Preserving Affordable Housing in Denver

Recommendations to Strengthen the City Ordinance and Create an Institutionalized Commitment to Preservation

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Authored by:
Laura Abernathy, National Housing Trust
Michael Bodaken, National Housing Trust

Special contributions by:
Jim Grow, National Housing Law Project

For more information on affordable housing preservation in the Denver region, please contact Melinda Pollack (mpollack@enterprisecommunity.org) or Brad Weinig (bweinig@enterprisecommunity.org) at Enterprise Community Partners, Inc.

For more information on affordable housing preservation around the country, please contact Laura Abernathy (labernathy@nhtinc.org) at the National Housing Trust.

For more information on affordable housing preservation ordinances around the country, please contact Jim Grow (jgrow@nhlp.org) at the National Housing Law Project.

One third of our nation's households live in rental housing – some from choice and some from necessity. Rental housing is a critical part of any community's healthy housing mix, ensuring diversity, opportunity and a labor force for essential community services. Unfortunately, rental housing is becoming less and less affordable. According to the Joint Center for Housing Studies' recently released report,[1] the share of U.S. households turning to the rental market for housing rose over the last decade, bringing the total number of renters to 43 million. A staggering 50% of U.S. renters pay more than 30% of their income for housing.[2] [3]

While federal, state and local assistance makes some housing affordable to families and seniors, this supply is not sufficient to meet the increasing demand for affordable rental housing. In Denver, there are only 39 affordable homes for each 100 households earning less than $20,000 annually.[4] [5] This shortage is made only more acute when existing affordable apartments are lost from the affordable stock due to deterioration, abandonment, or conversion to more expensive housing. The first step towards meeting rental supply needs is through preservation and improvement of Denver's housing stock. By preserving existing affordable housing, Denver is better able to provide necessary housing in a cost-effective manner while contributing to equitable, sustainable, and stable neighborhoods.

How does the City of Denver preserve affordable rental housing? Mile High Connects and Enterprise Community Partners sought guidance from the National Housing Trust on what could be done to help maintain diversity of housing near transit in Denver for decades to come. Notably, the City of Denver has a preservation ordinance on its books that is intended to stem the loss of affordable housing. Below we suggest that preservation in Denver can be facilitated by both strengthening that ordinance and adopting a number of other institutionalized changes intended to enable better focus, collaboration and resource deployment to preserve affordable housing in Denver.

PRESERVATION OF AFFORDABLE HOUSING IN DENVER

In 2000, the City of Denver adopted a Preservation Ordinance aimed at preserving the existing affordable stock of housing. Chapter 27, Article III of the City's ordinance applies to the preservation of affordable housing. It has the following key features:[6]

- Owners of federal preservation projects must provide the city and each tenant with a 1 year notice of a pending HUD Section 8 contract expiration.

[1] Joint Center for Housing Studies; *America's Rental Housing: Evolving Markets and Needs.* (December 2013).
[2] Joint Center for Housing Studies, *America's Rental Housing: Evolving Markets and Needs.* (December 2013).
[3] Historically, housing is considered affordable if it constitutes no more than 30% of household income.
[4] For households earning $20,000 annually, an affordable rent is $500 or less per month.
[5] Colorado Department of Local Affairs, Division of Housing. *Housing Need and Rent Burden in Colorado and its Metropolitan Areas.* (April 2012).
[6] To view the ordinance and relevant definitions in its entirety, please visit http://library.municode.com/HTML/10257/level3/TITIIREMUCO_CH27HO_ARTIIIPRAFHO.html#TOPTITLE.

- Owners of federal preservation projects who elect to “opt out” must provide to the city and each building tenant a notice of 150 - 210 days if the owner is opting out of a long term federally assisted housing contract.
- The city may pursue preservation of the project through negotiation for purchase or through condemnation.
- An owner who fails to comply with any of the requirements specified above shall pay a civil fine. Any fines received shall be used only for creating replacement affordable housing.

With respect to “local preservation projects,” [7] the City Ordinance includes the following language:

- When the owner of a local preservation project takes action which will make the affordable housing no longer affordable, the owner must provide a notice of 90 days to the city and the tenants. Within this period, the city or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.
- During the 90 day notice period the owner may not initiate an eviction without cause.

The ordinance also includes language pertaining to the long term affordability of properties subsidized by the City, imposing a minimum 20-year affordability requirement on properties that receive a city subsidy from the housing and neighborhood services division of the City and County of Denver (HNDS) or other city agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of median family income.

[7] Denver’s ordinance defines local preservation projects as “properties with ten (10) or more rental units which received financial assistance from one or another local entity, to create or preserve housing serving households below eighty (80) percent of median family income which have affordability restrictions that are still in force as of the effective date of this article. Financial assistance programs include subsidies from the City and County of Denver, Denver Urban Renewal Authority, the State of Colorado or the Colorado Housing and Finance Authority, or which have received bond financing issued by the City and County of Denver or the Colorado Housing and Finance Authority.”

