

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Buffy Wicks, Chair
SB 649 (Cortese) – As Amended April 19, 2021

SENATE VOTE: 37-0

SUBJECT: Local governments: affordable housing: local tenant preference

SUMMARY: Establishes a state policy supporting local tenant preferences in affordable housing developments. Specifically, **this bill**:

1. Creates the Local Tenant Preferences to Prevent Displacement Act.
2. Defines the following terms:
 - a) “Affordable rental housing” means a rental housing development, as defined, with a majority of its rents restricted to levels that are affordable to persons and families of low or moderate income, except that neither definition is restrictive to projects with only five or more units;
 - b) “Lower income households” means the same as defined in Section 50079.5 of the Health and Safety Code;
 - c) “Displacement risk” means certain conditions, when present, having the cumulative effect of causing displacement of lower income households, including, but not limited to, higher percentages of lower income rent-burdened residents, planned or occurring real estate development, rising rent levels, vacancy rates under 5 percent in lower cost apartments, increased evictions, or other local factors leading to displacement as determined by a municipality. It also includes displacement due to other precipitating events, which may include, but are not limited to, closures of mobilehome parks, Ellis Act evictions, cessation of rental subsidies, fire or other physical disaster, or other events as determined by a municipality; and
 - d) “Local tenant preference” means an affordable housing preference provided to lower income households subject to displacement risk for a percentage of deed-restricted affordable rental units in a residential property.
3. States that the purpose of this bill is to facilitate the acquisition, construction, rehabilitation, and preservation of affordable rental housing for lower income households to allow them to access and maintain housing stability in their communities.
4. Provides that a program authorized and implemented pursuant to this chapter must be restricted to lower income households subject to displacement risk.
5. States that this bill creates a state policy supporting local tenant preferences for lower income households, as defined, that are subject to displacement risk, and, further, permits local governments and developers in receipt of local or state funds, federal or state tax credits, or an allocation of tax-exempt private activity bonds designated for affordable rental housing to

restrict occupancy by creating a local housing preference for lower income households subject to displacement risk.

6. Permits a local government to establish a local tenant preference in an affordable housing rental development to reduce displacement of lower income households with displacement risk beyond local government boundaries by adopting a program that allows preferences in affordable rental housing acquired, constructed, preserved, or funded with state or local funds or tax programs.
7. Provides that a local government that elects to adopt a local tenant preference pursuant to this section must enact an ordinance that includes all of the following:
 - a) A clearly defined population eligible for the tenant preference;
 - b) Detailed findings that support a valid, nondiscriminatory government interest for the local tenant preference;
 - c) A declaration that the ordinance has undergone fair housing review and comports with existing fair housing law; and
 - d) A detailed summary of the strategies and policies enacted by the local government to address housing supply and equitable housing access, particularly for lower income households.
8. Specifies that a local tenant preference adopted pursuant to this bill shall be administered in a manner consistent with the duty to affirmatively further fair housing, the Fair Employment and Housing Act, the Unruh Civil Rights Act, and any implementing regulations thereunder.
9. Includes legislative findings and declarations related to the need for the bill and the role of state and local government in meeting housing needs.

EXISTING LAW:

- 1) Establishes the California Fair Employment and Housing Act, which prohibits, and provides remedies for, discrimination in housing accommodations on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person. (Government Code Section 12900 *et seq.*)
- 2) Provides under the Unruh Civil Rights Act that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civil Code Section 51 *et seq.*)
- 3) Defines “affirmatively furthering fair housing” to mean taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking

meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development. (Government Code Section 8899.50)

- 4) Provides that no person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. (Government Code Section 11135)
- 5) Provides that whenever all or any portion of a redevelopment project was developed with low- or moderate-income housing units the designated housing successor agency shall require that the housing be made available for rent or purchase to the persons and families of low or moderate income displaced by the redevelopment project and to a person of low or moderate income who is a descendant of the person displaced by the redevelopment project and who, at the time of displacement, was not living in the household or had not yet been born. Those persons and families shall be given priority in renting or buying that housing. (Health and Safety Code Section 34178.8(a))
- 6) Requires that low-income housing tax credits (LIHTCs) utilized for affordable rental housing must be available for public use. Further states that a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants:
 - a) With special needs;
 - b) Who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group; or
 - c) Who are involved in artistic or literary activities. (26 U.S.C. Section 42(g)(9)(A) – (C))
- 7) Prohibits discriminatory housing practices unde the federal Fair Housing Act. (42 U.S.C. Section 3601 *et seq.*)
- 8) Provides that a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Section 7, Article XI, California Constitution)

