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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DANIEL LEVIN; MARIA LEVIN; PARK LANE ASSOCIATES, L.P.; THE SAN FRANCISCO APARTMENT ASSOCIATION; and THE COALITION FOR BETTER HOUSING, Plaintiffs, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant, and DAVID GREENE and ALL OTHERS SIMILARLY SITUATED, Intervenors.	No. 3:14-CV-03352-CRB **PLAINTIFFS' RESPONSE TO DEFENDANT'S TRIAL BRIEF** Trial Date: October 6, 2014 Judge: Hon. Charles R. Breyer Courtroom 6, 17th Floor

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INTRODUCTION

Defendant City and County of San Francisco (City) acknowledges that San Francisco Administrative Code Section 39.9A(e)(3)(E) (2014 Ordinance) requires rental owners to pay up to hundreds of thousands of dollars to their tenants, so the tenant can (potentially) acquire housing in the city for two years, before the owner may exit the rental market (Payment). It admits that the Ordinance requires Daniel and Maria Levin (Levins) to pay more than $117,000 to a single tenant before the Levins can re-possess the bottom portion of their two story home for their own uses. The City nevertheless desperately defends the 2014 Ordinance from Plaintiffs' facial constitutional challenges. But its efforts are defeated by the lack of a real connection between the Payment mandate and (1) the impact of withdrawing property from the market or (2) the alleged purpose of the Payment. The disconnect is apparent from these uncontested, stipulated and admitted truths:

* There is no requirement in the 2014 Ordinance that the Payment be used for housing. All or some of it can be used for any other purpose. The law provides no incentive or mechanism to ensure tenants use the Payment for housing, and the City will never know if they do. "Might" does not create a sufficient connection between the Payment exaction and the underlying purpose of the law.
* The 2014 Ordinance does not require the Payment to be put to use in San Francisco. It provides no constraints on *where* tenants use the Payment. Even if tenants desire to put the money toward housing, they can do that by purchasing a houseboat in Los Angeles, if they wish.
* There is no income requirement for tenants to receive the Payment. Tenants receive the Payment whether they need affordable housing assistance or not.
* There is no evidence or logic to conclude that withdrawing property owners cause a tenant's need to stay in San Francisco. That need is caused by forces outside the property owner's control, including personal choices. Nor is there reason to believe landlords cause the insufficient supply of affordable housing in San Francisco.

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* There is no evidence that withdrawing rental property causes a tenant's need to purchase *two years* of open market housing; there is no evidence at all as to why the law demands two years worth of rent subsidies from property owners, rather than one month or ten years.

* Just before it enacted the 2014 Ordinance, the City enacted a law creating an "Ellis Act Housing Preference" program[1] for tenants displaced by the Ellis Act. *See* Exhibit 1. This confirms that the City can and, in fact, *has* created an affordable housing program that is properly tailored to address Ellis Act rental withdrawals, and that the Payment mandate is (in contrast) simply an un-tailored transfer of wealth from property owners to tenants.

* The Payment mandate applies to both rent controlled and non-rent controlled units. Thus, it allows a tenant already in an open market-rate unit to receive a Payment (if the owner uses the Ellis Act) enabling the tenant to move to a more expensive open market unit for two years (or to use the money for other purposes).

Given these realities, the 2014 Ordinance simply cannot survive rational basis scrutiny, much less the heightened scrutiny which applies under the "nexus" and "rough proportionality" tests of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Nor can the Ordinance survive California mitigation law, which is incorporated in the Ellis Act—California Government Code Section 7060.1(c). *See* Plaintiffs' Trial Brief at 22.

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[1] Plaintiffs only recently learned of the program's existence. The law creating the program is available on-line at: http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances13/o0277-13.pdf. It is attached to this brief as Exhibit 1. A City manual describing the operation of the Ellis Act affordable housing program is available here: http://sf-moh.org/modules/showdocument.aspx?documentid=7921. It is attached to this brief as Exhibit 2. Plaintiffs attempted to have such City documents added in the trial exhibits, but were unable to secure consent from the City. Therefore, Plaintiffs request that the Court judicially notice both the ordinance and the manual attached to this brief pursuant to Federal Rules of Evidence Rule 201(b)(2).

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Sensing the danger, the City throws up numerous procedural barriers to Plaintiff's claims. But the law does not support its defenses. Facial *Nollan* "nexus" claims are routine. And facial *Dolan* "rough proportionality" claims are entirely proper when, as here, they target the text of a mitigation law, rather than the exact amount of mitigation people must pay under the law. Similarly, there is no bar to *Nollan/Dolan* claims against legislatively imposed exactions. The City's other arguments are equally unavailing.

It is clear the City wants to help tenants afford housing in San Francisco, and it has valid options for doing so. *See* Exhibit 2. But the 2014 Ordinance is not one of them. No constitutional test and no rule of reason supports extracting two years of rent subsidies from withdrawing rental owners when there is no basis for believing the owners' acts cause the need for the Payment, or that recipient tenants need, or will use, the Payment for a housing purpose in San Francisco. Without such assurances, the 2014 Ordinance simply takes property from one class of citizens to benefit another. Since the law fails to include a mechanism for compensating aggrieved owners, and the City has not offered compensation, Stipulated Facts at 16 ¶ 78, the Ordinance must be enjoined.

ARGUMENT

I

PLAINTIFFS' FACIAL *NOLLAN/DOLAN* CLAIMS ARE VIABLE AND PROPERLY TARGET LEGISLATION, AND THERE IS NO REASONABLE RELATIONSHIP BETWEEN THE PAYMENT AND WITHDRAWAL OF RENTAL PROPERTY

As the Court knows, *Nollan* and *Dolan* require the government to show that there is a "nexus" and "rough proportionality" between an exaction of money and the social impact of the regulated property. On the merits of this claim, the City fails to provide any argument, much less evidence, justifying the 2014 Ordinance. Consequently, the City effectively rests its case on purported procedural barriers to Plaintiffs' *Nollan* and *Dolan* arguments. In particular, the City

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argues (1) facial *Nollan/Dolan* claims do not exist, (2) *Nollan* and *Dolan* do not apply to legislatively imposed exactions,[2] and (3) the Payment demand is not subject to *Nollan* and *Dolan*, because it is not a taking. These arguments fail because they rest on inapposite precedent and misinterpret the *Nollan* and *Dolan* standards.

A. The City Fails to Show a Reasonable Relationship Between the Social Impact of Withdrawing Rental Property and the Payment Mandate

It is the City's burden to prove that its Payment mandate is reasonably related in nature and extent to the withdrawal of rental property. *Dolan*, 512 U.S. at 391. It cannot shoulder that burden. The direct impact of withdrawal is displacement of a tenant. The tenant needs to move. As a large, unrestricted cash giveaway with no relation to moving costs and the like, the Payment is entirely unrelated to relocation.

Even if we assumed the 2014 Ordinance is meant to redress a tenant's loss of affordable housing in San Francisco, it still fails. How can the Payment mandate be reasonably related to this purpose when (under the terms of the 2014 Ordinance) it need not be spent on housing, and need not be spent in San Francisco, but is instead simply a "no-strings" transfer of money from landlord to tenant? The City's only answer is that some tenants *might* spend money on housing, and *might* spend it in the city, and the Court has to defer to this possibility. But the *Nollan* test is not a toothless rational basis test. *Nollan*, 483 U.S. at 841-42; *Dolan*, 512 U.S. at 391; *McNulty v. Town of Indialantic*, 727 F. Supp. 604, 606 (M.D. Fla. 1989) (*Nollan* "used strict scrutiny to examine the fit between the challenged regulation and the claimed state interest."). The "nexus" test requires a real, not a *speculative*, connection between an exaction and social problem arising from property. *Dolan*, 512 U.S. at 395; *Surfside Colony, Ltd. v. California Coastal Comm'n*, 226 Cal. App. 3d 1260, 1270 (1991) (requiring "substantial" and specific evidence of a close connection between property subject to condition and the condition). Unfortunately for the City, the Payment mandate

[2] It is interesting that the City has no objection to Plaintiffs' facial substantive due process claim. If a facial due process claim targeting legislation and based on a rational basis test is unobjectionable, then how can the City object to a facial *Nollan/Dolan* claim that targets legislation based on a "reasonable relationship" test that is also a form of means-ends analysis (albeit a higher level of scrutiny)?

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only exhibits a speculative nexus. *Philip Morris, Inc. v. Reilly*, 312 F.3d 24, 44 (1st Cir. 2002) (finding a taking in part because "[t]he tremendous individual loss is simply not justified by such a speculative public gain").

It gets even worse for the City when *Dolan*'s "rough proportionality" test comes into play. The City cannot and does not explain how a requirement that a withdrawing rental owner subsidize two years of a former tenant's rents is proportional to the owner's decision to go out of the rental business. Putting aside the nexus problem for the moment, perhaps the City could have proportionally required rental owners to pay a needy tenant's direct relocation costs, security deposit and first month's rent—thus enabling a tenant to get started in a new unit. But the 2014 Ordinance demands much more; it requires rental owners give their past tenants enough money for two years, regardless of need. This is disproportionate. *Dolan*, 512 U.S. at 393.

B. Plaintiffs' Facial *Nollan/Dolan* Claims Are Proper

Faced with 2014 Ordinance's infirmities under *Nollan* and *Dolan*, the City resorts to trying to block those cases entirely, arguing that Plaintiffs facial *Nollan/Dolan* claims are not cognizable. In so doing, the City relies on Judge Brunetti's opinion in the *Garneau v. City of Seattle*, 147 F.3d 802 (9th Cir. 1998).[3] City's Brief at 12. An opinion of one judge in a fragmented case like *Garneau* is not binding. *Lair v. Bullock*, 697 F.3d 1200, 1205 (9th Cir. 2012). In any event, the City's argument rests on a flawed and superficial reading of Judge Brunetti's views in *Garneau*.

As Plaintiffs' Trial Brief noted, Judge Brunetti's *Garneau* opinion never repudiates a facial *Nollan* claim. The City provides no authority holding that the *Nollan* "nexus" test cannot be facially invoked against a property law. This is because *Nollan* facial claims have been frequently litigated, including in the Ninth Circuit case of *Commercial Builders of Northern California v. City of Sacramento*, 941 F.2d 872, 875 (9th Cir. 1991); *see also*, *ABN 51st Street Partners v. City of New York*, 724 F. Supp. 1142, 1153 (S.D.N.Y. 1989) (facially applying *Nollan* to a claim against

[3] The *Garneau* decision consists of three opinions. Judge Brunetti's leading opinion discusses legislative exactions in rejecting the claim in that case. Judge Williams concurred in the judgment, but wrote a separate opinion explaining his reasoning, one that did not mention legislative exactions. Judge O'Scannlain dissented from the judgment and would have applied *Nollan/Dolan* to the legislation at issue.

an ordinance that required the owner to reserve units for low income renters when renovating property); *Crow-New Jersey 32 Ltd. Partnership v. Township of Clinton*, 718 F. Supp. 378, 384 (D.N.J. 1989) (applying *Nollan*'s "nexus" test to terms of a land use ordinance); *McNulty*, 727 F. Supp. at 606 (applying *Nollan* to a set back Ordinance). Thus, at a bare minimum, Plaintiffs' facial *Nollan* claim is live and the law fails under the claim.

Garneau is also not a barrier to Plaintiffs' *Dolan* "rough proportionality" claim. In *Garneau* Judge Brunetti rejected a *Dolan* claim that hinged on the exact amount of money a relocation payment law required landlords to make. 147 F.3d at 811. This case is different. Plaintiffs' "rough proportionality" arguments are not based on the *dollar amount* of the payments rental owners must make when the 2014 Ordinance is applied to them; they are based on the *nature* of the Payment mandate *as stated in the text of* the law. They argue an unrestricted, two-year differential payment is inherently disproportionate.

The idea that *Nollan/Dolan* cannot be raised in a facial challenge is not only unsupported by precedent, it is inconsistent with the Supreme Court's recent clarification that its exactions precedent arises, at least in part, from in the Unconstitutional Conditions Doctrine. *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013) ("*Nollan* and *Dolan* 'involve a special application' of this [unconstitutional conditions] doctrine . . . ." (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 547 (2005))); *Lingle*, 544 U.S. at 547 ("these cases involve a special application of the 'doctrine of "unconstitutional conditions"' " (quoting *Dolan*, 512 U.S. at 385)). After all, under the Unconstitutional Conditions Doctrine, federal courts regularly adjudicate facial claims asserting that the text of a law creates a condition that interferes with a constitutional right. *See Legal Services Corp. v. Velazquez*, 531 U.S. 533, 541-49 (2001); *Rust v. Sullivan*, 500 U.S. 173, 177, 196-99 (1991); *F.C.C. v. League of Women Voters of California*, 468 U.S. 364, 400 (1984); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 252-53, 269 (1974); *Legal Aid Services of Oregon v. Legal Services Corp.*, 608 F.3d 1084, 1093-94 (9th Cir. 2010). Thus, Unconstitutional Conditions jurisprudence—which now undergirds *Nollan* and *Dolan*—confirms

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that facial claims are proper when they target the text of a challenged law and a court can apply the relevant test to the text.

