

1 [Administrative Code - Housing Preservation Program and Affordable Housing Production and
2 Preservation Fund]

3 **Ordinance amending the Administrative Code to establish the Housing Preservation**
4 **Program and amend the Affordable Housing Production and Preservation Fund to**
5 **finance the acquisition of multifamily residential properties for the purpose of**
6 **preserving such properties as permanent affordable housing; requiring borrowers**
7 **under the Program to comply with certain procedures prior to eviction; authorizing the**
8 **Mayor’s Office of Housing and Community Development (“MOHCD”) to establish**
9 **policies and procedures to issue loans and/or grants from the Fund; and requiring**
10 **MOHCD to provide oversight and monitoring of such properties, and reports to the**
11 **Board of Supervisors.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Chapter 10, Article XIII of the Administrative Code is hereby amended by
21 revising Section 10.100-11, to read as follows:

22 **SEC. 10.100-11. AFFORDABLE HOUSING ~~PRODUCTION AND~~ PRESERVATION**
23 **FUND.**

24 (a) Establishment of Fund. The Affordable Housing ~~Production and~~ Preservation
25 Fund (“the Fund”) is hereby established as a category four fund to receive monies

1 appropriated from (1) excess Education Revenue Augmentation Fund (“Excess ERAF”)
2 revenues received by the City, (2) the City’s general fund, (3) grants from federal or state agencies,
3 and (4) any other funds intended for the acquisition and preservation of existing housing with the goal
4 of making such housing permanently affordable.

5 (b) Intent to Appropriate Excess ERAF Funds. It is the intent of the Board of
6 Supervisors to appropriate 50% of all projected Excess ERAF revenue to the Fund in each
7 fiscal year beginning in FY2019-2020, and to appropriate the remaining 50% of such revenue
8 for general one-time or ongoing uses, subject to the fiscal and budgetary provisions of the
9 Charter. Further, it is the intent of the Board of Supervisors to appropriate at least 50% of all
10 projected Excess ERAF revenues in each fiscal year to one-time uses and up to 50% for
11 ongoing uses. The Board intends to make such appropriations on an annual basis,
12 appropriating in each year’s Annual Appropriations Ordinance the projected Excess ERAF
13 revenues that the City receives in that fiscal year.

14 (c) Administration and Use of Funds. The Mayor’s Office of Housing and Community
15 Development (“MOHCD”) shall administer the Fund, and may consult with the City
16 Administrator, the Board of Supervisors, and other City bodies and departments on potential
17 uses of monies in the Fund to strive for a geographic balance of investments. Monies in the
18 Fund shall only be used for the purposes of (1) funding land acquisition and production of new
19 100% affordable housing projects, and (2) funding the acquisition and preservation of existing
20 housing with the goal of making such housing permanently affordable, including, but not limited
21 to, through the funding of maintenance and/or capital improvements, including but not limited to
22 acquisition of housing through the City’s Small Sites Program under the Housing Preservation
23 Program, as set forth in Administrative Code Chapter 120A; and (3) project-based operating and/or
24 rent subsidies to owners of rent-restricted affordable housing acquired and preserved under
25 Administrative Chapter 120 or Administrative Code Chapter 120A and housing extremely low-income

1 households with household income of 30% of median income or less. In each fiscal year until the
2 fiscal year ending June 30, 2024, up to 60% of the monies appropriated to the Fund in the fiscal
3 year shall be used for purpose (1), and at least 40% of the monies appropriated to the Fund in
4 the fiscal year shall be used for purpose (2); and in each fiscal year beginning after June 30, 2024,
5 at least 80% of the monies appropriated to the Fund in the fiscal year shall be used for purpose (2),
6 and up to 20% of the monies appropriated to the Fund in the fiscal year shall be used for purpose (3).

7 (d) ~~By no later than May 1, 2021 and every two years thereafter,~~ MOHCD shall annually
8 submit to the Board of Supervisors and the Mayor a report evaluating the uses of monies in
9 the Fund together with the report required under Administrative Code Section 120A.6. In preparing
10 the report, MOHCD shall rely on data from the Housing Balance Report required under
11 Planning Code Section 103, as well as any other information MOHCD determines ~~are~~ is
12 relevant. MOHCD's report shall include, at a minimum, information regarding the number of
13 new affordable units built using monies from the Fund, the number of units preserved as
14 permanently affordable using monies from the Fund, the geographic balance of investments
15 from the Fund, any unspent monies in the Fund, an analysis of funding gaps and ongoing
16 needs for affordable housing, and potential recommendations to alter the target funding
17 allocations in order to meet these needs. The MOHCD's report may be combined with any other
18 reporting obligations.

