



SAN FRANCISCO PLANNING DEPARTMENT

February 20, 2019

Ms. Angela Calvillo, Clerk
Honorable Supervisor Fewer
Honorable Supervisor Haney
Honorable Supervisor Ronen
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2019-001351CRV:
Nonprofit Organizations; First-Right-to-Purchase Multi-Family Residential
Buildings
Board File No. 181212
Planning Commission Recommendation: Approval in Concept**

Dear Ms. Calvillo and Supervisors Fewer, Haney and Ronen,

On February 14, 2019, the Planning Commission conducted duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance, introduced by Supervisor Fewer that would amend the Administrative Code. At the hearing the Planning Commission recommended approval of the ordinance in concept.

The Commission's additional recommendations were as follows:

1. The Commission is in full support of creating as many strategies as possible, and urges the Board of Supervisors work with MOHCD and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units.
2. The Commission recommends the Board of Supervisors continue to explore additional incentives for property owners who would be subject to the proposed Ordinance.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act CEQA Guidelines Section 15378 and 15060(c)(2).

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

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Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Matthew Lee, Deputy City Attorney
Ian Fregosi, Aide to Supervisor Fewer
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution No. 20383
Planning Department Case Report for Case No. 2019-001351CRV



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20383

HEARING DATE FEBRUARY 14, 2019

Project Name: Non-Profit Organizations' First Right of Refusal
Case Number: 2019-001351CRV [Board File No. 181212]
Initiated by: Supervisor Fewer / Introduced December 11, 2018
Staff Contact: Paolo Ikezoe, Citywide Division
paolo.ikezoe@sfgov.org, 415-575-9137
Reviewed by: Miriam Chion, Manager of Housing and Community Development
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RESOLUTION APPROVING, IN CONCEPT, THE PROPOSED ORDINANCE AND RECOMMENDING THAT THE BOARD OF SUPERVISORS WORK WITH THE MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT AND OTHER IMPLEMENTING AGENCIES TO ENSURE THE ORDINANCE RESULTS IN A STRATEGY THAT PRESERVES THE MAXIMUM NUMBER OF UNITS AND THAT THE BOARD OF SUPERVISORS CONTINUE TO EXPLORE ADDITIONAL INCENTIVES FOR PROPERTY OWNERS WHO WOULD BE SUBJECT TO THE PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE TO CONFER UPON CERTAIN NONPROFIT ORGANIZATIONS A FIRST-RIGHT-TO-PURCHASE, CONSISTING OF BOTH A RIGHT OF FIRST OFFER AND A RIGHT OF FIRST REFUSAL, OVER ALL MULTI-FAMILY RESIDENTIAL BUILDINGS IN THE CITY, FOR THE PURPOSE OF CREATING AND PRESERVING RENT-RESTRICTED AFFORDABLE RENTAL HOUSING; ESTABLISHING RELATED PROCEDURES FOR THE SELECTION OF SUCH NONPROFITS, PRESERVATION OF RENT-RESTRICTED AFFORDABLE HOUSING, AND IMPLEMENTATION AND ENFORCEMENT; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND MAKING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on December 11, 2018 Supervisor Fewer introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 181212, which would amend the Administrative Code to confer upon certain nonprofit organizations a first-right-to-purchase, consisting of both a right of first offer and a right of first refusal, over all multi-family residential buildings in the City, for the purpose of creating and preserving rent-restricted affordable rental housing; establishing related procedures for the selection of such nonprofits, preservation of rent-restricted affordable housing, and implementation and enforcement; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 14, 2019; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act CEQA Guidelines Section 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; now therefore be it

RESOLVED, that the Planning Commission hereby adopts the following findings and approves, in concept, the proposed Ordinance and recommends the Board of Supervisors work with MOHCD and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units and that the Board of Supervisors continue to explore additional incentives for property owners who would be subject to the proposed Ordinance .

