

 **POLICY AND ACTION ITEM 13.2**



EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: January 21, 2025

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Amy Chen, Community Development Director
Tim Davis, Director, Housing Consulting Services, HEART of SMC

SUBJECT: Implementation of 2020 Local Preference Policy

Recommendation

Adopt a resolution:

1. Adopting an updated Local Preference Policy that applies to City subsidized affordable housing units, density bonus units, and units produced through the City's Inclusionary Housing Ordinance;
2. Directing the City Manager to adopt updated guidelines to administer the Local Preference Policy and take any other action with respect to the policy consistent with the resolution and its purpose; and
3. Updating the Local Preference Policy to be non-durational and applied only to the extent that other funding sources for the project permit such preferences.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:
Priority: Promote Housing, Economic and Workforce Development

In addition, this recommendation is aligned with the following goal of the 2024-2028 Affordable Housing Strategy: Goal 4: Prevent displacement of East Palo Alto Residents, Policy 4:13 Implement an Effective and Fair Housing Compliant Local Preference Policy.

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Executive Summary

In 2020, the City adopted a Local Preference Policy (Policy) that, in determining eligibility for occupancy of City subsidized affordable housing units, density bonus units, and development projects subject to the City's Inclusionary Housing Ordinance, prioritizes people who live or work in East Palo Alto, or who were displaced from a residence in East Palo Alto. As part of the effort to implement that policy, staff recommend updating the Policy to include a non-durational, tier-based system, applied only to the extent that other funding sources for the project permit such preferences. In addition to adopting a new resolution updating the Policy, staff are also seeking approval to direct the City Manager to adopt guidelines to administer the Policy. This update to the Policy is especially timely with the construction of the 965 Weeks: Colibri Commons project, where leasing is expected to be complete by the end of 2025.

Background

The City's 2019-2023 Affordable Housing Strategy included a goal to establish a Local Preference policy to prevent displacement and improve access to affordable housing in East Palo Alto. To draft this policy, during 2018 and 2019, staff convened a Local Preference Working Group comprising housing experts, community-based organizations and affordable housing developers. After multiple stakeholder, community, and city council meetings¹, a draft Policy was presented to the City Council on March 17, 2020. While the framework was agreed upon, no vote was taken.

On April 7, 2020, the City Council adopted Resolution 52-2020, approving the Policy with no durational requirement (for a person to live in East Palo Alto for a period of time) for the residency preference for City supported affordable housing developments, and a 90-day durational requirement for the resident preference for Inclusionary units. The Policy also established a cumulative points system prioritizing individuals meeting multiple criteria.

On February 6, 2024, the City Council reaffirmed its commitment to the Local Preference Policy when it adopted the 2024-2028 Affordable Housing Strategy. City staff, HEART, EPACANDO, and Street Level Advisors reconvened working group meetings which took place in late 2024 to update the Policy for Council consideration.

The update is timely, as it would apply to the Colibri Commons affordable housing development at 965 Weeks Street, set to be leased in late 2025.

Analysis

Fair Housing Considerations

When considering the establishment of a Local Preference policy, the following laws must be taken into consideration:

¹ December 4, 2018, and December 18, 2018, City Council Meetings

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Table 1: Fair Housing Laws		
	Laws to Consider	Details
Federal	<ul style="list-style-type: none"> • 14th Amendment • Fair Housing act • Section 504 • Right to Travel 	<ul style="list-style-type: none"> • Prohibits Housing discrimination based on: <ul style="list-style-type: none"> ○ Race, Color, Religion, Sex, Familial Status, National Origin, Disability • Prohibits discrimination against persons with disabilities in federally funded housing (Section 504) • Prohibits the use of durational requirements for local preferences • Applies to All Housing/Housing Activities
State	<ul style="list-style-type: none"> • Fair Employment/Housing Act • Unruh Act • Govt Code 11139.3 	<ul style="list-style-type: none"> • Similar to Federal Fair Housing Act • Additional protected classes: <ul style="list-style-type: none"> ○ Ancestry ○ Citizenship ○ Immigration Status ○ Primary Language ○ Sexual orientation ○ Gender Identify ○ Gender Expression ○ Genetic Information ○ Marital status ○ Source of income ○ Military or Veteran Status ○ Age

Examples of Local Preference Policies

While many cities in California and across the country have local preference policies, there is significant variation based on the local context. Table 1 in Attachment 3 provides an overview of local preference policies in other California cities for comparison.

Summary of the Community Process

As noted above, the City embarked on a comprehensive community process to draft recommendations presented in the 2020 staff report. Each meeting consisted of discussion of the goals of the policy and several policy alternatives. Alternatives addressed different categories, i.e., live, work, and involuntary displacement; the amount of weight assigned to each category; the percentage of units the policy applies to; and the means of applying the preference.

Key feedback from the outreach process:

- Support for Local Preference: Strong community support for City-established local

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- preference to address affordable housing needs and prevent resident displacement.
- **Displacement Impacts:** Numerous examples highlighted how displacement has affected families in East Palo Alto.
- **Fair Housing Concerns:** General acknowledgement of legitimate Fair Housing concerns related to local preference policies.
- **Priority for Current Residents:** Emphasis on prioritizing current residents and addressing their immediate need for affordable housing.

