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PROPERTY OWNER AND OCCUPANT PREFERENCE PROGRAM

(CERTIFICATE OF PREFERENCE PROGRAM)

OF THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

As amended and restated pursuant to Agency Resolution No. 57-2008 (June 3, 2008)

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I. INTRODUCTION.

In 1967, the Redevelopment Agency of the City and County of San Francisco ("Agency") established a Certificate of Preference Program for displaced residents and businesses in the Western Addition A-2 Redevelopment Project Area. [1] The Agency was in the midst of implementing federally-funded urban renewal programs. It created a local program whereby displaced residents and businesses received "Certificates of Preference" and were thus entitled to a priority in the renting or buying of Agency-owned or approved property. The preference was in addition to other relocation benefits (i.e., fair market value for acquired property, relocation assistance, replacement housing units) that the displacees may have received; it was also subject to otherwise applicable eligibility requirements that the Agency imposed on the renting or buying of the property.

Two years later, in 1969, the California legislature established a "priority" for low and moderate income persons displaced by redevelopment projects "in renting or buying" affordable housing developed by redevelopment agencies.[2] This statutory obligation is currently codified in the Community Redevelopment Law at Section 33411.3 of the Health and Safety Code. State law does not specify how redevelopment agencies implement the "priority" for displacees.

The Certificate of Preference Program has special significance in the Western Addition A-2 and Hunters Point Redevelopment Project Areas, where federally-funded urban renewal authorized the widespread clearance and relocation of communities. [3] The federal programs were replicated across the country and caused wide-spread social, economic, cultural, political, and emotional upheaval that has been documented in the affected communities.[4] In light of the unique social and individual losses associated with urban renewal, the Agency provides enhanced preferences to those who were directly or indirectly affected by the redevelopment activities in the Western Addition A-2 and Hunters Point Redevelopment Project Areas.

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[1] See Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2, Agency Resolution No. 136-63 (Oct. 22, 1963); Property Owner and Occupant Preference Policy for Reestablishment in the Western Addition Redevelopment Project A-2, Agency Resolution No. 103-67 (July 25, 1967).

[2] Statutes 1969, chapter 955 (Senate Bill No. 146-Moscone), § 4.

[3] Although other project areas were subject to "urban renewal," they were not part of the Certificate Program. By the time the Agency adopted the original Certificate Program in 1967, massive displacement of businesses and residents had already occurred in the Western Addition A-1 and the Golden Gateway Project Areas. Moreover, the relocation of thousands of residents in the Yerba Buena Center Project Area was the subject of litigation that ultimately defined the rights of displacees in judicial orders and a settlement agreement. See Tenants and Owners in Opposition to Redevelopment ("TOOR") v. U.S. Dept. of Housing and Urban Development, 406 F. Supp. 1024 (N.D. Cal. 1970). Apparently, these other project areas in the urban renewal era were not included in the Certificate Program because of these circumstances and thus are not part of these revised program rules.

[4] See generally M. Fullilove, Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It (Ballantine Books 2004).

As noted above, the Agency has statutory obligations under the California Community Redevelopment Law to provide preferences to low- and moderate-income displacees in Agency-assisted housing and to businesses for the purposes of reentering the project area.[5] The Agency has fulfilled these obligations through a Certificate of Preference Program and through separately-adopted business re-entry policies that are part of redevelopment plan approvals.[6] Historically, the Certificate of Preference Program has applied only in the Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), Stockton-Sacramento,[7] and Bayview Industrial Triangle Redevelopment Project Areas.[8] In other redevelopment project areas, the Agency did not use the Certificate of Preference Program, but implemented the separately-adopted business re-entry policies and directly provided replacement housing to lower income displaced residents. Accordingly, the Certificate of Preference Program is only one means by which the Agency has fulfilled its statutory obligations to provide displaced persons with a priority in the renting or buying of property.

This Property Owner and Occupant Preference Program, as amended and restated, ("Amended and Restated Program") codifies and clarifies recent amendments that the Agency Commission authorized in Agency Resolution No. 57-2008 (June 3, 2008).[9] These amendments include extending the duration of certain residential certificates, expanding the housing opportunities for certain displacees who did not receive certificates at the time of displacement because they were not then eligible, e.g., minor children and adults who were not heads of the household, revising the appeals process when the Agency denies a certificate, providing an enhanced education and outreach program to identify displacees, and reaffirming existing policies that only persons displaced by Agency action are eligible for a certificate and that a displacee may establish eligibility even though his or her name does not appear on Agency records.

In addition, the Agency Commission authorized Agency staff to continue exploring the future expansion of the certificate program to certain persons who did not live in the household at the time of displacement, but who may be the grandchildren of the original displaced heads of household, i.e., children of the persons who were children themselves at the time of displacement. The Agency

[5] California Health and Safety Code, Section 33339.5 (Reentry in business in redeveloped areas); California Health and Safety Code, Section 33411.3 (Availability of low- and moderate-income units to displaced persons of low- and moderate-income).

