

Live, Work or Something Else:
Local Housing Preferences Training

July 17th, 2024

Fair Housing & Preferences

Erin Lapeyrolerie

LOCAL RESIDENTIAL PREFERENCES: DOES IT WORK FOR YOUR COMMUNITY?

Erin Lapeyrolerie, Goldfarb & Lipman, LLP

Disclaimer

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This general information does not constitute legal advice.

AGENDA

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The Basics

Making Sure Preferences Are a Good Fit

Defending Challenged Preferences

Risks

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THE BASICS

WHAT IS A RESIDENTIAL PREFERENCE

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NOT a residential requirement

A policy to prioritize housing applicants based on a status, such as current residence or current place of work

Result: Enhance the likelihood that a qualified household will be selected to purchase or lease a home

SCOPE OF PREFERENCES

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Geographic preference area

- Cities, counties
- Smaller areas, like neighborhoods, pose more risks and complications

How long will it be applicable

- Initial lease/sale
- Longer term

How many units

SCOPE OF PREFERENCES

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How to define “preferred” population; what kind of “proof” is required:

- Live
 - Unhoused population
 - Duration requirements (avoid)
- Work
 - Paid v. volunteer
 - Part-time v. full-time
- Displaced or at risk of displacement

A NOTE ON ANTI-DISPLACEMENT PREFERENCES. . .

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Tax credit units need to be available to the general public, with limited exceptions (discussed later)

Preferences for lower income individuals residing in *neighborhoods* and communities experiencing significant displacement pressures and gentrification furthers state policy

- Post preference on local jurisdiction's website
- Report website information annually to HCD

WHEN CAN THE JURISDICTION IMPOSE A PREFERENCE?

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Inclusionary units or publicly financed units

- Usually incorporated in project regulatory agreement

Local agencies can impose via ordinance or resolution

- Consider Government Code Section 7061*et seq.* for application of anti-displacement preferences applicable to tax credit projects – this must be by ordinance

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MAKING SURE PREFERENCES ARE A GOOD FIT

THERE ARE OTHER THINGS TO CONSIDER!

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Restrictions Linked
to Financing
Sources



Constitutional Law



Fair Housing Law

WILL PREFERENCE CONFLICT WITH FINANCING REQUIREMENTS?

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Consider financial feasibility of projects, common sources of financing, and flexibility of preferences

Examples of financing programs to consider:

- Tax Credits
- HUD financing
 - HUD Handbook 4350.3
- Other sources

WILL PREFERENCE CONFLICT WITH CONSTITUTIONAL RIGHT TO TRAVEL?

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The right to travel is a fundamental right under the US Constitution
Protects people from discrimination based on residency status with
respect to “essential activities” and or “fundamental rights.”

Restraints on the right to travel must be shown to be “necessary to
further a compelling state interest” to survive constitutional
challenges.

Durational residency requirements are commonly held to be
unconstitutional when they have a deterrent or penalizing effect
on the right to travel

WILL PREFERENCE CONFLICT WITH FAIR HOUSING LAWS?

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Federal Fair Housing Act

California Fair Housing and Employment Act

Affirmatively Furthering Fair Housing (California)

Gov't Code Section 65008

WHO IS PROTECTED UNDER FAIR HOUSING LAWS

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In the housing context, it is unlawful to discriminate against any person because of the 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. These are considered “protected classes”.

FAIR HOUSING AND INTENTIONAL DISCRIMINATION

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Facially Discriminatory (explicit and intentional)

- No preferences based on protected class

Disparate Treatment (intentional)

- No preferences that appear neutral but have the intent of treating people different based on protected class

PROHIBITION OF LOCAL GOV'T DISCRIMINATION

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Government Code Section 65008: A local agency cannot take any planning or land use action to deny residential occupancy because of protected class, age, or lawful occupation

- Exception to allow for senior housing and housing for homeless youth
- There are statutory provisions that allow for various types of employee housing (lawful occupation exception)
- Such action in violation of Gov't Code Section 65008 will be null and void

FAIR HOUSING AND DISPARATE IMPACT

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Inclusive Communities v. Texas Department of Housing (US Supreme Court, 2015)

Disparate Impact explicitly addressed under FEHA

- “Proof of a violation causing a discriminatory effect”
- Affirmative defense: action or inaction was necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve

ONE SIZE DOES NOT FIT ALL

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“When it comes to local preferences, **local context makes all the difference**. While prioritizing a percentage of affordable homes in a neighborhood for local residents could advance fair housing and community stabilization goals in gentrifying neighborhoods, a similar policy would perpetuate segregation and inequality in areas that are already wealthy and predominantly white. **Our fair housing laws are flexible enough to embrace this reality and permit local preferences in some places while prohibiting them in others.**” --*Sam Tepperman-Gelfant, 2015*

POLICY GOALS AND STRUCTURE

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Legitimate policy goals—what does the data say the community needs are:

- Anti-displacement
- Reduction in commuting distance
- Note: General reason to benefit local constituents typically not considered a legitimate policy goal that would outweigh disparate impact

Is preference designed to minimize potential disparate impact?