Recommended Local Preference Policy Updates

Based on input from the 2024 Working Group, staff believe that certain updates to the Local Preference Policy are necessary to accomplish its goals. The following are key recommendations.

Applicability and Administration

Staff recommends that the City's Policy apply to 1) any City-assisted affordable unit, 2) density bonus units, and 3) inclusionary housing units created under the City's Inclusionary Housing Ordinance. The Policy would cover both for-sale and rental units, applying at initial lease-up and upon each subsequent resale or new tenancy.

For City-assisted affordable units, Staff recommend the Policy default to apply to 50% of the affordable units unless a disparity study, authorized by the City Manager, suggests a different percentage for a specific project. For inclusionary units, the Policy would apply to all affordable units. The Policy would be applied at initial lease-up or resale on an ongoing basis through the use of a lottery selection and wait list process.

The 2020 Proposal: A Point System

As is evident in Appendix 3 Table 1, there are different approaches to preferences, including set asides for particular groups, through a point system, or through a two-tiered approach where you either received a preference, or you do not.

In both the March 20, 2020, and April 7, 2020, Staff Reports², staff recommended a point system. In such a system, applicants would receive points for the categories outlined in Table 2. Points would be cumulative and used to determine their priority within a lottery.

Table 2: 2020 Proposed Points System	
Preference Category	Points
All applicants	1
Work in East Palo Alto	1

² In both 2020 staff reports, it was not clear how the involuntary displacement preference worked, but staff reviewed the recording of the March 17, 2020 meeting and it became clear that this preference was an extra point and that the intent of the system was cumulative points.

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Involuntarily displaced from a residence in East Palo Alto	1
Reside in East Palo Alto	2

As the points are cumulative, the following combinations would have been possible:

Table 3: Potential Outcomes of Point System	
Applicant:	Total Points
Has no additional preferences	1
Works in East Palo Alto	2
Involuntarily displaced from East Palo Alto and lives and works outside East Palo Alto	2
Resides in East Palo Alto	3
Works in East Palo Alto and involuntarily displaced from a residence in East Palo Alto	3
Resides in East Palo Alto and was involuntarily displaced from a residence in East Palo Alto	4
Works and resides in East Palo Alto	4
Works and resides in East Palo Alto, and was involuntarily displaced from a residence in East Palo Alto	5

In such a system, those with 5 points would get the first opportunities to have their eligibility certified and access a unit, followed by those with 4 points, then those with 3 points, and so on. This would continue until the units that were set aside for preferences were filled, and then all remaining applicants would be eligible for the units with no preferences.

The 2025 Proposal: Simple Tiered System

In alignment with the outcomes of the 2019-2020 process, the 2024 working group began with the 2020 Resolution and Policy as a foundation. The group sought to ensure that preferences for living in, working in, or being displaced from East Palo Alto remained central while evaluating the proposal for fair housing compliance and ease of implementation.

Key Findings:

1. Complexity and Implementation Challenges:

- a. The 2020 proposal's point system was found to be overly complex for developers/owners and applicants.
- b. Documenting multiple preferences requires significant time and effort, complicating the application process and potentially confusing the applicant, causing distrust.
- c. Self-certification and post-lottery verification could reduce complexity but still risk

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confusion and distrust among applicants due to changes in preference rankings.

- d. Experiences from San Francisco and Berkeley highlighted the operational challenges of complex systems, which add time and work during the leasing process.

2. Integration with the Doorway System:

- a. A simpler system aligns better with the regional Doorway platform, which streamlines affordable housing access and is expanding to handle application processing and lotteries.

3. Fair Housing Concerns:

- a. The 90-day residency requirement for inclusionary units and the higher weighting for residential preference raised potential fair housing issues.
- b. A more inclusive approach drawing from a broader applicant pool could mitigate these concerns.

Recommended Simplified Tiered System:

To address the above issues, staff propose a straightforward tiered system where applicants claim and document one preference, even if they are eligible for more than one preference.

Applicants who meet any of the below criteria would have the priority for the units with a preference

- Currently lives in East Palo Alto
- Currently works in East Palo Alto
- Has been displaced from East Palo Alto

Applicants would not need to document multiple preferences, reducing paperwork and administrative burden. This system would also alleviate concerns about applicants being reassigned to different preference categories, enhancing clarity and fairness.

Process Overview:

- All applicants receive a lottery number
- Applicants are sorted first by preference status, then by lottery number.
- Units subject to preferences are offered to applicants with a preference first.
- Any remaining units are then made available to applicants without a preference.

This simplified approach honors the 2020 preferences, reduces program complexity, addresses fair housing concerns, and ensures a more efficient and transparent process.

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Compliance with Fair Housing Laws

All jurisdictions that adopt local preference policies must consider the Fair Housing implications of the policy, including the potential to cause a disparate impact on a protected class — that is, if the policy places individuals at a disadvantage in obtaining housing based on “protected characteristics,” such as race, sex, age, or family status. Federal Fair Housing laws, State Fair Housing laws, and affordable housing funding sources such as HUD or the California Tax Credit Allocation Committee (CTCAC) all must be taken into consideration when contemplating a local preference.

Staff is recommending a Policy that considers the demographic characteristics of East Palo Alto and the surrounding area and aims to benefit a broad population while still achieving the goals of anti-displacement, providing housing opportunities near job sites to reduce commuting and its associated environmental impacts, and to provide housing opportunities for residents who may be experiencing over-crowding or potential displacement. Applying the Policy to only a portion of the units in 100% affordable developments and including those who work in East Palo Alto are important ways that the Policy is specifically designed to minimize fair housing concerns.