[6] See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit 1.

[7] The Stockton-Sacramento Redevelopment Project Area expired in 2004; under the terms of the then-existing Property Owner and Occupant Preference Program, certificates of preference from that project area expired two years later in 2006.

[8] The Rincon Point-South Beach Redevelopment Project Area also has its own Certificate of Preference Program. Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980).

[8] Agency Resolution No. 57-2008 is attached as Exhibit 2.

Commission did not authorize an immediate expansion of the certificate program to include these "grandchildren;" rather it directed Agency staff to continue investigating, among other things, the feasibility of expanding eligibility in light of the supply of affordable housing and the ability of the Agency to meet existing demand. When Agency staff completes its review of the issues associated with the "grandchildren" expansion, it will make appropriate amendments to the program.

This Amended and Restated Program is divided into two separate sections: a program of preference for residential displacees and another program for business displacees. The residential program applies to all existing project areas, but has special provisions for certain project areas affected by urban renewal. The business program applies only to certain existing project areas that do not have a separately-adopted business re-entry policy, namely the Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan), and Bayview Industrial Triangle Redevelopment Project Areas. In all other project areas, separate re-entry policies remain in effect and are not affected by this Amended and Restated Program.

II. RESIDENTIAL CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain preferences in consideration for housing to persons displaced by Agency action or action on behalf of the Agency.

2. To give enhanced preferences in consideration for housing opportunities to those persons affected by urban renewal programs in the Western Addition A-2 and Hunters Point (Area A of the Bayview Hunters Point Redevelopment Plan (the "Urban Renewal Project Areas").

3. To implement, for all project areas, statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33411.3) requiring the Agency to give priority to displaced low- and moderate-income households in Agency-assisted housing and in other housing for low- and moderate-income households.

4. To supplement other rights and benefits that may be available to displaced persons, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

B. Definitions.

1. "Agency-Assisted Housing Units" means those units that the Agency must make available to displaced persons under Section 33411.3 of the Health and Safety Code, i.e., low- or moderate-income housing units developed (i) with any Agency assistance, (ii) pursuant to Section 33413 of the Health and Safety Code, or (iii) in any redevelopment project area.

2. "Certificate" or "Certificate of Preference" is Agency documentation that a person or business is eligible for a preference described in this Program.

3. "Displaced Person" means a person who was a legal occupant of a building and who permanently moved him or herself from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced person also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of

real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

4. "Residential A Certificate Holder" means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate of Preference based either: (i) on his or her status as a head of household at the time of displacement, or (ii) on his or her intent to live separate and apart from the household after displacement; and whose name appears on Agency records, e.g., the Site Occupant Record.

5. "Residential C Certificate Holder" means a Displaced Person who lived in an Urban Renewal Project Area and who is eligible to receive a Certificate based on his or residency in a household at the time of Agency displacement, but who was ineligible for a Residential A Certificate of Preference. To qualify for a Residential C Certificate, the person's name must appear on the Agency's Site Occupant Record for a dwelling unit or the person must be able to prove, to the reasonable satisfaction of the Agency, that he or she resided in the household at the time of displacement.

6. "Residential G Certificate Holder" means a Displaced Person a) who is the head of household or who demonstrates to the reasonable satisfaction of the Agency that he or she intends to live separate and apart from the household after displacement; b) who lived in the City and County of San Francisco other than an Urban Renewal Project Area at the time of displacement; and c) who has not been provided by the Agency with permanently affordable replacement housing in an Agency-Assisted Housing Unit.

7. "Residential Certificate" means Agency documentation that a person is eligible for a Residential A, C, or G Certificate.

8. "Residential Certificate of Preference Holder" or "Residential Certificate Holder" means all classes of residential certificate holders, i.e., Residential A, C, and G Certificate Holders.

9. "Site Occupant Record" means the Agency's record of the occupants of a building at the time of Agency displacement. The Agency or a designated agent of the Agency is responsible for completing the Site Occupancy Record ("SOR") for each displaced household.

10. "Urban Renewal Project Area" means the Western Addition A-2 or Hunters Point (i.e., Area A of the Bayview Hunters Point Redevelopment Project Area) Redevelopment Project Areas.

11. "Used" means a) in the case of a rental or purchase of a cooperative share, means the execution of a lease or rental agreement; or b) in the case of a purchase, the execution of a deed by the Agency or a third party pursuant to an agreement with the Agency requiring priority in sales to Certificate Holders.