As the first step in NHT's analysis of Denver's Preservation Ordinance, a number of affordable housing policymakers, advocates, and practitioners in Denver were interviewed to determine the effectiveness of the current ordinance.[8] While interviewees were specifically chosen due to their local and regional knowledge of affordable housing issues and preservation, not everyone was familiar with the ordinance and its requirements. Indeed, despite the existence of the current Denver Preservation ordinance, important affordable housing projects continue to be lost in Denver. Two years ago, Skyline Apartments, a downtown senior housing development, converted to market rate rentals after paying off the 40-year mortgage and ending Section 8 affordability.[9] The property was lost from the affordable housing stock. Today, Sakura Square, a property located in Northern Downtown Denver and consisting of 141 affordable units,[10] is at imminent risk of being lost, as the nonprofit owner intends on paying off a 40-year, Federal Housing Authority-backed mortgage in 2014.[11]

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Notably, both Skyline and Sakura Square are proximate to existing transit. While affordable rental housing is in short supply across Denver, it's especially scarce near existing transit. The cost of housing near existing and proposed transit is likely to rise as speculators drive up the cost of real estate. This increase in cost will potentially push housing out of reach for those households most likely to use transit.

[8] Interviews were conducted with the following individuals:

- Rick Garcia, HUD;
- Ismael Guerrero, Denver Housing Authority;
- Robin Kniech, Denver City Council;
- Aaron Miripol, Urban Land Conservancy;
- James Roy II, Urban Land Conservancy;
- Cris White, Colorado Housing and Finance Authority.

[9] Denver Business Journal. *Aging Sakura Square Faces Challenges*. (October 26, 2012).

[10] U.S. Department of Housing and Urban Development. *Multifamily Assistance and Section 8 Contracts Database.* Accessed August 8, 2013.

[11] Denver Business Journal. *Aging Sakura Square Faces Challenges*. (October 26, 2012).

STRENGTHENING THE CURRENT DENVER PRESERVATION ORDINANCE

Denver isn't alone in having legislation that includes specific language regarding the preservation and purchase of affordable housing. NHT surveyed a number of cities, including Denver, to assess how housing is preserved. The cities surveyed included Denver, Chicago, Los Angeles, Portland, San Francisco, Seattle, and Washington, D.C.[12] These municipal ordinances share a common purpose: to prevent existing affordable housing from exiting the affordable stock.[13] The means by which individual cities choose to address the threatened loss of affordability, however, differs. The following section of the report analyzes preservation laws from around the country and the different approaches each one takes to preserving affordable housing.

For a chart comparing Denver's Preservation Ordinance with similar laws around the country, please see the attached appendix.

In some cases, cities adopted ordinances structurally similar to Denver. In others, the cities chose to focus on tenant, not property, protection. Chicago, Portland, San Francisco, and Washington, D.C. have traditional preservation ordinances structurally similar to that found in Denver. In contrast, the approaches taken by Los Angeles[14] and Seattle[15] aim to protect the tenants directly rather than facilitate a preservation purchase. A chart of these findings can be found in the attached appendix.

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[12] Interviews were conducted with the following individuals:

- Franklin Campos, Program Coordinator, Los Angeles Housing Department;
- Jim Grow, Deputy Director and Senior Staff Attorney, National Housing Law Project;
- Sasha Hauswald, Public Policy Manager, San Francisco Mayor's Office of Housing;
- Daniel Ledezma, Senior Policy Manager, Portland Housing Bureau;
- Claudia Monterrosa, Policy & Planning Unit Manager, Los Angeles Housing Department;
- Rob Prasch, Preservation Director, Network for Oregon Affordable Housing;
- Marisol Romero, Policy Analyst and Systematic Code Enforcement Program (RSO), Los Angeles Housing Department.

[13] Washington, D.C.'s City Code has two sections dedicated to the preservation of affordable housing. For the purposes of this report, unless otherwise stated, references to D.C.'s preservation ordinance are meant to refer to the Low Income Housing Preservation and Protections Act of 2002 (Title 42, Subtitle V, Chapter 28A of City Code).

[14] Rather than protecting assisted properties through a notice ordinance or by providing a purchase opportunity, Los Angeles' Rent Stabilization Ordinance (RSO) protects tenants by setting allowable rent increases. The RSO also requires the registration of rental units, enumerates reasons for tenant eviction, and provides circumstances under which a landlord must provide relocation assistance to an evicted tenant. The RSO extends to all rental properties in the City of Los Angeles with more than one unit and built prior to 1978.

[15] Rather than protecting assisted properties by providing a purchase opportunity, Seattle's Tenant Relocation Assistance Ordinance provides benefits for residential tenants who will be displaced by housing demolition, substantial rehabilitation or alteration, change of use or removal of use restrictions. Benefits include payment of relocation assistance to low income tenants and advance notice of the planned development.

