


BOARD of SUPERVISORS



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MEMORANDUM

TO: Robert Collins, Executive Director, Rent Board
Kate Hartley, Director, Mayor's Office of Housing and Community Development
Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: April 9, 2019

SUBJECT: AMENDED LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Sub-Committee has received the following amended legislation, introduced by Supervisor Fewer on April 3, 2019:

File No. 181212-3

Ordinance amending 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 (and related construction sites and vacant lots) in the City, for the purpose of creating and preserving rent-restricted affordable rental housing, and to establish related procedures for the selection of such nonprofits, the preservation of rent-restricted affordable housing, and implementation and enforcement; amending the Business and Tax Regulations Code to exempt rent-restricted affordable housing created under this ordinance from increased rates of transfer tax; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Eugene Flannery, Office of Housing and Community Development
Amy Chan, Office of Housing and Community Development
Amanda Kahn Fried, Office of the Treasurer & Tax Collector

1 [Administrative, Business and Tax Regulations Codes - Nonprofit Organizations' First-Right-
2 to-Purchase Multi-Family Residential Buildings]

3 **Ordinance amending the Administrative Code to confer upon certain nonprofit**
4 **organizations a first-right-to-purchase, consisting of both a right of first offer and a**
5 **right of first refusal, over all multi-family residential buildings (and related construction**
6 **sites and vacant lots) in the City, for the purpose of creating and preserving rent-**
7 **restricted affordable rental housing; and to establishing related procedures for the**
8 **selection of such nonprofits, the preservation of rent-restricted affordable housing, and**
9 **other implementation and enforcement; amending the Business and Tax Regulations**
10 **Code to exempt rent-restricted affordable housing created under this ordinance from**
11 **increased rates of transfer tax; and affirming the Planning Department's determination**
12 **under the California Environmental Quality Act.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. Findings.

20 The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 et seq., "CEQA"). This determination is on file with the Clerk of the
23 Board of Supervisors in File No. 181212 and is incorporated herein by reference. The Board
24 affirms this determination.
25

1
2 Section 2. The Administrative Code is amended by adding Chapter 41B, consisting of
3 Sections 41B.1 through 41B.14, to read as follows:

4 **CHAPTER 41B: COMMUNITY OPPORTUNITY TO PURCHASE ACT**

5
6 **SEC. 41B.1. FINDINGS AND PURPOSE.**

7 (a) The City faces a severe and continuing housing crisis. Many City residents are unable
8 to obtain or retain affordable housing.

9 (b) This crisis has profoundly negative effects on the City. It causes dislocation, which frays
10 the social ties that bind our neighborhoods and communities together. It forces vulnerable residents to
11 leave their home, the City, for new communities where they are strangers. And it contributes to
12 homelessness—which is itself a severe and continuing crisis in the City.

13 (c) The City’s housing crisis is caused, in large part, by a shortage of affordable rental
14 housing. The creation and preservation of such housing is therefore of paramount public concern.

15 (d) One obstacle to the creation and preservation of affordable rental housing is rapid
16 turnover in the City’s real estate market. Nonprofit organizations seeking to create and preserve
17 affordable housing may be willing and able to pay market prices to purchase residential buildings for
18 sale, but nevertheless find themselves unable to purchase such buildings before they leave the market.
19 Nonprofit organizations serving the broader public interest must often move more deliberately and
20 borrow purchase money from non-traditional lenders in such real estate transactions than private
21 entities concerned solely with profit.

22 (e) The purpose of this Chapter 41B (which may be referred to as the “Community
23 Opportunity to Purchase Act”) is to enhance nonprofit organizations’ ability to purchase multi-family
24 residential buildings, at market prices, within a reasonable period of time, and to thereby promote the
25 creation and preservation of affordable rental housing.

1 (f) This Chapter 41B is intended to complement existing anti-displacement and
2 preservation programs administered by the Mayor’s Office of Housing and Community
3 Development (the “Agency”). In particular, this Chapter is intended to complement the Small
4 Sites Program and Preservation and Seismic Safety (“PASS”) program.

5 (1) The Small Sites Program was created to establish and protect long-term
6 affordable housing in smaller properties throughout the City, particularly at sites where market
7 pressures may otherwise result in tenant evictions and rising rents. By January 2019, the
8 Small Sites Program had empowered local nonprofit housing organizations to preserve 28
9 buildings, containing 205 residential units and 13 commercial spaces.

10 (2) The PASS program provides low-cost, long-term senior financing to fund
11 the acquisition, rehabilitation, seismic retrofitting, and preservation of affordable multi-family
12 housing, funded through bond revenues previously approved by City voters. It is anticipated
13 that the PASS program will preserve up to 1,400 units of affordable housing in the City.

14
15 **SEC. 41B.2. DEFINITIONS.**

16 *For purposes of this Chapter 41B, the following definitions apply:*

17 “Agency” means the Mayor’s Office of Housing and Community Development, or any
18 successor agency, department, or office.

19 “Area Median Income” means the Unadjusted Area Median Income published by the U.S.
20 Department of Housing and Urban Development for the geographic area that includes the City.

21 “City” means the City and County of San Francisco.

22 “Fee Interest” means ownership of real property in fee simple absolute.

23 “Multi-Family Residential Building,” or “Building,” means any privately-owned real property
24 in San Francisco improved with three or more residential rental units (whether or not the property also
25 includes non-residential uses), any privately-owned real property on which three or more residential

1 units are under construction, and any privately-owned vacant lot on which the Planning Code and
2 other applicable laws would permit the construction of three or more residential rental units.