C. Use of Residential Certificates.

A Residential Certificate entitles a Displaced Person, in accordance with the California Health and Safety Code Section 33411.3, to receive a priority in the renting or buying of an Agency-Assisted Housing Unit, subject to the following conditions:

1. The Displaced Person must meet the income eligibility and other requirements for the Agency-assisted housing unit.

2. Residential Certificate Holders are eligible to use a Certificate to receive a priority: 1) in the renting of, or buying of a cooperative share in, Agency-Assisted Housing Unit; and 2) in the buying of an Agency-Assisted Housing Unit. All classes of Residential Certificate Holders thus have the opportunity to exercise the Certificate twice: once for a rental or cooperative share opportunity and again for a homeownership opportunity, provided, however, that a person who is otherwise eligible for a Residential G Certificate Holder is not eligible for a Certificate if the Agency has provided the displaced household with affordable housing in an Agency-Assisted Housing Unit.

3. Residential Certificate Holders have the above-described preferences for the renting or buying of Agency-Assisted Housing Units in the following descending order of priority, provided, however, that a redevelopment plan or Agency Commission action may change this order of priority for a particular project area or project:

   a. A Displaced Person with the earliest date of displacement.

   b. A Displaced Person seeking to use a Certificate for a housing development in the Project Area from which the person was displaced.

c. A Displaced Person seeking to use a Certificate for a housing development either in a Project Area from which the person was not displaced or in any other part of the City.

4. The Certificate entitles the holder to preferential consideration only; the Residential Certificate Holder must still meet the otherwise applicable selection criteria on which the owner/agent shall make the final decision.

D. Exercising Certificate Opportunities.

1. As described in Section II.C.2 above, a Residential Certificate Holder has two opportunities to exercise a Certificate: once for rental or cooperative share opportunity and again for a homeownership opportunity. If the Residential Certificate Holder is successful in obtaining a unit through the use of the Certificate, he or she exercises (i.e., extinguishes) the right to use the Certificate for that particular type of housing, but may still use the certificate for a different tenure type.

a. In the case of a rental or cooperative share opportunity, to exercise a Residential Certificate means to secure successfully a tenancy in, or the purchase of a cooperative share in, an Agency-Assisted Housing Unit, as shown by the execution of a lease or other evidence of occupancy.

b. In the case of a homeownership opportunity, to exercise a Residential Certificate means to execute a deed and the closing of escrow for an Agency-Assisted Housing Unit.

2. A Residential G Certificate is exercised if the Agency provides the Residential Certificate Holder with affordable housing in an Agency-Assisted Housing Unit.

E. Application of Residential Certificate Program to a Particular Project.

The Agency shall require that developers and property managers of Agency-Assisted Housing Units extend preferences to Residential Certificate Holders upon initial occupancy of a housing project or upon the vacancy of previously-occupied units in the project. The terms and conditions by which the developer or property manager will implement these preferences shall be consistent with this Amended and Restated Program and shall appear in the affirmative marketing plan or similar documents for the project.

F. Duration of the Effectiveness of the Residential Certificate.

A Residential Certificate remains effective until the Residential Certificate Holder has completely exercised his or her Certificate as described in Section II. D; provided, however, that Certificates that have not been fully exercised have the following time limitations:

1. The Residential A and C Certificates shall be valid until seven years after completion of an Urban Renewal Project Area (i.e., Jan. 1, 2016), unless the Agency Commission approves five year extensions of these Certificates. The Agency shall not approve more than two five-year extensions.

2. The Residential G Certificate shall be valid until five years after the Agency displacement.

III. BUSINESS CERTIFICATE OF PREFERENCE PROGRAM.

A. Purpose.

1. To give certain re-entry preferences in consideration for business opportunities to businesses displaced by Agency action or action on behalf of the Agency.

2. To implement, for those project areas without separately-adopted business re-entry policies,[10] statutory requirements under the Community Redevelopment Law (Health & Safety Code § 33339.5) requiring the Agency to extend reasonable preferences to persons who were engaged in business in a redevelopment project area to reenter in business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan.

3. To supplement other rights and benefits that may be available to displaced businesses, such as relocation benefits under the Relocation Assistance and Property Acquisition Guidelines, 25 Cal. Code of Regulations, Sections 6000 et seq.

[10] Western Addition A-2, Hunters Point (Area A of the Bayview Hunters Point Redevelopment Project Area), and the Bayview Industrial Triangle Redevelopment Project Areas.

B. Definitions.

1. "Business Occupant" means: 1) the owner or renter of a building that was situated on real property in the Western Addition A-2, Hunters Point, or Bayview Industrial Triangle Redevelopment Project Areas and that was acquired by the Agency after the date of (i) the adoption of the redevelopment plans or (ii) the receipt of funds for acquisition of property for these project areas, whichever date occurred earlier; or 2) a tenant engaged in business in a building whose owner entered into an Owner Participation Agreement with the Agency to extensively rehabilitate the property and the tenant received the Agency's Notice of Displacement that was required under the then-applicable federal regulations. Acquisition by the Agency includes both purchase and acquisition by eminent domain/condemnation.