C. The Abrogated *McClung* Decision Does Not Bar Plaintiffs' *Nollan/Dolan* Claims Against the 2014 Ordinance and Other Ninth Circuit Precedent Confirms the Viability of Such Claims

In a second attempt to evade Plaintiffs' merits arguments, the City argues that *Nollan* and *Dolan* do not apply to exactions arising from a generally applicable legislative program. City's Brief at 14. This argument fails as well, because it too misreads the precedent. The City relies exclusively on *McClung v. City of Sumner*, 548 F.3d 1219, 1222 (9th Cir. 2008), a decision recently abrogated by the Supreme Court in *Koontz*. *McClung*'s precedential value is in doubt,[4] but even it has some value, it does not bar Plaintiffs' *Nollan/Dolan* challenge.

First, the City has over-stated *McClung*'s holding. In *McClung*, the Ninth Circuit emphasized the limited nature of its conclusions, stating:

> the ordinance before us concerns a permit condition designed to mitigate the adverse effects of the new development. New construction increases the burden on the City's sewer system and increases the loss that might result from flooding. After experiencing considerable flooding, the City enacted Ordinance 1603 to require most new developments to include specified storm pipes. We are not confronted, therefore, *with a legislative development condition designed to advance a wholly unrelated interest*. We do not address whether *Penn Central* or *Nollan/Dolan* would apply to such legislation.

548 F.3d at 1225 n.3 (emphasis added). Here, the Court *is* dealing with a condition—the Payment—that is entirely unrelated to a public interest in keeping people in affordable housing in San Francisco because nothing in the 2014 Ordinance constrains tenants to use the Payment for housing needs or to spend it within San Francisco.

Second, Ninth Circuit precedent issued both before and after *McClung* allows *Nollan/Dolan* claims against legislative exactions, thus confirming that *McClung* does not preclude such claims. As the City reluctantly notes, the recent *Horne v. U.S. Department of Agriculture* decision allowed

[4] The City appears to argue that *McClung* is only abrogated with respect to its holding that *Nollan* and *Dolan* do not apply to monetary exactions and therefore, that it remains viable on the legislative exaction issue. But *McClung*'s discussion of legislative exactions is so entwined with its (now admittedly abrogated) repudiation of monetary exactions that the two cannot be parceled out.

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a *Nollan/Dolan* claim against a generally applicable federal regulatory scheme, 750 F.3d 1128, 1144 (9th Cir. 2014). But what it does not say is that the Ninth Circuit also applied *Nollan* to a legislative exaction long *before McClung*. *See Commercial Builders*, 941 F.2d at 875.[5] If the earliest Ninth Circuit decision controls, this Court must follow *Commercial Builders*, not *McClung* (still assuming *McClung* has precedential value). But the Court need not go down this road because, as discussed above, *McClung* simply did not create a per se bar to claims against legislated exactions. Other federal courts have also applied the *Nollan* doctrine to legislation. *ABN 51st Street Partners*, 724 F. Supp. at 1153; *Crow-New Jersey 32 Ltd. Partnership*, 718 F. Supp. at 384; *McNulty*, 727 F. Supp. at 606.

Finally, to the extent the law is indeterminate on the issue, this Court should defer to the purposes of *Nollan* and *Dolan*. Those decisions are designed to alleviate the danger that the government will use its property conditioning powers to exact property which it could not directly appropriate (without compensation). *Nollan*, 483 U.S. at 831; *Koontz*, 133 S. Ct. at 2594-95. While it is theoretically possible that the legislative process may mitigate this danger in some instances, it will not always be so. When, as here, a majority uses legislation to require a minority of citizens to cede property for a purported public purpose, as a condition of their property ownership, and there is no clear link in the law between the property use and the condition, the danger remains that the government is improperly using the exaction power to take private property. *See generally*, Inna Reznik, *The Distinction Between Legislative and Adjudicative Decisions in* Dolan v. City of Tigard, 75 N.Y.U. L. Rev. 242, 267-74 (2000). In such cases, the legislative/adjudicative distinction makes no sense, and the *Nollan/Dolan* standards should be applied.

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[5] *Commercial Builders*' conclusions about the scope of *Nollan*, and the takings test applicable to money takings, have been superceded by the Supreme Court's decisions in *Dolan* and *Brown*. But the preliminary decision to apply the *Nollan* test to a legislative exaction remains good law.

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D. An Outright Demand That Plaintiffs Cede Money to Tenants To Sustain Ownership Would Be a Taking

The City's last ditch argument is that *Nollan* and *Dolan* do not apply to the Payment because it would not be a taking if the City simply demanded that property owners cede money to their tenants. *See Nollan*, 831 U.S. at 833-34 (indicating that *Nollan*'s test applies to property exactions that would be a taking if the government appropriated it outside the permit process). This argument must fall under *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 235, 240 (2003), *Koontz*, and *Horne*. The latter two decisions applied *Nollan* and *Dolan* to demands for personal property. In *Koontz*, the Court specifically held that *Nollan* and *Dolan* applied to a monetary exaction because an outright demand for money linked to the ownership of property is a per se taking. 133 S. Ct. at 2600.

A fair application of *Nollan* and *Dolan* dooms the 2014 Ordinance,[6] and when a law facially violates the *Nollan/Dolan* tests, there is nothing left for the Court to do except declare it unconstitutional and strike it down. *See Nollan*, 483 U.S. at 384; *Youpee v. Babbitt*, 67 F.3d 194, 198, 200 (9th Cir. 1995) (affirming a district court's declaration and injunction against a statute causing a facial taking); *see also*, *Eastern Enterprises v. Apfel*, 524 U.S. 498, 538 (1998) ("the Coal Act's allocation of liability to Eastern violates the Takings Clause, and [] should be enjoined").

II

THE 2014 ORDINANCE IS SUBJECT TO STRAIGHTFORWARD TAKINGS ANALYSIS BECAUSE IT CAN ONLY CAUSE A TAKING, AND THE PROPER TEST IS A PER SE STANDARD

The City argues that Plaintiffs cannot raise a per se takings claim against the 2014 Ordinance because (in its view) a property law posing a choice of impositions must be analyzed under *Nollan* and progeny. Alternatively, it argues the 2014 Ordinance does not cause a per se taking in appropriating money or real property. It is wrong on all counts.

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[6] Even if the heightened scrutiny of *Nollan* and *Dolan* does not apply to the 2014 Ordinance for some reason, that Ordinance would be subject to—and fail—pre-*Nollan* "reasonable relationship" exactions standards. *See Parks v. Watson*, 716 F.2d 646, 651-53 (9th Cir. 1983).

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A. Traditional Takings Analysis Applies When a Law Offers Two Property Use Choices—Denial or an Exaction—That Both Cause a Per Se Taking

The City misunderstands *Nollan* in arguing only *Nollan* and *Dolan* apply when a law gives a property owner a choice. *Nollan* hinged the applicability of the "nexus" test on two assumptions: (1) that the government could deny the proposed property use outright *without* causing a taking, 483 U.S. at 836-37, and (2) that an exaction condition imposed as an alternative to denial would be a taking if the government simply confiscated the property targeted by the exaction rather than imposing it through the permit process. *Id.* at 833-34. The idea is that if the government can *legitimately* deny a property use due to some impact, it must be able to offer a conditional alterative to denial—as long as the there is a sufficient relationship ("nexus") between the exaction and the impact of the property use.

The problem here is that the first assumption behind *Nollan*—that denial of the proposed property use would *not* be a taking—is not applicable. The property use at issue here is the withdrawal of property from the rental market and cessation of its occupation by a tenant. Unlike in *Nollan*, the City *would* cause a per se taking if it denied outright the ability of property owners to take possession of their property. *See* Plaintiff's Trial Brief at 15-16. Consequently, the predicate of a "permissible denial" does not exist, and without it, *Nollan* does not apply. *Nollan*, 483 U.S. at 836-37.

When the government would cause a taking by denying a property use, it cannot require the owner to submit to a condition that itself causes as taking, as the price for avoiding the first taking. *See Seawall Associates v. City of New York*, 542 N.E.2d 1059, 1069-70 (N.Y. 1989) ("[I]f the initial act amounts to an unlawful taking, then permitting the owners to avoid the illegal confiscation by paying a 'ransom' cannot make it lawful."). In that situation, the government is simply forcing the property owner to pick his takings poison, rather than offering a (potentially permissible) exaction alternative, and *Nollan* has no relevance. A law that inevitably results in one

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of two types of traditional per se takings—as the 2014 Ordinance does—must simply be treated as a per se taking.[7]

B. The City Misunderstands the Scope of Per Se Analysis in Contending It Does Not Apply to the 2014 Ordinance

On the merits of Plaintiffs' per se takings claims, the City contends the burdens the 2014 Ordinance imposes on rental owners do not rise to the level of a per se taking. The City is wrong once again.

1. *Brown*'s Per Se Approach for Money Takings Trumps the City's Precedent

The City relies on two cases in arguing that a per se test is inapplicable to a money taking like the Payment mandate: *Eastern Enterprises*, 524 U.S. 498, and *Horne*, 750 F.3d 1128. But these decisions do not control. *Eastern Enterprises* has been superceded on the money takings issue by more recent decisions, such as *Brown*, and *Koontz*, both of which confirm that a per se approach governs a money taking linked to a traditional property interest, such as real property. *See Koontz*, 133 S. Ct. at 2600. *Eastern* now stands for the very limited proposition that a legislative demand for money that is unconnected to any traditional property interest may not be a taking. *Id.* at 2599-2600. Here, of course, the Payment burdens real property, bringing this case under the per se framework of *Brown* and *Koontz*.

The City tries to distinguish *Brown* by asserting it applies only to "appropriation of a *specific, identifiable fund*." City's Brief at 19. But this is not what *Brown* says, nor is it how the Supreme Court has read *Brown*. *Brown* was very much like this case: the plaintiffs there challenged a law that, on its face, authorized the government to transfer money, in the form of interest, from a certain class of people to others. No "specific, identifiable fund" was taken—the

[7] If a state passed a law requiring property owners to turn over interest on court accounts to the state if they want to use the courts, *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), or allow an occupation of their property, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), we wouldn't apply *Nollan/Dolan* to determine the constitutionality of the law; we would simply conclude there is a taking. The same situation is at hand. By enactment, the 2014 Ordinance compels rental owners to select from Taking #1—the appropriation of their money—or Taking #2—the continued occupation of their property, and denial of the right to exclude others from the property.

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law imposed a general ongoing obligation—and yet the Court adopted a per se takings approach. *Brown*, 538 U.S. at 235, 240. In *Koontz*, the Court explained that *Brown*'s per se approach was valid not because the money taking there appropriated a specific bank "fund" or account, but because the taking operated on a *traditional property interest*. 133 S. Ct. at 2599-2600. The same considerations apply here. *Brown*'s per se test applies.

Horne, 750 F.3d 1128, does not alter the Supreme Court's per se framework. *Horne* did not address, much less limit, *Brown*. Nor could it. In *Brown*, the Supreme Court overruled the Ninth Circuit's rejection of a per se test in prior proceedings of that same case. 538 U.S. at 231, 235. *Horne* could not revive the Ninth Circuit's incorrect and repudiated view of the per se test. Indeed, it did not even directly consider the applicability of a per se approach to a money taking; *Horne* considered a requirement that a raisin grower give the government a portion of its crop. 750 F.3d at 1139-41 (analyzing a raisin "Marketing Order"). Given *Horne*'s unique facts and the supremacy of Supreme Court precedent, *Brown*, not *Horne*, controls here.

2. A Payment Demand Arising from an Owner's Decision To *Exit* the Rental Business Is Not Constitutionalized by Rent Control Rules Arising from a Decision to *Enter* the Market

The City continues to argue that the Payment demand in the 2014 Ordinance is not a taking because it is like traditional rent control. But two important distinctions refute its argument. First, courts that have upheld rent control have done so on the ground that property owners have a choice to allow or not allow tenants into their property. As long as owners can abandon the rental business, so say such courts, the transfer of wealth from landlord to tenant under rent control may be valid. But here, property owners are trying to exit, not enter the market, and the City is *still* requiring them to transfer wealth to a would-be tenant. In effect, the City is requiring property owners to transfer their property's market value to tenants whether the owners rent or not. No general rent (price) control case justifies such a scheme. *Seawall*, 542 N.E.2d at 1064 ("Contrary to defendants' contentions, the decisions . . . upholding rent control and similar regulations of housing conditions and other aspects of the landlord-tenant relationship do not undermine plaintiffs' claims of per se physical takings. Indeed, those decisions have no bearing on the question here . . . . It is the nature of the intrusion which is determinative—i.e., that it deprives the

owners of their rights to possession and exclusion—not the beneficial purpose of the regulation or the extent of the police power which authorizes it." (citations omitted)).

Furthermore, the 2014 Ordinance under attack here cannot be analogized to traditional rent control regulations because the landlord receives no monetary benefit from the tenant under the 2014 Ordinance. The property owner subject to rent control does receive a return from a tenant; perhaps it is less than the owner would like, but it is still a benefit. In contrast, under the 2014 Ordinance, subject landlords must transfer their wealth to the tenant even though the tenant is not providing any return benefit.

3. Plaintiffs' Compelled Tenant Occupation Arguments Are Timely, and the City Has No Defense on the Merits

The City presses a new statute of limitations defense against Plaintiffs' claim that the 2014 Ordinance causes a physical taking if rental owners refuse the Payment. It does so (again) based on its belief that Plaintiffs are targeting (long-existing) rent control regulations. City's Brief at 20. Both the premise and conclusion are false.