3 “Notice of Special Restrictions” means an agreement executed by a Qualified Nonprofit
4 and recorded against a Multi-Family Residential Building Purchased by such Qualified
5 Nonprofit, substantially in the form published by the Agency.

6 “Purchase of a Multi-Family Residential Building,” or “Purchase,” means to acquire any
7 interest that is transferred pursuant to the Sale of a Multi-Family Residential Building.

8 “Purchaser” means the individual, individuals, entity, or entities engaged, or seeking to
9 engage, in the Purchase of a Multi-Family Residential Building.

10 “Sale of a Multi-Family Residential Building,” or “Sale,” is defined in Section 41B.3.

11 “Sell” means to engage in the Sale of a Multi-Family Residential Building.

12 “Seller” means the individual, individuals, entity, or entities engaged, or seeking to engage, in
13 the Sale of a Multi-Family Residential Building.

14 “Qualified Nonprofit” is defined in Section 41B.4(a).

15
16 **SEC. 41B.3. “SALE OF A MULTI-FAMILY RESIDENTIAL BUILDING” DEFINED.**

17 **(a) General Definition.** *As used in this Chapter 41B, “Sale of a Multi-Family Residential*
18 *Building,” or “Sale,” means any of the following:*

19 *(1) The transfer, in exchange for money or any other thing of economic value, of a*
20 *present interest in the Multi-Family Residential Building, including beneficial use, where the value of*
21 *the present interest is the Fee Interest in the Multi-Family Residential Building, or substantially equal*
22 *to the value of that Fee Interest;*

23 *(2) If an interest in the Multi-Family Residential Building is held by a trust, the*
24 *transfer, in exchange for money or any other thing of economic value, of a beneficial interest in the*
25

1 trust, where the value of the beneficial interest in the trust is substantially equal to the value of the Fee
2 Interest of the Multi-Family Residential Building; or

3 (3) If an interest substantially equal to the value of the Fee Interest of the Multi-
4 Family Residential Building is held by any kind of corporate entity or partnership (including, but not
5 limited to, a corporation, limited liability company, general partnership, limited partnership, or limited
6 liability partnership), and if that interest is substantially equal in value to the total value of assets held
7 by the corporate entity or partnership, the transfer, in exchange for money or any other thing of
8 economic value, of a controlling interest in the corporate entity or partnership.

9 (b) **Multiple Owners.** For purposes of this Section 41B.3, in any instance in which multiple
10 entities (whether those entities are natural persons, trusts, corporate entities, partnerships, or any other
11 kind of entity, or any combination of different kinds of entities) hold interests in a Multi-Family
12 Residential Building, the transfer of multiple interests by or in those entities shall be considered the
13 transfer of a single interest, if the transfers are made in connection with substantially the same
14 transaction or set of transactions.

15 (c) **Exclusions.** Notwithstanding subsections (a) and (b), "Sale of a Multi-Family
16 Residential Building," or "Sale," does not include any of the following:

17 (1) Any transfer made under a mortgage, deed of trust, or deed in lieu of
18 foreclosure;

19 (2) Any transfer made in connection with any bankruptcy proceeding (including, but
20 not limited to, any transfer made by a bankruptcy trustee);

21 (3) Any transfer of an interest in real property held by the Federal government, by
22 the State government, or by any special district created by State law (including, but not limited to, any
23 transfer of any such interest held because of a taxpayer's nonpayment of tax);

1 (4) Any transfer by devise or intestacy, or any other transfer made in connection
2 with a bona fide effort to pass an interest in real property to one's devisees or heirs (including, but not
3 limited to, such transfers made in connection with a living trust); or

4 (5) Any transfer between or among spouses, domestic partners, siblings (including,
5 but not limited to, half-siblings, step-siblings, and adoptive siblings), parents (including, but not limited
6 to, step-parents and adoptive parents) or guardians and their children, grandparents and their
7 grandchildren, aunts or uncles and their nieces or nephews, great-aunts or great-uncles and their
8 grand-nieces or grand-nephews, or first or second cousins, or any combination thereof.

9 (6) Any transfer of an interest in a Multi-Family Residential Building income-
10 restricted at or below an average of 80% of Area Median Income for a minimum of 10 years, if
11 such transfer is to an entity controlled by a California public benefit corporation, and that entity
12 also participates in the management, direction, or control of the Building.

13
14 **SEC. 41B.4. QUALIFIED NONPROFITS.**

15 (a) Annual Selection of Qualified Nonprofits. The Agency shall establish a process for
16 certifying, on an annual basis, nonprofit organizations that meet the following criteria:

17 (1) The organization is a bona fide nonprofit, as evidenced by the fact that it is
18 exempt from federal income tax under 26 U.S.C. § 501(c)(3);

19 (2) The organization has demonstrated a commitment to the provision of affordable
20 housing for low- and moderate-income City residents, and to preventing the displacement of such
21 residents;

22 (3) The organization has demonstrated a commitment to community engagement, as
23 evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
24
25

1 (4) The organization has demonstrated the capacity (including, but not limited to,
2 the legal and financial capacity) to effectively acquire and manage residential real property at multiple
3 locations in the City; and

4 (5) The organization has, within the previous ~~three~~ five years, acquired or
5 partnered with another ~~nonprofit~~ housing development organization to acquire at least two
6 residential buildings under a “Small Sites” program operated by the Agency consistent with
7 Section 415.5(f)(2)(A) of the Planning Code, or using funding provided by the Agency, or has
8 acquired or partnered with another nonprofit organization to acquire at least two residential
9 buildings under this Chapter 41B.