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, “Tenant Preferences are an important tool to help stabilize neighborhoods and keep people from being uprooted from their homes, families, and networks. Nobody deserves to be forced out of their community because they can’t find stable and affordable housing, especially during a time when families are already facing extreme financial hardship due to the COVID-19 pandemic. Tenant preferences can help prioritize efficient use of scarce affordable housing resources to help mitigate problems caused by displacement in our communities. SB 649 will play a vital role in bolstering the state’s efforts to protect our most vulnerable residents from displacement and addressing the homelessness crisis ravaging our cities.”

Background on California’s housing crisis: The lack of affordable housing disproportionately impacts California’s most economically-vulnerable households. According to data from the 2019 American Communities Survey, over half of the state’s renter households are considered rent-burdened, which is defined as paying more than 30 percent of their income towards rent. For low-income renter households in the state the share of cost-burdened families is even higher at 80 percent. To address this shortfall the most recent update of the Statewide Housing Plan calls for the production of over a million units of affordable housing units for lower income households in the coming years¹.

Local preference policies for affordable housing: A number of California cities and counties provide current or former low-income residents with priority access to affordable housing units operated or funded by the jurisdiction or the local housing authority. Some of these policies give a preference to individuals and families displaced by government-led urban renewal and redevelopment policies. Others define the preference based on residency in certain neighborhoods or employment in the city or county.

For example, San Francisco maintains a Certificate of Preference (CoP) policy for those displaced in the 1960s and 1970s by the city’s redevelopment agency². Under urban renewal and redevelopment efforts local governments drew on federal funds to designate certain areas of city as “blighted” and then used eminent domain to force out residents – often low-income communities of color – before redeveloping the area with new residential and commercial development. Under the city’s CoP program displaced San Franciscans can receive priority access to affordable rental and ownership housing provided by the former redevelopment agency as long as they meet income eligibility requirements. Last year AB 1584 (Housing and Community Development Committee, Chapter 360, Statutes 2021) authorized an expansion of the CoP policy to all decedents of families displaced during redevelopment.

The City of Oakland also maintains a local preference policy which gives preferential access to city-funded affordable housing for those who work in the jurisdiction, those displaced by the city’s code enforcement activities, former residents evicted for “no fault” causes in the last eight years, and those who live in the same city council district as the affordable housing development. In developing their ordinance the City of Oakland determined that the local council-level preference portion of the ordinance needed to be capped at 30 percent of the units in an

¹ <https://statewide-housing-plan-cahcd.hub.arcgis.com/>

² <https://sfmohcd.org/certificate-preference>

affordable housing development in order to avoid a potential violation of fair housing laws based on disparate impact considerations³.

Proposal to create a state program supporting local tenant preference policies: This bill creates a state policy supporting local tenant preferences for lower income households that are subject to displacement risk. Under SB 649 local governments and developers receiving low-income housing tax credits (LIHTCs) or an allocation of tax-exempt private activity bonds to finance an affordable housing project would be able to limit occupancy according to the terms of a local tenant preference policy. While cities and counties already have the authority to enact their own local tenant preference policies for affordable housing financed with local government funds (and would be able to continue doing so in the same manner regardless of the outcome of this bill), a state program must be in place in order for local tenant preference policies to be applied to affordable housing developed with LIHTCs. Specifically, federal law requires that LIHTC developments are generally for “public use,” but preferences are permitted for members of a specified group under a state program or policy that supports housing for that group (26 U.S.C. Section 42(g)(9)).

Local ordinances enacted pursuant to this legislation would be restricted to lower income households subject to displacement risk. This bill defines displacement risk as conditions that cumulatively have the effect of causing displacement of lower income households, including, but not limited to, higher percentages of lower income rent-burdened residents, planned or occurring real estate development, rising rent levels, vacancy rates under 5 percent in lower cost apartments, increased evictions, or other local factors leading to displacement as determined by a municipality. Displacement risk can also include closures of mobilehome parks, Ellis Act evictions, cessation of rental subsidies, fire or other physical disaster, or other events that the city or county deems relevant.