One additional feature of the policy intended to reduce the risk of creating a fair housing concern is that no duration requirement would be included as part of the preference criteria. HUD does not allow durational requirements for units they fund, and the legal literature on the topic makes it clear that such a requirement raises the possibility of legal challenges.

In total, Staff feel that the proposed policy will help to minimize the potential for disparate impact and is a legally defensible approach to achieving the City's stated goals. A preference policy does not guarantee that fulfilling the requirements will result in a housing unit or that certain households will “skip to the front of the line,” but it does ensure that roughly half of the units in 100% affordable developments will be offered first to those who work or reside in East Palo Alto, or those displaced from East Palo Alto.

It should be noted that since the City adopted the preference policy in 2020, SB 649 was passed which allows local government to adopt local preference programs to address the impacts of displacement. Government Code Section 7061 authorizes the use of local preferences in developments funded with low income tax credits or tax exempt bonds. The City is required to post the local preference program on its website within 90 days of adoption that includes the ordinance or resolution adopting the policy and any supporting materials. The City is also required to provide HCD with a link to the website as part of its annual report.

Compatibility with Other Preferences/Set-Asides

The City's local preference policy must be compatible with other preferences and set asides. For example, if a developer is seeking funding from the County of San Mateo to fund an affordable housing project, the developer and that project would be subject to the County's set-aside requirements. As these units do not have a local preference, these units would be a part of the percentage of units to which the local preference does not apply.

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Units with accessibility features intended to help those with mobility needs, visual impairment, and/or a hearing impairment must be made available to a household with a household member with a documented need for the specific features included in the available accessible unit. If no applicant has a documented need for an accessible unit, the units will be offered to other eligible applicants according to the same lottery preference ranking used for other City Supported and Inclusionary Housing units.

Codification of the Policy

Staff recommends the Policy be articulated as a resolution. As with the Inclusionary Housing Ordinance, staff are developing supplemental guidelines to provide greater detail on requirements such as the selection process, waitlist management, marketing plan, compliance monitoring, and data collection.

Next Steps

If City Council approves the proposed Resolution and direct staff to develop guidelines, staff will finalize the guidelines for approval by the City Manager.

Fiscal Impact

There is no fiscal impact associated with adoption of the Policy.

Public Notice

The public was provided notice by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The action being considered does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect changes in the environment.

Government Code § 84308

Applicability of Levine Act: No, as the proposed action does not involve an entitlement.

Analysis of Levine Act Compliance: Not applicable.

Attachments

1. Resolution, Exhibit A – Local Preference Policy
2. Local Preference Policy Guidelines
3. Comparison of Other Jurisdictions
4. Resolution 52-2020

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

ADOPTING A LOCAL PREFERENCE POLICY FOR AFFORDABLE UNITS DEVELOPED WITH CITY SUBSIDY AND THROUGH THE INCLUSIONARY HOUSING PROGRAM

WHEREAS, the City of East Palo Alto (“City”) provides funding to support affordable housing development in the City through its Affordable Housing Fund; and

WHEREAS, Ordinance No. 425 requires that 20% of all units in new market-rate residential developments be affordable to extremely low-income, very low-income, low-income, and moderate-income households; and

WHEREAS, on October 16, 2018, the City Council adopted a five-year Affordable Housing Strategy, which includes a goal of anti-displacement and a Workplan to establish a local preference for affordable housing units in the City; and

WHEREAS, from January to May 2019, the City held five community meetings with stakeholder groups, where a draft local preference framework was developed; and

WHEREAS, on April 7, 2020, the City Council adopted resolution 52-2020 – Adopting a local preference policy for affordable units developed with city subsidy and through the inclusionary housing program; and

WHEREAS, on February 6, 2024, the City Council adopted the 2024-2028 Affordable Housing Strategy recommitting to the implementation of an effective and fair housing compliant Local Preference Policy.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY FINDS AND DECLARES THE FOLLOWING:

- A. There is a shortage of affordable housing in the Bay Area and in the City of East Palo Alto, where the median family income, at \$101,526, is less than 58% of the median family income for San Mateo County, 58% of East Palo Alto renter households are rent-burdened, and 18% of East Palo Alto households are considered to be overcrowded (American Community Survey, 2018-2022 5-year estimates);
- B. According to the U.S. Census, East Palo Alto’s Black/African American population has declined from 61% of the population in 1980 to 13% in 2020, evidence that many families have left East Palo Alto due to the excessive cost of living and lack of affordable housing opportunities, breaking strong, intergenerational community and neighborhood ties;
- C. Individuals who work in East Palo Alto often must travel long commute distances to their jobs from outside the city, leading to higher greenhouse gas emissions, traffic, and lower quality of life;
- D. According to the American Community Survey, home values in East Palo Alto increased 188% between 2012 and 2022, compared to 96% for San Mateo County, making homeownership out of reach for East Palo Alto residents;
- E. The high cost of housing is cited in the East Palo Alto Affordable Housing Strategy as a key reason for the need for the plan and the anti-displacement efforts measure therein, including the need for a local preference in affordable housing;

- F. Applying a preference for individuals who live or work in East Palo Alto and residents involuntarily displaced from East Palo Alto is within the City's authority to protect the public health, safety, and welfare; and
- G. Applying such a preference will create affordable housing opportunities that will allow those individuals to remain part of the community in East Palo Alto.