2. "Business Certificate of Preference Holder" means a Business Occupant who was engaged in business in a building at the time the Agency acquired the property. To be eligible for a Business Certificate of Preference, a property owner must have been the owner of record that executed the grant deed to the Agency or the owner of record in the eminent domain at the time the Agency acquired the property. If the property owner was a corporation, partnership or other legal entity, the Certificate will be listed in the corporation or the partnership's name. If there was more than one owner of record, only one certificate will be issued.

3. "Certificate" or "Certificate of Preference" is Agency documentation that a person or business is eligible for a preference described in this Program.

4. "Displaced Business" means a person who was a legal occupant of a building and who permanently moved his or her business from the property as a result of acquisition of the property (i) by the Agency, (ii) by a private entity under contract with or on behalf of the Agency, or (iii) as a result of receipt of a notice of intention to acquire by the Agency. Displaced business also includes a person who moves as a result of the rehabilitation, demolition, or other displacing activity that the Agency or any person having an agreement with or acting on behalf of the Agency undertakes of real property on which the person is in lawful occupancy. A Displaced Person may be an owner or a tenant in lawful occupancy of the property from which he/she was displaced.

C. Use of Business Certificates.

The Business Certificate Program applies only to the Western Addition A-2, Hunters Point, and Bayview Industrial Triangle Redevelopment Project Areas. Other redevelopment project areas have separate business re-entry and preference policies that implement Section 33339.5 of the California Health and Safety Code.[11]

1. Agency-Owned Property.

The Agency may offer property that it owns for purchase and development. The Agency selects developers of such parcels based on the extent to which the proposed development serves the needs of the Project Area and the City and County of San Francisco and satisfies the requirements of the request for proposals/ qualifications, if any. The Agency may extend preferences to Business Certificate Holders who were displaced from the project area in which the Agency-owned property is located. The major factors for evaluating proposals will include:

a. Economic feasibility of the proposal.

b. The financial capacity of the developer and the demonstrated ability of the development design team.

c. The ability of the developer to proceed expeditiously with development of the site.

d. Architectural quality and degree of compliance with design objectives of the offering.

e. Other factors included in the offering.

When the Agency determines that proposals from applicants with Business Certificates and from those without Business Certificates are substantially equivalent, the Agency shall give preference to the proposal associated with the Business Certificate.

2. Rehabilitated Structures.

In the event the Agency acquires structures for rehabilitation, the Agency may sell these structures to the Business Certificate Holder who has the highest qualified bid, who complies with the terms of offering, and who was displaced from the project area in which the rehabilitated structure was located; provided, however that these

[11] See List of Separately-Adopted Business Preference and Re-Entry Policies, attached as Exhibit 1.

Business Certificate Holders will not receive a preference in bidding on a residential rehabilitation offering unless there are at least two units and the property will be used to engage in business; and provided further that a Business Certificate of Preference Holder may not use priority to bid on rehabilitation offering if the intended use is for private residency.

3. Privately-Owned Commercial Space.

A Business Certificate only entitles the Business Certificate Holder who desires to rent business space from a private property owner to a preferential consideration if the space meets the requirements of the redevelopment plan and if the Agency has required the owner to provide a preference to Business Certificate Holders who were displaced from the project area in which the privately-owned commercial space is located. The owner of the business space makes the final determination on the business mix, rental rates and terms and conditions.

4. Priority of Business Certificates.

Business Certificate Holders have the above-described preferences; provided, however, that a redevelopment plan or Agency Commission action may change or eliminate the priority for a particular project area or project; and provided further that in situations where the Agency or private property owner receives applications from multiple Business Certificate Holders having equal qualifications, the Business Certificate Holder with the earliest date of displacement from the project area in which the business opportunity is located will receive priority.

D. Timing of Eligibility Determination.

When a Business Certificate is to be used for priority in preferential offerings, eligibility must be established and a certificate issued prior to the bid opening or the specified deadline for the development proposal.

E. Use of Business Certificates by Partnerships or Corporations.

1. A partnership or corporation in which a Business Certificate Holder has an ownership interest, may use the Certificate in the purchase of property provided:

   a. The Business Certificate Holder owns outright, fifty-one percent (51%) or more of the partnership or corporation. If two or more Certificate Holders have an ownership interest in the partnership or corporation, the total percentages of ownership held by all the certificate holders must be at least 51%. In the event such partnership or corporation uses the certificate, each certificate holder, regardless of percentage of ownership, shall be deemed to have exercised his or her certificate.

   b. The fifty-one percent (51%) or more ownership interest was not funded by a loan from the partnership, corporation, or any member or shareholder thereof and the Business Certificate Holder so declares in writing under penalty of perjury if required by the Agency.

   c. The Business Certificate Holder must sign a non-collusion affidavit if persons other than Business Certificate Holders own the partnership or corporation.

   d. The Business Certificate Holder shall not intend to sell his or her interest in the corporation or partnership at the time the Certificate is used and the Certificate Holder shall so declare in writing under penalty of perjury, if required by Agency.

   e. The Business Certificate Holder shall not sell his or her interest in the corporation or partnership unless the Agency has issued a certificate of completion of new improvements and/or rehabilitation and the transfer or assignment complies with Agency anti-speculation restrictions or other conditions limiting transfer.

