



## Legal Aid Foundation of Los Angeles

### Long Beach Office

601 Pacific Avenue  
Long Beach, CA 90802  
Phone: (562) 435-3501  
Fax: (562) 435-7118  
[www.lafla.org](http://www.lafla.org)

### Other Office Locations:

Central Office, 1550 W. 8th Street, Los Angeles, CA 90017 T: (213) 640-3881  
East Los Angeles Office, 5228 Whittier Boulevard, Los Angeles, CA 90022 T: (213) 640-3883  
Santa Monica Office, 1640 5th Street, Suite 124, Santa Monica, CA 90401 T: (310) 899-6200  
South Los Angeles Office, 7000 S. Broadway, Los Angeles, CA 90003 T: (213) 640-3988  
West Office, 1102 Crenshaw Boulevard, Los Angeles, CA 90019 T: (323) 801-7989

Writer's Direct Line: (562) 304-2520

Writer's email: [sbrowne@lafla.org](mailto:sbrowne@lafla.org)

January 19, 2010

### RE: Comments re: the City of Long Beach's Proposed Local Housing Preference

Legal Aid supports the adoption of a carefully crafted preference for local residents and workers for City supported affordable housing units. We have reviewed the City's proposed Local Housing Preference Policy and we offer the following comments and proposed revisions:

1. **Adopt a Policy similar to Oakland's.** The City of Long Beach's proposed Local Housing Preference Policy ("Policy") is too complex. The Policy should be streamlined to make compliance, monitoring and enforcement easier. The City of Oakland's local resident/worker preference for affordable units is a model policy -- it is and simple, easy to comply with and does not violate applicable state and federal laws. Long Beach should adopt a Policy that mirror's the City of Oakland's. (See Oakland's local resident/worker preference policy and accompanying staff report attached hereto).
2. **Preference for those who live and work in Long Beach.** Sections 1.b. and 7.a.iii. of the proposed Policy violate state and federal fair housing laws because these sections are likely to have a discriminatory impact on seniors, disabled and female head of households, all of whom are groups protected by fair housing laws. Sections 1.b. and 7.a.iii. provide a priority for households that reside *and* work within the City of Long Beach. This preference is likely to have a discriminatory impact on seniors, disabled and female head of households, as they are less likely to work than other Long Beach residents. The City, therefore, should remove this preference category from the proposed Policy.
3. **Involuntary displacement.** The City should substantially revise or remove entirely the preference for involuntary displacement. This preference appears to be copied from the Long Beach Housing Authority's local preference policy and many sections of it are not relevant to the proposed Policy. The involuntary displacement preference is problematic in the following ways:
  - a. In section 2.a., the terms "by no fault of the applicant" and "appropriate documentation" are vague and unclear.
  - b. The required timeline for involuntary displacement is unclear -- i.e., When does displacement need to occur to qualify for this preference?
  - c. The "Termination of Tenancy" category is likely to be enforced in a subjective manner by owners. Owners, moreover, are not likely to provide needed documentation to tenants.

- d. The "Witness Protection Program" category does not seem relevant. Most households in this category are not likely to be Long Beach residents, as they are likely to be relocating from other cities.
  - e. The "Inaccessibility of Unit" category is likely to be enforced in a subjective manner by property owners. Owners, moreover, are not likely to provide needed documentation to tenants.
  - f. Applicants are likely to have a difficult time obtaining needed documentation to qualify for the "Substandard Housing" category. Low income applicants are not likely to have the resources needed to obtain professional written documentation of substandard housing conditions. Moreover, this preference is vague and unclear — i.e., What constitutes substandard housing?
  - g. The "Homelessness" category is not complete because it does not include homeless persons residing in Long Beach but sleeping in shelters outside the City and homeless persons with families residing in Long Beach.
  - h. The involuntary displacement preference could have a discriminatory impact on groups protected by fair housing laws.
  - i. If the involuntary displacement preference is removed from the Policy as we recommend, a new section should be added to the Policy to protect homeless persons residing in Long Beach, homeless persons residing in Long Beach but sleeping in shelters outside the City and homeless persons with family living in Long Beach.
4. **Employment.** The requirement that Long Beach workers work an average of at least 20 hours per week over the 90 day period prior to the date of application is problematic in two ways. First, the 20 hour per week work requirement could have a discriminatory impact on groups protected by fair housing laws, such as seniors and disabled, who are likely to work less than 20 hours per week. Second, the 90 day durational requirement is problematic. Federal housing programs, such as Section 8, public housing and HUD's multi-family housing programs, prohibit durational requirements that restrict eligibility based on the length of time a family has lived or worked in the local jurisdiction.<sup>1</sup> Courts, moreover, have consistently ruled that durational residency and work requirements are unconstitutional. It is therefore unlikely that such requirements can be legally imposed in local housing programs. The proposed Policy, therefore, should be revised to remove the 20 hour work requirement and the 90 day durational work requirement (i.e., applicants must only provide proof of employment at date of application).
5. **Justification/findings must be added to the Policy.** The Privileges and Immunities Clause of Article IV of the United States Constitution provides that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."<sup>2</sup> The U.S. Supreme Court specifically has specifically rejected the argument that discrimination based on municipal -- as opposed to state -- residency does not implicate the Clause.<sup>3</sup> However, the Privileges and Immunities Clause only precludes discrimination against non-residents when the governmental action burdens one of the