Recommendation 1: Amend the Current Preservation Ordinance to Cover Affordable Properties Not Presently Included

The existing Denver Ordinance extends to specified federally assisted and locally subsidized properties. The Ordinance does not cover Low Income Housing Tax Credit (LIHTC) properties or federally assisted properties facing a loss of affordability due to either maturing mortgages or prepayment.

	all HUD subsidies	S8	LIHTC	Local subsidy	Other
Denver	X	X		X	
Chicago	X	X	X		
Portland	X	X		X	
San Francisco	X	X			
Washington, D.C.	X	X		X	X

Table 1: What types of affordable properties are covered?

Denver currently has 12 LIHTC properties, totaling 1,032 units, with tax credits expiring within the next 24 months.[16] Not including LIHTC properties within the ambit of Denver's Preservation Ordinance arguably places these affordable housing properties at risk.

The Trust recommends that the Denver ordinance be broadly amended to include a number of housing types not currently covered. Once this is done, the City will be in a better position to set preservation goals. As an example, the City may, in setting specific preservation goals, consider targeting preservation resources near existing and proposed transit lines, given the recent investment in transit in Denver and knowing that these investments may lead to an increased price in housing near transit lines. The geographic nexus between affordable housing in the Denver metro region and existing and future transit lines is already well documented. The National Housing Trust determined that 7,300 federally subsidized units were within ½ mile of existing transit in Denver.[17] Other information regarding Denver housing located

The Urban Land Conservancy (ULC) is creating an early warning system to identify and preserve affordable housing in the Denver region. Though still in development, the intention of The Denver Regional Affordable Housing Early Warning System is to create a database of regional properties to alert specific partners when existing income-restricted housing developments are nearing expiration of their affordability.

Armed with this information, partners will be better suited to purchase the properties and ensure their long-term affordability. ULC is collecting information on existing affordable housing units in the Denver metro area, relying primarily n datasets from the City and CHFA.[17]

[16] National Housing Preservation Database, http://www.preservationdatabase.org/. Accessed December 7, 2013.
[17] AARP and NHT, *Preserving Affordability and Access in Livable Communities: Subsidized Housing Opportunities Near Transit and the 50+ Population*. (September 2009).

proximate to transit is yet to be documented as part of ULC's Early Warning System. Once the data is collected the question arises: which of these properties should be "protected" through a local preservation scheme?

Rather than including an exhaustive list of property types in the ordinance, the Trust recommends that Denver create a categorical definition of the types of housing covered by the ordinance that includes a functional catch-all to encompass types of at-risk housing that may not yet be on the City's radar. Ideally this language would encompass assistance from HUD, Treasury, USDA (Rural Development), and other federal and local sources. By maximizing the universe of properties covered by the ordinance, the City can better determine preservation priorities and opportunities.[19]

Should the City of Denver elect to be more specific, the City of Chicago's preservation ordinance is a good example of an ordinance that includes a number of particular types of properties that should be preserved.[20] Should the City choose this option and list specific property types, the Trust recommends that a catch-all phrase be included to capture any at-risk properties not specifically delineated, providing the flexibility to preserve properties whether or not specifically set forth in the ordinance.

Finally, we recommend that Denver's ordinance continue to protect properties receiving local subsidies to maximize preservation opportunities created by the ordinance. Any housing receiving public investment, whether federal or local, should be protected by the ordinance.

Recommendation No. 2: Amend the Current Preservation Ordinance to Include Assisted Properties that are for Sale

Denver's existing preservation ordinance does not apply to affordable properties that are for sale, meaning that the City is not granted any rights to preserve these potentially at-risk properties. The National Housing Law Project notes that there are two types of events that trigger the purchase opportunity included in most preservation ordinances: 1) a planned sale or other disposition of the property or 2) an action that would affect the current affordability structure, such as expiration or termination of use or affordability restrictions or any subsidies.[21] In the same way that broadly defining the types of properties included under the ordinance maximizes opportunities for preserving affordable housing, so, too, does broadly defining the trigger for the purchase opportunity.

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[18] Interview with Aaron Miripol and James Roy II, Urban Land Conservancy, August 6, 2013.
[19] Washington D.C.'s Low-Income Housing Preservation Act of 2000 defines affordable multifamily housing as a "residential real property consisting of 5 or more dwelling units in which, as the result of use restrictions or other covenants, at least 20% of the dwelling units are occupied by very low-income households," effectively encompassing properties receiving funds from an unspecified variety of sources. While the D.C. ordinance goes on to specify the types of properties that trigger specific rights, the Trust recommends that Denver's adopted language be similarly broad to include a multitude of housing affordability programs.
[20] City of Chicago Affordable Housing Preservation Ordinance.
[21] National Housing Law Project, *A Brief Review of State and Local Preservation Purchase Laws.* Housing Law Bulletin, Volume 36, November-December 2006.