10 Nonprofit organizations that the Agency certifies as having met these criteria shall be known as
11 “Qualified Nonprofits.” An organization’s certification as a Qualified Nonprofit shall be valid for a
12 period not to exceed one year, but three years. ~~The~~ The Agency shall solicit new applications for
13 Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits
14 shall be eligible to apply for renewed certification as Qualified Nonprofits. In the absence of new
15 information raising doubts about whether the organization qualifies as a Qualified Nonprofit, an
16 existing Qualified Nonprofit’s application for renewed certification as a Qualified Nonprofit shall be
17 routinely and swiftly granted.

18 **(b) Existence and Publication of Qualified Nonprofits List.** The Agency shall publish on
19 its website, and make available upon request, a list of Qualified Nonprofits. In addition to such other
20 information as the Agency may include, this list shall include contact information for each Qualified
21 Nonprofit. This contact information shall include, but need not be limited to, a mailing address, an e-
22 mail address that the Qualified Nonprofit monitors regularly, and a telephone number.

23 **(c) Disqualification of Qualified Nonprofits.** The Agency shall promptly investigate any
24 complaint alleging that a Qualified Nonprofit has failed to comply with this Chapter 41B. If, after
25 providing the Qualified Nonprofit with notice and opportunity to be heard, the Agency determines that

1 a nonprofit organization listed as a Qualified Nonprofit has failed to comply with this Chapter, the
2 Agency may suspend or revoke that nonprofit organization's certification as a Qualified Nonprofit.

3
4 **SEC. 41B.5. GENERAL PROVISIONS.**

5 **(a) First Right to Purchase Conferred.** This Chapter 41B shall be construed to confer
6 upon each Qualified Nonprofit a first right to purchase any Multi-Family Residential Building for Sale
7 in the City. This first right to purchase shall consist of both a right of first offer, as set forth in Section
8 41B.6, and a right of first refusal, as set forth in Section 41B.7.

9 **(b) Confidential Information Protected.** Any information obtained from a Seller by a
10 Qualified Nonprofit under this Chapter 41B—including, but not limited to, disclosures made under
11 Section 41B.6(c) and (e), and terms and conditions of an offer of Sale made under Section 41B.7(b)—
12 shall be kept confidential to the maximum extent permitted by law, except that a Qualified Nonprofit
13 may, if otherwise permitted by law, share such information with other Qualified Nonprofits to facilitate
14 Qualified Nonprofits' exercise of the rights conferred by this Chapter. Nothing in this Chapter permits
15 or requires the disclosure of information where such disclosure is otherwise prohibited by law.

16 **(c) Preexisting Rights Unaffected.** This Chapter 41B shall not be construed to impair any
17 contract, or affect any property interest held by anyone other than the Seller of a Multi-Family
18 Residential Building (including, but not limited to, any interest held under a mortgage, deed of trust, or
19 other security interest; any option to purchase; or any right of first offer or right of first refusal), in
20 existence before the effective date of this Chapter.

21
22 **SEC. 41B.6. RIGHT OF FIRST OFFER.**

23 **(a) General Construction.** This Section 41B.6 shall be construed to confer upon each
24 Qualified Nonprofit a right of first offer with respect to any Multi-Family Residential Building for Sale
25

1 in the City, as set forth in this Section. ~~This right of first offer is cumulative with the right of first~~
2 ~~refusal set forth in Section 41B.7.~~

3 (b) Opportunity for Qualified Nonprofits to Submit Offers. Before the Seller of a Multi-
4 Family Residential Building may offer that Building for Sale to any Purchaser other than a Qualified
5 Nonprofit, or otherwise solicit any offer to Purchase that Building from any Purchaser other than a
6 Qualified Nonprofit, the Seller shall notify each Qualified Nonprofit, via e-mail, of its intent to Sell the
7 Building, and shall provide each Qualified Nonprofit with an opportunity to make an offer to Purchase
8 the Building as set forth in subsections (d)–(f). The Seller shall submit this notification on the same
9 calendar day and, to the extent possible, at the same time, to each of the e-mail addresses included on
10 the Agency’s list of Qualified Nonprofits pursuant to Section 41B.4(b).

11 (c) Related Disclosures. When the Seller, pursuant to subsection (b), notifies each
12 Qualified Nonprofit, via e-mail, of its intent to sell a Multi-Family Residential Building, the Seller shall
13 also provide each Qualified Nonprofit with the following information:

- 14 (1) The number of rental units in the Building;
15 (2) The address or location of each rental unit; and
16 (3) The rate of rent due for each unit.