The Planning Commission hereby adopts the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed ordinance aligns with the Planning Department's goals and priorities. It implements one of the key recommendations of the MAP2020 Action Plan is to create a right-of-first-refusal similar to the proposed legislation, to allow acquisition and preservation of rent-controlled units. Several other Planning Department projects, including the Community Stabilization Strategy and the Housing Affordability Strategies projects, have proposed exploring right-of-first-refusal to prevent displacement and preserve existing affordable homes.
2. The Commission finds that San Francisco's housing affordability crisis will not be solved through any one program, but rather with a multi-pronged set of production, preservation and protection strategies. The proposed legislation would enable an additional strategy for acquiring and preserving affordable housing, though it would not create an additional funding source. The Commission is in full support of creating as many strategies as possible, and urges the Board of Supervisors work with MOHCD and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units.
3. The Commission recommends the Board of Supervisors continue to explore additional incentives for property owners who would be subject to the proposed Ordinance.

4. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

Policy 2.4

Promote improvements and continued maintenance to existing units to ensure long term habitation and safety.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.1

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

Policy 3.2

Promote voluntary housing acquisition and rehabilitation to protect affordability for existing occupants.

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

Policy 4.5

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.6

Acquire and rehabilitate existing housing to maximize effective use of affordable housing resources.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

Policy 8.1

Support the production and management of permanently affordable housing.

5. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
 1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;
The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.
 2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;
The proposed Ordinance would not have a negative effect on housing or neighborhood character. The proposed Ordinance would enable the preservation of existing affordable rental units, and would contribute towards maintaining the economic diversity of our neighborhoods.
 3. That the City's supply of affordable housing be preserved and enhanced;
The proposed Ordinance would increase the City's supply of affordable housing.
 4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;
The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.
 5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

6. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

AND THEREFORE BE IT FURTHER RESOLVED that the Commission hereby approves, in concept, the proposed Ordinance and recommends that the Board of Supervisors work with MOHCD and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units and that the Board of Supervisors continue to explore additional incentives for property owners who would be subject to the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 14, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Johnson, Koppel, Melgar, Moore, Richards

NOES: None

ABSENT: Fong

ADOPTED: February 14, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: FEBRUARY 14, 2019

RE: **Non-Profit Organizations' First Right of Refusal**
Case Number: **2019-001351CRV [Board File No. 181212]**
Initiated by: Supervisor Fewer / Introduced December 11, 2018
Staff Contact: Paolo Ikezoe, Citywide Division
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Reviewed by: Miriam Chion, Manager of Housing and Community Development
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BACKGROUND

The proposed legislation, introduced by Supervisor Sandra Lee Fewer, would amend the Administrative Code to give certain qualified non-profit organizations the first right of refusal to purchase multi-family rental properties or vacant lots in San Francisco. A previous version of the legislation included a reference to the Planning Commission, but the current version has removed that reference, as the proposal does not amend the Planning Code. Though the Planning Commission is not required to take official action on this item, it has been referred to the Planning Commission by the Clerk of the Board under pursuant to [Board Rule 3.23](#) which allows Planning 30 days to review Administrative Code amendments that are land use in nature. Staff is recommending the Commission pass a resolution in support of the ordinance, as it would implement one of the key recommendations of MAP2020 and is a valuable tool for preserving affordable housing and preventing displacement when rental buildings change ownership.

SUMMARY OF LEGISLATION

The concept of right-of-first-refusal is an often discussed but rarely implemented tool for preventing displacement and preserving affordable housing. Washington DC is one of the few large US cities with such a law, the Tenants Opportunity to Purchase Act (TOPA).¹ Similar legislation has been discussed or attempted in many other cities, for example in Somerville, MA, where an effort failed in March 2018.² This proposed legislation combines elements of a typical right-of-first-refusal law with the existing Small Sites program.

Confers right of first refusal to purchase multi-family rental buildings to qualified non-profit organizations

The legislation would create a new section in the Administrative Code giving 'Qualified Nonprofit' organizations (defined below) the right of first refusal on the sale of either of the following:

¹<https://ota.dc.gov/page/tenant-opportunity-purchase-act-topa>

²<http://www.cambridgeday.com/2018/03/06/order-for-right-of-first-purchase-refusal-dies-property-owners-called-idea-process-flawed/>

1. Any residential building containing three or more rental units
2. Any privately-owned vacant lot with the zoned potential for three or more units

Any time a property meeting the above qualifications is put up for sale, the legislation would require the seller to notify all Qualified Nonprofits of the intent to sell the property. Qualified Nonprofits would then have the following rights:

1. Right of first offer

Qualified Nonprofits would have five calendar days to respond as to whether they would like to make an offer on the building. The seller would be required to send Qualified Nonprofits who express interest within this time period information about current tenants in the building. After receiving this information, Qualified Nonprofits would have an additional 25 calendar days to make an offer to purchase the building. The seller free to accept or reject any offer made by a Qualified Nonprofit. If no Qualified Nonprofit makes an offer, or if the seller rejects any offer made by a Qualified Nonprofit, the seller may offer the building for sale to the general public.