Nothing in Plaintiffs' takings claim challenges the City's controls on rental pricing. *Seawall Associates*, 542 N.E.2d at 1064. Plaintiffs instead raise a more fundamental complaint, that the 2014 Ordinance compels them to abandon their right to withdraw property from the market and to submit to its continued occupation by a tenant, in violation of their right to exclude others, if they do not make the Payment. *Id.* Since Plaintiffs filed their complaint approximately two months after enactment of the Payment mandate, this claim is timely under the two year limitations period governing 42 U.S.C. § 1983 claims.

The City protests that Plaintiffs may have been able to raise such a claim against a different, previously enacted City rent law (such as the 2005 Ordinance). But this is irrelevant. The 2014 Ordinance imposes new and substantively different obligations on rental owners, and creates new procedures. Therefore, it is subject to independent challenge. *See Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1027 (9th Cir. 2007) (amendments to an ordinance "will give rise to a new cause of action [and restart the limitations period] . . . if those amendments alter 'the effect of the ordinance upon the plaintiffs' " (quoting *De Anza Properties*

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X, Ltd. v. County of Santa Cruz, 936 F.2d 1084, 1086 (9th Cir. 1991))); *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809, 822 (2001) (holding that the plaintiffs' challenges to the validity of the tax ordinance "are not barred merely because similar claims could have been made at earlier times as to earlier violations").

On the merits, the City contends no per se taking can arise from a requirement that rental owners "choose between making a required payment and continuing to rent their properties," City's Brief at 20, since a "property owner either initially consented to the creation of a tenancy (or acquired property where a tenancy is in place)." *Id.* In essence, the City's position is that once a property owner opens their property for rental, the government can constitutionally forbid the owner from ending the occupancy. But this is precisely the sort of compelled occupation scheme that federal and state courts have rejected. Plaintiff's Trial Brief at 16. Property owners have a fundamental right to end occupation of their property by unwanted people. Indeed, the very purpose of the Ellis Act is to prevent local governments from forcing property owners to continue offering their property for accommodation. Cal. Gov't Code § 7060. A law that abridges these rights, as the 2014 Ordinance does if property owners do not make the Payment, unconstitutionally takes state and federal property rights.

III

THE CITY FAILS TO IDENTIFY A RATIONAL BASIS FOR THE PAYMENT SUFFICIENT TO SATISFY DUE PROCESS; NOR DOES IT JUSTIFY THE LAW UNDER CALIFORNIA'S ELLIS ACT[8]

The City fails to rebut Plaintiffs' substantive due process challenge to the 2014 Ordinance or its claim arising under the Ellis Act. As to the due process issue, the City agrees that the standard is whether the 2014 Ordinance rationally advances a legitimate state interest. City's Brief at 21. *Crown Point Development, Inc. v. City of Sun Valley*, 506 F.3d 851, 856 (9th Cir. 2007). It wrongly argues, however, that the Payment mandate satisfies this test because it would

[8] Plaintiffs mistakenly included an Unreasonable Seizure under the Fourth Amendment argument in their Trial Brief. But their Fourth Amendment claim is not at issue in the facial proceedings; it pertains only to the as-applied portion.

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ameliorate "adverse effects" on tenants. The first flaw in this argument is that the Payment mandate is not designed as mitigation for generalized "adverse effects," and the City offers no evidence to that effect. The 2014 Payment requirement is specifically designed to ameliorate a tenant's presumed loss of "affordable" (rent controlled) housing after an Ellis Act withdrawal, and to enable such a tenant to pay for new housing in San Francisco. The City's attempt to turn the mitigation Payment into a plan to compensate tenants for unspecified, non-housing hardships is belied not only by the record, by the text of the law, and by the very name of the mandate ("Rental Payment Differential")[9], but also by the fact that the law already provides for a separate "over 62" and "disability" payment to ameliorate general hardships.

The City does not show how requiring landlords, like the Levins, to hand over a hundred thousand dollars in unrestricted funds to a tenant can possibly "rationally" advance a City interest in providing tenants with affordable housing. "Rational" means there is a firm basis for the Board of Supervisors to believe that the Payment will secure affordable housing in the city. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (noting rational basis review is "not toothless"); *Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1193 (9th Cir. 2013) (Governmental action is not rationally related if it bears" '"no *substantial* relation"' " to public goals (emphasis added) (quoting *Lebbos v. Judges of Superior Court, Santa Clara Cnty.*, 883 F.2d 810, 818 (9th Cir. 1989) (quoting *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926)))). But since the law does not require tenants to spend the payment on housing or in San Francisco, it cannot have such a firm belief. It may have hope that the law will advance the City's interest, but hope is not a rational basis.

Similarly, the City cannot show a rational basis for the retroactive nature of the Ordinance. What rational basis is there for dramatically increasing the liability of rental owners, like the Levins, who filed to withdraw property prior to enactment of the 2014 Ordinance, thereby frustrating expectations based on prior law, when the Ordinance does not even ensure tenants will use the enhanced payment for housing? The City does not say.

[9] Tellingly, the moderate tenant payments required by the prior 2005 Ordinance are called "relocation" payments, not "Rental Payment Differential" payments.

The City also fails to adequately defend the 2014 Ordinance against Plaintiffs' Ellis Act claims. The Payment is facially invalid under the Ellis Act for the same reasons that it fails the *Nollan* "nexus" test, *Dolan* "rough proportionality" test, and the Due Process rational basis test, namely the lack of a sufficient relationship between requiring unrestricted landlord payments to tenants and the City's desire to secure affordable housing in San Francisco for displaced tenants. Ultimately, the City asks the Court to simply defer to the City and to turn a blind eye to the flaws in the law that prevent it from being sufficiently tailored. But the Constitution requires more and people like the Levins deserve more. The City can come up with a more carefully drafted law, but this one must fall.

IV

PLAINTIFFS' FACIAL TAKINGS CLAIMS ARE RIPE

As an afterthought, the City argues that Plaintiffs' takings claims are unripe under the state court exhaustion concept of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 190 (1985). City's Brief at 25. Plaintiffs provided several reasons for rejecting this argument in their Trial Brief. Plaintiffs' Trial Brief at 13.

Here, Plaintiffs reiterate that the Supreme Court has repeatedly held that *facial takings claims not seeking monetary compensation* are instantly ripe. *See San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 345-46 (2005) (facial takings claims held instantly ripe because they "requested relief distinct from the provision of 'just compensation' "); *Yee v. City of Escondido*, 503 U.S. 519, 533-34 (1992) (because a takings claim "does not depend on the extent to which petitioners are deprived of the economic use of their particular pieces of property or the extent to which these particular petitioners are compensated, petitioners' facial challenge is ripe"); *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725, 736 n.10 (1997) (" 'facial' [takings] challenges to regulation are generally ripe the moment the challenged regulation or ordinance is passed"). The Supreme Court has specifically held that a claim resting on *Nollan* "nexus" type arguments is ripe without respect to state court compensation proceedings. *Yee*, 503 U.S. at 534.

Finally, even if some of Plaintiffs' claims were potentially subject to *Williamson County* (they are not), it would be proper for the Court to waive that ripeness doctrine. *Williamson*

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County's state compensation doctrine is a discretionary, prudential doctrine. *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1118 (9th Cir. 2010). A primary prudential concern is the avoidance of inefficient, piecemeal litigation. *San Remo Hotel*, 545 U.S. at 346; *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 350 n.7 (1986). If *Williamson County* applies, the Court should waive its ripeness doctrine as a matter of judicial economy, for the purpose of litigating all Plaintiffs' facial claims in one proceeding. *See Town of Nags Head v. Toloczko*, 728 F.3d 391, 399 (4th Cir. 2013).

CONCLUSION

The Court should enjoin San Francisco Administrative Code Section 39.9A(e)(3)(E)(ii).

DATED: October 1, 2014.

Respectfully submitted,

J. DAVID BREEMER
JENNIFER F. THOMPSON

By /s/ J. David Breemer
J. DAVID BREEMER

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EXHIBIT 1

AMENDED IN COMMITTEE
11/25/2013

FILE NO. 130968 ORDINANCE NO. 277-13

[Administrative, Planning Codes – Ellis Act Displaced Emergency Assistance Ordinance]

Ordinance amending the Administrative and Planning Codes to provide a preference in occupying units or receiving assistance under all affordable housing programs administered or funded by the City, including all former San Francisco Redevelopment Agency affordable housing programs administered or funded by the City, to certain tenants being evicted under the Ellis Act, California Government Code Section 7060 et seq.; and, making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

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

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

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 130968 and is incorporated herein by reference.

(b) On November 21, 2013, the Planning Commission, in Resolution No. 19029, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 130968, and is incorporated herein by reference.

(c) Pursuant to Planning Code Section 302, this Board finds that these Planning Code Amendments will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 19029 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 19029 is on file with the Board of Supervisors in File No. 130968.

Section 2. The Administrative Code is hereby amended by revising Sections 24.8 and 37.6, to read as follows:

SEC. 24.8. PREFERENCE IN ALL CITY AFFORDABLE HOUSING PROGRAMS FOR CERTIFICATE OF PREFERENCE HOLDERS *AND DISPLACED TENANTS*.

This Section shall apply to all programs related to the provision of affordable housing, unless specified otherwise. To the extent permitted by law, the Mayor's Office of Housing *and Community Development ("MOHCD")* or its successor shall give, or require project sponsors or their successors in interest funded through MOH*CD* to give, preference in occupying units or receiving assistance under all City affordable housing programs*, including all former San Francisco Redevelopment Agency affordable housing programs administered or funded by the City,* first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521,who meet all of the qualifications for the unit or assistance*; and second to any Displaced Tenant, as defined herein, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the*

landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates.

~~*The Mayor's Office of Housing shall develop procedures and amend its regulations within 90 days of the effective date of this legislation to implement the requirements of this Section*~~ *MOHCD shall implement the Certificate of Preference Holder requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of Ordinance No. 232-08, and MOHCD shall implement the Displaced Tenant preference requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of the ordinance creating the Displaced Tenant preference*. Said procedures and regulations shall be subject to approval by Resolution of the Board of Supervisors. *The requirements of this paragraph are directory rather than mandatory.*

For purposes of this Section, "Displaced Tenant" shall mean any tenant residing in San Francisco who on or after January 1, 2012 has received a notice that his or her landlord plans to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the

corresponding provisions of the Rent Ordinance, cited above, and, who, as of the date of receipt of the notice of withdrawal from the rental market, has resided in his or her unit continuously for: (i) at least ten years; or (ii) at least five years, if the tenant can verify that he or she is suffering from a life threatening illness as certified by his or her primary care physician or that he or she is disabled, as defined in Administrative Code Section 37.9(i). *MOHCD shall establish a process for a tenant to verify his or her status as a "Displaced Tenant," which, at a minimum, shall require a tenant to show: (i) the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market; (ii) the tenant meets the ten or five year residency requirement stated above; and (iii) the tenant either: (A) is listed on the notice of withdrawal; (B) is listed on the lease for the unit in question; or (C) has other evidence sufficient to establish, in MOHCD's reasonable discretion, that he or she has lived in the unit for the required five or ten year period, as applicable.* If the Rent Board grants a landlord's request to rescind the Notice of Intent to Withdraw Rental Units under the Ellis Act before a tenant moves out of his or her unit~~If at any time prior to moving out of his or her unit, a tenant's landlord rescinds the notice of withdrawal from the rental market~~, *such tenant shall no longer qualify as a "Displaced Tenant". Additionally, if a person disputes a MOHCD determination that he or she does not qualify as a "Displaced Tenant" under this Section, such person shall have the right to a hearing conducted by a Rent Board Administrative Law Judge (as defined in Administrative Code Section 37.2(f)), with MOHCD as the responding party.*

The Board of Supervisors shall hold a hearing on the status of this *Section*~~*legislation*~~ within 2 years of the effective date of *Ordinance 232-08*~~*this legislation*~~ to assess its impact, or at such time as the ~~*Mayor's Office of Housing*~~*MOHCD* certifies to the Board of Supervisors that, in any one fiscal year, the percent of Residential Certificate of Preference holders obtaining an affordable housing unit by taking advantage of the *applicable* preferences in this *Section*~~*legislation*~~ in all of the City's affordable housing programs combined exceeds 50% of

the total number of units made available through the City's affordable housing programs in that year.

*The Board of Supervisors shall hold a*n initial *hearing to assess the impact of the Displaced Tenant preference within one year of the effective date of the ordinance creating the Displaced Tenant preference*. The Board of Supervisors shall hold a subsequent hearing within three years of the effective date, at which MOHCD and the Rent Board shall submit a report on the demographics and income levels of beneficiaries of the Displaced Tenant preference system.

SEC. 37.6. POWERS AND DUTIES.

In addition to other powers and duties set forth in this Chapter, and in addition to powers under the Charter and under other City Codes, including powers and duties under Administrative Code Chapter 49 ("Interest Rates on Security Deposits"), the Board shall have the power to:

* * * *

(o) As provided by Administrative Code Section 24.8, utilize Administrative Law Judges to hear and decide petitions from persons who dispute the Mayor's Office of Housing and Community Development's determination that such person does not qualify as a "Displaced Tenant" (as defined in Administrative Code Section 24.8).