<sup>1</sup> See, 24 C.F.R. Sec. 5.655(c)(1)(i) and (v) and the *Multi-Family Occupancy Handbook*, par. 4-6(C)(1)(a) and (g) (Multi-family housing programs); 24 C.F.R. Sec. 960.206(b)(1)(ii) (Public housing); 24 C.F.R. Sec. 982.207(b)(1)(ii) (Section 8 Housing Choice Vouchers).

<sup>2</sup> UNITED STATES CONSTITUTION, ART. IV, § 2, cl. 1

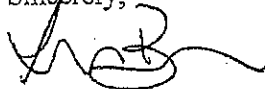
<sup>3</sup> Camden, 465 U.S. at 216.

privileges and immunities protected under the clause, *and* the government does not have a "substantial reason" for the difference in treatment or the discrimination practiced against the nonresidents does not bear a "substantial relationship" to the government's objectives.<sup>4</sup> Other cities have adopted local resident/worker policies based on an explicitly stated desire to address local housing needs, gentrification and displacement of local residents and workers. Wisely, these cities, such as the City of Oakland, have included findings in their policies regarding the gentrification and displacement they hope to address and the way in which the local preference policy will accomplish that goal. Long Beach's proposed Policy, therefore, should be revised to include findings regarding the problems the Policy seeks to address and the way in which the Policy will address those problems. The City of Oakland's local resident/worker policy and the accompanying staff report provide an example of how to easily include this analysis. These documents are attached to these comments.

6. **Not retroactive.** The proposed Policy should be amended to include a section stating that the Policy is to be applied prospectively, not retroactively. This will prevent the displacement of households currently residing in affordable units.
7. **Disparate Impact.** As a matter of legal due diligence, the City should conduct a preliminary demographic analysis of waiting lists for recently completed affordable housing projects in the City to see if the racial or ethnic breakdown of Long Beach residents on the lists are significantly different from the racial or ethnic breakdown of non-residents. The City should undertake this analysis to determine whether there might be a significant disparate impact to a protected class under state or federal fair housing laws if the City adopts a local resident/worker preference policy. The City of Oakland undertook a preliminary demographic analysis of recent wait lists prior to the adoption of its local resident/worker policy. This analysis is described in Oakland's policy and the related staff report, both of which are attached hereto.

Thank you for your consideration of our comments. Feel free to contact me if you have any questions.

Sincerely,



Susanne Browne  
Senior Attorney

<sup>4</sup> Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 284 (1985).

# CITY OF OAKLAND

## CITY AGENDA REPORT

08 APR -2 AM ID: 11

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Community and Economic Development Agency  
DATE: April 15, 2008

RE: Agency and City Resolutions Adopting an Oakland Resident and Oakland Worker Preference Policy for Affordable Housing Developments Funded Through the Agency's and City's Notice of Funding Availability (NOFA) Process

---

### SUMMARY

Staff is recommending that the Council/Agency approve one Agency and one City resolution adopting a policy that affordable housing developments funded through the 2007-08 Notice of Funding Availability (NOFA) process and future NOFAs be required to implement a preference for Oakland workers and residents in the selection of tenants and homebuyers for project units. There would be no durational requirement to qualify for the preference (i.e., all Oakland residents and workers would be eligible for the preference regardless of the length of time of residency or employment), and the preference would be applied only if and to the extent that other funding sources for the project permit the preference.