2. Right of first refusal

If a seller receives an offer on a qualifying property from any purchaser other than a Qualified Nonprofit that they wish to accept, they must present that same offer, with the same terms and conditions, to all Qualified Nonprofits. Qualified Nonprofits would have five calendar days to accept or reject that offer.

Sellers of qualifying properties who do not notify the City and offer these rights to qualified non-profits would be subject to possible civil action.

Defines “qualified non-profit organization”

The legislation would create eligibility criteria for the types of organizations offered this first right of refusal, as follows:

1. Must be a bona-fide nonprofit, exempt from federal income tax under 23 U.S.C.501(c)(3);
2. Must be able to demonstrate a commitment to the provision of affordable housing for low- and moderate-income San Francisco residents, and the prevention of displacement of such residents;
3. Must be able to demonstrate a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
4. Must be able to demonstrate the capacity to effectively acquire and manage residential real property at multiple locations in San Francisco;
5. Within the previous three years, must have acquired or partnered with another nonprofit organization to acquire at least two residential buildings under MOHCD's Small Sites program.

Creates affordability requirements for units in buildings purchased under the program

Units in buildings purchased by qualified non-profits under this legislation would be subject to the following affordability requirements:

1. Any existing tenants in the building shall be permitted to retain their existing leasehold interest (i.e. the terms of their lease would remain the same)

2. Properties acquired under the program would have a Notice of Special Restrictions placed on the building requiring any units acquired be maintained as “rent-restricted affordable housing” in perpetuity. Similar to the Small Sites program, the mean value of all rents paid in the building shall not exceed 80% of AMI, and gross household income of new tenants in the building shall not exceed 120% of AMI.

RECOMMENDATION

The Department recommends that the Commission recommend *approval in concept of the proposed Ordinance* and adopt the attached Draft Resolution urging the Board of Supervisors to continue to refine the legislation in coordination with MOHCD, the Rent Board and implementing parties. The Draft Resolution urges the Board of Supervisors to consider any potential amendments which would increase the ordinance’s effectiveness.

BASIS FOR RECOMMENDATION

Aligns with Department Goals and Priorities

One of the key recommendations of the MAP2020 Action Plan is to create a right-of-first-refusal similar to the proposed legislation, to allow acquisition and preservation of rent-controlled units. Several other Planning Department projects, including the Community Stabilization Strategy and the Housing Affordability Strategies projects, have proposed exploring right-of-first-refusal to prevent displacement and preserve existing affordable homes.

Enables new opportunities to preserve existing affordable housing citywide

San Francisco’s housing affordability crisis will not be solved through any one program, but rather with a multi-pronged set of production, preservation and protection strategies. The proposed legislation would enable an additional strategy for acquiring and preserving affordable housing, though it would not create an additional funding source. The Department is in full support of creating as many strategies as possible, and urges the Board of Supervisors and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units.

IMPLEMENTATION

This ordinance does not appear to implicate the Planning Commission or department staff, and neither would be particularly involved in implementing the ordinance. As such, the Department does not hold expertise to recommend amendments to the ordinance which would result in optimal effectiveness and ease of implementation. For this reason, the Department recommends that the Commission recommend that the Board of Supervisors pursue further refinements of the legislation in coordination with MOHCD, the Rent Board and other implementing parties.

REQUIRED COMMISSION ACTION

This legislation proposes no amendments to the Planning Code, and therefore the Commission is not required to take any action on this item. Under the [Charter Section 4.105](#), the Planning Commission does have advisory responsibilities to the Board of Supervisors on land use and planning matters.

ENVIROMENTAL REVIEW

The proposed amendments to the Administrative Code are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a direct or indirect physical change in the environment.

PUBLIC COMMENT

As of the date of this memo, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

Exhibit A: Board File 181212

Exhibit B: Draft Planning Commission Resolution