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DEFENDING CHALLENGED PREFERENCES

STUDY YOUR POLICY OPTIONS BEFORE PREFERENCE ADOPTION

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Complete disparate impact analysis prior to adopting policy

- What is the foreseeable impact of the policy on a protected class?
- Statistical analysis

Consider: Is there another feasible path to achieving the policy goal that is less discriminatory?

HOW MUCH DISPARATE IMPACT IS TOO MUCH DISPARATE IMPACT?

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There is a disparate impact when a policy has a discriminatory effect where it actually or predictably results in a disparate impact on a group of individuals, or creates, increases, reinforces, or perpetuates segregated housing patterns, based on membership in a protected class

Not a clear test available for how much is too much disparate impact

Option to use 80% test from employment discrimination cases as benchmark

Also, compare discriminatory effect to that of feasible, alternative policies

DISPARATE IMPACT CLAIM

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FEHA Regulations breaks down burden shifting test

- Complainant proves discriminatory effect
- City proves (with supporting evidence):
 - (1) The practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory purposes;
 - (2) The practice effectively carries out the identified purpose;
 - (3) The identified purpose is sufficiently compelling to override the discriminatory effect; and
 - (4) There is no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect.

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RISKS

WHAT IF WE VIOLATE FAIR HOUSING?

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Private plaintiff brings civil claim and wins:

- (1) an order prohibiting the defendant from engaging in the discriminatory practice or requiring the defendant to take affirmative action; (2) reasonable attorney's fees and costs; and (3) actual or punitive damages for each claimant.

Attorney General brings civil claim and wins:

- (1) a court order prohibiting the defendant from engaging in the discriminatory practice; (2) monetary damages for all persons aggrieved by the discriminatory conduct; and (3) a civil penalty up to \$50,000 for the first violation and up to \$100,000 for any subsequent violation.

VIOLATION OF AFFH

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Public agencies have a duty to affirmatively further fair housing pursuant to Government Code Section 8899.50

- 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

Attorney General may bring suit for violation of the AFFH duty under the Housing Element law

- Government Code Section 65585(j)

IS A PREFERENCE RIGHT FOR YOUR JURISDICTION?

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Takeaways:

- Focus on the policy goal and consider alternative paths to achieving the goal. This may include considering alternative ways to structure a preference policy or alternatives to a preference policy.
- Conduct a disparate impact study and determine if a protected class will foreseeably and disproportionately be negatively impacted by the policy.
- Analyze impact when policy is put to practice.
 - But, do not request protected class information from housing applicants.

Questions?

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Contact:

Erin Lapeyrolerie

elapeyrolerie@goldfarblipman.com

Thank you!



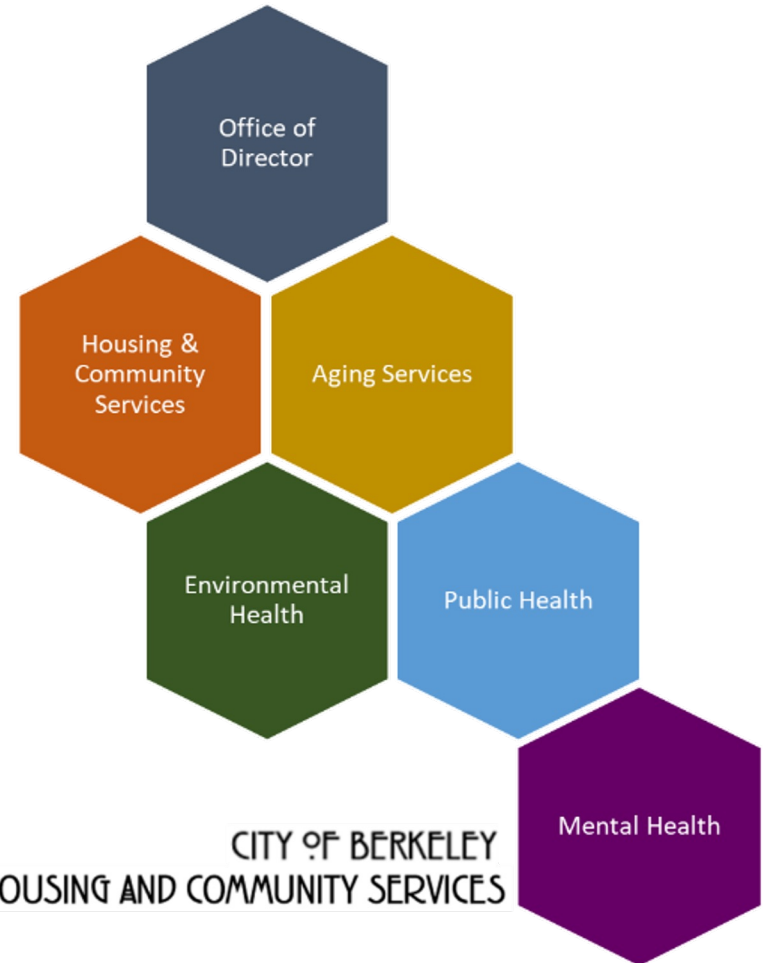
City of Berkeley Department of Health, Housing, and Community Services