A preference for Oakland residents would help remedy potential gentrification impacts triggered by new development and revitalization, helping Oakland households avoid being "priced out" of their neighborhoods, and therefore avoiding potential displacement. A preference for Oakland workers would encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances to find affordable housing, as well as encourage businesses to locate in Oakland.

### FISCAL IMPACT

There are no specific fiscal impacts related to this action.

### BACKGROUND

The legal issues arising from a residency preference policy were presented to Council last year by the City Attorney's Office during the discussions around adopting such a policy for the Wood Street affordable housing developments. An Oakland residency preference policy was adopted by the Council/Agency on December 4, 2007 (See Attachment A) to apply to the Wood Street affordable housing developments (Legistar No. 07-0555 and 07-0555-1, Agency Resolution Nos. 2007-0082 and 2007-0083).

Item: \_\_\_\_\_  
City Council  
April 15, 2008

Subsequently, a recommendation to adopt a similar policy was introduced as part of the March 4, 2008 Agenda item regarding recommendations for funding awards for the 07-08 NOFA. Council requested that staff bring the preference policy back to Council as a separate item for further discussion and action.

## KEY ISSUES AND IMPACTS

### Policy Reasons for a Preference Policy

There are a number of policy reasons to adopt an Oakland resident and Oakland worker preference policy for affordable housing developments funded by the City/Agency. Giving preference to existing Oakland residents who are otherwise qualified to rent or buy affordable units would be a way to mitigate the effects of gentrification and displacement caused by market-rate development in historically low-income neighborhoods. That is, reserving below-market rate housing units subsidized by the City or Agency for Oakland residents is a way to counteract the effects of market rate redevelopment projects that tend to increase market rate rents and housing prices and make market rate housing unaffordable to existing residents. It would also provide an opportunity for existing Oakland residents to afford the housing provided by the City/Agency and stay in Oakland and benefit from the impacts of the City/Agency's redevelopment and community development efforts.

Another reason is that a residency preference would encourage neighborhood stability, i.e., provide a means for residents who have been active in a community to remain in the community in the face of increasing market rate rents and housing prices.

A preference for Oakland workers would encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances to find affordable housing. It could also encourage businesses to locate in Oakland in order to take advantage of the affordable housing opportunities available to their workers. Housing applicants who are already working in Oakland, have been notified that they are hired to work in Oakland, or are active participants in education or job training programs in Oakland would be considered Oakland workers for purposes of this policy.

### Disparate Impact

At the recommendation of the City Attorney's office and as a matter of legal due diligence, CEDA staff conducted a preliminary demographic analysis of waiting lists for recently completed affordable housing projects in Oakland to see if the racial or ethnic breakdown of Oakland residents on the lists are significantly different from the racial or ethnic breakdown of non-residents. The results of that analysis showed no significant disparate impacts to any protected class if a residency preference is applied. First, about 75% of households on the

Item: \_\_\_\_\_  
City Council  
April 15, 2008

waiting lists and about 72% of households selected for units are already Oakland residents. Thus the impact of instituting a residency preference would be relatively limited, since three out of four households selected for new units are already Oakland residents. Second, there does not seem to be any significant difference in the racial or ethnic composition of Oakland residents on the lists compared to non-residents. Therefore, based on data from recent projects, staff does not see any evidence that imposing an Oakland resident and Oakland worker preference would have a significant disparate impact on any class protected by fair housing laws.

### SUSTAINABLE OPPORTUNITIES

*Economic:* Approval of this policy will help reduce potential gentrification impacts triggered by new development and revitalization, helping Oakland households avoid being "priced out" of their neighborhoods, and therefore avoiding potential displacement.

*Environmental:* The preference for Oakland workers would encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances to find affordable housing.

*Social Equity:* Making affordable housing more easily obtainable for Oakland residents is a means of achieving greater social equity and retaining Oakland's neighborhood-level environment by allowing families to be able to afford to continue residing and working in Oakland.

### RECOMMENDATION(S) AND RATIONALE

Staff recommends that the Council/Agency adopt an Oakland resident and Oakland worker preference policy. Such a policy will be beneficial to applicants of affordable housing units throughout the City of Oakland in that this policy will help remedy potential gentrification impacts triggered by new developments and revitalization, as well as help Oakland households avoid being "priced out" of their neighborhoods, and therefore avoid potential displacement.