17 (d) Time for Qualified Nonprofits to Express Interest. No later than 11:59 p.m. on the fifth
18 full calendar day after a Seller has, pursuant to subsection (b), notified ~~a~~ each Qualified Nonprofit, via
19 e-mail, of its intent to Sell a Multi-Family Residential Building, ~~that~~ each Qualified Nonprofit shall
20 notify the Seller and every other Qualified Nonprofit, via e-mail, as to whether or not ~~that the~~
21 Qualified Nonprofit wishes to further consider whether to make an offer to Purchase the Building. If,
22 after 11:59 p.m. on the fifth full calendar day after a Seller has notified each Qualified Nonprofit of its
23 intent to Sell the Building, no Qualified Nonprofit has ~~so~~ notified the Seller that it wishes to further
24 consider whether to make an offer to Purchase the Building, the Seller may immediately proceed
25 to offer the Building for Sale to, and to solicit offers of Purchase from, prospective Purchasers other

1 than Qualified Nonprofits, subject to the right of first refusal set forth in Section 41B.7. If, at or before
2 11:59 p.m. on the fifth full calendar day after a Seller has notified each Qualified Nonprofit of its intent
3 to Sell the Building, each Qualified Nonprofit has notified the Seller that the Qualified Nonprofit does
4 not wish to further consider whether to make an offer to Purchase the Building, the Seller may likewise
5 immediately offer the Building for Sale to, and solicit offers of Purchase from, prospective Purchasers
6 other than Qualified Nonprofits, subject to the right of first refusal set forth in Section 41B.7.

7 (e) **Additional Disclosures.** If, no later than 11:59 p.m. on the fifth full calendar day after a
8 Seller has notified ~~a~~ each Qualified Nonprofit of its intent to Sell a Multi-Family Residential Building,
9 ~~the any~~ Qualified Nonprofit has, consistent with subsection (d), notified the Seller that the Qualified
10 Nonprofit wishes to further consider whether to make an offer to Purchase the Building, the Seller shall
11 disclose to ~~the~~ each such Qualified Nonprofit, via e-mail, the name or names of any tenant or tenants
12 in each rental unit of the Building, as well as any available contact information for each tenant.

13 (f) **Time for Qualified Nonprofits to Make Offer.** Upon receipt, via e-mail, of the
14 disclosures described in subsection (e), ~~the~~ each such Qualified Nonprofit (that is, each Qualified
15 Nonprofit that has, consistent with subsection (d), notified the Seller that the Qualified
16 Nonprofit wishes to further consider whether to make an offer to Purchase the Building) shall
17 have 25 additional calendar days to decide whether to make an offer to Purchase the Building, and to
18 submit any such offer to the Seller. Any such offer of Purchase shall be presumed to be contingent
19 upon the Qualified Nonprofit's ability to conduct due diligence and secure financing in a manner
20 consistent with subsection (g), unless the Seller and the Qualified Nonprofit expressly agree otherwise
21 in writing.

22 (g) **Seller Free to Accept or Reject Offer.** The Seller is free to accept or reject any offer of
23 Purchase submitted by a Qualified Nonprofit under subsection (e). Any such acceptance or rejection
24 shall be communicated in writing. If the Seller rejects all such offers of Purchase, or if the 25-day
25 period described in subsection (e) has elapsed and no Qualified Nonprofit has submitted an offer of

1 Purchase, the Seller may immediately offer the Building for Sale to, and solicit offers of Purchase from,
2 prospective Purchasers other than Qualified Nonprofits, subject to the right of first refusal set forth in
3 Section 41B.7.

4 (h) Seller's Acceptance of Offer. If the Seller accepts an offer of Purchase submitted by a
5 Qualified Nonprofit, the Qualified Nonprofit shall have 60 days to conduct due diligence and secure
6 financing related to the Purchase, unless the Seller and the Qualified Nonprofit have expressly agreed
7 otherwise in writing. At the end of this 60-day period (or any other period to which the Seller and the
8 Qualified Nonprofit have expressly agreed in writing), the Seller shall proceed to Sell the Multi-Family
9 Residential Building to the Qualified Nonprofit in a manner consistent with the Qualified Nonprofit's
10 offer of Purchase.

11
12 **SEC. 41B.7. RIGHT OF FIRST REFUSAL.**

13 (a) General Construction. This Section 41B.7 shall be construed to confer upon each
14 Qualified Nonprofit a right of first refusal, as set forth in this Section, with respect to any Multi-
15 Family Residential Building for sale in the City, as set forth in this Section. This right of first
16 refusal is cumulative with the right of first offer set forth in Section 41B.6. which that Qualified
17 Nonprofit has previously made an offer of purchase under Section 41B.6(f), or for which that
18 Qualified Nonprofit was not previously given the opportunity described in Section 41B.6(b).

19 (b) Written Offer of Sale to Qualified Nonprofits; Terms and Conditions Set by Market.
20 Except as provided in subsection (f), whenever the Seller of a Multi-Family Residential Building
21 receives from a Purchaser other than a Qualified Nonprofit an offer to Purchase the Multi-Family
22 Residential Building that the Seller wishes to accept, and whenever the Seller of a Multi-Family
23 Residential Building makes an offer to Sell the Multi-Family Residential Building that a Purchaser
24 other than a Qualified Nonprofit expresses a desire to accept, the Seller shall, before any such offer of
25 Purchase or Sale may be accepted, offer to Sell the Building to each any Qualified Nonprofit that has

1 previously made an offer of purchase under Section 41B.6(f) with respect to that Building, or
2 that was not previously given the opportunity described in Section 41B.6(b) with respect to
3 that Building. This ~~Any such offer of Sale to a Qualified Nonprofits~~ shall contain the same terms and
4 conditions (including, but not limited to, price) as the offer of Purchase previously received by the
5 Seller which the Seller wishes to accept or the offer of Sale previously made by the Seller which a
6 Purchaser has expressed a desire to accept, except that the terms and conditions in the offer of Sale to
7 a Qualified Nonprofits shall not be inconsistent with the applicable timeframe described in subsection
8 (c) or (d). ~~The Such an offer of Sale to a Qualified Nonprofits~~ shall be submitted in writing, on the
9 same calendar day (and, to the extent possible, at the same time), to each of the e-mail addresses
10 included on the Agency's list of Qualified Nonprofits for any Qualified Nonprofits that have
11 previously made an offer of purchase under Section 41B.6(f) with respect to the relevant
12 Building, or that were not previously given the opportunity described in Section 41B.6(b) with
13 respect to that Building. If the Seller has not previously made the disclosures set forth in Section
14 41B.6(c) and Section 41B.6(e) with respect to the Multi-Family Residential Building, the Seller shall
15 include those disclosures with ~~the any offer of Sale~~ required by this subsection (b).