The city or county adopting the policy would need to clearly define the population eligible for the preference in the text of the ordinance. Additionally, the jurisdiction would need to issue findings that support a valid, nondiscriminatory government interest for the ordinance and confirm that it has undergone fair housing review and comports with existing fair housing law. The city or county would also need to issue a detailed summary of the strategies and policies it has adopted to address housing supply and equitable housing access, particularly for lower income households.

The City of San Jose is one of the co-sponsors of this bill and would like to apply a local tenant preference policy on affordable housing units. As noted above, LIHTC and certain other funding sources cannot be used to develop affordable housing restricted to special populations unless there is a state program in place. The Teacher Housing Act of 2016 is one such example of a recent state program allowing restricted occupancy in LIHTC-financed affordable housing.

Policy Considerations: While local preference policies have historically been used to further the exclusionary goals of white-majority suburbs, a more recent wave of local preference policies seeks to use them as tools to prevent displacement of low-income households being priced out of communities due to rising housing costs and gentrification pressures. A recent *Columbia Law Review* piece notes that “proponents of these policies contend that their use on an intracity level

³ <https://oakland.legistar.com/View.ashx?M=F&ID=4467448&GUID=AE598EEA-98E9-4FBE-B548-ECFCCA9A81DF>

preserves rather than excludes minority communities, thereby inverting the traditional discriminatory application of such preferences. Opponents of the policies argue that any residency preference implemented in a racially segregated area necessarily perpetuates segregation and violates the law.⁴ Attempts to prevent the displacement of minority populations using local preference policies face a number of challenges. Moreover, there are not clear standards to turn to in deciding how best to draft a policy advancing a local or community preference in housing in a way that will hold up to a legal challenge.

For example, San Francisco initially proposed using a neighborhood-based local preference policy for a senior housing development it sought to build with funding from the federal Department of Housing and Urban Development (HUD). However, HUD rejected the city's proposal and eventually HUD signed off on an alternate preference policy based on residency in neighborhoods where low-income residents faced high rates of displacement risk. This local preference policy was ultimately applied to 40 percent of the units⁵. This bill similarly uses "displacement risk" as the basis for creating a local tenant preference policy and specifies that the preference is to be applied to a percentage of deed-restricted affordable rental units in a residential property.

However, this bill does not include a specific maximum percentage of units and this suggests that a city could elect to draft a local tenant preference ordinance that applies to 100 percent of the units in affordable housing developments (assuming the ordinance passed fair housing review). Should this bill advance out of this committee the author may wish to consider adding a cap indicating the maximum percent of units (e.g., 50 percent) in an affordable housing development which can be subject to a local tenant preference policy. Limiting the applicability of local preference policies is a way to increase the probability that such policies will withstand a legal challenge. Additionally, since the City of San Jose is the only jurisdiction in support of the bill, it may be worth considering narrowing the bill to be a pilot program with just one city or a handful of jurisdictions. Including a sunset date would also allow the Legislature to evaluate whether the state should continue authorizing local tenant preferences as a state program in perpetuity or whether the policy needs to be revisited.

Technical tweak or Pandora's box? It could be argued that this bill seeks to make a relatively minor and technical change to state housing law. However, since this bill would allow all 539 California cities and counties to create local tenant preference policies that could be applied to state and federally-financed affordable housing developments, this could create considerable administrative and legal complexities for state housing finance entities such as the Department of Housing and Community Development (HCD), the California Housing Finance Agency (CalHFA), and the California Tax Credit Allocation Commission (TCAC). As a public agency the State of California and its departments and agencies have a duty to affirmatively further fair housing (Government Code Section 8899.50 *et seq.*).

Specifically, affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive

⁴ Zachary C. Freund, Note, *Perpetuating Segregation or Turning Discrimination on its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures* (2018) 118 Colum. L. Rev. 833, 834.

