

BOARD of SUPERVISORS



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MEMORANDUM

TO: Daniel Adams, Director, Mayor's Office of Housing and Community Development

FROM: Monique Crayton, Assistant Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: March 26, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Aaron Peskin on March 19, 2024.

File No. 240262

Ordinance amending the Administrative Code to require owners of multifamily residential buildings to provide notice to the Mayor's Office of Housing and Community Development and qualified nonprofit organizations of foreclosure proceedings related to said multifamily residential buildings; and add a deed in lieu of foreclosure in the definition of a "Sale of a Multi-Family Residential Building" as a type of transfer that requires notice to qualified nonprofit organizations, right of first offer, and right of first refusal for a multifamily residential building under the Community Opportunity to Purchase Act.

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

cc:

Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development

1 [Administrative Code - Community Opportunity to Purchase Act]

2

3 **Ordinance amending the Administrative Code to require owners of multifamily**
4 **residential buildings to provide notice to the Mayor’s Office of Housing and Community**
5 **Development and qualified nonprofit organizations of foreclosure proceedings related**
6 **to said multifamily residential buildings; and add a deed in lieu of foreclosure in the**
7 **definition of a “Sale of a Multi-Family Residential Building” as a type of transfer that**
8 **requires notice to qualified nonprofit organizations, right of first offer, and right of first**
9 **refusal for a multifamily residential building under the Community Opportunity to**
10 **Purchase Act.**

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

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

19

20 Section 1. Chapter 41B of the Administrative Code is hereby amended by revising
21 Sections 41B.1, 41B.3, and 41B.5, to read as follows:

22 **SEC. 41B.1. FINDINGS AND PURPOSE.**

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

25 (b) This crisis has profoundly negative effects on the City. It causes dislocation,
which frays the social ties that bind our neighborhoods and communities together. It forces
vulnerable residents to leave their home, the City, for new communities where they are

1 strangers. And it contributes to homelessness—which is itself a severe and continuing crisis in
2 the City.

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

6 (d) Obstacles to the creation and preservation of affordable rental housing include
7 off-market sales, the transfer of multifamily residential building by foreclosure or deed in lieu of
8 foreclosure, and rapid turnover in the City’s real estate market. Nonprofit organizations seeking
9 to create and preserve affordable housing may be willing and able to pay market prices to
10 purchase residential buildings for sale, but nevertheless find themselves often unable to
11 purchase such buildings before they leave the market. Nonprofit organizations serving the
12 broader public interest must often move more deliberately and borrow purchase money from
13 non-traditional lenders in such real estate transactions than private entities concerned solely
14 with profit. Nonprofit organizations may also have access to public funds dedicated to acquire
15 multifamily residential buildings under the threat of foreclosure or subject to foreclosure proceedings,
16 but such nonprofit organizations sometimes do not have the benefit of notice that such multifamily
17 residential buildings are available for purchase.

18 * * * *

19 **SEC. 41B.3. "SALE OF A MULTI-FAMILY RESIDENTIAL BUILDING" DEFINED.**

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

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

1 (2) If an interest in the Multi-Family Residential Building is held by a trust, the
2 transfer, in exchange for money or any other thing of economic value, of a beneficial interest
3 in the trust, where the value of the beneficial interest in the trust is substantially equal to the
4 value of the Fee Interest of the Multi-Family Residential Building; or

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

12 (4) The transfer of the Fee Interest or other beneficial interests of the Multifamily
13 Residential Building made under a deed in lieu of foreclosure and/or related agreement related to the
14 repayment of a loan and avoidance of foreclosure.

15 * * * *

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

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

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

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

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,
3 but not limited to, such transfers made in connection with a living trust); or

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

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

14 (7) For the purpose of a land dedication under the Planning Code or a
15 development agreement or similar agreement approved by the Board of Supervisors, any
16 transfer to the City or its designee of an interest in any privately-owned lot on which the
17 Planning Code and other applicable laws would permit the construction of three or more
18 residential rental units.

19 * * * *

20 **SEC. 41B.5. GENERAL PROVISIONS.**

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

1 (b) **Confidential Information Protected.** With the exception of the notice to Sell a
2 Building under Section 41B.6(b), any information obtained from a Seller by a Qualified
3 Nonprofit under this Chapter 41B—including, but not limited to, disclosures made under
4 Section 41B.6(c) and (e), and terms and conditions of an offer of Sale made under Section
5 41B.7(b)—shall be kept confidential to the extent required by law, except that a Qualified
6 Nonprofit may, if otherwise permitted by law, share such information with other Qualified
7 Nonprofits to facilitate Qualified Nonprofits’ exercise of the rights conferred by this Chapter.
8 Nothing in this Chapter permits or requires the disclosure of information where such
9 disclosure is otherwise prohibited by law.

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

15 (d) **Notice of Default.** All owners of a Multifamily Residential Building shall provide written
16 notice to each Qualified Nonprofit and the Agency of a non-judicial foreclosure or a judicial
17 foreclosure related to an owner’s Multifamily Residential Building. Within two business days of receipt
18 of any of the following documents, an owner of a Multifamily Residential Building shall deliver to each
19 Qualified Nonprofit and the Agency, via e-mail, a copy of:

20 (1) a notice of default related to such Multifamily Residential Building under California
21 Civil Code Section 2924b(b), or successor provision;

22 (2) a civil complaint filed in superior court of a judicial foreclosure action related to
23 such Multifamily Residential Building under the California Code of Civil Procedure Sections 725a –
24 730.5, or successor provisions;

1 (3) a notice of sale related to such Multifamily Residential Building under California
2 Civil Code Section 2924f(b)(4), or successor provision;

3 (4) a notice of levy related to such Multifamily Residential Building under the Code of
4 Civil Procedure sections 699.540 and 700.015, or successor provisions;

5 (5) a notice of sale related to such Multifamily Residential Building under the Code of
6 Civil Procedure section 701.540;

7 (6) any other notice of default or notice of sale related to a judicial foreclosure or a non-
8 judicial foreclosure of such Multifamily Residential Building under California law.

9

10 Section 2. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor’s veto of the ordinance.

14

15 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the “Note” that appears under
20 the official title of the ordinance.

21

22 APPROVED AS TO FORM:
23 DAVID CHIU, City Attorney

24

25 By: \S\
KEITH NAGAYAMA
Deputy City Attorney

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor inquires..."
- 5. City Attorney Request
- 6. Call File No. from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: