

ATTACHMENT C: Possible Types of Tenant Preferences and Legal Issues Assessment

AREA-WIDE TENANT PREFERENCE POLICIES					
#	Type	Possible Definition of Population	Example	Analysis	Number of Legal Issues
1	Live or Work	Those who live or work in San José. Evidence of residency includes a lease or evidence of utility bill payments at a SJ address. Local workers include those who spend 75% or more of a 40-hour workweek at a San José-based company or work location, and those who have received job offers at such an employer.	Many jurisdictions have this preference, including San Francisco, Emeryville, Boston. New York City has a tenant preference for NYC residents but not its workers. Housing authorities also establish live or work preferences through housing voucher programs.	Standard preference in many jurisdictions. Legal rationale is established and is recognized by State HCD. Applies to a broad population so legal analyses may be easier.	Low
2	Displaced	Residents displaced due to Ellis Act evictions or expiration of affordability restrictions	San Francisco gives a preference to residents displaced by an Ellis Act eviction. This preference also includes those displaced by “Owner Move-in” evictions and those displaced by fire. It defines a set-aside of 20% of most newly-funded affordable housing developments for this purpose. Boston has an Urban Renewal Displacee program for those displaced during a defined time period due to urban renewal programs. New York City has a similar program for residents of	Residents would need to show proof of residency and proof of eviction. City will now be notified of Ellis Act evictions and landlords’ notices of intent to withdraw the units from the market, and can validate the information. City tracks its affordability restriction expiration dates and would know which buildings were affected. Disparate impact data analysis would need to be done.	Low

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			certain urban renewal areas in certain years.		
3	Disaster victims	San José residents displaced from their residences for more than 90 days due to natural disaster (flood, fire, etc.) based on a state of emergency declaration, date that a City official mandated evacuation of the unit, or other specific disaster event declared by City.	San Francisco’s preference for displaced fire victims requires a tenant to have been ordered by a fire official to vacate and be displaced for at least 6 months. San Francisco includes this preference in its “Displaced” preference. Many housing authorities give preferences for housing vouchers for disaster victims.	Would need to create acceptable substitutes for occupancy paperwork if it is ruined in the disaster. Illegal units may not have had an official mandated evacuation order for that address, so need to create alternative procedures and standards.	Low
4	Anti-displacement	Residents living in certain low-income neighborhoods with defined boundaries that are undergoing extreme displacement pressure, as determined by City staff analysis annually.	San Francisco’s Anti-Displacement Housing Preference would allow up to 40% of new certain new affordable housing units to be occupied by residents with this preference. Location is defined by census tracts per staff analysis.	Housing staff’s analysis of neighborhoods determines eligibility, potentially based on objective analysis such as UC Berkeley. Need to determine an appeal process and whether illegal units would be covered. Disparate impact analysis would need to be done, and HUD’s approval would likely be needed.	Low
5	Neighborhood	Existing residents in a neighborhood or within a 0.5-mile radius that has a restricted affordable, City-supported rental or for-sale	San Francisco has a preference for existing neighborhood residents to occupy newly-leasing or for-sale affordable housing developments of 5 or	Applicant must prove residency in a location currently undergoing development, as defined by City. Neighborhood eligible for preference would	Low

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		development of 5 or more units can occupy up to some percentage (40%) of the new development.	more units that it subsidizes. The preference is limited to 40% of units in the new developments at the time of lease-up or sale. Neighborhood is defined as same Supervisorial District or 0.5-mile radius from the new development. New York City now reserves 50% of subsidized affordable apartments for neighborhood residents and has had this preference since 1988.	change over time. HUD may need to approve as under Fair Housing law, program cannot concentrate race or poverty.	
6	Rent-burdened	Existing City residents who pay more than a certain percentage of their income towards housing costs.	San Francisco has a Rent-burdened Preference for City residents who pay over 50% of gross income towards housing costs. Effectuated only in affordable housing produced via Development and Disposition Agreements of former RDA.	A large part of San Jose's overall population or its low-income population would qualify, which makes this an impractical policy to implement.	High
7	Non-chronic homeless	Households experiencing homelessness that do not qualify as chronically homeless and who have a residence and work history.	City of San José's Transition in Place (TIP) / Rapid Rehousing program.	Rationale is that need for permanent homes for homeless residents is overwhelming and immediate. Consistent with City policies.	Low
8	Domestic Violence Survivors	Residents and dependents fleeing domestic violence who do not need intensive services provision through on-site service provider.	Many housing authority voucher programs give priority to the Violence Against Women Act population. Some DV survivors may be more traumatized - more	HUD considers this population to be qualitatively similar to the homeless re. evidencing need. Status relies on self-reporting, which may be a re-traumatizing	Low

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			appropriate for higher-services environments - while others might not need service intensity of supportive housing environment.	event that should be handled delicately with staff trained to help this population. Confidentiality also is a significant issue for this population, so administration of this policy would be more difficult than for other preferences. Appropriate precautions are unlikely to occur if DV units are interspersed in non-supportive affordable housing.	
9 (NEW)	Public Safety City employees	Current City employees of Fire, Police, and Office of Emergency Response.	New York City has created a preference for municipal employees in its City-subsidized developments' units which includes but is not limited to public safety personnel. Preference applies to 5% of units in each development. Staff's research found that affordable housing for first responders is typically done through funded homebuyer loan programs, not tenant preferences.	All tenants must income-qualify as low-income households at or below 60% of the Area Median Income to be eligible for affordable housing, so the pool of eligible City employees will likely be relatively small. If City salaries are similar to statewide EDD average salaries, few firefighters and police likely qualify as low-income. However, support staff and other municipal employees could.	Low