	Sale	Expiring contract	Prepayment/opt-out
Denver		X	X
Chicago	X	X	X
Portland		X	X
San Francisco	X	X	X
Washington, D.C.	X	X	X

Table 2: What event triggers the application of purchase rights?

We recommend that Denver's ordinance be amended to include assisted properties that are for sale.

Recommendation No. 3: Amend the Current Preservation Ordinance to Include a Right of First Refusal, Permitting a Designated Purchaser to Acquire Title by Matching an Existing Market Based Offer

To maximize opportunities for preservation under Denver's ordinance, we suggest Denver consider amending its current ordinance to allow a right of first refusal when an owner intends to sell or dispose of federally or locally assisted affordable housing. Once an owner has decided to sell, the owner would be required to submit notice and the city or a designated partner could step in and purchase the at-risk property for preservation by matching another sale offer.

In Chicago, San Francisco and Washington, D.C., when a property comes up for sale, other specified developers may step in to purchase the property – at market value – and protect the property's affordability via a right of first refusal.

Denver's Preservation Ordinance does not afford a right of first refusal, but, much like Portland's, provides time for the City to negotiate a purchase: specifically, the language requires that an owner of a federal preservation project "refrain from taking any action…that would preclude the city or its designee from succeeding to the contract or negotiating with the owner for purchase of the property."[22]

To better protect properties at risk of conversion, we recommend that Denver's Preservation Ordinance be amended to provide a right of first refusal to the City or its designee. Such a right allows the City (or its designee) to acquire the property by matching a market-based price negotiated by the owner and a third party. This allows the property to be preserved, while the original owner receives the same price negotiated in the private market. Notably, the city or its designee is not obligated to make an offer on or purchase the property. However, granting the city or its designee a right of first refusal helps assure that at-risk properties are preserved and improved. It is important that these rights apply in instances concerning both federal and local preservation projects. Should the City or its designee choose to meet the purchase price, the

[22] Denver, Colorado Code of Ordinances, Title II, Chapter 27, Article III, Section 27-47.

Trust recommends that the approved purchaser be required to match the third-party negotiated price within 90 days.

Should the City of Denver adopt a right of first refusal ordinance, it's important that the designated purchaser pay market rate by matching a bona fide offer for the property – and no more. To protect the taxpayer, Chicago's ordinance defines a bona fide offer as one "evidenced by a purchaser contract reflecting a sales price and an earnest money deposit equal to at least 5% of the sales price identified in the purchase contract."[23] If the right of first refusal extends beyond the City itself, an exception for those proposed sales that would themselves guarantee preservation would also be advisable.[24]

While a right of first refusal may be the only legislative language available to ensure preservation, it is not the only way to preserve at-risk affordable housing. Notably, the City of Portland has been very successful in achieving preservation results, though the city ordinance does not grant a right of first refusal. Instead, Portland has successfully tackled preservation through a city-wide commitment to preservation, specific goal setting, and resource dedication. For more on how Denver can achieve successful preservation results outside of the ordinance, see page 11.

Recommendation No. 4: Amend the Current Preservation Ordinance to Require Increased Notice and Notice of Intended Sale

When an owner puts a property up for sale or proposes termination of affordability, municipalities and the residents need time to consider their options, most especially to determine whether it's in the best interest of the community to preserve the property. Consideration of their options takes time. In order to secure this option, all of the ordinances reviewed by the Trust included notice obligations upon the owner, i.e., notice of sale provided to the city, tenants or both. Indeed, "notice provisions are a staple of purchase opportunity legislation."[25]

[23] City of Chicago Affordable Housing Preservation Ordinance, Section 2-44-111.
[24] In the event that a property is at risk of conversion for reasons other than an intended sale, there are fewer options available to ensure preservation. The City and/or a mission minded developer could approach the owner to see if the owner would consider a sale rather than convert the property to market. The offer may be enough to motivate the owner (who is otherwise facing an expiring contract or considering opting-out or pre-payment) to sell the property and preservation may be possible.
[25] National Housing Law Project, *A Brief Review of State and Local Preservation Purchase Laws.* Housing Law Bulletin, Volume 36, November-December 2006. Page 221.

	Notice	
	To Tenants	To City
Denver	X	X
Chicago[26]		X
Portland	X	X
San Francisco	X	X
Washington, D.C.	X	X

Table 3: Which cities require notice?

While each of the ordinances examined include notice requirements, the time frames differ.[27] Denver's current ordinance requires notice of one year for expiring Section 8 contracts, 210 days for opting out of a federally assisted project, and 150 days' notice for opting out of a one-year contract extension.

	Notice Requirements			
	Expiring S8	Opting out of federal assistance		Sale
		Long-term contract	One-year contract extension	
Denver	12 months	210 days	150 days	n/a
Chicago[28]	12 months	12 months	12 months	12 months
Portland	12 months	210 days	150 days	n/a
San Francisco	12 months	18 months	18 months	n/a
Washington, D.C.	12 months	12 months	12 months	n/a

Table 4: What are the various local notice requirements for federally assisted properties?