Section 3. The Administrative Code is hereby amended by revising Sections 10.100-110, 10.100-370, and 43.3.4 to read as follows:

SEC. 10.100-110. MAYOR'S HOUSING AFFORDABILITY FUND.

(a) Establishment of Fund. The Mayor's Housing Affordability Fund is created as a category two fund to receive any prior legally binding obligations, any grants, gifts, bequests from private sources for the purposes *cited* in *sub*section (b), any monies repaid to the City as

a result of loans made by *the* City to developers to assist in the development of affordable housing, any repayments of monies to *the* City where the City is beneficiary under a promissory note which was acquired as a result of *the* City's housing affordability assistance, any repayments of loans made from this fund and any monies otherwise appropriated to the fund.

(b) Use of Fund. The fund shall be used exclusively for the purpose of providing financial assistance to for-profit and nonprofit housing developers, where the contribution of monies from the fund will allow units in a project to be affordable to persons and families of low and moderate income. City departments may recover any costs of administering any project receiving funds from the Mayor's Housing Affordability Fund. The Mayor's Office of Housing *and Community Development ("MOHCD")* shall develop procedures and amend its regulations such that, for all projects funded by this fund, it requires the project sponsor or its successor in interest to give preference in occupying units or receiving assistance first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet all of the qualifications for the unit or assistance*; and second to any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new developments*

going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates. ~~*The Mayor's Office of Housing shall develop procedures and amend its regulations within 90 days of the effective date of this legislation to implement the requirements of this Section.*~~

MOHCD shall implement the Certificate of Preference Holder requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of Ordinance No. 232-08, and MOHCD shall implement the Displaced Tenant preference requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of the ordinance creating the Displaced Tenant preference. Said procedures and regulations shall be subject to approval by Resolution of the Board of Supervisors. *The requirements of this paragraph are directory rather than mandatory.*

SEC. 10.100-370. SAN FRANCISCO HOPE SF FUND.

(a) Establishment of Fund. The HOPE SF Fund is hereby established as a category four fund for the purpose of assisting in the replacement and/or rehabilitation of distressed public housing projects in the City and County of San Francisco.

* * * *

(d) Administration of Fund. The fund shall be administered by the Mayor's Office of Housing *and Community Development ("MOHCD")*. The Director of *MOHCD* ~~*the Mayor's Office of Housing*~~ shall promulgate such rules and regulations as he or she may deem appropriate to carry out the provisions of the fund. Such rules and regulations shall be developed in consultation with any appropriate agencies or organizations with which the Director, or his or her designee, may choose to consult. The rules and regulations shall be subject to a public hearing and approved by resolution of the Board of Supervisors. ~~*The Mayor's Office of Housing*~~ *MOHCD* shall develop procedures such that, for all projects funded by the HOPE SF Fund, *MOHCD* ~~*the Mayor's Office of Housing*~~requires the project sponsor or its successor in interest to give preference in occupying units first to any current occupants of a housing development receiving Funds, ~~*and*~~ second to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet all of the qualifications for the unit*; and third to any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of*

the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates. ~~*The Mayor's Office of Housing and Community Development shall develop procedures and amend its regulations within 90 days of the effective date of this legislation to implement the preference described in this Section.*~~

MOHCD shall implement the Certificate of Preference Holder requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of Ordinance No. 232-08, and MOHCD shall implement the Displaced Tenant preference requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of the ordinance creating the Displaced Tenant preference. Said procedures and regulations shall be subject to approval by Resolution of the Board of Supervisors. *The requirements of this paragraph are directory rather than mandatory.*

SEC. 43.3.4. PROPOSED USE OF BOND PROCEEDS.

Following payment of costs of issuance, 85 percent of the bond proceeds will be used for the development of affordable rental housing through the development account described in the regulations, and 15 percent of the bond proceeds will be used for downpayment assistance for low and moderate income first-time homebuyers through the downpayment assistance loan account described in the program regulations; including all legally permissible administrative costs related to the program. The Mayor's Office of Housing *and Community Development ("MOHCD")* shall develop procedures and amend its regulations such that, for all projects funded by this affordable housing and home ownership bond program, including multifamily rental projects and down payment assistance to individual households, it requires

the project sponsor or its successor in interest to give preference in occupying units or receiving assistance first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet all of the qualifications for the unit or assistance; *and second to any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates.* ~~*The Mayor's Office of Housing shall develop procedures and amend its regulations within 90 days of the effective date of this legislation to implement the requirements of this Section.*~~

MOHCD shall implement the Certificate of Preference Holder requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of

Ordinance No. 232-08, and MOHCD shall implement the Displaced Tenant preference requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of the ordinance creating the Displaced Tenant preference. Said procedures and regulations shall be subject to approval by Resolution of the Board of Supervisors. *The requirements of this paragraph are directory rather than mandatory.*

Section 4. The Planning Code is hereby amended by revising Sections 413.10, 415.5, 415.6 and 415.7 to read as follows:

SEC. 413.10. CITYWIDE AFFORDABLE HOUSING FUND.

All monies contributed pursuant to Sections 413.6 or 413.8 or assessed pursuant to Section 413.9 shall be deposited in the special fund maintained by the Controller called the Citywide Affordable Housing Fund ("Fund"). The receipts in the Fund are hereby appropriated in accordance with law to be used solely to increase the supply of housing affordable to qualifying households subject to the conditions of this Section. *The Mayor's Office of Housing and Community Development ("MOHCD")*~~*MOH*~~ shall develop procedures such that, for all projects funded by the Citywide Affordable Housing Fund, MOH*CD* requires the project sponsor or its successor in interest to give preference in occupying units first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet all of the qualifications for the unit*; and second to any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to*

withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates. ~~*The Mayor's Office of Housing shall develop procedures and amend its regulations within 90 days of the effective date of this legislation to implement the requirements of this Section*~~.

MOHCD shall implement the Certificate of Preference Holder requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of Ordinance No. 232-08, and MOHCD shall implement the Displaced Tenant preference requirements of this Section by developing procedures and amending its applicable regulations within 90 days of the effective date of the ordinance creating the Displaced Tenant preference. Said procedures and regulations shall be subject to approval by Resolution of the Board of Supervisors. *The requirements of this paragraph are directory rather than mandatory.*

The Fund shall be administered and expended by the Director of MOH*CD*, who shall have the authority to prescribe rules and regulations governing the Fund which are consistent with Section 413.1et seq. No portion of the Fund may be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar expense of any entity.

SEC. 415.5. AFFORDABLE HOUSING FEE.

* * * *

(f) Use of Fees. All monies contributed pursuant to this Section shall be deposited in the special fund maintained by the Controller called the Citywide Affordable Housing Fund. ~~*MOH*~~ *The Mayor's Office of Housing and Community Development ("MOHCD")* shall use the funds in the following manner:

(1) Except as provided in subsection (2) below, the receipts in the Fund are hereby appropriated in accordance with law to be used to:

(*A*~~a~~) increase the supply of housing affordable to qualifying households subject to the conditions of this Section; and

(*B*~~b~~) provide assistance to low and moderate income homebuyers; and

(*C*~~c~~) pay the expenses of MOH*CD* in connection with monitoring and administering compliance with the requirements of the Program. MOH*CD* is authorized to use funds in an amount not to exceed $200,000 every 5 years to conduct follow-up studies under Section 415.9(e) and to update the affordable housing fee amounts as described above in Section 415.5(b). All other monitoring and administrative expenses shall be appropriated through the annual budget process or supplemental appropriation for MOH*CD*. The fund shall be administered and expended by MOH*CD*, which shall have the authority to prescribe rules and regulations governing the Fund which are consistent with this Section.

(2) "Small Sites Funds."

(A) Designation of Funds. MOH*CD* shall designate and separately account for 10% percent of all fees that it receives under Section 415.1et seq., excluding fees that are geographically targeted such as those in Sections 415.6(a)(1) and 827(b)(C), to support acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOH*CD* shall continue to

divert 10 percent of all fees for this purpose until the Small Sites Funds reach a total of $15 million at which point, MOH*CD* will stop designating funds for this purpose. At such time as designated Small Sites Funds are expended and dip below $15 million, MOH*CD* shall start designating funds again for this purpose, such that at no time the Small Sites Funds shall exceed $15 million. When the total amount of fees paid to the City under Section 415.1et seq. totals less than $10 million over the preceding 12 month period, MOH*CD* is authorized to temporarily divert funds from the Small Sites Fund for other purposes. MOH*CD* must keep track of the diverted funds, however, such that when the amount of fees paid to the City under Section 415.1et seq. meets or exceeds $10 million over the preceding 12 month period, MOH*CD* shall commit all of the previously diverted funds and 10 percent of any new funds, subject to the cap above, to the Small Sites Fund.

(B) Use of Small Sites Funds. The funds shall be used exclusively to acquire or rehabilitate "Small Sites" defined as properties consisting of less than 25 units. Units supported by monies from the fund shall be designated as housing affordable to qualifying households as defined in Section 415.1 for no less than 55 years. Properties supported by the Small Sites Funds must be either

(i) rental properties that will be maintained as rental properties;

(ii) vacant properties that were formerly rental properties as long as those properties have been vacant for a minimum of two years prior to the effective date of this legislation,

(iii) properties that have been the subject of foreclosure or

(iv) a Limited Equity Housing Cooperative as defined in Subdivision Code Sections 1399.1et seq. or a property owned or leased by a non-profit entity modeled as a Community Land Trust.

(C) Initial Funds. If, within 18 months from the date of adoption of this ordinance, MOH*CD* dedicates an initial one-time contribution of other eligible funds to be used initially as Small Sites Funds, MOH*CD* may use the equivalent amount of Small Sites Funds received from fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of the initial one-time contribution is reached.

(D) Annual Report. At the end of each fiscal year, MOH*CD* shall issue a report to the Board of Supervisors regarding the amount of Small Sites Funds received from fees under this legislation, and a report of how those funds were used.

(E) Intent. In adopting this ordinance regarding Small Sites Funds, the Board of Supervisors does not intend to preclude MOH*CD* from expending other eligible sources of funding on Small Sites as described in this Section, or from allocating or expending more than $15 million of other eligible funds on Small Sites.

(3) For all projects funded by the Citywide Affordable Housing Fund, MOHCD requires the project sponsor or its successor in interest to give preference in occupying units first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who otherwise meet all of the requirements for a unit; and second to any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced

Tenant may apply the preference to new developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development. The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates. Otherwise, it is the policy of the City to treat all households equally in allocating affordable units under this Program.

SEC. 415.6. ON-SITE AFFORDABLE HOUSING ALTERNATIVE.

If a project sponsor is eligible and elects to provide on-site units pursuant to Section 415.5(g), the development project shall meet the following requirements:

* * * *

(d) Marketing the Units: ~~*MOH*~~ *The Mayor's Office of Housing and Community Development ("MOHCD")* shall be responsible for overseeing and monitoring the marketing of affordable units under this Section. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. MOH*CD* may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. MOH*CD* may require in the Procedures Manual that prospective purchasers complete homebuyer education training or fulfill other requirements. MOH*CD* shall develop a list of minimum qualifications for marketing firms that market affordable units under Section 415.5et seq., referred to the Procedures Manual as Below Market Rate (BMR units). No

developer marketing units under the Program shall be able to market affordable units except through a firm meeting all of the minimum qualifications. The Notice of Special Restrictions or conditions of approval shall specify that the marketing requirements and procedures contained in the Procedures Manual as amended from time to time, shall apply to the affordable units in the project.

(1) Lottery: At the initial offering of affordable units in a housing project and when ownership units become available for re-sale in any housing project subject *to* this Program after the initial offering, MOH*CD* must require the use of a public lottery approved by MOH*CD* to select purchasers or tenants.

(2) Preferences: MOH*CD* shall create a lottery system that gives *the following* preference*s: (A)* first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet the qualifications of the Program*; (B)* ~~*, and*~~ second to *any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and*

(iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development; and (C) third to people who live or work in San Francisco who meet the qualifications of the Program. *The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates.* MOH*CD* shall propose policies and procedures for implementing these preferences to the Planning Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the ~~*Board of Supervisors*~~ *City* to treat all households equally in allocating affordable units under this Program.

SEC. 415.7. OFF-SITE AFFORDABLE HOUSING ALTERNATIVE.

If the project sponsor is eligible and selects pursuant to Section 415.5(g) to provide off-site units to satisfy the requirements of Section 415.1et seq., the project sponsor shall notify the Planning Department and *the Mayor's Office of Housing and Community Development ("MOHCD")* ~~*MOH*~~ of its intent as early as possible. The Planning Department and MOH*CD* shall provide an evaluation of the project's compliance with this Section prior to approval by the Planning Commission or Planning Department. The development project shall meet the following requirements:

* * * *

(e) Marketing the Units: MOH*CD* shall be responsible for overseeing and monitoring the marketing of affordable units under this Section. In general, the marketing requirements and procedures shall be contained in the Procedures Manual as amended from time to time and shall apply to the affordable units in the project. MOH*CD* may develop occupancy standards for units of different bedroom sizes in the Procedures Manual in order to promote an efficient allocation of affordable units. MOH*CD* may require in the Procedures Manual that

prospective purchasers complete homebuyer education training or fulfill other requirements. MOH*CD* shall develop a list of minimum qualifications for marketing firms that market affordable units under Section 415.1et seq., referred to the Procedures Manual as Below Market Rate (BMR units). No project sponsor marketing units under the Program shall be able to market BMR units except through a firm meeting all of the minimum qualifications. The Notice of Special Restrictions or conditions of approval shall specify that the marketing requirements and procedures contained in the Procedures Manual as amended from time to time, shall apply to the affordable units in the project.