16 **(c) Time for Qualified Nonprofits to Accept Offer, in General.** *Except as provided in*
17 *subsection (d), no later than 11:59 p.m. on the fifth full calendar day after a Seller has submitted an*
18 *offer of Sale under subsection (b) to a Qualified Nonprofit via e-mail, that Qualified Nonprofit shall*
19 *notify the Seller and every other Qualified Nonprofit, via e-mail, of its decision to accept or reject the*
20 *Seller's offer of Sale. If, during this time period, any Qualified Nonprofit that has received such an*
21 *offer of Sale decides to accept the Seller's offer of Sale, that Qualified Nonprofit shall immediately*
22 *notify the Seller and every other Qualified Nonprofit of that decision, via e-mail. After a Qualified*
23 *Nonprofit notifies the Seller of its decision to accept the Seller's offer of Sale, and notwithstanding any*
24 *defect in that Qualified Nonprofit's notice to other Qualified Nonprofits, that Qualified Nonprofit shall*
25

1 be deemed to have accepted the offer of Sale, and no other Qualified Nonprofit may accept the Seller's
2 offer of Sale, whether or not the time period described in this subsection (c) has elapsed.

3 **(d) Time for Qualified Nonprofits to Accept Offer, Absent Prior Opportunity to Exercise**
4 **Right of First Offer.** Notwithstanding subsection (c), if Qualified Nonprofits have not previously had
5 an opportunity to exercise the right of first offer set forth in Section 41B.6 with respect to the Sale of a
6 Multi-Family Residential Building (because, for example, the Seller of the Building has received an
7 unsolicited offer to Purchase the Building), each Qualified Nonprofit shall notify the Seller and every
8 other Qualified Nonprofit, via e-mail, of its decision to accept or reject the Seller's offer of Sale no
9 later than 11:59 p.m. on the 30th full calendar day after the Seller has, pursuant to subsection (b),
10 notified the Qualified Nonprofit of its intent to Sell a Multi-Family Residential Building. If, during this
11 time period, any Qualified Nonprofit decides to accept the Seller's offer of Sale, that Qualified
12 Nonprofit shall immediately notify the Seller and every other Qualified Nonprofit of that decision, via
13 e-mail. After a Qualified Nonprofit notifies the Seller of its decision to accept the Seller's offer of Sale,
14 and notwithstanding any defect in that Qualified Nonprofit's notice to other Qualified Nonprofits, that
15 Qualified Nonprofit shall be deemed to have accepted the offer of Sale, and no other Qualified
16 Nonprofit may accept the Seller's offer of Sale, whether or not the time period described in this
17 subsection (d) has elapsed.

18 **(e) Qualified Nonprofit's Acceptance of Offer.** If, in accordance with subsection (c) or (d),
19 as applicable, a Qualified Nonprofit notifies the Seller that the Qualified Nonprofit has decided to
20 accept the Seller's offer of Sale, the Seller shall proceed to Sell the Multi-Family Residential Building
21 to that Qualified Nonprofit in a manner consistent with the offer of Sale. A Qualified Nonprofit that so
22 notifies the Seller (that is, before any other Qualified Nonprofit so notifies the Seller) shall be obliged
23 to Purchase the Multi-Family Residential Building in a manner consistent with the offer of Sale.

24 **(f) Qualified Nonprofits' Rejection of Offer.** If, at or before the deadline set forth in
25 subsection (c) or (d), as applicable, each Qualified Nonprofit that has received an offer of Sale has

1 notified the Seller that it does not wish to accept the Seller's offer of Sale, the Seller may immediately
2 proceed with the Sale of the Multi-Family Residential Building, consistent with the offer of Purchase or
3 offer of Sale that the Seller previously received from, or made to, a Purchaser other than a Qualified
4 Nonprofit, as described in subsection (b). If, after the deadline set forth in subsection (c) or (d), as
5 applicable, no Qualified Nonprofit has notified the Seller that it has decided to accept the Seller's offer
6 of Sale, the Seller may likewise immediately proceed with the Sale of the Multi-Family Residential
7 Building, consistent with such offer of Purchase or offer of Sale. If, however, the Seller does not
8 proceed with the Sale of the Building in a manner consistent with such offer of Purchase or offer of
9 Sale, and instead receives from a Purchaser other than a Qualified Nonprofit a materially different
10 offer to Purchase the Multi-Family Residential Building that the Seller wishes to accept, or makes a
11 materially different offer to Sell the Multi-Family Residential Building that a Purchaser other than a
12 Qualified Nonprofit expresses a desire to accept, that materially different offer of Purchase or offer of
13 Sale shall be considered a new offer of Purchase or offer of Sale for purposes of subsection (b).