F. Limitations on Use of Certificate.

Business Certificate Holders may only use the Certificate. The Business Certificate of Preference cannot be used by any other person than the named recipient.

G. Exceptions to Preference.

The Agency may authorize an offering or commercial space that does <u>not</u> give priority to Certificate Holders, but the authorization must clearly state

that the Agency will not require preferences to holders of Business Certificates. However, persons who have, or are eligible to have, a certificate and who are successful in responding to a special disposition offering, either individually, jointly, or as members of a partnership or corporation, will be deemed to have exercised their certificate if they hold the minimum percentage of ownership specified in the special disposition.

H. Duration of the effectiveness of the Certificate.

Business Certificates shall be valid until two years after the completion of the Project Area from which the business was displaced.

IV. APPLICATION FOR AND NON-TRANSFERABILITY OF CERTIFICATES.

Application for all Certificates of Preference must be made to the Agency. A Certificate is not transferable voluntarily, by inheritance, by operation of law, or otherwise. A Certificate applicant is not entitled to certificate priorities until a Certificate has actually been issued. When a Certificate is requested and proof of eligibility cannot be established by Agency records, the burden shall be upon the applicant to supply the Agency with the necessary documentation.

V. REVIEW AND APPEALS PROCEDURE.

A. Persons and Entities Entitled to Reconsideration ("Complainants"). A person or business who is denied a Certificate of Preference may seek reconsideration of the Agency's decision within thirty days of receipt of the Agency's written determination of denial by filing a written statement explaining the basis for the person's eligibility for a Certificate of Preference. If a person has not received a written determination from the Agency within a reasonable period of time following the filing of an application for a Certificate of Preference, that person may also file for a reconsideration under this Section.

B. Informal Settlement. The Agency shall schedule, within sixty (60) days of receipt of a request for reconsideration, an informal settlement meeting with the complainant to consider the request for reconsideration. At the meeting, the complainant shall personally present, to the Agency, any documentation or other information justifying the person's eligibility for a Certificate of Preference under these Rules. The purpose of the meeting is to discuss the matter informally and attempt to settle without an appellate hearing. The Agency will prepare a summary of such informal discussion (the "Summary Statement") no later than thirty (30) days from the date of the last meeting. The Summary Statement will specify the names of the participants, dates of meeting, the Agency's decision regarding the complainant's eligibility for a Certificate of Preference, and will specify the procedure by which an appellate hearing may be obtained if the

complainant is not satisfied. The Summary Statement shall either be delivered personally to the complainant or sent by regular mail to the complainant's address or such other address as the complainant specifies.

C. Procedures to Obtain Administrative Review. A person that has received a Summary Statement affirming the Agency's denial of a Certificate of Preference may petition for administrative review ("Petitioner"). The Petitioner must submit a written request for administrative review to the Agency's Deputy Executive Director of Housing or his or her designee within fourteen (14) days from the date of the Summary ("Petition"). The Petition must provide the specific facts on which the complainant relies to establish eligibility for a Certificate of Preference.

D. Hearing Officer. A neutral hearing officer shall conduct the administrative review. The hearing officer may not be a person who approved the decision to deny the Certificate of Preference or a subordinate of that person. As of the date of these amended rules, the Agency intends to use the Administrative Law Judges of the San Francisco Residential Rent Stabilization and Arbitration Board to review these matters.

E. Scheduling of Hearing. The Hearing Officer shall hold the hearing within forty-five (45) days of the date of the filing of the Petition. The Agency shall ensure that written notice, by mail, of the date, time and place of the hearing is given at least ten (10) days prior to the date of the hearing. This notice shall also include these procedures governing the hearing.

F. Postponements.

(a) The Hearing Officer may grant a postponement of a hearing only for good cause and in the interest of justice.

(b) "Good cause" shall include, but is not limited, to the following:

(1) the illness of a party, an attorney or other authorized representative of a party, or a material witness of a party;

(2) verified travel outside of San Francisco scheduled before the receipt of notice of the hearing; or,

(3) any other reason which makes it impractical to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans which cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause."

(c) Parties may agree to a postponement at any time. Where the parties have agreed to a postponement, the Hearing Officer shall be notified in writing at the earliest date possible.

