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

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

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

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

32 **Section 4.** Section 27-50, D.R.M.C. shall be amended by deleting the language stricken  
33 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: \_\_\_\_\_