(1) Lottery: At the initial offering of affordable units in a housing project and when ownership units become available for resale in any housing project subject to this Program after the initial offering, MOH*CD* must require the use of a public lottery approved by MOH*CD* to select purchasers or tenants.

(2) Preferences: MOH*CD* shall create a lottery system that gives *the following* preference*s: (A)* first to Residential Certificate of Preference Holders under the San Francisco Redevelopment Agency's Property Owner and Occupant Preference Program, as reprinted September 11, 2008 and effective October 1, 2008 and on file with the Clerk of the Board in File No. 080521, who meet the qualifications of the Program*; (B)* ~~*, and*~~ second to *any Displaced Tenant, as defined in Administrative Code Section 24.8, who meets all of the qualifications for the unit or assistance, provided that the following limitations shall apply to the Displaced Tenant preference: (i) a Displaced Tenant may apply the preference to existing, currently-occupied developments only for three years from the date the landlord filed with the Residential Rent Stabilization and Arbitration Board ("Rent Board") a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, California Government Code Section 7060 et seq. and the corresponding provisions of the San Francisco Rent Stabilization and Arbitration Ordinance ("Rent Ordinance"), Administrative Code Sections 37.9(a)(13) and 37.9A; (ii) a Displaced Tenant may apply the preference to new*

developments going through the initial occupancy process only for six years from the date the landlord filed with the Rent Board a notice of intent to withdraw the tenant's unit from the rental market pursuant to the Ellis Act, cited above, and the corresponding provisions of the Rent Ordinance; and (iii) for any new residential development going through the initial occupancy process, the Displaced Tenant preference shall apply only to twenty percent (20%) of the units in such development; and (C) third to people who live or work in San Francisco who meet the qualifications of the Program. *The Displaced Tenant's preference shall still apply even if such Displaced Tenant declines a unit offered through application of the preference, but upon accepting and occupying a unit obtained using the preference, such Displaced Tenant's preference terminates.* MOH*CD* shall propose policies and procedures for implementing these preferences to the Planning Commission for inclusion in the Procedures Manual. Otherwise, it is the policy of the ~~*Board of Supervisors*~~*City* to treat all households equally in allocating affordable units under this Program.

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

Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Evan A. Gross
Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 130968 **Date Passed:** December 10, 2013

Ordinance amending the Administrative and Planning Codes to provide a preference in occupying units or receiving assistance under all affordable housing programs administered or funded by the City, including all former San Francisco Redevelopment Agency affordable housing programs administered or funded by the City, to certain tenants being evicted under the Ellis Act, California Government Code, Section 7060 et seq.; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

November 25, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 25, 2013 Land Use and Economic Development Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

November 26, 2013 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 10, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 130968

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/10/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

12/18/13
Date Approved

EXHIBIT 2

Ellis Act Housing Preference Program
Procedures Manual

April 4, 2014

INTRODUCTION

Background

The Ellis Act Displacement Emergency Assistance Ordinance was passed into law on December 18th, 2013. The legislation required a new preference in all City Affordable Housing Programs for tenants who are displaced due to withdrawal of their housing unit from the rental market, as allowable under the State Ellis Act. The legislation responded to concern over a rise in these Ellis Act Evictions that paralleled rising market-rate housing prices in 2013.

Under San Francisco's Residential Rent Stabilization and Arbitration Ordinance, there is no limit on the amount of rent a landlord may first charge when initially renting a vacant unit, but owners of residential buildings subject to rent control face limitations on the rent increases they may impose upon existing tenants. Landlords subject to the Rent Ordinance must also have "just cause" to evict an existing tenant. While there are 15 just cause reasons for eviction, most of them refer to breach of the rental agreement or other types of unacceptable tenant behavior. Of several allowable reasons for eviction that are not the tenant's fault ("No-Fault Evictions"), Owner Move-In (OMI) and Ellis Act Evictions are historically the most numerous. No-Fault Evictions rose significantly in 2013. In response, the City of San Francisco created a program to assist the rising number of tenants displaced due to the Ellis Act and for whom a market rate rental unit would be unaffordable.

Program Summary

The Ellis Act Housing Preference (EAHP) Program implements the Ellis Act Displacement Emergency Assistance Ordinance by creating procedures and regulations for a Displaced Tenant Preference, as defined below. Certain tenants who have been or may be displaced by Ellis Act Evictions that took place in 2012 or later may apply for an EAHP certificate from the Mayor's Office of Housing and Community Development (MOHCD). Once applications are reviewed and approved, eligible applicants are issued an EAHP certificate, which serves as official documentation of their priority status for admission to any City Affordable Housing, as defined below, for which they qualify. This preference is limited in the following important ways:

- The preference applies to City Affordable Housing. City Affordable Housing includes all buildings that received support from MOHCD or the former San Francisco Redevelopment Agency (SFRA). City Affordable Housing also includes below market rate (BMR) rental and ownership units governed by the Inclusionary Housing Program, Condo Conversion BMR Program, Down Payment Assistance programs and former SFRA programs. The preference does not apply to most privately owned and operated housing. The preference does not apply to Public Housing buildings (except the HOPE SF Developments) nor to Section 8 Vouchers[1].

- Applicants must meet all other eligibility requirements for rental or purchase in order to use their EAHP certificate. City Affordable Housing is targeted to low- and moderate-income households, thus income limits always apply. In addition to income caps, many affordable housing buildings have

[1] The Ellis Act Housing Preference Program does not entitle EAHP certificate holders to a priority on the waitlist for Section 8 Vouchers. This is not meant to imply that Section 8 Voucher holders are ineligible for the EAHP certificate. Section 8 Voucher holders who have been Ellis Act Evicted and meet other EAHP Program eligibility requirements may apply for the certificate.

other eligibility criteria. Possession of an EAHP certificate does not guarantee that the holder will be eligible for a City Affordable Housing unit.

- For new developments going through the initial lease-up or sale process, the EAHP priority applies to twenty percent (20%) of the affordable units. Buildings with four (4) or fewer affordable units are not required to provide the EAHP priority at initial lease-up or sale because 20% of that number of units is zero. For re-rental and re-sale units, EAHP certificate preference applies to every unit that becomes available, regardless of the number of affordable units in the building. However, if the Project Sponsor fills vacancies off of an established waitlist, EAHP certificate holders must be on that waitlist at the time of the vacancy in order to use the certificate for that unit.

- Only tenants who were residing in the same unit for at least 10 years prior to the date their landlord filed a Notice of Intent To Withdraw (see definition below) are eligible for the Ellis Act Housing Preference, unless they are Disabled (see definition below) or suffering from a Life-Threatening Illness (see definition below). Tenants who are Disabled or suffer from a Life-Threatening Illness are eligible for the EAHP if they were residing in their rental unit for at least 5 years prior to the filing date of the Notice of Intent to Withdraw. If the landlord did not file a Notice of Intent to Withdraw with the Rent Board, tenants who vacated their rental unit are not eligible for the preference.

Definitions

"Displaced Tenant"
Any tenant residing in San Francisco who, on or after January 1, 2012, received a notice that his or her landlord plans to withdraw their rental unit from the rental market pursuant to the Ellis Act, and who, as of the date of receipt of the notice of withdrawal from the rental market, resided in his or her unit continuously for: (i) at least ten years; or (ii) at least five years, if the tenant can verify that he or she is suffering from a Life-Threatening Illness as documented in writing by his or her primary care physician or (iii) at least five years if the tenant can document that they are Disabled (as defined herein).

"City Affordable Housing Programs"[2] include:

- Affordable housing units that received support from the former San Francisco Redevelopment Agency (SFRA)
- Former SFRA Inclusionary and BMR units with affordability restrictions required by City contract or Redevelopment Area Plan
- Affordable housing units administered or funded by the Mayor's Office of Housing and Community Development (MOHCD)
- Inclusionary Housing Units (BMR units), which are defined as "Affordable Units" in Planning Code Section 401
- MOHCD Loan Assistance programs for first-time homebuyers
- Programs and residential units funded by:
    - The Mayor's Housing Affordability Fund
    - The HOPE SF Fund
    - The Affordable Housing and Home Ownership Bond Program (Proposition C)
    - The Citywide Affordable Housing Fund

City Affordable Housing does not include programs or affordable housing units exclusively supported by the Department of Housing and Urban Development (HUD), the San Francisco Human Services Agency

[2] Definition of City Affordable Housing is drawn from Ordinance No. 277-13, the Ellis Act Displaced Emergency Assistance Ordinance.

(H.S.A), the San Francisco Department of Public Health (DPH), or the San Francisco Housing Authority (SFHA).

"City Affordable Housing" or "Affordable Housing"
Any Housing Unit funded or created pursuant to a City Affordable Housing Program. The term Affordable Housing is used synonymously with the term City Affordable Housing in this procedures manual.

"Ellis Act Eviction"
An eviction due to the Ellis Act (California Government Code Section 7060 et. seq.).. The Ellis Act was enacted by the California legislature in 1986 to require municipalities to allow property owners to leave the residential rental housing business. More information is available on the Rent Board Website: http://www.sfrb.org/index.aspx?page=966

"Housing Unit"[3]
A room or suite of two or more rooms that is designed for, or is occupied by, one individual, family, or collection of individuals. Dwelling units, apartments, single family homes, condominiums, single room occupancy (SRO) hotel rooms, lodging rooms, housekeeping rooms, and congregate residences are all considered housing units for the purpose of this program.

"Eviction Notice"[4]
Also known as a "Notice to Vacate" the eviction notice is an official written notice from a property owner to one or more tenants of their anticipated termination of tenancy. If a landlord is seeking to evict a tenant, the Rent Board mandates that the notice to vacate must state the grounds under which possession of the unit is sought. Thus, in the case of an Ellis Act Eviction, the Eviction Notice must state that the termination of tenancy is due to the landlord's intent to withdraw the unit from the rental market.

"Notice of Intent to Withdraw" or "NOI"[5]
Shorthand for Notice of Intent to Withdraw Residential Units from the Rental Market. The NOI and the Eviction Notice are not the same. The NOI is filed with the Rent Board, while the Eviction Notice is delivered to the tenant. See below for details.

- Prior to evicting tenants pursuant to the Ellis Act, a property owner must serve the tenants with notices of termination of tenancy, which are also known as Eviction Notices or Notices to Vacate. The Eviction Notice requires tenants to quit the premises on the effective date of withdrawal, which is 120 days after the Notice of Intent To Withdraw Residential Units from the Rental Market (NOI) is filed with the Rent Board.

- In addition to providing tenants with an Eviction Notice, the owner must file a Notice of Intent To Withdraw Residential Units from the Rental Market (NOI) with the Rent Board.

"Rent Board"
The City and County of San Francisco Rent Board.

"Disabled" [6]

[3] Definition of Housing Unit is primarily drawn from San Francisco Housing Code Section 401, which includes definitions of Dwelling Unit, Apartment, Lodging Room, Housekeeping Room and Congregate Residence.
[4] Definition of Eviction Notice is drawn from the Rent Board website.
[5] Definition of Notice of Intent to Withdraw is drawn from the Rent Board website.

A Disabled tenant is defined for purposes of this program as a person who is disabled or blind within the meaning of the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP), and who is determined by SSI/SSP to qualify for that program or who satisfies such requirements.

SSI/SSP rules define Disabled to mean: unable to do any substantial, gainful activity because of a mental or physical impairment that can be expected to last for a continuous period of at least 12 months or that will result in death. "Substantial, gainful activity" generally means work with wages in excess of $500 per month.[7]

"Continuous Occupancy"
Occupancy will be considered "continuous" for the purpose of this program if the same rental unit was a primary residence for at least 10 of 12 months in each calendar year.

"Life -Threatening Illness"
A chronic, severe, and life-threatening physical illness that requires continuous medical treatment. Examples include HIV disease, cancer or severe heart disease. Doctor's certification of life-threatening illness must describe how the condition meets at least one of the below criteria.

(a) substantially impedes the individual's ability to work or perform one or more activities of daily living
(b) has a prognosis of 12 months or less

"Certificate of Preference" or "COP"
A Certificate of Preference is a document that was issued by the San Francisco Redevelopment Agency ("Agency") to residents displaced by the Agency in the 1960's when the Agency was implementing its federally-funded urban renewal program. This Certificate gives holders preferential consideration for Agency-sponsored and City-sponsored housing opportunities in San Francisco. In 2012 the responsibility of overseeing the Certificate of Preference Program was transferred to the Mayor's Office of Housing and Community Development.

"Ellis Act Housing Preference Program"
The Ellis Act Housing Preference (EAHP) Program implements the Ellis Act Displacement Emergency Assistance Ordinance by creating procedures and regulations for a Displaced Tenant Preference.

"Displaced Tenant Preference"
A preference established in Administrative Code Section 24.8 for certain tenants being evicted under the Ellis Act to receive preference in occupying units or receiving assistance under City Affordable Housing Programs.