Anna Cash



City of Berkeley Department of Health, Housing, and Community Services

Enhancing Community Life and
Supporting Health and Wellness
for All



Berkeley's Affordable Housing Preference Policy

Anna Cash
City of Berkeley

July 17, 2024



What is Berkeley's Affordable Housing Preference Policy?



Berkeley's Housing Preference Policy prioritizes households who experienced or are facing displacement in Berkeley for new affordable housing units.

city of berkeley
ADELINE CORRIDOR
specific plan

Community Calls for a Preference Policy



- Gentrification and displacement, especially in South Berkeley
- Adeline Corridor Specific Plan
- BART redevelopment: Ashby & North Berkeley

PUBLIC REVIEW DRAFT
MAY 2019

1947 CENTER STREET
BERKEEY CA 94704



Community-Driven Engagement

Partnership for the Bay's Future Challenge Grant

- Dedicated Fellow
- Support for Healthy Black Families/East Bay Community Law Center

Engagement Strategy

- Community Surveys
- Outreach led by Healthy Black Families
- Community Leaders Group

Preference Categories

- First Priority: Displaced due to BART construction
- Displaced due to eviction
- Displaced due to foreclosure
- Ties to redlined neighborhoods
- Ties to redlined neighborhoods – generational
- Homeless OR at-risk of homelessness
- Families with children



Learn More & Get in Touch

[Berkeleyca.gov/housing-preferences](https://berkeleyca.gov/housing-preferences)



HousingPreferences@berkeleyca.gov



Additional Slides (for Q&A)

Implementation Planning

Started before policy adopted:

- Coordination with Housing Portal
- BART Database
- Disparate Impact Analysis

Adopted date: July 11, 2023

Once policy adopted:

- Outreach planning
- Drafting Administrative Guidelines & training

Effective date: January 1, 2024



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Descendants of Residents of Redlined Neighborhoods

Your household can receive preference for housing if you or another household member have a parent/guardian or grandparent who lives or lived in a redlined neighborhood within Berkeley. If you qualify and would like to be considered for this preference, please enter your relative's primary or former address. If you qualify for this preference and are selected for an interview, be prepared to provide proof of address for the address holder. Use the map below to determine if your address is in a formerly redlined neighborhood:

City of Berkeley Map of Formerly Redlined Neighborhoods

Please select one:

- At least one of my parents or grandparents lives or lived in a formerly redlined neighborhood in Berkeley
- I do not qualify for this preference

Next

Application Process

CERTIFICATES

HOUSING PORTAL PRE-APPLICATION

LOTTERY & SORTING WAITLIST BY PREFERENCES

PREFERENCE VERIFICATION

Redwood City Local Live/Work Preference

Alin Lancaster



Redwood City Local Live/Work Preference



Anti-Displacement Strategy (ADS)

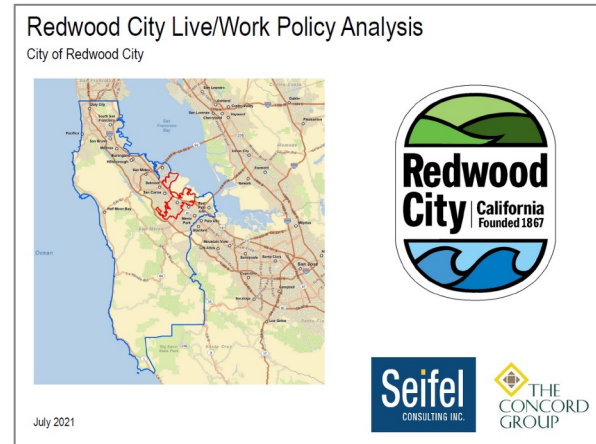


- Tenant Protections
- Preservation
- Mobile Homes
- **Local live/work preference**