Requiring an owner to provide more notice before terminating assistance or selling provides potential purchasers with more time to develop a viable purchase offer for preserving the property. While Denver's 12-month notice requirement for expiring S8 contracts is in line with practices from around the country, Denver requires significantly less notice for properties opting out of federal assistance. *We recommend that Denver revise its notice to require*

[26] Though the City of Chicago's ordinance does not require giving notice to tenants, Illinois' Federally Assisted Housing Preservation Act requires owners to submit notice of intent to terminate, sell or dispose of an assisted property to each affected building tenant.

[27] Because federal notice requirements for conversion events were uneven and changing, local ordinances often established notice requirements to guarantee receipt by designated entities, minimum periods, and content, in addition to covering possible sales.

[28] Though the City of Chicago's ordinance does not require giving notice to tenants, Illinois' Federally Assisted Housing Preservation Act requires owners to submit notice of intent to terminate, sell or dispose of an assisted property to each affected building tenant.

increased notice for opting out of either a long-term contract or a one-year contract extension. This would allow potential preservation purchasers significantly more time to prepare an offer, while also being in line with common practice from around the country.

The recommended right of first refusal should be accompanied by an appropriate notice requirement for an intended sale of a federally or locally assisted property. This will allow the City or its designee adequate time to gather the resources necessary to match an offer of purchase. Denver's ordinance does not currently require a notice of intended sale. The Trust recommends that the ordinance require notice for owners of federally assisted properties intending to sell or otherwise dispose of the property. If a right of first refusal is adopted, per recommendation #3, there should be adequate time allowed for the city or designee to arrange financing for the purchase amount. In determining how much notice is most appropriate, the Trust recommends that the City assess its capacity in terms of lining up informed purchasers and accessing necessary financial resources.

In addition to notice for termination of federal assistance, some ordinances, including Denver's, require notice when a property's local assistance is soon to be terminated. The idea is to give the City of Denver time to discuss with the owner his/her options, including potential sale to a mission minded for profit or nonprofit purchaser. The Trust recommends that the Denver ordinance continue to apply to locally assisted properties but reconsiders the appropriate time frame based on the City's capacity to determine whether the property should be preserved.

Recommendation No. 5: Amend the Current Preservation Ordinance to Protect Tenants Should Preservation of the Property Not Be Feasible

In the event that conversion occurs, it is imperative that appropriate laws be in place to protect tenants. "When a private owner leaves a HUD project-based subsidy program, … the owner's obligation to maintain the low rents or accept the project-based assistance at the property is lifted, leaving most of the residents unable to pay the new rent without a new rental assistance subsidy."[29] In the event of opt-out or many prepayments, federal law provides enhanced vouchers, "[providing] the tenant with the right to remain in the unit after a conversion to market rents."[30] The property owner is required to accept the voucher and, in most cases, the tenant's portion of the rent will not increase. Other federal conversions may trigger eligibility for only regular vouchers, with neither a right to remain in one's home nor a market-rate subsidy.

Thus, it is possible that tenants will be involuntary displaced when at-risk properties convert to market. The Trust recommends that the Denver ordinance be amended to provide relocation assistance in these instances.

[29] National Housing Law Project, *Enhanced Vouchers and Tenant Protection Vouchers.* http://nhlp.org/node/666 Accessed December 8, 2013.
[30] National Housing Law Project, *Enhanced Vouchers and Tenant Protection Vouchers.* http://nhlp.org/node/666 Accessed December 8, 2013.

	Relocation Assistance
Denver	
Chicago	
Portland	X
San Francisco	X
Washington, D.C.	X

Table 5: Which cities provide relocation assistance to displaced residents?

It is not uncommon for residents involuntarily displaced by conversion to receive financial assistance for relocation, though the source of those funds differs. In Portland, the Portland Housing Bureau makes “adequate financial resources” available to all tenants involuntary displaced, and asks for voluntary contributions from the owners of federally-assisted projects who have chosen to opt-out of their affordability requirements. In Washington, D.C., the Low-Income Housing Preservation and Protections Act stipulates that the Mayor can provide up to $500 per tenant in relocation assistance. San Francisco also provides relocation assistance to displaced tenants, though the payment comes directly from the property owner. In Seattle, a separate Tenant Relocation Assistance Ordinance provides displaced tenants with a $2,000 payment from the city, though it should be noted that before this payment is made, the property owner is required to pay the city $1,501 per property household. Given already constrained resources at the city, the Trust recommends that Denver’s relocation assistance follow a model established by Seattle, where assistance is provided primarily by the property owner.

STRENGTHENING DENVER’S PRESERVATION POLICY AND PRACTICE

Recommendation No. 1: Appoint a City Preservation Manager.

Preserving affordable housing requires more than a strongly worded ordinance. Cities with successful preservation results have made preservation a priority outside of the ordinance.