"Project Sponsor"
In this procedures manual, Project Sponsor is a general term that refers to the entity responsible for leasing or selling units in a residential building containing one or more City Affordable Housing unit. The Project Sponsor may be the entity who received planning approval for the building's construction, it may be the housing developer primarily responsible for building construction, it may be the building owner, it may be a leasing/selling agent or it may be a property management entity.

"Household"
Any person or persons who reside or intend to reside in the same housing unit.

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[6] Definition of Disabled is drawn from Administrative Code Section 37.9 (i)

[7] From: http://www.cdss.ca.gov/agedblinddisabled/Pg1423.htm

APPLYING FOR THE CERTIFICATE

Inquiries about applying for the Ellis Act Housing Preference (EAHP) Program certificate should be addressed to the Mayor's Office of Housing and Community Development at (415) 701-5613, via TDD at (415) 701-5503 or at sfhousinginfo@sfgov.org.

Eligibility

Possession of an EAHP certificate does not guarantee that the holder will be eligible for a City Affordable Housing unit. EHAP certificate holders will still be required to meet all other eligibility requirements of the unit for which the holder intends to apply for (e.g. income eligibility, household size requirements, etc.). Additionally, please note that tenants can apply for, and use the EAHP certificate while they are still residing in the unit that they are being evicted from so long as the NOI for that unit was filed and has not been rescinded.

To be eligible for the EAHP, applicants must meet the following criteria:

(1) A Notice of Intent to Withdraw (NOI) for their unit was filed with the Rent Board on or after January 1, 2012.
(2) If the NOI was rescinded by the landlord, applicants must demonstrate that they moved out prior to the date it was rescinded.
(3) Prior to the date the Notice of Intent to Withdraw (NOI) was filed, the applicant had continuously occupied the unit for which the NOI was filed for a period of (i) at least ten years, (ii) at least five years, if the tenant can document that he or she is suffering from a Life-Threatening Illness as certified by his or her primary care physician, or, (iii) at least five years, if the tenant can verify that he or she is Disabled.
(4) The applicant was at least 18 years of age at the time the Rent Board received the NOI.

Application Process

Each qualified tenant is entitled to their own certificate. Certificates will be issued to individual applicants, rather than to families or groups of individuals. Multiple individuals may not apply for the EAHP certificate with a single application. Youth under 18 years of age seeking to live in affordable housing with an EAHP certificate holder do not need their own certificate in order to receive the EAHP priority. An entire household is entitled to priority placement so long as at least one member of that household holds an EAHP certificate.

The EAHP application forms and a list of required supporting documents are available for download from the MOHCD website. Applicants may also pick up hard copies of the application forms at the Mayor's Office of Housing and Community Development, located at #1 South Van Ness Avenue, 5th Floor.

Only applications that are accurate and complete, with all required documentation attached, will be accepted for review. Applicants may submit their application and attachments by email to sfhousinginfo@sfgov.org, or by mail/in-person at the Mayor's Office of Housing and Community Development. Applications submitted by mail or in person should be addressed as follows:

Ellis Act Housing Preference Program
Mayor's Office of Housing and Community Development
1 South Van Ness Ave, 5th Floor

San Francisco, CA 94103

MOHCD will determine whether or not applicants are eligible within twenty-one (21) calendar days after receiving their complete applications with required documentation. Approved applicants will be issued an official EAHP Certificate. Applicants deemed ineligible will receive a written denial letter including reasons for the determination and information on how to appeal the decision. The appeals process is also described below.

Documentation

Required attachments to the application are:

(1) Proof of Continuous Occupancy
Continuous occupancy means that the same rental unit was a primary residence for a given household at least 10 of 12 months in each calendar year. The applicant must demonstrate continuous occupancy of their rental unit for at least 10 years immediately preceding the date on which the Notice of Intent to Withdraw (NOI) was filed with the Rent Board. MOHCD has, on record, all NOIs that were filed with the Rent Board on or after January 1, 2012. Thus, applicants do not need to supply the NOI to MOHCD. If desired, an applicant may obtain a copy of the NOI for their own records by contacting the Rent Board.

Proof of occupancy will be required for every year of tenancy, up to the required minimum of 10 years (or 5 years for Disabled tenants and tenants with a Life-Threatening Illness). For example, 10 utility bills, one from each year of occupancy, would suffice. Alternately, a combination of the documentation below is allowed. For instance, an official print out from the DMV might cover 7 years of tenancy, while voter registration records might account for an additional 3 years of tenancy.

In cases where an applicant lacks occupancy documentation for one of the five (5) or ten (10) required years, MOHCD may judge that continuous occupancy has nonetheless been sufficiently demonstrated, provided that MOHCD has received satisfactory evidence of occupancy during the years preceding and following the year for which no documentation is available.

As part of the application for an EAHP certificate, ALL applicants must sign an affidavit under penalty of perjury that they were in Continuous Occupancy. Any evidence that the applicant was not occupying the unit continuously for the required five (5) or ten (10) year period will result in a denial of an EHAP application.

The following is a list of documentation in addition to the Continuous Occupancy Affidavit that will be accepted as proof of continuous occupancy.

Note: All records must bear the applicant's name and the address as they appear on the Notice of Intent to Withdraw. All documents must be verifiable by the source. MOHCD reserves the right to reject any documentation as questionable or unverifiable.

- Utility bills (phone, cable, internet, water, or gas) Upon request, Pacific Gas & Electric can provide a monthly payment history which will meet this requirement. Currently, P G & E will provide this history going back to 2002.
- Tax returns
- Voter registration records
- DMV vehicle registration records
- School records

- Paystubs
- Bank statements
- Public benefits records (e.g. SSI/SSP, MediCal, GA, Unemployment Insurance, Foodstamps)
- Proof of rent payment from the applicant to the owner or tenant listed on the Notice of Intent to Withdraw. Rent payment must be documented by bank statements or money order receipt.
- Notarized letter or declaration from the property owner listed on the NOI indicating start and end date of tenancy in the unit listed on the NOI.
- Eviction Notice*
- Notice of Intent to Withdraw**
- Lease***

*Note on Eviction Notice: The applicant's name does not have to be listed on an eviction notice in order for the tenant to qualify for the EAHP certificate. However, if an applicant *does* possess an eviction notice that includes their name, as well as the address as listed on the NOI, then that eviction notice may serve as proof of occupancy for the year in which it was written.

**Note on NOI: The applicant's name does not have to be listed on the NOI in order for the tenant to qualify for an EAHP certificate. However, if an applicant's name *is* listed on the NOI then it may serve as proof of occupancy for the year in which it was filed with the Rent Board. To utilize the NOI as evidence of occupancy during the year it was issued, please indicate so in writing to MOHCD.

***Notes on Leases:
The applicant's name does not have to be listed on the lease in order for the tenant to qualify for an EAHP certificate. Subtenants and tenants without a lease may qualify for the EAHP certificate with sufficient evidence of occupancy.

If an applicant's name *is* listed on the lease but is *not* included on either an NOI or an Eviction Notice, then the lease will be considered proof of occupancy for the term of the lease only. Tenants must submit supplementary documentation for the portion of the required 10-year or 5-year period that the lease does not cover.

If an applicant's name *is* listed on the lease and *also* included on either an NOI or an Eviction Notice, then the lease agreement will be considered sufficient evidence of occupancy for the entire period after its inception until the NOI filing date. Any evidence that the applicant was not occupying the unit continuously for the required five (5) or ten (10) year period, such as evidence that the unit was subletted during that time, will result in a denial of an EHAP application.

- Tenants who signed a lease at least 10 years prior to the date listed on the NOI, *and* who are named on the NOI, need only submit the Lease document as evidence of continuous occupancy.

- Tenants who signed a lease less than 10 years prior to the date listed on the NOI, *and* who are named on the NOI, must submit supplementary documentation for the portion of the required 10-year or 5-year period prior to the lease inception.

(2) Proof of Disability[8] Status (as applicable)

- Proof of participation in the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP)
  OR

[8] As defined in Administrative Code Section 37.9 (i)

- Doctor's certification provided on the MOHCD form from a licensed physician or other medical professional accepted by the Social Security Administration. The certification shall serve as proof that the applicant qualifies for SSI/SSP. SSI/SSP eligibility requires the applicant is unable to do substantial, gainful activity because of a mental or physical impairment that can be expected to last for a continuous period of at least 12 months or that will result in death. "Substantial, gainful activity" generally means work with wages in excess of $500 per month.[9]

  Acceptable medical sources are:
  - licensed physicians;
  - licensed or certified psychologists only for purposes of establishing mental retardation, learning disabilities, and borderline intellectual functioning ;
  - licensed optometrists only for purposes of establishing visual disorders;
  - licensed speech-language pathologists only for purposes of establishing speech or language impairments[10].

  The certification form must be submitted to MOHCD directly from the licensed physician or medical professional.

(3) Proof of Life -Threatening Illness (as applicable)

- Doctor's certification provided on the MOHCD certification form and completed by a licensed physician. For purposes of this program, the definition of Life-Threatening Illness is: A chronic, severe, and life-threatening physical illness that requires continuous medical treatment, for example HIV disease, cancer or severe heart disease. Doctor's certification of life-threatening illness must describe how the condition meets at least one of the below criteria.
  1. substantially impedes the individual's ability to work or perform one or more activities of daily living
  2. has a prognosis of 12 months or less

  The certification form must be submitted to MOHCD directly from the licensed physician or medical professional.

Questions and Appeals

Inquiries about documentation required for the EAHP certificate application, and other questions regarding the application process, should be addressed to the Mayor's Office of Housing and Community Development at (415) 701-5613, via TDD at (415) 701-5503 or at sfhousinginfo@sfgov.org.

Applicants who wish to dispute MOHCD's initial eligibility determination may request, in writing, that the Director of Homeownership & Below Market Rate Programs review and reconsider their application. Any supplementary materials or additional information demonstrating eligibility should be submitted at the same time as the request for reconsideration. Requests for reconsideration may be emailed to sfhousinginfo@sfgov.org with the subject heading "Request for EAHP Application Reconsideration"

Requests for reconsideration may be delivered by mail or person to:

Director of Below Market Rate Programs
Ellis Act Housing Preference Program

[9] From: http://www.cdss.ca.gov/agedblinddisabled/Pg1423.htm

[10] From: http://www.ssa.gov/disability/professionals/bluebook/evidentiary.htm

Mayor's Office of Housing and Community Development
1 South Van Ness Ave, 5th Floor
San Francisco, CA 94103

Upon receipt of the request for reconsideration, the complete application package will be reviewed by the Director of Homeownership & Below Market Rate Programs and a final MOHCD determination of whether or not the applicant is eligible shall be made within seven (7) calendar days.

Applicants who wish to dispute the final MOHCD determination made by the Director of Homeownership & Below Market Rate Programs are entitled to a hearing at the Rent Board.

The request for a Rent Board hearing must be in writing and may be delivered via email to sfhousinginfo@sfgov.org with the subject heading "Request for EAHP Rent Board Hearing "

Requests for a Rent Board hearing may be delivered by mail or person to:

Request for EAHP Rent Board Hearing
Ellis Act Housing Preference Program
Mayor's Office of Housing and Community Development
1 South Van Ness Ave, 5th Floor
San Francisco, CA 94103

Upon receiving the written request for a Rent Board hearing, MOHCD will provide the Rent Board with application materials and any supplementary information from the applicant as well as contact information for the applicant and any named representatives indicated in the request for Rent Board hearing. The Rent Board will then send a Notice of Hearing at least 10 days before the hearing date to MOHCD and to the applicant and their named representatives.

Requests for postponements must be submitted in writing and will be granted only when there is good cause, such as travel plans made prior to receipt of the Notice of Hearing. Evidence of conflicting plans must be submitted with the request for postponement.

On the hearing date, the applicant and MOHCD may each appear to present evidence and argue their position. The hearing process is designed so that no one needs an attorney, although parties are entitled to have an attorney or other authorized representative assist them at the hearing. The parties or their representatives are permitted to present testimony and evidence, and to cross-examine the other parties and their witnesses. The Administrative Law Judge may also ask questions of the parties and witnesses to ensure that all pertinent facts are brought out. The record may be held open for the submission of additional evidence after the hearing.

After the record is closed, the Rent Board Administrative Law Judge will issue a written decision that will be mailed to all the parties and their representatives. If no appeal is filed, the decision becomes final. If an appeal is filed, portions of the decision may be stayed until the Rent Board Commission acts on the appeal.

For more information on the hearing process, refer to the Rent Board website.

INFORMATION FOR EAHP CERTIFICATE HOLDERS

Uses and Limitation of the EAHP Certificate

Privileges Granted to EAHP Certificate Holders

EAHP certificate holders, and all adult members of their household, are entitled to a preference for admission into City Affordable Housing and MOHCD loan assistance programs for first time homebuyers. At least one member of the household must possess the certificate in order for the household to be entitled to the preference. Upon accepting the downpayment assistance loan using the preference, the certificate is exercised and the EAHP priority terminates. Thereafter, the certificate becomes null and void for any future use.

If a household intending to reside together contains multiple EAHP certificates, the household only needs to exercise one of the certificates for a specific housing opportunity. It is up to the members of that household to determine which certificate will be exercised, or "used up" upon occupancy.