BE IT FURTHER RESOLVED THAT, BASED ON THE ABOVE FINDINGS, THE CITY COUNCIL HEREBY:

- 1. Adopts a Local Preference Policy, as set forth in Attachment 1 to this Resolution and incorporated by this reference, that applies to City subsidized affordable housing units, Density Bonus Units, and through the City's Inclusionary Housing Ordinance;
- 2. Directs the City Manager to adopt guidelines to administer the Local Preference Policy and take any other action with respect to the policy consistent with this resolution and its purpose; and
- 3. Establishes that this Local Preference Policy applies only to the extent that other funding sources for the project permit such preferences.

PASSED AND ADOPTED this ___ day of January 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Martha Barragan, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lē, City Attorney

Exhibit A

City of East Palo Alto Affordable Housing Local Preference Policy

The purpose of establishing a local preference policy (“Policy”) for affordable housing is to prevent and mitigate displacement impacts to vulnerable households living or working in East Palo Alto, or to address past displacement from East Palo Alto, thereby encouraging family health, neighborhood stability, and preserving existing residents’ continued ties to local institutions, services, schools, community business centers, and health care providers, and thereby enhance the public welfare by further implementing the goals and objectives of the Housing Element to prevent or mitigate displacement of low-income residents and affirmatively further fair housing goals.

I. Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Policy. Words and phrases not defined in this Section shall be interpreted so as to give this Policy its most reasonable application.

- A. “Affordable Housing” or “Affordable Unit” shall mean restricted residential property where the rent or sales price is limited by a deed restriction and/or regulatory agreement.
- B. “Area Median Income” or “AMI” “means the median family income of a geographic area of the state.
- C. “City Supported Affordable Housing” shall mean Affordable Housing that receives financing, land, or ground lease property interest from the City of East Palo Alto for new construction, rehabilitation, or for acquisition and rehabilitation.
- D. “Inclusionary Housing” shall mean Affordable Units restricted by the City as a result of the City of East Palo Alto’s Inclusionary Zoning requirements.
- E. “Local Preference Guidelines” shall mean the requirements for implementation and administration of this Policy adopted by the City Manager pursuant to Section VIII of this Policy.
- F. ~~(b)~~ “Owner” shall mean any person or entity having a legal right of ownership or rights under a ground lease in real property, or their agents responsible for the management and leasing of the property to residential tenants.
- G. “Qualifying Documents” shall mean documentation establishing an applicant’s first and last name and current address where they reside, as further defined in the Local Preference Guidelines.
- H. “100% Affordable Housing Projects” are those projects where all units are income restricted, except for a manager unit or units.

II. Local Preferences

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- A. The preference policy shall apply to contracts entered into by the City on or after the effective date of the resolution establishing each preference, including contracts materially amended on or after the effective date.
- B. Applicants only need to qualify for one of the preference criteria to receive the Local Preference. To qualify for the Local Preference, an applicant must:
- (i) Reside in East Palo Alto: At least one member of the applicant household's principal place of residence is within the City of East Palo Alto as of the date of application for housing; or
 - (ii) Work in East Palo Alto: At least one member of the applicant household currently works or has received an offer to work within the City of East Palo Alto for at least 20 hours per week; or
 - (iii) Be involuntarily displaced from a residence in East Palo Alto: The applicant household must include at least one adult member whose principal place of residence was a housing unit within the City of East Palo Alto until they were displaced from that unit because of any of the following:
 - Natural Disaster declared by the Governor;
 - Domestic Violence;
 - City Code Enforcement Activities;
 - A "No Fault" Eviction from a rental unit in East Palo Alto, if the eviction occurred within a year of the application for housing; or
 - A 10% or higher increase in rent in the last 12 months.

The eligibility requirements for each preference criteria is outlined in section IV below.

- C. For 100% Affordable Housing Projects, these preferences shall apply to 50% of the affordable units. However, at the discretion of the City Manager, a disparity study may be undertaken to adjust this percentage on a particular project. The preference shall be applied to the initial lease-up or sale of the residential development and continuing thereafter throughout the term of the affordability restriction.
- D. For Inclusionary Housing and Density Bonus units, these preferences shall apply to all units at initial lease-up or sale of the residential development and continuing thereafter throughout the term of the affordability restriction.

III. Implementation

- A. The Owner of a City Supported Affordable Housing or Inclusionary Housing shall be responsible for including information about local preferences in their marketing materials, including the documentation needed to qualify applicants and determine eligibility for the local preference.
- B. The requirements of this Policy shall be included as a term in the regulatory

agreement, affordability agreement, or other agreement between the City and/or other governmental entity and the Owner of a City Affordable Housing Property or Inclusionary Units.

- C. The Marketing Plan for the property shall include the local preference and outline procedures for implementing them.
- D. Applicants shall self-certify their eligibility for preferences with their initial application, and the owner or their designee shall confirm the eligibility after the lottery and before leasing or selling the affordable units.

IV. Proof of Eligibility for Preferences

The Owner shall use the following evidence to determine eligibility for local preferences, which may be further detailed in the Local Preference Guidelines.