Having a thoughtful and strong preservation ordinance is an essential step in preserving affordable housing in the Denver region. However, legal language of any strength will fail to have a meaningful impact without an institutionalized commitment to preservation. When asking interviewees why Denver’s preservation ordinance has been ineffective, the Trust expected to receive responses concerning the need for stronger notice requirements or purchase opportunities. Instead, local interviewees indicated that the City should rededicate its focus and resources on saving affordable housing. In our view, that rededication should be led by a person whose principal job is the preservation of affordable housing in Denver. Therefore, while recommendations for improving the existing ordinance are laid out above, *the Trust recommends that the City of Denver appoint a Preservation Manager* – someone to take responsibility for and ownership of the City's preservation engagement, coordinate preservation tactics across agencies and stakeholders, and engage in long-term strategic preservation planning.

***Recommendation No. 2:* Establish a "Preservation Collaborative" and Ensure that Affordable Housing Preservation is Explicitly Included in CHFA's Upcoming Strategic Plan.**

After speaking with housing practitioners, advocates, and policymakers in the Denver region, the Trust embarked on the second phase of the study by surveying cities across the nation to determine how effective their respective ordinances have been in preserving affordable housing and why. [31] Not surprisingly, different cities approach preservation differently; our discussions revealed that there are very few – if any – components of an ordinance that guarantee successful preservation. What quickly became clear, however, is that cities with successful preservation results have made preservation a priority. The common thread in cities with successful preservation results is city or statewide convenings that engage preservation stakeholders with the express purpose of facilitating preservation of affordable housing. In cities including Los Angeles, Portland, and Washington, D.C., the city engages in regular convenings with HUD officials, representatives from the state, and local developers and non-profit organizations to coordinate preservation activity, discuss individual properties, and, when a building is being sold, match at-risk properties with potential preservation buyers.

Similar collaborative working groups have been invaluable in advancing preservation in other cities throughout the country:[32]

- The most obvious example is the City of Portland.[33] In Portland, city, state and federal officials, together with stakeholders from the nonprofit and for-profit community, meet every quarter to analyze the state of play of affordable housing in the region. In particular, participants review potential loss of affordable housing in the next quarter or six months and consider how best to address it.[34] Under the leadership of strong housing leaders and a preservation focused housing department, the Portland Housing Bureau preserved 11 properties – totaling over 700 homes – in the last five years. While the ordinance set the broad framework for preserving these homes, successful implementation required a focused engagement between a number of state and local officials, resource dedication and focused activity on behalf of the City's housing staff.

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[31] Cities surveyed outside of Denver are Chicago, Los Angeles, Portland, San Francisco, Seattle, and Washington, D.C.

[32] Interview with Rob Prasch, Preservation Director, Network for Oregon Affordable Housing, November 14, 2013 and Franklin Campos, Program Coordinator, Los Angeles Housing Department, November 18, 2013.

[33] Portland's preservation ordinance is nearly identical to Denver's existing ordinance, requiring the same notice for the same types of properties and triggering the same rights.

[34] Interview with Rob Prasch, Preservation Director, Network for Oregon Affordable Housing, November 14, 2013 and Daniel Ledezma, Senior Policy Manager, Portland Housing Bureau, December 12, 2013.

- In Chicago, the Preservation Compact brings together public, private, and non-profit leaders to stem the loss of multifamily rental housing. [35] Every month for the last four years, a working group consisting of representatives from the Preservation Compact, government agency staff, and partners from the Sargent Shriver National Center on Poverty Law, Chicago Rehab Network and Community Investment Corporation gather to: a) identify and evaluate potential at-risk properties; b) coordinate and track progress on preservation strategies for at-risk properties; c) identify and act on policy issues related to preserving government assisted properties.[36]

Fortuitously, the Colorado Housing and Finance Authority (CHFA) is currently incorporating a similar stakeholder process into the Community Engagement portion of the Authority's Strategic Plan. [37] Convened by CHFA, the intended purpose of the group is to gather entities and individuals with like interests and motivations to discuss specific housing issues and the resources that may be available to address them. [38] While CHFA's focus is state-wide and is not limited to preservation, it is the first step towards achieving a coordinated preservation engagement in Denver. *The Trust recommends the City of Denver meet with CHFA in the near term to ensure that affordable housing preservation is an integral part of the Authority's Strategic Plan.*

Moreover, the preservation of affordable housing in Denver would benefit from similar meetings between potential preservation buyers and decision makers.

The Trust recommends that the City establish a "Preservation Collaborative" comprised of individuals from the City housing agencies, HUD, the Colorado Division of Housing, Enterprise Community Partners, Urban Land Conservancy, mission minded developers and CHFA . The Collaborative should meet regularly to determine preservation priorities and resource allocation for properties that are threatened with demolition or conversion to market rate.