(d) Requests for postponement of a hearing must be made in writing at the earliest date possible, with supporting documentation attached. The person requesting a postponement should notify the other parties of the request and provide them with any supporting documentation.

G. Absence of Parties.

If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Hearing Officer may, as appropriate: continue the case, decide the case on the record in accordance with these rules; dismiss the case with prejudice; or proceed to a hearing on the merits.

H. Conduct of Hearing.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If a party does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. In the absence of a timely and proper objection, relevant hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which timely and proper objection is made is admissible for all purposes, including as the sole support for a finding, if (a) it would otherwise be admissible under the rules of evidence applicable in a civil action or (b) the Hearing Officer determines, in his or her discretion, that, based on all the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

I. Burden of Proof. In any proceeding before the Hearing Officer, the Petitioner shall have the burden of proving that he or she meets the eligibility requirements for a Certificate of Preference under these Rules.

J. Stipulations. The parties, by stipulation in writing filed with the Hearing Officer, may agree upon the facts or any portion thereof involved in the hearing. The parties may also stipulate as to the testimony that would be given by a witness if the witness were present. The Hearing Officer may require additional evidence on any matter covered by stipulation.

K. Record of Proceedings. All proceedings before the Hearing Officer shall be recorded by tape or other mechanical means.

L. Personal Appearances and Representation by Agent. In any proceeding before the Hearing Officer, each party may appear personally or by an attorney, or by a representative designated in writing by the party, other than an attorney.

M. Decisions of the Hearing Officer. The Hearing Officer shall make written findings of fact and a written decision as to whether the Petitioner is eligible for a Certificate of Preference. A copy of the decision will be sent to the Petitioner and the Agency.

(a) The decision of the Hearing Officer to issue a Certificate of Preference shall be binding on the Agency, and the Agency shall promptly issue a Certificate of Preference consistent with the Hearing Officer's decision.

(b) A decision by the Hearing Officer that the Petitioner is not entitled to a Certificate of Preference shall not affect any rights the Petitioner may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

VI. OUTREACH.

The Agency shall provide outreach to persons who are potentially eligible Residential Certificate Holders. The Agency shall also provide education to Residential Certificate Holders on how to exercise a Certificate and information on location of the opportunities to exercise a Certificate for rental or ownership housing.

VII. REPORTING.

Agency staff shall annually report to the Agency Commission on the status of the Residential Certificate Program including but not limited to the number of outstanding certificates, the number of Residential Certificate Holders for which the Agency currently has addresses, the number of new certificates issued, and the number of Residential Certificate Holders exercised in the past 12 months to purchase or rent new housing.

VIII. PRIOR CERTIFICATES; EFFECTIVE DATE OF PROGRAM.

A. All non-exercised, validly issued Certificates issued prior to the effective date of this program shall be honored. However, this Amended and Restated Program shall govern the manner of exercising and prioritizing.

B. The effective date of this Amended and Restated Program is October 1, 2008.

IX. AMENDMENTS TO CERTIFICATE PROGRAM.

The Agency Commission or the Executive Director may amend, from time to time, this Amended and Restated Certificate Program.

LIST OF SEPARATELY-ADOPTED BUSINESS PREFERENCE AND RE-ENTRY POLICIES

Business Occupant Re-Entry Policy, Bayview Hunters Point Redevelopment Project, Agency Resolution No. 34-2006 (March 7, 2006);

Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business Occupants in the Transbay Redevelopment Project, Agency Resolution No. 17-2005 (Jan. 25, 2005);

Amended Rules Governing Participation by Property Owners and the Extension of Reasonable Preferences to Business occupants for the South of Market Redevelopment Project, Agency Resolution No. 150-2005 (Oct. 4, 2005);

Business Reentry Preference Program for the Mission Bay North Redevelopment Project Area, Agency Resolution No. 187-98 (Sept. 17, 1998);

Business Reentry Preference Program for the Mission Bay South Redevelopment Project Area, Agency Resolution No. 192-98 (Sept. 17, 1998);

Business Occupant Re-Entry Preference Program, Hunters Point Shipyard Redevelopment Project, Agency Resolution No. 93-97 (June 17, 1997);

Property owner and occupant re-entry preference program for the Rincon Point-South Beach Redevelopment Project Area, Agency Resolution No. 330-1980 (Oct. 28, 1980);

Rules for Business Preference and Reentry for the Butchertown Redevelopment Project ("India Basin"), Agency Resolution No. 238-1968 (Dec. 10, 1968)

Special Assistance Available to Businesses and Industries and Business Preference Rules for the Yerba Buena Center Redevelopment Project Area D-1, Agency Resolution No. 108-1965 (Aug. 17, 1965)