Encouraging Oakland workers to live in Oakland would benefit them in time saved in travel and a reduction in traffic impacts and costs while allowing them to be part of a community near their workplace.

Additionally, it is recommended that any Oakland resident/worker preference policy adopted by the City and Agency include a general qualification that the policy only applies if and to the extent that other funding sources for the project permit the Oakland resident and Oakland worker a preference standard.

Item: \_\_\_\_\_  
City Council  
April 15, 2008

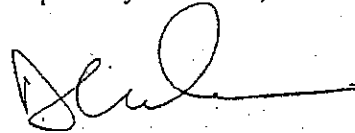
**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the Council approve a resolution establishing an Oakland resident and Oakland worker preference policy for affordable housing developments funded by the City through the 07-08 NOFA and all future NOFAs.

**ACTION REQUESTED OF THE REDEVELOPMENT AGENCY**

Staff recommends that the Redevelopment Agency approve a resolution establishing an Oakland resident and Oakland worker preference policy for affordable housing developments funded by the Agency through the 07-08 NOFA and all future NOFAs.

Respectfully submitted,



DAN LINDHEIM

Director

Community & Economic Development Agency

Reviewed by:

Sean Rogan

Deputy Director

Housing and Community Development

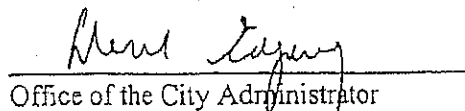
Prepared by:

Traci Lewis

Housing Development Coordinator

Housing and Community Development

APPROVED AND FORWARDED TO THE  
CITY COUNCIL

  
Office of the City Administrator

Item: \_\_\_\_\_  
City Council  
April 15, 2008

## Attachment A

### **Oakland Residency Preference**

The Train Station Partnership has proposed in their letter dated September 25, 2007 that the City "develop a residency preference for West Oakland and/or Oakland residents or workers" for the affordable housing proposed for the Wood Street development project. The CED Committee requested a recommendation on whether or not a preference for Oakland residents (but not for West Oakland residents) for the above housing units would be acceptable. The City Attorney's office issued a confidential opinion to the City Council regarding the legal issues raised by an Oakland residency preference.

Staff is recommending that an Oakland residency preference be implemented for the homebuyer assistance and for the subsidized homeownership units eventually developed on-site at Wood Street. There would be no durational requirement for residency, and the residency preference would be applied only if and to the extent that other funding sources for the project permit the preference. A residency preference would remedy potential gentrification impacts of redevelopment activities in the area. The redevelopment of the Wood Street District is anticipated to raise property values, with the possible result of "pricing out" and displacing existing Oakland residents. A residency preference for Agency subsidized affordable homeownership opportunities at Wood Street would assist households avoid potential displacement, providing an opportunity for existing residents to afford the housing provided and to stay in Oakland and benefit from the impacts of the redevelopment in the Wood Street District. If Council directs staff to pursue a residency preference for all City or Agency subsidized affordable housing developments and first-time homebuyer loan programs, staff could return with a recommendation on a citywide residency preference as part of the next NOFA funding recommendations to Council.

Excerpt from Wood Street Affordable Housing Agenda Report, presented to the Community and Economic Development Committee on November 27, 2007 and approved by the City Council on December 4, 2007.



OFFICE OF THE CITY CLERK  
OAKLAND

2008 APR -3 PM 2:36

APPROVED AS TO FORM AND LEGALITY:

  
Deputy City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

### A RESOLUTION ADOPTING AN OAKLAND RESIDENT AND OAKLAND WORKER PREFERENCE POLICY FOR AFFORDABLE HOUSING DEVELOPMENTS FUNDED THROUGH THE CITY'S NOTICE OF FUNDING AVAILABILITY PROCESS

WHEREAS, the City funds affordable housing developments through a Notice of Funding Availability ("NOFA") process; and

WHEREAS, giving a preference to Oakland residents to rent or buy units in these developments is necessary and justified because such a preference will remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City caused by City affordable housing development programs, would provide an opportunity for existing Oakland residents to afford the housing provided by the City and stay in Oakland and benefit from the impacts of City redevelopment and community development efforts, and would encourage neighborhood stability by providing a means for residents who have been active in a community to remain in the community in the face of increasing market rate rents and housing prices; and