⁵ "Feds To Allow Preferences For Low-Income Applicants In S.F. Housing Complex." NPR. September 23, 2016. <https://www.npr.org/2016/09/23/495237494/feds-to-allow-preferences-for-low-income-applicants-in-s-f-housing-complex>

communities free from barriers that restrict access to opportunity based on protected characteristics. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development. As such, all of the housing finance entities at the state would need to be confident that any local preference policy limiting residency in state-financed developments affirmatively furthered fair housing while also complying with FEHA and Government Code Section 11135 – a provision of state law added in 1977 in order to prevent discrimination in state-funded programs. It states that no person shall be denied equal access to the benefits of, or subjected to discrimination by, any program administered or funded by the state, on the basis of sex, race, religion, sexual orientation or any other protected characteristic and could be implicated in the state's affordable housing funding decisions if the use of local tenant preference policies limits equal access to state programs.

Following extensive stakeholder feedback the author's office and committee have agreed to make a number of changes to the bill. These proposed amendments would generally remove much of current bill language and more concisely provide statutory authorization for the application of a local tenant preference in affordable housing developments financed through LIHTCs and tax-exempt private activity bonds. These proposed amendments would accomplish the following:

1. *Revise the declarations and findings to state that this bill meets the requirement for a state program to be in place under Section 42(g)(9) of the Internal Revenue Code.* Proposed amendments remove extraneous language on the role of state and local governments in providing housing. Additionally, staff notes that the committee amendment language in the declarations and findings includes the phrase "clarifying that a preference for lower income residents facing displacement may be applied". However, the author's stated reasoning for introducing this legislation (i.e., to create a state program with provides authorization for restricting occupancy in LIHTC-financed housing) suggests that the use of local tenant preferences is not currently allowed under existing law. Moreover, the committee has received technical assistance from stakeholders involved in the LIHTC award process which suggests that it would be more appropriate to use the term "establishing" or "providing" rather than "clarifying". Furthermore, no stakeholders have been able to identify LIHTC-financed properties in the state which have been filled under a local tenant preference policy. Should this bill advance from this committee the author may wish to give further consideration as to whether "clarifying" is the best term to use in this context.
2. *Remove extraneous provisions related to defining displacement risk and ordinance parameters.* Since each city and county that wishes to create a local tenant preference will need to draft the policy accordance with the specific local conditions in the jurisdiction, prescribing terms for these policies in statute may be counterproductive and create confusion as to whether a specific local preference policy is allowed. Strike outs in the bill's proposed Government Code sections 7061.1, 7061.2, and 7061.3 accomplish this goal.
3. *Require HCD and the Department of Fair Employment and Housing (DFEH) to create guidance for local governments related to local tenant preference policies.* Committee amendments would require HCD and DFEH to issue information guidance to cities and counties related to local tenant preference policies and state fair housing laws on or before July 1, 2024. Such guidance could aid local governments in understanding the types of fair housing analyses they may consider using when evaluating a particular policy. However, while state guidance could be helpful, as noted above, there is considerable uncertainty

around the interaction between fair housing laws and local tenant preferences. Even with state guidance, cities and counties may risk running afoul of fair housing laws, including the federal Fair Housing Act which state entities are not well-positioned to advise on.

Staff notes that the proposed HCD and DFEH guidance in the committee amendments is independent from the bill's authorization of cities and counties to adopt a preference that could be applied to LIHTC-financed affordable housing. Specifically, while the guidance required under this bill would be issued on or before July 1, 2024, cities and counties with local tenant preference policies could apply those to LIHTC and certain bond-financed affordable housing on or after January 1, 2023 (the operational date of this bill). The author may wish to clarify this point explicitly in the bill language after this bill leaves this committee.

4. *Post local tenant preference ordinances in a centralized web-based location.* To provide greater transparency on the specifics of local tenant preference policies the committee may wish to consider amendments to require cities and counties to submit all ordinance text and supporting materials to HCD and for HCD to post this information on their website. Such a policy would also provide a centralized repository for local ordinances so that the public, researchers, and advocacy organizations could access all of them in one location.