EXHIBIT 1

RESOLUTION NO. 57-2008

Adopted as Amended at the Commission Meeting of June 3, 2008

AUTHORIZING THE EXECUTIVE DIRECTOR 1) TO AMEND THE CERTIFICATE OF PREFERENCE PROGRAM BY EXTENDING THE PROGRAM'S TERMINATION DATE, EXPANDING BENEFITS TO EXISTING CERTIFICATE HOLDERS, AND AMENDING APPEAL PROCEDURES GOVERNING DENIAL OF CERTIFICATES, AND 2) TO DETERMINE THE TIMING AND APPROPRIATENESS OF A FUTURE EXPANSION OF ELIGIBILITY TO INCLUDE CERTAIN RELATIVES OF THE ORIGINAL DISPLACEES; ALL REDEVELOPMENT PROJECT AREAS AND CITYWIDE HOUSING

BASIS FOR RESOLUTION

1. On October 22, 1963, the Redevelopment Agency of the City and County of San Francisco ("Agency") initially authorized, by Resolution No. 136-63, a business preference program for the Western Addition Redevelopment Project Area A-2. Its primary purpose was to enable business owners "to re-enter [the displaced] business in the redeveloped area." Rules Governing Business Preferences for the Western Addition Redevelopment Project Area A-2 (Oct. 22, 1963) ("1963 Rules") at page 1. This program implemented the then newly-adopted California Community Redevelopment Law requirement that redevelopment agencies extend reasonable preferences to businesses "to reenter in business within the redeveloped area." Cal. Health & Safety Code § 33339.5. In conformity with this statute, the Agency has approved, on numerous occasions since 1963, business reentry programs for particular project areas prior to the approval of new redevelopment plans.

2. On July 25, 1967, the Agency extended, by Resolution No. 103-67, the preference program to residential owners and occupants who were "obliged to move as a direct result of the operation of the [redevelopment] program" in the Western Addition Redevelopment Project Area A-2. The program established that "every A-2 owner or occupant will be afforded preferential consideration in the purchase of project land for the purpose of private development, or the rental of improved space within the new and rehabilitated structures on such land." The program authorized the issuance of certificates, which were "non-assignable and non-transferable" to "a property owner or occupant of Area A-2 prior to the date of the adoption of Agency Resolution No. 103-67." Certificates were valid for one year from date of issuance and could only be used once for "reestablishment." The minutes of the Agency Commission meeting on July 25, 1967 describe the program as "the first of its kind on the West Coast."

3. In 1969, the California Legislature amended the Community Redevelopment Law to require redevelopment agencies to provide low- and moderate-income households displaced by a redevelopment project with a priority in the renting and buying of affordable housing units that the agency develops. The Legislature amended this section in 1974, 1975, and 2002.

4. The statutory authorization for the certificate of preference program in housing is codified at Section 33411.3 of the Health and Safety Code. It requires the Agency to give "priority in renting or buying" to displaced, low- and moderate-income households "whenever all or any portion of a redevelopment project is developed with low- or moderate-income housing units and whenever any low- or moderate-income housing units are developed with any agency assistance." To qualify, the lower income household must be "displaced by the redevelopment project."

5. On April 18, 1978, the Agency Commission rescinded, by Resolution No. 76-78, prior versions of the Certificate Program and adopted a new policy that clarified the Agency's rules and administration of the Certificate of Preference Program ("Certificate Program"). Memorandum, W. Hamilton to Agency Commissioners, No. 109-14078-002 (April 11, 1978). The 1978 policy established the framework for the current administration of the Certificate Program.

6. The 1978 policy made several changes including expanding the Certificate Program to include other project areas besides the A-2 Area; establishing that "only one certificate may be issued to a person or entity whether or not preference can be established on more than one basis;" and providing that a Certificate Holder could only use the certificate once to rent or to purchase units in assisted development unless a Certificate Holder who had used the certificate to rent subsequently used it to "upgrade" by purchasing an assisted unit.

7. The 1978 policy provided that a single certificate was available to the family unless the applicant determined "independent eligibility" by demonstrating that they were part of a separate family unit who lived in the same household at the time of displacement or that they intended to live separately apart from the family upon displacement. An individual or family received either: 1) a Residential Certificate A if they occupied a "Project Area building at the time it was acquired by the Agency," or 2) a Residential Certificate B if they occupied a Project Area building after a certain date but before the Agency acquired the building.

8. The 1978 policy stated that "When a Certificate is requested and proof of eligibility cannot be established by Agency records, the burden shall be upon the applicant to supply the Agency with necessary documentation." Section VII of Property Owner and Occupant Preference Program attached to Memorandum, W. Hamilton to Agency Commissioners (April 11, 1978).

9. In 1991, the Agency confirmed the applicability of the Certificate Program to all new housing developed within any redevelopment project areas and thereafter all developments assisted by tax increment funds were required to provide preferential consideration to the Certificate Holders.