- A. Resides in East Palo Alto: Applicant may submit documentation from an appropriate source stating the applicant resides in East Palo Alto as of the date of the application for housing.
- B. Works in East Palo Alto: Applicant must provide employment verification from employer, or another appropriate source, stating the applicant is employed there as of the date of the application for housing. A written offer of employment may suffice as evidence of employment in the City.
- C. Involuntary Displacement: Displacement shall be evaluated based in the following:
 - (i) Disaster: Applicants shall provide certification from a unit of government concerning displacement due to a disaster prior to the submittal of the application for housing.
 - (ii) Domestic Violence: Applicants shall provide certification from local police, social service agency, court, clergy, physician, public or private shelter, or counseling facility concerning displacement due to domestic violence, fear of reprisal, or hate crime.
 - (iii) Housing Code Enforcement Activity: Applicants shall provide documentation from the City and/or landlord. Displacement due to code enforcement activities includes situations in which a tenant vacates a unit in response to a notice to vacate, notice to abate a life-threatening condition, or declaration of substandard condition issued by the City or a court.
 - (iv) "No Fault" Eviction: Applicants shall provide a copy of an eviction notice or a copy of a court order or judgment in the unlawful detainer proceeding or other official records documenting the eviction
 - (v) 10% or Greater Rent Increases: Applicants who are displaced due to a rental increase of over 10% shall provide a copy of a rent increase notice and evidence of a subsequent change of residence.

Applicants who were evicted due to cause, such as nonpayment of rent or breach of

the rental agreement, shall not be eligible for this preference.

Upon determining eligibility, the Owner shall notify the applicant of their eligibility for the local preference. Any disagreement over the eligibility of the applicant for the local preference shall be reviewed and determined by the Director of Community Development as defined in the Local Preference Guidelines.

V. Limitations & Exclusions

- A. Owners are not required to approve applicants who are otherwise not qualified for renting or purchasing the unit.
- B. Unless otherwise expressed herein, preferences shall be non-durational, i.e., there shall be no minimum time period for residency or employment to qualify for the preference.
- C. This Policy or any successor Policy shall be applied only if other funding sources for the project do not prohibit the preference. This preference program shall be applied only if it does not violate federal and state fair housing law.

VI. Periodic Review

The City shall conduct a review of its local preference program for consistency with its affirmatively furthering fair housing goals under state and federal law and provide a report and possible recommendations to City Council every three years following the effective date of this resolution.

VII. Guidelines

The City Manager or designee is hereby authorized to adopt and, from time to time, amend Guidelines for the administration and implementation of the local preference as provided by this policy.

East Palo Alto Local Preference Policy Administrative Guidelines

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Introduction

The Affordable Housing Local Preference Policy (LPP) establishes a local preference to assist people who live or work in East Palo Alto, or who were displaced from a residence in East Palo Alto, to receive a preference for affordable housing units.

The LPP applies to units created under the City of East Palo Alto's Inclusionary Zoning Ordinance or Density Bonus requirements or supported by the City of East Palo Alto through funding, land, or other financial support. Developments that are leasing up on or after January 1, 2025, are required to implement preferences, in initial lease-up, waitlists, and resales. Developments that are reopening waitlists after January 1, 2025, and had initial lease up *prior* to January 1, 2025, will be encouraged, but not required, to participate.

Resolution ____ established the following criteria for qualifying for the local preference:

- Lives in East Palo Alto
- Works in East Palo Alto
- Displaced from a residence in East Palo Alto

Definitions

- A. "Affordable Housing" or "Affordable Unit" shall mean restricted residential property where the rent or sales price is limited by a deed restriction and/or regulatory agreement.
- B. "Area Median Income" or "AMI" "means the median family income of a geographic area of the state.
- C. "City" shall mean the City of East Palo Alto.
- D. "City Supported Affordable Housing" shall mean Affordable Housing that receives financing, land, or ground lease property interest from the City of East Palo Alto for new construction, rehabilitation, or for acquisition and rehabilitation.
- E. "Household" shall mean any person or persons residing or intending to reside in the same Unit, whether related or not.
- F. "Inclusionary Housing" shall mean Affordable Units restricted by the City because of the City of East Palo Alto's Inclusionary Zoning requirements.
- G. "Local Preference Guidelines" shall mean these guidelines adopted by the City Manager pursuant to Section VIII of this Policy.
- H. "Lower-Income Household" shall have the definition given in California Health & Safety Code section 50079.5 and generally understood to be less than 80 percent of area median income.

- I. "Owner" shall mean any person or entity having a legal right of ownership or rights under a ground lease in real property, or their agents responsible for the management and leasing of the property to residential tenants.
- J. "Preference Units: shall mean those affordable units to which the Local Preference is applied.
- K. "Qualifying Documents" shall mean documentation establishing an applicant's first and last name and current address where they reside, as further defined in these Local Preference Guidelines.
- L. "Set Aside Units" shall mean affordable units that are filled through case management, for example by referral from a homelessness services provider.
- M. "Unit" shall mean a portion of a building designed for, or intended for the exclusive use of, persons living as one household.
- N. "Unit Type" shall mean an affordable unit, by both income maximum and number of bedrooms.
- O. "100% Affordable Housing Projects" are those projects where all units are income restricted, except for a manager unit or units.