The EAHP certificate entitles holders to receive a priority in the renting of, buying only one of a cooperative share in, or buying only one affordable housing or market rate unit. Upon accepting and occupying a unit obtained using the preference, the certificate is exercised and the EAHP priority terminates. Thereafter, the certificate becomes null and void for any future use.

- In the case of a rental or cooperative share opportunity, to exercise an EAHP certificate means to secure successfully a tenancy in, or the purchase of a cooperative share in, the housing unit, as shown by the execution of a lease or other evidence of occupancy.
- In the case of a homeownership opportunity, to exercise a EAHP certificate means to execute a deed and/or promissory note and the closing of escrow.

EAHP certificate holders may apply to an unlimited number of housing opportunities until they exercise their certificate, and, in general, they may turn down offers for City Affordable Housing opportunities without affecting their priority status.[11]

Limitations of the EAHP Certificate

While EAHP certificate holders are entitled to a preference for admission into City Affordable Housing, the preference alone does not guarantee that all EAHP certificate holders will be offered a unit. Below are details about important limitations governing the Ellis Act Housing Preference.

Affordable Housing Eligibility Requirements

MOHCD requires that Project Sponsors of City Affordable Housing projects extend preference to EAHP certificate holders upon initial occupancy of a new housing project or upon the vacancy of previously-occupied units in an existing project.

Displaced tenants holding an EAHP certificate must also meet the income eligibility and other eligibility requirements for the housing unit or building in order to exercise their certificate. City Affordable Housing is targeted to low- and moderate-income households, thus income limits always apply. As an example, in 2014, for most studio and one-bedroom rental apartments in many affordable housing

[11] There is one exception to this rule. EAHP certificate holders who are homeless and receive an EAHP priority referral into a housing unit governed by the DPH Direct Access to Housing Program will not have the privilege of multiple housing offers. However, the EAHP certificate may still be exercised outside of the Direct Access to Housing Program.

buildings, the income cap for a single person without children is $34,000 (equivalent to 50% of Area Median Income). Income limits for homeownership programs are typically higher than affordable rental apartments. For instance, for a single person without children in 2014, a studio or one bedroom condominium for sale under the Inclusionary Program has an income cap of $61,150. 2014 income limits for the largest City Affordable Housing Programs are listed below; however, this list is not comprehensive. Applicants interested in a particular building or program should review program rules and/or check with the Project Sponsor or the agent responsible for the leasing or sale of units.

Additional qualifications are required for occupancy in many buildings. For instance, senior buildings typically require at least one member of the household be 62 years of age or older and limit additional occupants. Most homeownership programs require applicants to be first-time homebuyers. Typically, units with multiple bedrooms are only available to larger households, and conversely, studio and one-bedroom units are generally restricted to singles or two-person households.

EAHP certificate holders should review applicable program rules and check with the Project Sponsor or the agent responsible for the leasing or sale of units in a building for a complete understanding of the eligibility requirements. **Possession of an EAHP certificate does not guarantee that the holder will be eligible for a City Affordable Housing unit.**

2014 INCOME LIMITS FOR SELECTED CITY AFFORDABLE HOUSING PROGRAMS

		Typical Affordable Rental Units*	Inclusionary BMR Rental Units	Inclusionary BMR Ownership Units	Most Programs for First Time Homebuyers**
		50% of Median Income	55% of Median Income	90% of Median Income	120% Median Income
HOUSEHOLD SIZE	1 Person	$34,000	$37,350	$61,150	$81,550
	2 Person	$38,850	$42,750	$69,950	$93,250
	3 Person	$43,700	$48,050	$78,650	$104,900
	4 Person	$48,550	$53,400	$87,400	$116,500
	5 Person	$52,450	$57,650	$94,350	$125,800

*****Note that there are many exceptions to this generality. Some units accept higher income households or have a lower income cap. This table is intended as a general guideline only. Applicants interested in a particular building or program should review program rules and/or check with the Project Sponsor or the agent responsible for the leasing or sale of units.

******See MOHCD website for specific program requirements.

Certificate Expiration

An EAHP certificate holder may apply the preference to existing, currently-occupied developments for up to three (3) years from the date the landlord filed the Notice of Intent to Withdraw (NOI). Or, an EAHP certificate holder may apply the preference to new developments going through the initial occupancy/sale process for up to six (6) years from the date the landlord filed the NOI. Expiration dates will be clearly marked on the certificate.

Three (3) years after the date the landlord filed the NOI, the EAHP certificate is not valid for use in existing developments and after six (6) years after the date the landlord filed the NOI, the Ellis Act Housing Preference expires and the certificate becomes null and void.

How the EAHP Certificate Works with Other Preferences

New Construction. The order of preferences documented in an approved marketing plan or developer agreement shall not be pre-empted by the Ellis Act Housing Preference Program. Preferences required by a former Redevelopment Project Area Plan shall not be pre-empted by the Ellis Act Housing Preference Program. Preferences required by the Local Operating Support Program (LOSP), Direct Access to Housing Program, Housing First Program, or other government program shall not be pre-empted by the Ellis Act Housing Preference Program. Thus, buildings with other approved and documented occupancy priorities shall apply the EAHP preference after the other preferences (including the COP preference). InInclusionary BMR Units (which generally do not include other approved occupancy priorities), COP holders receive first preference, EAHP certificate holders receive second preference, and households that live or work in San Francisco receive third preference.

In cases where the project does not have other approved occupancy preferences the Project Sponsors shall give first preference in occupying affordable housing to persons who have been issued a COP certificate and who meet all qualifications for the unit. The Project Sponsor shall give second preference in occupying affordable housing to persons who have been issued an EAHP certificate and who meet all qualifications for the unit.

For new developments going through the initial lease-up or sale process, the EAHP priority applies to only twenty percent (20%) of the units. Buildings with four (4) or fewer affordable units are except from granting the EAHP priority at initial lease-up or sale.

In new developments with five (5) or more affordable units going through the initial lease-up or sale process, the EAHP priority applies to only twenty percent (20%) of the affordable units. Thus, if the number of affordable units available exceeds the number of qualified applicants who hold a COP certificate, the next priority will go to EAHP certificate holders for up to 20% of the total newly developed affordable units in the development.

Re-Rental and Re-Sale. For re-rental and re-sale units, EAHP certificate preference applies to every unit that becomes available, regardless of the number of affordable units in the building. Project Sponsors that fill unit vacancies off of a waitlist must accept applications from approved EAHP certificate holders at any time, regardless of whether the waitlist is closed to other applicants. If the EAHP certificate holder is found eligible for an affordable housing unit in the building, they shall be placed at the top of the waitlist, above all others except COP and other preference holders.

Notice of Intent and EAHP Rescindments

If the landlord rescinds the NOI, then the tenant is not eligible to apply for the EAHP certificate unless they can demonstrate that they moved out prior to the date of the NOI rescindment. If the landlord rescinds the NOI following issuance of an EAHP certificate, and an EAHP certificate holder is still residing in the original unit, then the EAHP certificate will be rescinded by MOHCD.

If the NOI is rescinded after the tenant has moved out of their unit, then the tenant will be eligible to apply for the EAHP certificate. If the tenant has already been issued an EAHP certificate, the certificate will not be rescinded. Similarly, if the NOI is rescinded after the certificate holder has moved into an affordable housing unit, the NOI rescindment will not affect their tenancy.

Additional Use Restrictions

An EAHP certificate is not transferable voluntarily, by inheritance, by operation of law, or otherwise.

A Displaced Tenant is not entitled to EAHP priorities until a certificate has actually been issued.

INFORMATION FOR PROJECT SPONSORS OF INCLUSIONARY BMR UNITS

New and Vacant Buildings

Preference Order and Required Unit Set-Aside
The Project Sponsors shall give first preference in occupying BMR units to persons who have been displaced from their homes by redevelopment activities, have been issued a Certificate of Preference (COP) and who meet all qualifications for the unit.

The Project Sponsor shall give second preference in occupying BMR units to persons who have been displaced from their homes by an Ellis Act Eviction, have been issued an Ellis Act Housing Preference (EAHP) Program certificate and who meet all qualifications for the unit.

For new residential developments going through the initial lease-up or sale process, the EAHP priority shall apply to twenty percent (20%) of the BMR units. Thus, if the number of units available exceeds the number of qualified applicants who hold a COP, the next priority will go to EAHP certificate holders for up to 20% of the total BMR units. The EAHP priority does not apply at initial lease-up or sale to buildings having four (4) or fewer than four (4) BMR units. However, the EAHP priority does apply to these same units upon re-rental or resale. Re-rental and re-sale units, EAHP certificate holders shall have second priority on every unit that becomes available.

The Project Sponsor shall give third preference in occupying BMR units to persons living or working in San Francisco who meet all qualifications for the unit.

Marketing Plan
The Project Sponsor shall supply MOHCD with a complete and updated Marketing Plan at least sixty (60) calendar days prior to accepting lease applications and at least one hundred and twenty (120) calendar days prior to the anticipated close of escrow for ownership units or lease origination dates for rental units. This information shall not be changed without providing MOHCD with fourteen (14) calendar days written notice.

Outreach to EAHP Certificate Holders
The City shall furnish the following:

- A Housing Email Alert service which provides notices to EAHP certificate holders advising them that City Affordable Housing units will soon be available;
- Assistance to tenants in filing EAHP applications (when possible) or referral to an appropriate housing counseling organization.

Application Forms
All City Affordable Housing project applications shall include the following questions:

- "Do you have an Ellis Act Housing Preference Program certificate?"
- "If yes, please provide the address from which you were evicted."

Pre-Lottery Application Status Reports
At least every seven (7) calendar days, from the initial date applications are accepted, The Project Sponsor shall supply MOHCD with a "status report" listing names and addresses of EAHP certificate

holders. MOHCD will, in turn, confirm within fourteen (14) calendar days that applicants are or will qualify as EAHP certificate holders. No less than 48 business hours prior to lottery proceedings, MOHCD must have a complete list of all applicant's names, addresses, and whether they have indicated that they have an EAHP certificate.

Lottery Procedures
Applicants who submit a complete application by the application deadline will receive a numbered lottery ticket whose twin ticket shall be entered into the lottery. EAHP certificate holders will receive one numbered lottery ticket that will be entered into both the EAHP lottery and the lottery for applicants who live or work in San Francisco. Incomplete applications will not be entered into either lottery. Applicants shall be invited to attend lotteries, but attendance is not mandatory.

To conduct the lottery, MOHCD and/or the Project Sponsor shall pull application tickets from a vessel and order and record the lottery results in rank order by application ticket number. There should be three separate lotteries held. First, COP holders will be drawn and ranked, followed by EAHP applicants, followed by applicants who live or work in San Francisco. In addition to the EAHP lottery, EAHP certificate holders will also be included in the live/work lottery regardless of their current live/work location. After the EAHP lottery is conducted and recorded all EAHP applicant lottery tickets will be combined with the live/work applicant tickets.

After the lottery, three final lottery lists shall be produced by the Project Sponsor and approved by MOHCD. The Project Sponsor shall notify applicants of their position in the lottery.

Application Review
The Project Sponsor shall adhere to the rank order of each of the lottery lists when offering BMR units to lottery winners. Applicants shall be reviewed by the Project Sponsor with MOHCD's approval post-lottery for program qualifications and issued an approval or disqualification letter. Note that eligibility requirements for the units available will be considered. For example, a five (5) member household who is ranked 3rd on the list will not be offered a unit if there are only studio apartments available.

For new developments, the EAHP lottery list will include all EAHP applicants but will only apply to 20% of the available affordable units. Once those units have been filled, the Project Sponsor shall begin the application review of the Live/Work or general lottery list for the remaining affordable units2. Should any of the EAHP certificate applicants being considered for the EHAP priority units fall out before occupying a unit, the Project Sponsor shall go back to the EAHP lottery list to fill the vacancy until the EAHP list is exhausted. Once the EAHP list is exhausted, the Project Sponsor shall go to the Live/Work or general list to fill any units remaining from the EHAP priority units.

Post-Lottery Status Report
At least every seven (7) calendar days after the lottery, the Project Sponsor shall supply MOHCD with a "status report" listing names and addresses of all EAHP certificate holders indicating the status of each application as of that date and the exact reason for any rejections. This weekly status report shall continue until all City Affordable Housing Units are leased/sold.

Applicants who are deemed ineligible shall be notified in writing within seven (7) calendar days, with a copy to MOHCD.

Response Deadline
EAHP Applicants who have been accepted and notified in writing by the Project Sponsor shall have at least ten (10) calendar days thereafter to enter into a lease agreement or ownership agreement. If the EAHP applicant fails to affirmatively respond, the application should be closed. Rejection of the unit by an EAHP certificate holder must be shown on the current status report.

Final Documentation
Within fourteen (14) calendar days after execution of a lease or sale, the Project Sponsor shall supply MOHCD with a copy of the following for all EAHP applicants

- signed copy of lease or ownership agreement
- copy of complete application

Rerentals and Resales

The Project Sponsor or their Agent shall notify MOHCD at least thirty (30) calendar days prior to the intended lease origination or sale date of a vacant BMR unit and before beginning any general marketing.

A public lottery that is done in accordance with the process outlined in the Inclusionary Housing Program Procedures manual and above will be held for all BMR Units upon rerental or resale.