WHEREAS, giving a preference to Oakland workers to rent or buy units in these developments is necessary and justified because such a preference will encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and will encourage businesses to locate in Oakland to take advantage of the affordable housing opportunities available to their workers; and

WHEREAS, such a preference policy will not have a significant disparate impact on any class of people protected by fair housing laws; now, therefore, be it

RESOLVED: That the City Council hereby adopts a policy that Oakland residents and Oakland workers shall be given a preference to buy or rent affordable housing units assisted by City funds provided through the NOFA process, provided that the residency and worker preferences shall be non-durational and shall be applied only if and to the extent that other funding sources for the project permit such preferences; and

FINDINGS  
Re: purpose  
need for  
loc. pref.

DISPARATE  
IMPACT  
FINDING

Simple  
POLICY  
w/o  
A durational  
Req't

Def.  
of  
Oakland  
Worzel

**FURTHER RESOLVED:** That applicants for units who are working in Oakland, have been notified that they are hired to work in Oakland, or are active participants in education or job training programs in Oakland shall be considered Oakland workers for purposes of this policy; and be it

**FURTHER RESOLVED:** That this policy shall be applied to projects funded under the 2007-08 NOFA process and all future NOFAs; and be it

**FURTHER RESOLVED:** That the City Council hereby appoints the City Administrator and his or her designee to adopt rules and regulations for the preference policy consistent with this Resolution, administer the policy, and take any other action with respect to the policy consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

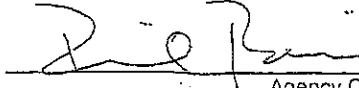
ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

OFFICE OF THE CITY CLERK  
OAKLAND

2008 APR -3 PM 2:36

APPROVED AS TO FORM AND LEGALITY:

  
Agency Counsel

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. \_\_\_\_\_ C.M.S.

---

### A RESOLUTION ADOPTING AN OAKLAND RESIDENT AND OAKLAND WORKER PREFERENCE POLICY FOR AFFORDABLE HOUSING DEVELOPMENTS FUNDED THROUGH THE AGENCY'S NOTICE OF FUNDING AVAILABILITY PROCESS

WHEREAS, the Agency funds affordable housing developments through a Notice of Funding Availability ("NOFA") process; and

WHEREAS, giving a preference to Oakland residents to rent or buy units in these developments is necessary and justified because such a preference will remedy or mitigate potential displacement and gentrification impacts of redevelopment activities in the City caused by Agency affordable housing development programs, would provide an opportunity for existing Oakland residents to afford the housing provided by the Agency and stay in Oakland and benefit from the impacts of Agency redevelopment efforts, and would encourage neighborhood stability by providing a means for residents who have been active in a community to remain in the community in the face of increasing market rate rents and housing prices; and

WHEREAS, giving a preference to Oakland workers to rent or buy units in these developments is necessary and justified because such a preference will encourage households working in Oakland to live near their workplaces, avoiding the negative environmental and traffic impacts of commuters traveling long distances between their jobs and their residences, and will encourage businesses to locate in Oakland to take advantage of the affordable housing opportunities available to their workers; and

WHEREAS, such a preference policy will not have a significant disparate impact on any class of people protected by fair housing laws; now, therefore, be it

RESOLVED: That the Agency hereby adopts a policy that Oakland residents and Oakland workers shall be given a preference to buy or rent affordable housing units assisted by Agency funds provided through the NOFA process, provided that the residency and worker preferences shall be non-durational and shall be applied

only if and to the extent that other funding sources for the project permit such preferences; and be it

**FURTHER RESOLVED:** That applicants for units who are working in Oakland, have been notified that they are hired to work in Oakland, or are active participants in education or job training programs in Oakland shall be considered Oakland workers for purposes of this policy; and be it

**FURTHER RESOLVED:** That this policy shall be applied to projects funded under the 2007-08 NOFA process and all future NOFAs; and be it

**FURTHER RESOLVED:** That the Agency hereby appoints the Agency Administrator and his or her designee to adopt rules and regulations for the preference policy consistent with this Resolution, administer the policy, and take any other action with respect to the policy consistent with this Resolution and its basic purpose.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
CHAIRPERSON DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
Secretary of the Redevelopment Agency  
of the City of Oakland, California