Overview of the Local Preference

Applicants only need to qualify for one of the preference criteria to receive the Local Preference. To qualify for the local preference, an applicant must:

- Reside in East Palo Alto: At least one member of the applicant household's principal place of residence is within the City of East Palo Alto as of the date of application for housing; or
- Work in East Palo Alto: At least one member of the applicant household currently works or has received an offer to work within the City of East Palo Alto for at least 20 hours per week; or
- Be involuntarily displaced from a residence in East Palo Alto: The applicant household must include at least one adult member whose principal place of residence was a housing unit within the City of East Palo Alto until they were displaced from that unit within the five years prior to application because of any of the following:
 - Natural Disaster declared by Governor;
 - Domestic Violence;
 - City Code Enforcement Activities;
 - A "No Fault" Eviction from a rental unit in East Palo Alto, if the eviction occurred within 12 months of the application for housing; or
 - A 10% or higher increase in rent in the last 12 months.

Applicability of Preference to Affordable Units

The LPP shall be applied only to the extent allowed by Fair Housing law and other government agency funding sources.

For Inclusionary Housing units, the local preference shall apply to all units at initial lease-up or sale of the residential development and continuing thereafter throughout the term of the affordability restriction.

For 100% Affordable Housing Projects, the local preference shall apply to 50% of the Affordable Units at initial lease-up or sale of the residential development and continuing thereafter throughout the term of the affordability restriction. With the permission of the City Manager, this percentage may be adjusted for a specific project, through the completion of a disparate impact analysis. Such an analysis shall adhere to the general standards established for such analyses by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice Civil Rights Division. The Local Preference Policy applies to all affordable units, regardless of any set aside. For example:

Number of Affordable Units:	100 units
Units with a set aside:	15 units
Units with no set aside:	85 units
Units with the local preference (50% of all units):	50 units
Percent of units with no aside to which local preference applies:	$50/85 = 59\%$

Application and Lottery Process

Step 1: Applicant completes an on-line or paper application and selects the preference qualifications they believe they are eligible for.

Step 2: A lottery is conducted by the leasing/marketing agent, and a random number generator is used to assign all applicants, regardless of preference, a number.

Step 3: For the units with the local preference, the leasing/marketing agent sorts the lottery list based first on the income eligibility (AMI) and the bedroom type (the "Unit Type"), then local preference eligibility and finally by the lottery number (lower to higher). Applicants eligible for more than one Unit Type may appear in more than one list.

Step 4: The leasing/marketing agent begins the process of confirming both the eligibility and preference for each applicant, starting in order of the above sort. The applicant shall provide sufficient documentation to establish both eligibility for the Unit Type and the local preference. Applicants deemed ineligible for a specific Unit Type are removed from the list for that Unit/Unit Type. Applicants who are not able to establish the local preference, but who are otherwise eligible for the unit, are resorted accordingly.

Step 5: The leasing/marketing agent continues the process outlined in Step 4 until all the preference units have been filled. All remaining applicants are then eligible for any available Unit, including preference Units if such Units are not filled by applications having a preference, and are sorted by their eligibility for a Unit Type and their lottery number, with no consideration of their local preference eligibility,

Documentation Required

Preference Criteria	Documentation Required
<p>Reside in East Palo Alto</p>	<p>Applicant must provide at least two of the following:</p> <ul style="list-style-type: none"> • Lease agreement • Telephone bill • Electric Bill • Cable or Internet Bill • Other Utility Bills (water, trash, etc.) • Voter Registration <p>Unhoused residents of East Palo Alto may receive this preference with written evidence from a government agency or social service provider that the resident received homelessness services in East Palo Alto or had had an East Palo Alto home as their previous address. .</p>
<p>Work in East Palo Alto</p>	<p>Applicant must provide at least one of the following:</p> <ul style="list-style-type: none"> • Employment verification from an employer • Three most recent months of paystubs, including the number of hours worked and address of the employment location • A written offer of employment including the address of the employment location
<p>Involuntarily displaced from a residence in East Palo Alto</p>	<p>Applicant must provide one of the following:</p> <p><u>Natural Disaster</u>: Certification from a unit of government, such as FEMA.</p> <p><u>Domestic Violence</u>: Certification from local police, social service agency, court, clergy, physician, public or private shelter, or counseling facility concerning displacement due to domestic violence, fear of reprisal, or hate crime,</p> <p><u>Housing Code Enforcement Activity</u>: Documentation from the City and/or landlord. Displacement due to code enforcement activities includes situations in which a tenant vacates a unit in response to a notice to vacate, notice to abate a life-threatening condition, or declaration of substandard condition issued by the City or a court.</p> <p><u>“No Fault” Eviction</u>: Copy of an eviction notice or a copy of a court order or judgment in the unlawful detainer proceeding or other official records documenting the reason for the eviction.</p>

	<u>10% or Greater Rent Increases:</u> Copy of a rent increase notice and evidence of a subsequent change of residence.
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Interaction with Disability Preferences

Where units are created with features that meet the needs of those with a particular disability (mobility, vision, or hearing) (“Accessible Units”), those who would benefit from the accessibility features of the unit shall receive a preference for those units, regardless of their eligibility for the local preference.

Marketing

All marketing materials shall clearly outline the preferences available for the Affordable Units, including the following:

- Criteria for qualifying for the local preference
- A clear statement that the documentation will be required after the lottery and before the rental or purchase
- A statement that the local preference is a preference, not a requirement, and anyone who believes they are otherwise qualified for the Affordable Units should apply.