INFORMATION FOR PROJECT SPONSORS OF AFFORDABLE HOUSING BUILDINGS (EXCLUDING INCLUSIONARY BMR UNITS)

New and Vacant Buildings

Preference Order and Required Unit Set-Aside
The order of preferences documented in an approved marketing plan or developer agreement shall not be pre-empted by the Ellis Act Housing Preference Program. Preferences required by a former Redevelopment Project Area Plan shall not be pre-empted by the Ellis Act Housing Preference Program. Preferences required by the LOSP, Direct Access to Housing Program, Housing First Program, or other government program shall not be pre-empted by the Ellis Act Housing Preference Program. Thus, buildings with other approved and documented occupancy priorities shall apply the COP and EAHP after the other preferences, ensuring that COP holders are granted priority above EAHP certificate holders.

In cases where the project does not have other approved occupancy preferences, the Project Sponsor shall give first preference in occupying affordable housing to persons who have been issued a Certificate of Preference (COP) and who meet all qualifications for the unit. The Project Sponsor shall give second preference in occupying affordable housing to persons who have been issued an Ellis Act Housing Preference (EAHP) Program certificate and meet all qualifications for the unit.

For new residential developments going through the initial lease-up or sale process, the EAHP priority shall apply to twenty percent (20%) of the affordable housing units. Thus, if the number of units available exceeds the number of qualified applicants who hold a COP or other preference, the next priority will go to EAHP certificate holders for up to 20% of the total affordable units. The EAHP priority does not apply at initial lease-up or sale to buildings having four (4) or fewer affordable housing units. However, the EAHP priority does apply to these same units upon re-rental or resale.

Marketing Plan
The Project Sponsor shall supply MOHCD with a complete and updated marketing plan at least six months prior to construction completion. This information shall not be changed without providing MOHCD with fourteen (14) calendar days written notice.

Outreach to EAHP Certificate Holders
The City shall furnish the following:

- Written and/or printed notices to EAHP certificate holders advising them that units will soon be available
- Assistance to qualified tenants in filing EAHP applications (when possible) or referral to an appropriate housing counseling organization

Application Forms
All applications for City Affordable Housing shall include the following questions:

- "Do you have an Ellis Act Housing Preference Program ccertificate?"
- "If yes, please provide the address of the unit from which you were evicted through the Ellis Act."

Pre-Lottery Application Status Reports
The Project Sponsor shall supply MOHCD with the names and addresses of applicants who answer the above question affirmatively or otherwise demonstrate that they are EAHP certificate holders. A status

report including this information will be provided, at a minimum, every seven (7) calendar days from the initial date applications are accepted. The MOHCD will, in turn, verify within fourteen (7) calendar days of receipt of each status report which such applicants are confirmed as qualified EAHP certificate holders. Project Sponsors should not enter into any lease or sales agreement with an EAHP certificate holder unless they have received verification in writing from MOHCD that the certificate is valid.

After the application period has closed, and prior to lottery proceedings, a non-prioritized list of all interested applicants will be provided to MOHCD. The list shall include applicant names, addresses, and whether the applicant holds an EAHP ccertificate.

Lottery Procedures
Specific outreach and lottery procedures in the MOHCD-approved marketing plan for each development will ensure a transparent and fair process. In addition to procedures in the approved marketing plan, Project Sponsors shall ensure that, after application of any approved and documented occupancy priorities, all COP holders receive first priority for occupancy and EAHP certificate holders receive second priority for occupancy in 20% of the affordable units. EAHP certificate holders who are not offered a unit in the EHAP priority units shall have equal chance at any remaining units as other qualified applicants.

When compatible with the MOHCD approved marketing plan, MOHCD recommends following the below lottery procedure:

Applicants who submit a complete application by the application deadline will receive a numbered lottery ticket whose twin ticket shall be entered into the lottery. EAHP certificate holders will receive one numbered lottery ticket that will be entered into both the EAHP lottery and the general lottery. Incomplete applications will not be entered into either lottery. Applicants shall be invited to attend lotteries, but attendance is not mandatory.

To conduct the lottery, MOHCD and/or the Project Sponsor shall pull application tickets from a vessel and order and record the lottery results in rank order by application ticket number. There should be three separate lotteries held. First, COP holders will be drawn and ranked, followed by EAHP applicants, followed by general applicants. After the EAHP lottery is conducted and recorded all EAHP applicant lottery tickets will be combined with the general lottery.

After the lottery, the final lottery lists shall be produced by the Project Sponsor and approved by MOHCD. The Project Sponsor shall notify applicants of their position in the lottery.

In cases where there are numerous preferences, as is the case for most developments in former Redevelopment Project Areas, working in collaboration with MOHCD, the Project Sponsor should execute a single lottery for each preference. The EAHP lottery shall be held after the COP preference and before the general lottery. All preference holders have an established rank within their individual lottery. The Project Sponsor shall record the order of lottery numbers drawn and produce the final lottery lists. Once the lottery preferences have been confirmed and applied, applicants shall be notified of their position in the lottery.

Post-Lottery Status Report
Within two (2) calendar days, the Project Sponsor shall supply MOHCD with the lottery results including the rank order of each applicant and indication of EAHP certificate holders.

Thereafter, every seven (7) calendar days following any lottery or upon initiating lease-up, the Project Sponsor shall supply MOHCD with a “status report” listing names and addresses of EAHP certificate holders indicating the status of each application as of that date until all affordable units are leased/sold. If

ineligibility is determined, the applicant will be notified in writing within one week after such determination is made, with a copy to MOHCD. These applications will also appear on the status report.

EAHP applicants who are deemed ineligible shall be notified in writing with a copy to MOHCD.

Appeals
In the case of an appeal or request for reconsideration, the Project Sponsor shall follow procedures outlined in the MOHCD monitoring and procedures manual and project marketing plan. Typically, this will require maintaining an appropriately sized unit for the disqualified household.

Response Deadline
Applicants who have been accepted and notified in writing by the Project Sponsor shall have at least ten (10) calendar days thereafter to enter into a lease agreement or ownership agreement. If the applicant fails to affirmatively respond, the application may be closed, making that unit available to the next eligible tenant. Written notice shall be provided to applicants whose applications are closed after 10 days due to a lack of response. Rejection of the unit by an EAHP ccertificate holder and closed applications must be shown on the status report.

Final Documentation
Within fourteen (14) calendar days after execution of a lease or sale, the Project Sponsor shall supply MOHCD with a copy of the following for all EAHP tenants:

- signed copy of lease or ownership agreement
- copy of complete application

Rerentals and Resales
Upon rerental or resale of any affordable unit or when re-opening the project waitlist to new applicants, the Project Sponsor shall notify MOHCD as soon as possible in advance of any vacancy or waitlist opportunity. In no event shall MOHCD be notified fewer than thirty (30) days before the date of re-occupancy for a vacant unit. In no event shall MOHCD be notified fewer than thirty (30) days before a closed waitlist is re-opened for new applications. Violation of the thirty (30) day notification requirement may delay re-occupancy.

Appeals, response deadline, application forms, and final documentation requirements above shall apply to all rerentals and resales.

Waitlists
Project Sponsors that fill unit vacancies off of a waitlist must accept applications from approved EAHP certificate holders at any time, regardless of whether the waitlist is closed to other applicants. If the EAHP certificate holder is found eligible for an affordable housing unit in the building, they shall be placed at the top of the waitlist, above all others except COP and other preference holders.

No more than seven (7) calendar days following the date any new applications are accepted for a waitlist, the Project Sponsor shall supply MOHCD with a status report listing names and addresses of EAHP certificate holders indicating the status of each application as of that date and the reason for any rejections.

MOHCD will, in turn, verify within fourteen (7) calendar days which such applicants are qualified as EAHP certificate holders.

Each time a new waitlist is established and on an annual basis, MOHCD shall be provided with a complete list of all applicant names, rank on the waitlist, address, and whether they hold an EAHP certificate upon finalization of the waitlist.

Lotteries
Project Sponsors that fill unit vacancies using a lottery process must adhere to the guidelines pertaining to lotteries and status reports that are outlined above for new and vacant buildings.

Other Rerental Processes
Borrowers that fill unit vacancies using some other process than an established waitlist or a lottery, such as those who use a first-come first-served method, must consult with MOHCD to ensure a fair, transparent process that adheres to the required EAHP priorities.

HOW EAHP WORKS IN DIRECT ACCESS TO HOUSING (DAH) UNITS

Per the Ellis Act Displacement Emergency Assistance Ordinance, all affordable housing units that receive assistance from MOHCD or SFRA must prioritize eligible EAHP certificate holders. Some Direct Access to Housing (DAH) units overseen by the Department of Public Health are also funded by MOHCD or SFRA. For those units, the EAHP priority will be integrated into the existing referral process. Thus, the EAHP Program procedures differ in these units than in other types of affordable housing.

To be eligible for DAH units, an individual must be referred by a case manager to Placement. If the client is appropriate for DAH housing, then Placement passes the referral onto the DAH Access and Referral Team. The DAH Access and Referral Team manages a pool of potential DAH housing applicants. Clients are prioritized for DAH housing based on their:

- Level of medical and/or mental health acuity
- Substance use severity
- Homeless situation
- Match between clients' needs and available on-site services
- Availability and match of a DAH unit

MOHCD will provide regular updates to the DAH Access and Referral Team with the name of approved COP and EAHP certificate holders. The DAH Access and Referral Team will flag all COP and EAHP certificate holders in the pool of potential DAH housing applicants.

When applying preferences in cases where more than one individual are otherwise equivalent in their level of priority, as determined by the DAH Access and Referral Team, the COP holder will receive first preference and any EAHP certificate holder will receive second preference for the available unit.

Upon identifying a match between an available unit and an applicant having a COP or EAHP certificate, the DAH Access and Referral Team initiates a site-specific application process via the referring case manager. At this point, the DAH Access and Referral Team will notify MOHCD of the name and address of the preference holder, contact information for the referring case manager, and contact information for property management staff at the affordable housing site to which they have been referred.

COP and EAHP certificate holders must complete an application and proceed through a typical screening process for the unit, including an interview and background check. Housing sites may have additional site-specific paperwork, documentation and tenant selection process.

As soon as practicable, property management staff shall notify MOHCD in writing, of the approval or rejection of any COP or EAHP certificate holders who have applied, and provide the reason for any rejection. Property management at the housing site determines all applicant housing outcomes based on resident selection criteria.

As soon as practicable, after execution of a lease, the property management staff shall supply MOHCD with a copy of the following for all COP and EAHP tenants:

- signed copy of lease agreement
- copy of complete application(s)

USE OF THE EAHP CERTIFICATE IN HUMAN SERVICES AGENCY HOUSING FIRST UNITS

Per the Ellis Act Displacement Emergency Assistance Ordinance, all affordable housing units that receive assistance from MOHCD and the former SFRA must prioritize eligible EAHP certificate holders. Some units in the Housing First Program, overseen by the Human Services Agency (HSA), are also funded by MOHCD or SFRA. For Housing First units, the EAHP priority will be integrated into the existing referral processes managed by HSA. Thus, the EAHP Program procedures differ in these units than in other types of affordable housing.

Buildings that offer Housing First units for homeless and formerly homeless clients include:

- Master-leased SRO buildings (Care not Cash buildings and non-Care not Cash buildings)
- LOSP funded units
- Shelter + Care funded units

The Human Services Agency partners with community-based organizations located throughout the city that outreach to and serve homeless individuals and families to be the primary referral sources for Housing First units. These organizations are called Access Points. To be eligible for Housing First units, an individual or household must be referred by one of the Access Point organizations.

Access Point organizations include family emergency shelters, domestic violence shelters, transitional housing facilities, and other stand-alone agencies. For Care Not Cash buildings, clients get a referral from their CAAP eligibility worker if they are actively receiving benefits and are homeless.

At initial rent up, Housing First units are distributed to each organization in sequential order. When units become available after initial rent up, they are distributed to the next Access Point agency in sequence. All referrals are done in real time and no wait lists are created.

In making the referral for a Housing First unit, Access Point agencies must prioritize individuals and families according to the eligibility criteria and highest need. In cases where more than one individual or family meets the eligibility criteria and is otherwise equivalent in their level of priority, as determined by the Access Point staff, the COP holder then the EAHP certificate holder shall be prioritized for the available unit.

The Access Point Intake Form Access Point staff complete and provided to HSA staff shall include the following questions:

- "Have you been displaced from your home or residence by the San Francisco Redevelopment Agency?"
- "Do you have an Ellis Act Housing Preference Program certificate?"
- "If yes, please provide the address from which you were Ellis Act Evicted."

In this way, HSA staff will be able to immediately identify COP and EAHP certificate holders referred for Housing First units. Upon initiating the project-specific housing application for a client having a COP or EAHP certificate, the HSA Housing First staff will notify MOHCD of the name and address of the preference holder and contact information for property management staff at the affordable housing site to which they will apply.

COP holders and EAHP certificate holders must complete an application and proceed through a typical application and screening process for the unit.

As soon as practicable, property management staff shall notify MOHCD in writing, of the approval or rejection of any COP or EAHP certificate holders who have applied, and provide the reason for any rejection.

As soon as practicable, after execution of a lease, the property management staff shall supply MOHCD with a copy of the following for all COP and EAHP tenants:

- signed copy of lease agreement
- copy of complete application(s)