[35] The Preservation Compact is led by Community Investment Corporation (CIC).
[36] The Preservation Compact, www.preservationcompact.org.
[37] Interview with Cris White, Executive Director/CEO, Colorado Housing and Finance Agency, August 9, 2013.
[38] Interview with Cris White, Executive Director/CEO, Colorado Housing and Finance Agency, August 9, 2013.

Recommendation No. 3: Set Specific Preservation Goals.

Preservation of housing in Portland was spearheaded by a few housing champions dedicated to preserving Portland's affordable housing stock. "Under the leadership of Portland City Commissioner Nick Fish and then-Bureau Director Will White, …[the Portland Housing Bureau] launched "11x13," a campaign to preserve the affordability of those buildings subsidized by federal rent assistance contracts with [HUD] that were set to expire prior to 2013."[40] Between 2008 and 2013, 11 properties consisting of 717 apartment homes were preserved and improved.

The 11x13 initiative benefitted from setting clear, tangible goals. By targeting 11 individual properties, the City of Portland was able to focus resources on preserving them. *Denver's preservation activity would be enhanced by setting specific, realistic preservation goals.*[41]

Portland's 11x13 Preservation Campaign

In 2008, the Portland Housing Bureau (PBH) identified 11 privately owned buildings at risk of losing their affordability by 2013. Because of their highly desirable locations, more than 700 affordable homes were susceptible to being converted to market rate rentals or sold as condominiums. Under the leadership of Portland City Commissioner Nick Fish and then-Bureau Director Will White, PBH launched 11x13, a campaign to preserve the affordability of those buildings subsidized by federal rent assistance contracts with HUD that were set to expire.

The City partnered with HUD, the State of Oregon, the Network for Oregon Affordable Housing, local nonprofits and private funders. A coalition worked in close coordination for five years, and in the spring of 2013 the City announced that it had successfully preserved each of the 11 buildings, requiring 60 years of affordability for 700 homes located in Portland's vibrant and desirable neighborhoods.

11x13 was funded by local, private and federal sources. For every dollar the City invested, $4 in private funds and $5 in federal funds were leveraged. The City invested $22 million in CDBG, Section 108 loans, and local urban renewal dollars. This leveraged $110 million in private investments and more than $120 million in federal assistance over the next 20 years.[39]

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[39] Portland Housing Bureau, *11x13 Housing Preservation Campaign*. http://www.portlandoregon.gov/phb/article/458801

[40] Portland Housing Bureau, *11x13 Housing Preservation Campaign.* http://www.portlandoregon.gov/phb/article/458801

[41] Identifying the properties to be included in these future goals requires accurate data on the at-risk properties in the city. The Urban Land Conservancy (ULC) is already doing much of this significant work through the creation of The Denver Metro Affordable Housing Early Warning System.

Recommendation No. 4: Strategically Access Preservation Resources and Establish Relationships with Mission Minded Lenders and Equity Providers.

Denver TOD Fund

The city of Denver, Enterprise and the Urban Land Conservancy created an acquisition fund with investments from the three lead partners, as well as the John D. and Catherine T. MacArthur Foundation, CHFA, Rose Community Foundation, and local banks and CDFIs. Opened in 2010, the revolving loan fund aims to support the creation or preservation of more than 1,000 affordable housing units with current or future access to high-frequency public transportation. The fund anticipates that its $30 million in capital investments to purchase and hold sites will leverage $100 million in local economic development.[42]

As of April 2013, a total of 8 properties have been acquired using the TOD Fund, preserving or creating 626 affordable homes. Of these, 2 – accounting for a total of 52 affordable units – have been preservation deals. The Dahlia Apartments, located in Northeast Park Hill at 33rd and Dahlia, was the first property to utilize financing through the TOD Fund and preserved 36 2-bedroom units. The second development preserved through the TOD Fund Is Villa TOD, a mixed use property in the Santa Fe arts district including 16 units of workforce housing. Villa TOD is on the Santa Fe bus corridor and 5 blocks from a light rail station.[43]

Goal setting and proactive information sharing cannot preserve affordable housing without the necessary resources to complete a preservation transaction.

Denver is already home to the nation's first transit oriented development (TOD) acquisition fund. As of April 2013, a total of eight properties have been acquired using the TOD Fund, preserving or creating 626 affordable homes. Of these eight properties, two – accounting for a total of 52 affordable units – have been preservation transactions. The Dahlia Apartments, located in Northeast Park Hill, was the first property to utilize financing through the TOD Fund, resulting in the preservation and improvement of 36 two-bedroom apartments. The second development preserved through the TOD Fund is Villa TOD, a mixed use property in the Santa Fe arts district including 16 units of workforce housing. Villa TOD is on the Santa Fe bus corridor and 5 blocks from a light rail station.[44] While the Fund is currently limited to $3 million[45], transactions to preserve an affordable property in the City can require up to three times that amount.