19
20 Section 2. The Administrative Code is hereby amended by adding Chapter 120A,
21 consisting of Sections 120A.1, 120A.2, 120A.3, 120A.4, 120A.5, and 120A.6, to read as
22 follows:

23
24 **CHAPTER 120A: HOUSING PRESERVATION PROGRAM**

1 **SEC. 120A.1. DEFINITIONS.**

2 For purposes of this Chapter 120A, the following terms shall have the following
3 meanings:

4 “Affordable Housing” shall have the same meaning set forth in Administrative Code Chapter
5 120, as amended from time to time.

6 “Board” means the Board of Supervisors.

7 “Borrower” means a recipient of a Loan.

8 “City” means the City and County of San Francisco.

9 “Declaration of Restrictions” shall have the same meaning set forth in Administrative Code
10 Chapter 120, as amended from time to time.

11 “Extremely Low-Income Household” means a household earning up to 15% of Median Income
12 or up to 25% of Median Income.

13 “Financial Hardship” means a financial hardship based on (1) rent charged under a
14 Declaration of Restrictions being greater than 40% of gross household income, and assets, excluding
15 non-liquid assets and retirement accounts, that do not exceed asset amounts permitted by MOHCD
16 when determining eligibility for a unit, and/or (2) the existence of other exceptional circumstances,
17 such as excessive medical bills.

18 “Fund” means the Affordable Housing Preservation Fund administered by MOHCD under
19 Administrative Code Chapter 10.100-11.

20 “Grant” or “Grants” means a grant of funds made under the Program with a term of 10 years
21 or longer.

22 “Legacy Tenant” means a Low-Income Tenant occupying a unit on the date that a Borrower
23 acquires a Property either with the use of funding under the Program or based on a commitment from
24 MOHCD to receive permanent financing after acquisition of the Property.

1 “Loan” means a loan of funds made under the Program, including the modification,
2 refinancing, or restructuring of a loan.

3 “Low-Income Tenants” means tenants with household income not exceeding 60% of Median
4 Income.

5 “Median Income” shall have the same meaning set forth in Administrative Code Chapter 120,
6 as amended from time to time.

7 “MOHCD” means the Mayor’s Office of Housing and Community Development, or any
8 successor agency.

9 “MOHCD Director” means the Director of MOHCD, or the MOHCD Director’s designee.

10 “Preservation Funds” means monies from the Fund or any other grant of funds accepted by the
11 City for the purpose of preservation of residential buildings as Affordable Housing, including, but not
12 limited to, any grants from federal or state agencies.

13 “Program” means the Housing Preservation Program for the acquisition and preservation of
14 existing multi-family residential buildings for the purpose of preserving such residential buildings as
15 permanently affordable.

16 “Program Regulations” means policies, procedures, rules, guidelines, or manuals published by
17 MOHCD and designed to implement the Program.

18 “Property” means any real property used and restricted as Affordable Housing and used to
19 secure a Loan or Grant.

20 “Rent Board” means the San Francisco Residential Rent Stabilization and Arbitration Board
21 established under Administrative Code Section 37.4, or any successor agency.

22 “Small Sites Program” means MOHCD’s program for financing the acquisition of residential
23 buildings as permanent Affordable Housing.

24
25 **SEC. 120A.2 ESTABLISHMENT OF THE PROGRAM.**

1 (a) MOHCD shall operate a Housing Preservation Program designed to provide financing
2 in the form of long-term loans and/or grants to eligible nonprofit organizations, including directly
3 controlled subsidiaries, for the purpose of acquiring, operating, maintaining, and/or improving multi-
4 family residential buildings as permanent Affordable Housing, especially residential buildings that are
5 at risk of loss of affordability or a risk of loss of the opportunity to create permanent housing
6 affordability, due to vacancy decontrol in buildings regulated under Administrative Code Chapter 37
7 or market speculation. MOHCD shall determine the eligibility and qualifications for nonprofit
8 organizations to receive loans and/or grants under the Program.

9 (b) The Program shall be subject to all federal, state, and local laws applicable to the
10 Program, the making of loans, including, but not limited to, the requirements under Administrative
11 Code Chapter 120, and any other applicable requirements. If there is any conflict between this
12 Chapter 120A and the requirements of a federal or state grant accepted by the City, the requirements of
13 the federal or state funding source shall control.