14 **(g) Conditional Third-Party Sales Agreements Permitted.** If, as described in subsection
15 (b), the Seller of a Multi-Family Residential Building receives from a Purchaser other than a Qualified
16 Nonprofit an offer to Purchase the Multi-Family Residential Building that the Seller wishes to accept,
17 or if the Seller of a Multi-Family Residential Building makes an offer to Sell the Multi-Family
18 Residential Building that a Purchaser other than a Qualified Nonprofit expresses a desire to accept,
19 that offer of Sale or offer of Purchase may be accepted subject to the contingency that no Qualified
20 Nonprofit exercises the right of first refusal conferred by this Section 41B.7. In such a circumstance,
21 the Seller and the Purchaser shall each expressly acknowledge, in writing, that the Purchaser's
22 Purchase of the Multi-Family Building will not occur if a Qualified Nonprofit exercises the right of first
23 refusal conferred by this Section.

1 SEC. 41B.8. PRESERVATION AS RENT-RESTRICTED AFFORDABLE HOUSING; TENANT
2 PROTECTIONS.

3 (a) ~~Existing Tenants Protected.~~ Following the Purchase of a Multi-Family
4 Residential Building by a Qualified Nonprofit under the first right to purchase conferred by this
5 Chapter 41B, each existing residential tenant in the Building shall be permitted to retain that
6 tenant's existing leasehold interest according to the terms (including, but not limited to,
7 duration) of that tenant's existing lease.

8 ~~(b) Affordable Housing Preserved.~~ *Any Multi-Family Residential Building Purchased*
9 *by a Qualified Nonprofit under the first-right-to-purchase conferred by this Chapter 41B shall be*
10 *maintained as rent-restricted affordable housing in perpetuity. For purposes of this subsection (b),*
11 *"rent-restricted affordable housing" shall mean that the mean value of all rents paid by residential*
12 *tenants in the Building shall not exceed 80% of Area Median Income, and that the gross household*
13 *income of new tenants in the Building shall not exceed 120% of Area Median Income. The Agency*
14 *shall establish procedures to ensure that each Building acquired under this Chapter is subject to a*
15 *Notice of Special Restrictions setting that: (a) sets forth the manner in which that Building shall be*
16 *preserved as rent-restricted affordable housing, and (b) provides that no existing residential*
17 *tenants at the time of the Purchase or new residential tenants following the Purchase may be*
18 *evicted without just cause consistent with the substantive provisions of Administrative Code*
19 *Section 37.9(a).*

20
21 SEC. 41B.9. INCENTIVES.

22 (a) Access to Buyers. *The Agency shall endeavor to maintain and publicize the list of*
23 *Qualified Nonprofits described in Section 41B.4 in a manner that, to the maximum extent feasible,*
24 *promotes the existence of the Qualified Nonprofits as a readily accessible pool of potential buyers for*
25 *Multi-Family Residential Buildings. The Agency shall, to the maximum extent permitted by law and*

1 otherwise feasible, publicize the existence of this list in a manner intended to facilitate voluntary sales
2 to Qualified Nonprofits in a manner that avoids or minimizes the need for a broker, other search costs,
3 or other transaction costs.

4 **(b) Partial City Transfer-Tax Exemption.** ~~The Board of Supervisors may, by~~
5 ~~ordinance, provide that a Qualified Nonprofit's Purchase of a Multi-Family Residential Building~~
6 ~~under the right of first offer set forth in Section 41B.6 is exempt from the increased rate of tax~~
7 ~~imposed by Business and Tax Regulations Code Section 1102(d) (f), to the extent permitted~~
8 ~~by, and in a manner consistent with, Section 1102. As set forth in Section 1108.6 of the~~
9 ~~Business and Tax Regulations Code, the increased tax rate imposed by subsections (d), (e),~~
10 ~~and (f) of Business and Tax Regulations Code Section 1102 shall not apply with respect to~~
11 ~~any deed, instrument or writing that effects a transfer under Section 41B.6 of this~~
12 ~~Administrative Code, as Administrative Code Section 41B.6 exists as of the effective date of~~
13 ~~the ordinance in Board File No. _____.~~

14 **(c) Potential Federal Tax Benefits.** Any Qualified Nonprofit that Purchases a Multi-
15 Family Residential Building under the right of first offer set forth in Section 41B.6 shall, to the
16 maximum extent permitted by law and otherwise feasible, be obliged to work with the Seller in good
17 faith to facilitate an exchange of real property of the kind described in 26 U.S.C. § 1031, for the
18 purpose of facilitating the Seller's realization of any federal tax benefits available under that section of
19 the Internal Revenue Code.

20 **(d) Information to Sellers.** The Agency shall produce an information sheet describing the
21 benefits of a Seller's decision to accept a Qualified Nonprofit's offer of Purchase made in connection
22 with the right of first offer set forth in Section 41B.6. The information sheet shall further explain that,
23 even if a Seller does not accept a Qualified Nonprofit's offer to Purchase a Multi-Family Residential
24 Building pursuant to the right of first offer set forth in Section 41B.6, the Building will still be subject to
25 the right of first refusal set forth in Section 41B.7. The information sheet shall contain a field in which

1 the Seller may acknowledge, in writing, that the Seller (or the Seller's authorized representative) has
2 read and understood the information sheet. A Qualified Nonprofit that makes an offer to Purchase a
3 Multi-Family Residential Building under the right of first offer set forth in Section 41B.6 shall include a
4 copy of, or link to, this information sheet with that offer of Purchase, but any failure to comply with this
5 Section 41B.9(d) shall have no effect on a Qualified Nonprofit's exercise of the right of first offer set
6 forth in Section 41B.6.