To support the City’s fair housing goals and expand access, rental housing developers are required to post their developments on [Doorway](#), the regional affordable housing listing service. At the time of this writing, Doorway only advertises rental properties, but as the website’s capacity expands, developers may be required to complete their lotteries through Doorway, and homeownership projects also would be required to market via Doorway. As a result, some of the steps in the application and lottery process may be handled by Doorway, rather than the developer.

Turn Overs and Waitlists

For affordable rental units, a waitlist will be created at the initial lottery, which shall expire one year after the initial rent up of the units is complete. Upon expiration or exhaustion of this list, whichever comes first, a new lottery will be held for units upon turnover. As with the initial lease up, each lottery list expires after one year. If a waitlist was created because of advertising for one specific type of unit, by either AMI or bedroom type, that waitlist may only be used to fill another unit of the same AMI and bedroom type.

Monitoring and Reporting Requirements

Leasing and sales agents will be required to share demographic and preference data with the City through a lease-up/sales summary when the Affordable Units are initially occupied, in a form approved by the City. For rental projects, properties are also

responsible for providing tenant preference data on their Annual Compliance Report. This information will be used by the City to generate annual reports on the LPP with aggregate data. No personal information will be collected or published.

Regulatory Documents

The LPP requirements will be integrated into each development's affordable housing and regulatory agreements and spelled out in the Fair Housing Marketing Plan and, for rentals, the Tenant Selection Plan.

Attachment 3

Table 1. Comparison of Local Preference Policies in Other Jurisdictions

	Santa Monica	San Francisco	Oakland	Pasadena	Berkeley
Type of housing	Inclusionary units Affordable units with City subsidy	Inclusionary units Affordable units with City subsidy	Affordable units (if over 5) with City subsidy	Inclusionary units. Affordable units with City subsidy	Inclusionary units Affordable units with City subsidy
Preference categories	(Ranked) 1. Displacement 2. Live/work 3. All other applicants	(Ranked, with max set asides) 1. Displacement from urban renewal 2. Displacement (general) 3. Neighborhood Preference: • Live/work • All other applicants	(Ranked) 1. Displacement 2. Neighborhood preference: • Live/work • All other applicants	(Ranked) 1. Live/work 2. Live only 3. Work only 4. Displacement 5. All other applicants	1. BART displacement, 2. One point each for: • Foreclosure • Eviction • Families w/ children • Homeless or at risk of homelessness • Ties to redlined area • Historical ties to redlined area
When applied	Initial lease-up and ongoing	Initial lease-up and ongoing (with exceptions)	Initial lease-up and ongoing (with exceptions)	Initial lease-up and ongoing	Initial lease-up and ongoing
Selection process	City maintains eligibility list 1. Inclusionary: City selects from list; developer verifies 2. 100% Affordable: Developer selects from list and verifies	Main lottery using DAHLIA (universal application) system, then further sorting into the 4 individual preference categories New lottery for each inclusionary unit vacancy City responsible for selection/ verification for all units	Lottery conducted by affordable developer for each development for each of the preference groups, with city oversight	Conducted by affordable developer with city approval and oversight of process 1. directly from priority list; 2. from a lottery of households at top of priority list; or 3. selecting from city's Section 8/Supportive Housing/Home-owner waitlist	Lottery conducted by affordable developer for each development, with City providing certificate for BART/Foreclosure preferences
Waitlist Management	1. City maintained list for inclusionary units 2. Affordable developers maintain list for their own affordable units	1. City uses DAHLIA system (universal application) for all units – no waitlist 2. Developer maintains waitlist once established by DAHLIA	Affordable developers maintain list	Affordable developers maintain a priority list after initial certificate of occupancy issue; developer must update it on yearly basis	Affordable developers are required to use the Doorway portal (BAHFA) for list management
Ordinance	No- in guidelines for "Affordable Housing Program"	Yes	Yes	No- in guidelines	Policy approved by Council

RESOLUTION NO. 52 – 2020

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO**

**ADOPTING A LOCAL PREFERENCE POLICY FOR AFFORDABLE UNITS DEVELOPED WITH
CITY SUBSIDY AND THROUGH THE INCLUSIONARY HOUSING PROGRAM**

WHEREAS, the City of East Palo Alto (“City”) provides funding to support affordable housing development in the City through its Affordable Housing Fund; and

WHEREAS, Ordinance No. 425 requires that 20% of all units in new market-rate residential developments be affordable to extremely low-income, very low-income, low-income, and moderate-income households; and

WHEREAS, on October 16, 2018, the City of East Palo Alto City Council (“City Council”) adopted a five-year Affordable Housing Strategy, which includes a goal of anti-displacement and workplan to establish a local preference for affordable housing units in the City; and

WHEREAS, from January to May 2019, the City held five community meetings with stakeholder groups, where a draft local preference framework was developed.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY finds and declares the following:

- A. There is a shortage of affordable housing in the Bay Area and in the City of East Palo Alto, where the median income at \$58,783, which is less than half of San Mateo County, and the rate of rent-burdened households is 63%; and
- B. Many families have left the City due to the high cost of living and lack of affordable housing opportunities, breaking strong, intergenerational community and neighborhood ties; and
- C. Individuals who work in the City often must travel long commute distances to their jobs from outside the city, leading to higher greenhouse gas emissions, traffic, and lower quality of life; and
- D. The Existing Conditions Report for the 2014 General Plan Update showed that over half of all households in the City have four or more persons, far above the County average of 2.75 persons per household, suggesting overcrowded conditions; and
- E. Anti-displacement is one of the overarching principles of the Affordable Housing Strategy, adopted by the City Council in 2018, and one of the top priorities of the community as expressed during the outreach for the Strategy; and
- F. Applying a preference for individuals who live or work in the City, and residents involuntarily displaced from the City of East Palo Alto is within the City’s authority to protect the public health, safety, and welfare; and
- G. Applying such a preference will create affordable housing opportunities that will allow those individuals to remain part of the community in the City of East Palo Alto.