Committee Amendments: The committee may wish to consider the following amendments to the bill:

SECTION 1. The Legislature finds and declares all of the following:

- (a) The changes made by this act are necessary in order to provide affordable housing opportunities to lower income individuals residing in neighborhoods and communities experiencing significant displacement pressures and gentrification due to rapid growth and densification.
- (b) California law recognizes that the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian is a priority of the highest order. The early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels.
- (c) Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.
- ~~(d) California law recognizes that each locality is best capable of determining what efforts are required by it to contribute to the attainment of the state housing goal, provided such a determination is compatible with the state's housing goals and regional housing needs.~~
- ~~(e)~~(d) Almost all affordable housing developments require tax credit allocations for financial viability, and many also seek tax-exempt private activity bond financing. Under income tax regulations, to qualify as an exempt facility, a facility must serve or be available on a regular basis for general public use. Section 42(g)(9) of the Internal Revenue Code (26 U.S.C. Sec. 42(g)(9)) provides that a project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants with special needs, or who are

members of a specified group under a federal program or state program or policy that supports housing for such a specified group. *This act is intended to meet this requirement by clarifying that a preference for lower income residents facing displacement may be applied to developments receiving low-income housing tax credits and tax-exempt bonds for qualified residential rental properties defined under Internal Revenue Code 142(d) used to create and preserve affordable housing, provided the policy is implemented and applied in a manner consistent with the duty to affirmatively further fair housing pursuant to Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), the Unruh Civil Rights Act (Section 51 of the Civil Code), Government Code § 65008, Government Code §11135, the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), and any implementing regulations thereunder.*

(e)(f) Municipalities, ~~especially those in urban areas~~, are significantly challenged to meet the demand for affordable housing for ~~its~~ *their* lower income residents. Market forces continue to increase the cost of living through rising rents and increased home prices, while incomes for lower income residents continue to lag behind. This effect is magnified in areas of significant income inequality. While municipalities attempt to tackle these issues by targeted investment and zoning, these efforts can unintentionally lead to further housing displacement. Indeed, some of the main drivers for residential displacement are proximity to rail stations, proximity to job centers, historic housing stock, and location in a strong real estate market.

(f)(g) Communities and their residents benefit from affordable, stable housing when they can maintain access and proximity to local institutions, services, schools, community business, centers, and health care providers, and familial and social networks. Students' educational attainment is higher when they move less and have more stability, the mental and physical health of the community is improved with stably housed residents' lowered stress levels and ability to afford medical visits, and the community's fiscal health is improved as residents' discretionary spending increases on nonhousing costs such as food, medications, and clothes.

(g)(h) Studies have shown that negative effects for displaced lower income adults and children include their removal from their family, friends and community support networks, increased financial strain, decreased economic opportunities, increased and more costly commutes, unstable housing situations, worsened safety and environmental concerns, significant trauma, worsened educational outcomes, and for some, homelessness.

(i) ~~Local tenant preferences to lower income households for new and existing affordable housing can help stabilize housing for those who are at greatest risk of displacement from their communities due to community growth and densification that has resulted in increased housing costs and housing cost burdens for existing residents.~~

(j) ~~This act, and its implementation, is intended to be consistent with the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) and the Unruh Civil Rights Act (Section 51 of the Civil Code), and any implementing regulations thereunder.~~

SEC. 2. Chapter 12.76 (commencing with Section 7061) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.76. Local Tenant Preferences to Prevent Displacement Act

~~7061. This chapter shall be known and may be cited as the Local Tenant Preferences to Prevent Displacement Act.~~

It is the policy of the state of California that lower income individuals residing in neighborhoods and communities experiencing significant displacement pressures and gentrification due to rapid growth or increasing housing prices need access to housing that is affordable and that assists those households in avoiding displacement. To the extent feasible and consistent with other state and federal laws, the Low Income Housing Tax Credit program and tax-exempt bonds for qualified residential rental properties defined under Internal Revenue Code 142(d) used to create and preserve affordable housing should be used to support access to housing that would allow households at risk of displacement to remain in the community.

7061.1.

(a) *No later than July 1, 2024 the Department of Housing and Community Development and the Department of Fair Employment and Housing shall jointly develop and publish informational guidance for developing local tenant preference policies consistent with the state fair housing laws, including but not limited to the duty to affirmatively further fair housing pursuant to Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), the Unruh Civil Rights Act (Section 51 of the Civil Code), Government Code § 65008, Government Code §11135, and any implementing regulations thereunder.*

(b) *The Department of Housing and Community Development and the Department of Fair Employment and Housing may review, adopt, amend, and repeal informational guidance in order to implement this section. Any informational guidance adopted, amended, or repealed pursuant to this subdivision are hereby exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).*

For purposes of this chapter:

(a) “Affordable rental housing” means a rental housing development, as defined in subdivision (d) of Section 50675.2 of the Health and Safety Code, with a majority of its rents restricted to levels that are affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, but neither definition is restrictive to projects with only five or more units.