7
8 **SEC. 41B.10. ENFORCEMENT.**

9 (a) Seller Certification. Every Seller of a Multi-Family Residential Building in the City
10 shall, within 15 days of the Sale of that Building, submit to the Agency a signed declaration, under
11 penalty of perjury, affirming that the Sale of that Building substantially complied with the requirements
12 of this Chapter 41B. Each such declaration shall include the address of the relevant Building; the
13 Agency shall publish all such addresses on its website at least once per week. Failure to file the
14 declaration required by this subsection (a) shall be an infraction punishable to the maximum extent
15 provided by Section 36900(b) of the California Government Code.

16 (b) Civil Action. In the event that a Seller Sells a Multi-Family Residential Building without
17 substantially complying with the requirements of this Chapter 41B, a Qualified Nonprofit may institute
18 a civil action, in a court of competent jurisdiction, to remedy that violation of this Chapter, in a manner
19 consistent with subsections (c) and (d).

20 (c) Remedies. Remedies in a civil action brought under this Section 41B.10 shall include,
21 but need not be limited to, the following, which may be imposed cumulatively:

22 (1) Damages in an amount sufficient to remedy the harm to the Qualified Nonprofit.
23 There shall be a rebuttable presumption that this amount is equal to the difference between the price of
24 the relevant Multi-Family Residential Building at the time of the Sale made in violation of this Chapter
25

1 41B, and the price for which the Qualified Nonprofit could purchase that Multi-Family Residential
2 Building at the time when damages are awarded;

3 (2) If the Seller's violation of this Chapter was knowing or willful, mandatory civil
4 penalties in an amount proportional to the culpability of the Seller and the value of the relevant Multi-
5 Family Residential Building. There shall be a rebuttable presumption that this amount is equal to 10%
6 of the Sale price of the Multi-Family Residential Building for a first willful or knowing violation of this
7 Chapter, 20% of the Sale price for a second willful or knowing violation, and 30% of the Sale price for
8 each subsequent willful or knowing violation. Civil penalties assessed under this subsection (b)(2)
9 shall be payable to the Citywide Affordable Housing Fund established by Section 10.100-49 of the
10 Administrative Code;

11 (3) Reasonable attorneys' fees; and

12 (4) Such other remedies as might be available under State law, except to the extent
13 that any such remedies would be inconsistent with subsection (d).

14 (d) **Limitation on Remedies.** Any remedy imposed in a civil action under this Section
15 41B.10 shall be imposed only against the Seller or a party that has willfully colluded with the Seller to
16 violate this Chapter 41B. In no event shall any such remedy deprive the Purchaser of a Multi-Family
17 Residential Building of any interest in that Multi-Family Residential Building, or otherwise affect any
18 property interest held by the Purchaser, unless the Purchaser willfully colluded with the Seller to
19 violate this Chapter.

20
21 **SEC. 41B.11. IMPLEMENTATION.**

22 The Agency shall have the power to interpret and implement this Chapter 41B. The Agency
23 shall, within 90 days of the effective date of this Chapter, promulgate appropriate rules or regulations
24 interpreting and implementing this Chapter, including the establishment of procedures to implement
25

1 this Chapter, in a manner that the Agency deems most appropriate. The Agency may thereafter revise
2 those rules or regulations from time to time.

3
4 **SEC. 41B.12. UNDERTAKING FOR THE GENERAL WELFARE.**

5 In enacting and implementing this Chapter 41B, the City is assuming an undertaking only to
6 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
7 obligation for breach of which it is liable in money damages to any person who claims that such breach
8 proximately caused injury.

9
10 **SEC. 41B.13. CONSTRUCTION WITH OTHER LAWS.**

11 Nothing in this Chapter 41B shall be construed to conflict with any State or Federal law, or
12 with any provision of the Charter.

13
14 **SEC. 41B.14. SEVERABILITY.**

15 If any section, subsection, sentence, clause, phrase, or word of this Chapter 41B, or any
16 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
17 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
18 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
19 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
20 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
21 application thereof would be subsequently declared invalid or unconstitutional.

22
23 Section 3. Article 12C of the Business and Tax Regulations Code is amended by
24 adding Section 1108.6, to read as follows:
25

1 **SEC. 1108.6. PARTIAL EXEMPTION FOR RENT-RESTRICTED AFFORDABLE HOUSING;**
2 **COMMUNITY OPPORTUNITY TO PURCHASE ACT.**

3 (a) Exemption from Increased Tax Rate. As authorized by the last sentence of
4 Section 1102, the increased tax rate imposed by subsections (d), (e), and (f) of Section 1102
5 shall not apply with respect to any deed, instrument or writing that effects a transfer under
6 Section 41B.6 of the Administrative Code, as that Section 41B.6 exists as of the effective date
7 of this Section 1108.6. The lower tax rate imposed by subsection (c) of Section 1102 shall
8 apply to the entire consideration or value of the interest or property conveyed by a deed,
9 instrument or writing that is subject to the exemption in this subsection (a).

10 (b) Requirements for Exemption. Every person claiming the exemption under
11 subsection (a) must:

12 (1) Obtain from the Mayor's Office of Housing and Community Development, or
13 its successor agency, department, or office, a certificate confirming that the deed, instrument
14 or writing effects a transfer under Section 41B.6 of the Administrative Code.