14 (c) On the effective date of this Chapter 120A, MOHCD's Small Sites Program shall be
15 governed by this Chapter 120A. This Chapter 120A shall have prospective effect only, and shall not be
16 interpreted to impair or change the obligations of any loan agreement or other contract entered into by
17 the City under MOHCD's Small Sites Program prior to the effective date of this Chapter 120A. Any
18 amendments to a loan agreement or contract that provides additional funding to a Borrower shall
19 comply with this Chapter 120A.

20
21 **SEC. 120A.3. ELIGIBLE USES OF PRESERVATION FUNDS.**

22 MOHCD shall make Loans and/or Grants of Preservation Funds to eligible nonprofit
23 organizations, including a directly controlled subsidiary of such nonprofit organization, for the
24 following:

1 (a) Acquisition of Multi-Family Residential Buildings: financing the acquisition of
2 multifamily residential buildings consistent with the Program Regulations. MOHCD shall prioritize
3 funding for the acquisition of: (1) buildings where the owner previously served eviction notices under
4 Administrative Code Section 37.9(a)(13) that were allowed under the California Ellis Act (California
5 Government Code Section 7060 et seq.) or for a landlord's use and occupancy under Administrative
6 Code Section 37.9(a)(8); (2) buildings with 40% or more of the units occupied by Low-Income Tenants;
7 and (3) buildings in areas of San Francisco with the highest rate of evictions and/or buy-outs of
8 tenants. MOHCD may establish additional eligibility requirements to ensure suitability as Affordable
9 Housing and financial feasibility.

10 (b) Capital Improvements and Maintenance: financing capital improvements and/or
11 maintenance of Affordable Housing that is financed under this Program or previously financed under
12 the Small Sites Program.

13 (c) Rental Subsidies: grants or other payment of Preservation Funds for the purpose of
14 providing project-based rent subsidies for new and existing Affordable Housing that would allow
15 Extremely Low-Income Households to afford a unit with rent restricted at an annual amount not to
16 exceed 30% of 60% of Median Income and such households pay a maximum rent not to exceed an
17 annual amount of 30% of 15% of Median Income or 30% of 25% of Median Income, as applicable to
18 the household's income. Such Affordable Housing shall be financed in whole or in part by the City, the
19 former Redevelopment Agency of the City and County of San Francisco, or the Office of Community
20 Investment and Infrastructure to be eligible for project-based rent subsidies. Preservation Funds shall
21 not be used to provide rent subsidies directly to tenants to lease market-rate residential units or forms
22 of housing other than Affordable Housing. MOHCD may provide grants or other payment of
23 Preservation Funds for the purpose of operating subsidies for Affordable Housing providing housing to
24 tenants with household income of 30% of Median Income or less.

1 **SEC. 120A.4. REQUIREMENTS FOR THE RECEIPT OF PRESERVATION FUNDS.**

2 (a) Legacy Tenants. Prior to acquisition of any Property, MOHCD and the Borrower shall
3 determine if any units in the Property are subject to rent control under Administrative Code
4 Chapter 37. To such extent, MOHCD and the Borrower shall allow any Legacy Tenant to submit
5 sufficient evidence of a Financial Hardship based on the new rent limitations of the Declaration of
6 Restrictions. If MOHCD determines a rent increase allowed under the Declaration of Restrictions
7 would cause a Legacy Tenant to experience a Financial Hardship based on such sufficient evidence,
8 MOHCD and the Borrower shall exclude the Legacy Tenant's rental unit from the rent levels allowed
9 under the Declaration of Restrictions, so long as the Legacy Tenant remains a tenant in occupancy of
10 the rental unit, and during that time the unit shall instead remain subject to the rent increase
11 limitations that otherwise would have applied under Chapter 37. MOHCD and the Borrower shall
12 provide written notice to the Rent Board regarding any rental unit that will remain regulated under
13 Chapter 37. After a Legacy Tenant has vacated the unit, the maximum income and rent under the
14 Declaration of Restrictions shall apply to such previously excluded rental unit, and Borrower and
15 MOHCD shall provide written notice to the Rent Board that the previously excluded rental unit shall be
16 regulated under a Declaration of Restrictions.

17 (b) Priority for New Tenants. For any vacant unit, the Borrower shall prioritize new
18 tenants with a maximum household income at or below the household income of the tenant who
19 occupied such unit at the time the Borrower acquired the Property to the extent it is financially feasible
20 or there is availability of an operating or rental subsidy for the Property.

21 (c) Eviction Standards and Required Notices.