Live/Work Policy Analysis Findings



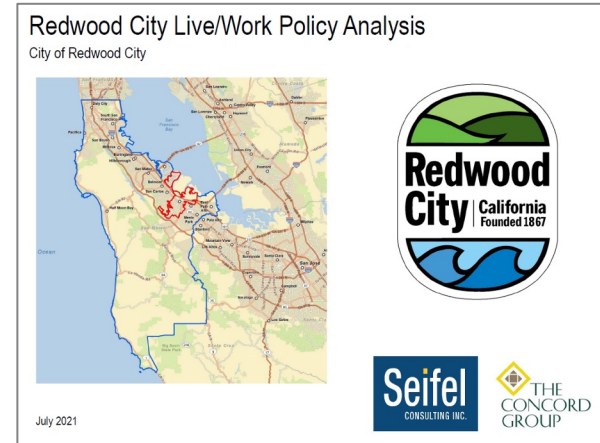
- City faces a significant **jobs/housing imbalance**
- Lower income households have been displaced and **displacement pressure** continues
- Long commutes from outside the City increase **greenhouse gas emissions**



Live/Work Policy Analysis Findings



- **Disparate Impact Analysis**
 - **Live only** preference doesn't pass 80% Test
 - Expanded preference to include **currently work** and **formerly lived** to limit possible disparate impacts



Local Live/Work Preference



- Adopted in 2021 within City's Affordable Housing Ordinance
- Households **who live or lived** in the City and/or households who **work or have been offered work** in the City



Applies to for-rent
affordable units



Applies to for-sale
affordable units

Local Live/Work Preference Implementation



- No minimum residency period for **currently live** or **formerly lived** preference
- Must work an average of at least 20 hours/week annually in Redwood City to qualify for **currently work**
- All preferences are equally weighted
- Limited implementation experience as most projects with preference haven't been constructed yet



Doorway + Local Preferences

Babs Deffenderfer

An aerial photograph of a densely populated urban neighborhood, likely San Francisco, showing a mix of residential buildings, streets, and green spaces. In the background, a large body of water (the bay) is visible, with a city skyline and a bridge in the distance under a clear blue sky.

LOCAL PREFERENCES + DOORWAY

JULY 17 2024

HOUSING MANAGERS

UX RECOMMENDATIONS





The application of local preferences to affordable housing placement decisions is **important information** to share and can be **challenging to explain.**

Housing Preferences

Preference holders will be given highest ranking.

1st HOUSING OPPORTUNITY FOR PERSONS WITH AIDS (HOUSEHOLDS WHERE A PERSON HAS BEEN MEDICALLY DIAGNOSED WITH HIV/AIDS)

There is one apartment that is set-aside for a household eligible for the HOPWA program (Housing Opportunity for Persons with AIDS), which is a household where a person has been medically diagnosed with HIV/AIDS.

2nd LIVE OR WORK IN CONTRA COSTA COUNTY

Do you live or work in the County of Contra Costa?

After all preference holders have been considered, any remaining units will be available to other qualified applicants.

Doorway recommends:

Use **simple and concise language** to describe the preferences

Create **consistency across** local preference **policies**

Minimize the number of local preferences + the criteria to qualify

An aerial photograph of a coastal town and a large golf course. The town is situated on a cliffside overlooking the ocean, with a sandy beach in the foreground. The golf course is a large, green expanse with various paths and fairways. In the background, there are rolling hills and mountains under a clear sky. The entire image has a semi-transparent blue overlay, and the title text is centered in white.

DOORWAY CONSIDERATIONS FOR OPERATIONALIZING YOUR PREFERENCES



How will a claimed preference be validated?

When will a claimed preference be validated?

What information is required in order to validate?

SMC PREFERENCES IN DOORWAY



Preference

Title

Live or work in City of Palo Alto

Description

I need the following information about each preference:

- Tile (ex: Live or Work in the City of San Mateo)
- Description
- Options (ex: "Yes, I live in the City of San Mateo," "No, I do not live or work in the City of San Mateo")
- url or PDF of description, if you care to add it to listings

Please note that we need a few weeks to incorporate any new preference into our paper app and train our system to read the new preference off of the paper app

SORT ORDER NAME DESCRIPTION

= 1 Live in Palo Alto At least one member of my household lives in the City of Palo Alto




= 2 Work in Palo Alto At least one member of my household works in the City of Palo Alto



Thank you for coming!

Don't forget your CM credits!

	Event	10 a.m. PDT	1 p.m. PDT	Result		Cancel	
9293542	Live, Work or Something Else: Local Housing Preferences Training	Single Event	Wednesday, July 17, 2024, 1 p.m. PDT	Wednesday, July 17, 2024, 2:30 p.m. PDT	Entered Relist	CM 1.50	Edit  Cancel 