15 (2) Submit the certificate described in subsection (b)(1) of this Section 1108.6 to
16 the County Recorder at the time such person submits the affidavit described in subsection (c)
17 or (d) of Section 1111.

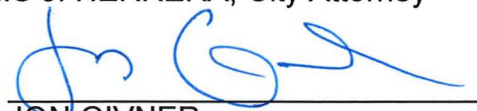
18 (c) Operative Date. This Section 1108.6 shall apply to all deeds, instruments, or
19 writings that are delivered on or after the effective date of the ordinance in Board File No.
20 , but on or before the sunset date in subsection (d).

21 (d) Sunset Date. This Section 1108.6 shall expire by operation of law on June 30,
22 2024, and shall not apply to any deeds, instruments, or writings that are delivered on or after
23 July 1, 2024.

1 Section 34. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5
6 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

7
8 By:



9 JON GIVNER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative, Business and Tax Regulations Codes - Nonprofit Organizations' First-Right-to-Purchase Multi-Family Residential Buildings]

Ordinance amending 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 (and related construction sites and vacant lots) in the City, for the purpose of creating and preserving rent-restricted affordable rental housing, and to establish related procedures for the selection of such nonprofits, the preservation of rent-restricted affordable housing, and other implementation and enforcement; amending the Business and Tax Regulations Code to exempt rent-restricted affordable housing created under this ordinance from increased rates of transfer tax; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Under existing law, those selling residential real property in San Francisco are (with limited potential exceptions—e.g., for housing projects that have received public financial assistance, see S.F. Admin. Code Chapter 60) generally free to sell such property to whomever they wish.

Amendments to Current Law

This ordinance would, in general, give certain City-approved nonprofit organizations a first-right-to-purchase—consisting of both a right of first offer and a right of first refusal—over all privately owned buildings containing three or more residential rental units, as well as such buildings under construction and vacant lots where such buildings could be built, anywhere in the City.

Nonprofit organizations upon which the ordinance conferred this right, called "Qualified Nonprofits," would be selected by the Mayor's Office of Housing and Community Development based on criteria set forth in the ordinance—for example, demonstrated commitment to the provision of affordable housing for low- and moderate-income City residents, and demonstrated capacity to effectively acquire and manage residential real property at multiple locations in San Francisco.

As noted above, the first-right-to-purchase conferred by the ordinance would consist of both a right of first offer and a right of first refusal. As to the right of first offer, the prospective seller of a multi-family residential building would be required to notify Qualified Nonprofits of its intent to sell the building before offering the building for sale to the general public. The prospective seller would also be required to disclose certain information concerning the building—in particular, the number and addresses of rental units, and applicable rent.

AMENDED IN COMMITTEE

4/3/2019

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Qualified Nonprofits would then have five full calendar days to express interest in purchasing the building. If a qualified nonprofit did express such an interest, the seller would be required to make certain additional disclosures (in particular, tenants' names and contact information), and the qualified nonprofit would have 25 additional days to make a firm offer of purchase, which the seller would be free to accept or reject.

If a seller did not sell the building to a qualified nonprofit under the ordinance's right of first offer, then the building would be subject to the ordinance's right of first refusal. Under the ordinance's right of first refusal, a seller who wishes to accept a private buyer's offer to purchase the building (or who had made an offer to sell the building that a private buyer wishes to accept) must first provide Qualified Nonprofits with an opportunity to match that offer and purchase the building in place of the private buyer. Only Qualified Nonprofits who have already exercised the right of first offer or who were not given the opportunity to exercise the right of first offer would be eligible to exercise the right of first refusal. The ordinance generally provides for a five-day period for Qualified Nonprofits to exercise this right of first refusal, but extends this period to 30 days for situations in which Qualified Nonprofits have not previously had an opportunity to exercise their right of first offer (because, for example, the seller of the building has received an unsolicited offer to purchase the building).

Property purchased by Qualified Nonprofits under the proposed ordinance would be required to be preserved as rent-restricted affordable housing, as defined by the ordinance, under a notice of restrictions to be recorded against the property. In particular, the ordinance provides that the mean value of all rents paid by residential tenants in the building could not exceed 80% of Area Median Income, and that the gross household income of new tenants in the building could not exceed 120% of Area Median Income. The ordinance further provides that existing and future tenants in the building could be evicted only for just cause.

The ordinance would provide a partial exemption from the City's transfer tax for transfers of buildings under the program. The ordinance also contemplates other potential incentives to encourage sales to Qualified Nonprofits outside the context of the ordinance's right of first refusal, including the potential for Qualified Nonprofits to facilitate sellers' efforts to obtain federal tax benefits under 26 U.S.C. § 1031.

The ordinance would require those who sell property subject to the ordinance to file a signed declaration, under penalty of perjury, affirming that the sale of that property substantially complied with the ordinance. The Mayor's Office of Housing and Community Development would be required to publish the addresses associated with such declarations on its website at least once per week. In the event that property subject to the ordinance were sold in violation of the ordinance, a Qualified Nonprofit would be empowered to institute a lawsuit to remedy that violation, with potential remedies against the seller to include damages and (for knowing or willful violations) civil penalties presumptively tethered to the value of the relevant property.

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Background Information

This legislative digest reflects amendments adopted by the Budget and Finance Subcommittee on April 3, 2019.

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