22 (1) A Borrower shall not endeavor to recover possession of a unit funded under this
23 Program except for good cause, which may include, but is not limited to, failure to pay rent, violations
24 of law, substantial damage to a rental unit, substantial nuisance or interference with the comfort, safety
25 or enjoyment of the Borrower or other tenants, use of a rental unit for any illegal purpose, or violation

1 of the affordability covenants under a Declaration of Restrictions or Program Regulations. The
2 Program Regulations shall establish further requirements for “good cause” or elaborate on the
3 meaning of “good cause,” based on this Section 120A.4(c)(1) and the principles of just cause eviction
4 rules under Administrative Code Section 37.9 and California Civil Code Section 1946.2.

5 (2) No less than 14 days prior to sending a tenant a notice to vacate a unit, the
6 Borrower shall provide such tenant with a written warning by postal delivery and electronic mail
7 providing the tenant an opportunity to cure the default unless the tenant is causing imminent risk to the
8 Property or to other tenants residing at the Property.

9 (3) If a tenant has missed any rent payments, a Borrower shall first offer a
10 repayment plan for such missed rent payment or payments prior to commencing any unlawful detainer
11 action.

12 (4) Prior to commencing any unlawful detainer action, the Borrower shall provide
13 tenants with information about MOHCD’s Right to Counsel Program and tenant counseling resources
14 available to tenants facing eviction.

15 (5) Borrowers shall, or shall cause their third party property management agent to,
16 provide written notice to MOHCD prior to commencement of eviction of any tenant occupying a unit
17 funded under the Program, provided that the Borrower shall maintain confidentiality as required under
18 California law related to an unlawful detainer action.

19
20 **SEC. 120A.5. PROGRAM MANAGEMENT AND REGULATIONS; ADMINISTRATION**
21 **OF LOANS AND GRANTS.**

22 (a) Program Management. The MOHCD Director shall be responsible for the operation
23 and management of the Loans and/or Grants provided under the Program. The MOHCD Director may
24 appoint agents and consultants to assist with the administration of Loans under the Program, provided
25 that any such appointment is consistent with the civil service provisions of the Charter.

1 **(b) Program Regulations.** *The MOHCD Director is authorized to publish from time to time*
2 *Program Regulations as appropriate to implement the Program, consistent with applicable law and*
3 *this Chapter 120A. The MOHCD Director shall publish all Program Regulations on MOHCD's*
4 *website and in such additional places as the MOHCD Director deems appropriate. The Program*
5 *Regulations shall address matters such as but not limited to Program and Fund administration, public*
6 *and competitive processes to apply for Loans and/or Grants, compliance with applicable laws and*
7 *regulations, appraisal of the Property, affordability restrictions for the longest possible term, eligible*
8 *uses of Funds, underwriting criteria, transaction processing, documentation, compliance monitoring,*
9 *and enforcement.*

10 **(c) Loans.** *Administrative Code Section 120.3 or any successor provision shall govern the*
11 *minimum requirements and terms of a loan provided by MOHCD to a Borrower under this Program.*
12 *Administrative Code Section 120.4 or any successor provision shall govern the administration of loans*
13 *provided by MOHCD to a Borrower under this Program. MOHCD, the Director of the Real Estate*
14 *Division, and the City Attorney shall have the same authority under this Program as set forth in*
15 *Administrative Code Chapter 120.*

16 **(d) Grants.** *Administrative Code Chapter 21G or any successor provision shall govern the*
17 *administration and award of grants provided by MOHCD to a Borrower under this Program.*

18
19 **SEC. 120A.6. REPORTS TO THE BOARD.**

20 *The Director shall submit an annual report to the Board, within 180 days following the end of*
21 *each fiscal year, with a summary of all Loans and Grants made under this Chapter 120A for the prior*
22 *fiscal year. The Director's report shall include (1) available funds under the Program, (2) funding*
23 *allocated in the previous fiscal year, (3) if available, demographic data of residents including income*
24 *level after acquisition, (4) the number of tenants at or below 30% of Median Income, 60% of Median*
25 *Income, 80% of Median Income, and 120% of Median Income for each Property, (5) vacancy rate at*

1 time of acquisition of a Property (and after acquisition if applicable), and (6) other information, if any,
2 regarding this Chapter that the Director chooses to include in the report. The Director's report may be
3 combined with any other reporting obligations.

4
5 Section 3. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor's veto of the ordinance.

9
10 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the "Note" that appears under
15 the official title of the ordinance.

16
17 APPROVED AS TO FORM:
18 DAVID CHIU, City Attorney

19 By: /s/ KEITH NAGAYAMA
20 KEITH NAGAYAMA
21 Deputy City Attorney
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