(b) “Lower income households” means the same as defined in Section 50079.5 of the Health and Safety Code.

(c) (1) “Displacement risk” means certain conditions, when present, having the cumulative effect of causing displacement of lower income households, including, but not limited to, higher percentages of lower income rent burdened residents, planned or occurring real estate development, rising rent levels, vacancy rates under 5 percent in lower cost apartments, increased evictions, or other local factors leading to displacement as determined by a municipality.

(2) "Displacement risk" includes displacement due to conditions described in paragraph (1) or other precipitating events, which may include, but are not limited to, closures of mobilehome parks, evictions pursuant to Chapter 12.75 (commencing with Section 7060), cessation of rental subsidies, fire or other physical disaster, or other events as determined by a municipality.

(d) "Local tenant preference" means an affordable housing preference provided to lower income households subject to displacement risk for a percentage of deed restricted affordable rental units in a residential property.

7061.2. (a) The purpose of this chapter is to facilitate the acquisition, construction, rehabilitation, and preservation of affordable rental housing for lower income households to allow them to access and maintain housing stability in their communities.

(b) A program authorized and implemented pursuant to this chapter shall be restricted to lower income households subject to displacement risk.

(c) This chapter creates a state policy supporting local tenant preferences for lower income households, as described in Section 42(g)(9) of the Internal Revenue Code (26 U.S.C. Sec. 42(g)(9)), that are subject to displacement risk, and, further, permits local governments and developers in receipt of local or state funds, federal or state tax credits, or an allocation of tax-exempt private activity bonds designated for affordable rental housing to restrict occupancy by creating a local housing preference for lower income households subject to displacement risk.

(a) *A local government adopting a tenant preference policy shall submit the ordinance and supporting materials to the Department of Housing and Community Development no later than 30 days after the date the ordinance becomes operational.*

(b) *The Department of Housing and Community Development shall post on its internet website any local government ordinance and any supporting materials related to the ordinance submitted to the department pursuant to subdivision (a).*

7061.3. (a) A local government may allow a local tenant preference in an affordable housing rental development to reduce displacement of lower income households with displacement risk beyond local government boundaries by adopting a program that allows preferences in affordable rental housing acquired, constructed, preserved, or funded with state or local funds or tax programs.

(b) A local government that elects to adopt a local tenant preference pursuant to this section shall enact an ordinance that includes all of the following:

(1) A clearly defined population eligible for the tenant preference.

(2) Detailed findings that support a valid, nondiscriminatory government interest for the local tenant preference.

(3) A declaration that the ordinance has undergone fair housing review and comports with existing fair housing law.

(4) A detailed summary of the strategies and policies enacted by the local government to address housing supply and equitable housing access, particularly for lower income households.

(e) A local tenant preference adopted pursuant to this section shall be administered in a manner consistent with the duty to affirmatively further fair housing pursuant to Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2), the Unruh Civil Rights Act (Section 51 of the Civil Code), and any implementing regulations thereunder.

Related legislation:

AB 1584, Chapter 360, Statutes 2021: Permitted successor agencies to redevelopment agencies to extend preferences to descendants of individuals displaced by the former redevelopment agency.

SB 1413, Leno, Chapter 732, Statutes 2016: Created the Teacher Housing Act of 2016 which established a state policy supporting the use of federal and state low-income housing tax credits to fund housing for teachers and school district employees subject to certain conditions.

AB 686, Santiago, Chapter 958, Statutes 2018: Required public agencies to administer programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

REGISTERED SUPPORT / OPPOSITION:

Support

City of San Jose (Sponsor)
Housing Action Coalition (Co-Sponsor)
SOMOS Mayfair (Co-Sponsor)
AIDS Healthcare Foundation
All Home
California Housing Consortium
City of Berkeley
City of Pleasanton
County of Santa Clara
Destination: Home
East Bay Young Democrats
Enterprise Community Partners
First Community Housing
LISC Bay Area
Mercy Housing
MidPen Housing Corporation
San Jose City Council District 5
SV@Home Action Fund
Working Partnerships USA

Opposition

None on file

Analysis Prepared by: Sandra Nakagawa / H. & C.D. / (916) 319-2085