10. On December 8, 1998, the Agency Commission authorized, by Resolution No. 253-98, the expansion of eligibility standards for the Certificate Program to include persons "who were minor children or adults in the household at the time of displacement and who appear in the Agency's Site Occupancy Records." Eligibility was limited to those persons whose names appeared on Agency records to ensure that a "preference" continued to provide meaningful opportunities only to persons whom the Agency could verify had been displaced. Agency staff estimated that the expanded eligibility could "translate to approximately 23,200 potential certificates." Memorandum, J. Morales to Agency Commissioners at page 2 (Dec. 1, 1998).

11. In new rules issued on June 1, 1999, the Agency established the Residential C Certificate Holder to describe the new class of eligible persons, but provided that this new certificate of preference was derivative of the original Residential A Certificate. In other words, the eligibility of the Residential C Certificate Holder was limited by the actions of the Residential A Certificate Holder in exercising the original certificate. If the Residential A Certificate Holder had used the certificate to rent, the Residential C Certificate Holder from that same displaced household could only use a certificate to obtain a preference in the purchase of an assisted unit. As with other Certificate Holders, the Residential C class had to meet income eligibility requirements for the low- and moderate-income housing that the Agency had assisted.

12. Since the beginning of 2007, the Agency Commission has received numerous memoranda from Agency staff and held several public hearings on the administration of the Certificate Program to consider how the Agency may improve it. See e.g., Memorandum, M. Rosen to Agency Commissioners, No. 118-41005-003 (Meeting of March 20, 2007); Memorandum, M. Rosen to Agency Commissioners, No. 118-35007-002 (May 31, 2007); and Memorandum, F. Blackwell to Agency Commissioners, No. 118-09908-002 (Jan. 29, 2008).

13. Agency wishes to modify immediately the Certificate Program by amending the rules to include the following:

    a. Extending the time limit for the Residential Certificates (which under current rules will expire two years after the expiration of a particular project area) by an additional 15 years subject to Agency Commission review and approval of the Certificate Program at or before the fifth year and the tenth year of the extended term, and also requiring that Agency staff report annually to the Agency Commission on the effectiveness of the Certificate Program;

b. Providing an education and outreach program that fully informs the public about the eligibility and benefits under the Certificate Program;

c. Reaffirming eligibility for Residential C Certificates to include persons who were not on the Site Occupant Record but who were members of the displaced households so long as they are able to prove that they resided in the household at the time of displacement;

d. Expanding housing opportunities for the existing group of Residential C Certificate Holders by allowing them to use the certificate for either assisted rental or assisted ownership units, regardless of whether the Residential A Certificate, upon which the Residential C Certificate was based, was exercised;

e. Clarifying and enhancing the appeals process to resolve disputes regarding certificate eligibility and extending the time for Agency written responses to informal settlement meetings; and

f. Reaffirming existing Agency policy that eligibility for certificates requires that Agency action or action on behalf of the Agency is the cause of the original displacement.

14. The Agency wishes to take additional steps to establish the basis for expanding eligibility for certificates of preference to those persons who did not live in the household at the time of displacement, but who are the children of the displaced household members that are eligible for the Residential C Certificate Holders. In most instances, the Residential C Certificate Holders are the children of the head of the displaced household, who had originally qualified for Residential A Certificates. This proposed expansion thus may provide housing opportunities for many of the grandchildren of the original displaced head of households and also retains a nexus to the original displacement and the harm associated with that displacement. The additional steps that the Agency will take prior to expanding eligibility to the children of the Residential C Certificate Holders include:

a. Establishing the factual basis for the Agency to make findings that the expansion to the class of persons who did not reside in the displaced household, but whose parents were displaced nonetheless suffered economic, social and other harm because of the parents' displacement;

b. Conducting an extensive investigation and outreach effort to identify: 1) the remaining numbers of the Residential C Certificate Holders and their current addresses, and 2) their children, if any, who would be eligible under the expanded Certificate Program; and

c. Assessing whether the supply of newly-created affordable housing, and of existing affordable housing that becomes vacant upon turnover, is

sufficient to meet the potential demands of existing Residential C Certificate Holders and those of an expanded class that includes the children of the Residential C Certificate Holders.

15. Authorization of the amendments to the Certificate Program does not constitute a project, pursuant to the California Environmental Quality Act Guidelines Section 15378(b)(5).

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized: 1) to amend immediately the Certificate of Preference Program by extending the program's termination date, expanding benefits to existing certificate holders, amending appeal procedures governing denial of certificates, and making other changes described above, and 2) to determine the timing and appropriateness of a future expansion of eligibility to include certain relatives of the original displacees.

APPROVED AS TO FORM:

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James B. Morales
Agency General Counsel