BE IT FURTHER RESOLVED THAT, BASED ON THE ABOVE FINDINGS, THE CITY OF EAST PALO ALTO CITY COUNCIL HEREBY:

1. Adopts a Local Preference Policy, as set forth in **Attachment 1** to this Resolution and incorporated by this reference, that applies to City subsidized affordable housing units and through the City's Inclusionary Housing Ordinance; and
2. Directs the City Manager to adopt guidelines to administer the Local Preference Policy and take any other action with respect to the policy consistent with this resolution and its purpose; and
3. Establishes that this Local Preference Policy shall be applied only to the extent that other funding sources for the project permit such preferences.


PASSED AND ADOPTED this 7th day of April 2020, by the following vote:

AYES: Abrica, Gauthier, Moody, Romero, and Wallace-Jones

NOES:

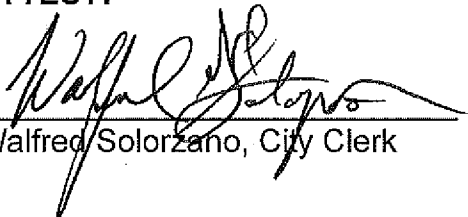
ABSENT:

ABSTAIN:



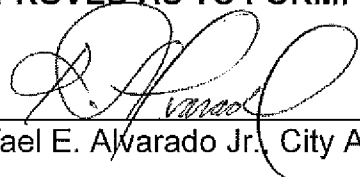
Regina Wallace-Jones, Mayor

ATTEST:



Walfred Solorzano, City Clerk

APPROVED AS TO FORM:



Rafael E. Alvarado Jr., City Attorney

Proposed Local Preference Framework for City of East Palo Alto

Group	Points	Definition	Evidence
Live and Work in East Palo Alto	4	<p>Must currently live and work in the City of East Palo Alto.</p> <p>Live: Principal place of residence is within the City of East Palo Alto as of the date of application for housing.</p> <p>Work: 20 hours per week or more in the City.</p>	<p><u>Live</u> Applicant may submit documentation from an appropriate source stating the applicant resides in East Palo Alto as of the date of the application for housing.</p> <p><u>Work</u> Employment verification from employer, or another appropriate source, stating the applicant is employed there as of the date of the application for housing. A written offer of employment may suffice as evidence of employment in the City.</p>
Live in East Palo Alto	3	<p>Must currently live in the City of East Palo Alto. Principal place of residence is within the City of East Palo Alto as of the date of application for housing.</p>	<p>Applicant may submit documentation from an appropriate source stating the applicant resides in East Palo Alto as of the date of the application for housing.</p>
Work in East Palo Alto	2	<p>Must currently work 20 hours per week or more in the City of East Palo Alto.</p>	<p>Employment verification from employer, or another appropriate source, stating the applicant is employed there as of the date of the application for housing. A written offer of employment may suffice as evidence of employment in the City.</p>
East Palo Alto Residents Involuntarily Displaced	1	<p>Household must include at least one adult member whose principal place of residence was a housing unit within the City of East Palo Alto until they were displaced from that unit as a result of any of the following:</p> <ol style="list-style-type: none"> 1. Natural Disaster declared by Governor 2. Domestic Violence 3. City Code Enforcement Activities 	<p><u>Disaster</u> Applicants shall provide certification from a unit of government concerning displacement due to disaster prior to the submittal of the application for housing.</p> <p><u>Domestic Violence</u></p>

		<p>4. A "No Fault" Eviction from a rental unit in East Palo Alto, if the eviction occurred within a year of the application for housing</p> <p>5. A 10% or higher increase in rent in the last 12 months</p>	<p>Applicants shall provide certification from local police, social service agency, court, clergy, physician, public or private shelter, or counseling facility concerning displacement due to domestic violence, fear of reprisal, or hate crime prior to the submittal of the application for housing.</p> <p><u>Housing Code Enforcement Activity</u> Applicants shall provide documentation from the City and/or landlord. Displacement due to code enforcement activities includes situations in which a tenant vacates a unit in response to a notice to vacate, notice to abate a life-threatening condition, or declaration of substandard condition issued by the City or a court.</p> <p><u>"No Fault" Eviction</u> Applicants shall provide a copy of an eviction notice or a copy of a court order or judgment in the unlawful detainer proceeding or other official records documenting the eviction. Applicants who are displaced due to a rental increase of over 10% shall provide a copy of a rent increase notice and evidence of a subsequent change of residence. Applicants who were evicted due to cause, such as nonpayment of rent or breach of the rental agreement, shall not be eligible for this preference.</p>
All Other Applicants	1		NA