In an era of constrained resources, the Trust suggests that the City and CHFA consider how to smartly prioritize their funding to save properties at risk. Additionally, there may be private funds available to help the city preserve affordable housing. For example, Mercy Housing recently used the Housing Partnership Equity Trust to preserve affordable housing in Chicago.

[42] Enterprise Community Partners, The National Housing Trust and Reconnecting America, *Preserving Affordable Housing Near Transit*. (September 2010).
[43] Interview with Aaron Miripol, President and CEO, Urban Land Conservancy, August 6, 2013.
[44] Interview with Aaron Miripol, President and CEO, Urban Land Conservancy, August 6, 2013.
[45] In 2014, the maximum loan size for the TOD Fund will increase to $5 million.

NHT/Enterprise, an affiliate of the National Housing Trust, has relatively low cost 7 year bridge financing. Finally, Enterprise Community Partners is developing an equity fund for the preservation of mixed income properties nationwide.[46] None of these mechanisms depend on taxpayer funds. *The Trust recommends that the City of Denver, Urban Land Conservancy, Housing Preservation Equity Trust, NHT/Enterprise, Enterprise Community Partners and Mercy Housing meet in the first quarter of 2014 to determine whether funds from some of these entities could be "risk shared" to serve as a possible source of financing preservation in and around Denver.*

CONCLUSION

Affordable housing is at risk in Denver. Saving it requires a modified preservation ordinance and an institutionalized commitment to preservation.

In order to provide the necessary legal framework for preservation, the Trust recommends the City consider amending its Preservation Ordinance in the following ways:

1. Cover Affordable Properties Not Presently Included;
2. Include Assisted Properties that are for Sale;
3. Include a Right of First Refusal, Permitting a Designated Purchaser to Acquire Title by Matching an Existing Market Based Offer;
4. Require Increased Notice and Notice of Intended Sale;
5. Protect Tenants Should Preservation of the Property Not Be Feasible.

Further, the Trust recommends that the City consider the following recommendations to create a city-wide preservation commitment and strategically partnering with mission-driven preservationists:

1. Appoint a City Preservation Manager;
2. Establish a "Preservation Collaborative;"
3. Set Specific Preservation Goals;
4. Strategically Access Preservation Resources.

By taking action to preserve housing affordability, the City can ensure that people of all incomes are able to live in Denver, protecting diversity, opportunity and a labor force for essential community services. NHT is ready to provide assistance as Denver navigates how to best safeguard affordable housing for decades to come.

[46] The total amount of the Housing Equity Partnership Trust is $100 Million. NHT/Enterprise has a low cost line of credit for $20 Million. Enterprise's new product totaling approximately $50 million should be available in 2014 or 2015.

Appendix: Provisions of Local Preservation Ordinainces

	Name	Date enacted	Type of Housing Covered	Notice	Triggering event for exercising right	Nature of rights triggered	Whose right?	Tenant protection post conversion
Denver	Denver, Colorado Code of Ordinance, Preservation of Affordable Housing	2000	All HUD-subsidized housing, S8, local subsidies	* One year for pending S8 contract expiration * 210 days for opting out of federal project * 150 days for opting out of a one year extension of a federal project * 90 days for local project, whether contact expiration or opting out	Opt-out, expiring contract	Time for city to negotiate for purchase	City or designee	N/A
Chicago[1]	Affordable Housing Preservation Ordinance	2007	Federally assisted housing (including LIHTC)	* Not less than 12 months	Prepayment, termination or an intended disposition	Right of first refusal	Qualified entity	N/A
Portland	Portland City Code, Chapter 30.01: Affordable Housing Preservation	1999	All HUD subsidized housing, S8, other state and local subsidies	*1-year notice to city, tenants for S8 contract expirations *210 days notice to city and tenants for long-term federal contract opt-outs *150 days notice to city and tenants for opting-out of federal 1-year extensions *90 day notice to city and tenants for local preservation projects	Opt-out, expiring contract	Time for city to neogitate for purchase	City or designee	N/A

1: Passed to supplement the Illinois Federally Assisted Housing Preservation Act, which has very detailed and specific language concerning the preservation of affordable housing.

	Name	Date enacted	Type of Housing Covered	Notice	Triggering event for exercising right	Nature of rights triggered	Whose right?	Tenant protection post conversion
San Francisco	SF Assisted Housing Preservation Ordinance	1990	All HUD subsidized housing, S8	*18 month for prepayment or terminiation *12 month notice for S8 contract expiration	Intended sale or disposal of property	Right of first refusal	City, tenants association, nonprofit	Payment provided to displaced tenants by owner
Washington D.C.	Low-Income Housing Preservation and Protections Act of 2002	2002	All HUD subsidized housing, S8, local subsidies	*1 year notice to tenants, the city, the state, the housing authority and the Department of Consumer and Regulatory Affairs	Intended sale of assisted property	City right to purchase, assignable	City, via Mayor	Relocation assistance payments provided by Mayor