BOARD of SUPERVISORS

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M E M O R A N D U M

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448

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

DATE: September 8, 2026

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 260961

[Labor and Employment Code - Small Business Workers' Right of First Offer/First Refusal to Purchase Business]

Ordinance amending the Labor and Employment Code to create a right of first offer and a right of first refusal for certain small business employees to purchase that business via a worker cooperative.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

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RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ No Comment

____ Recommendation Attached

_____

Chairperson, Small Business Commission

CC:
Office of Chair Sherrill

[Labor and Employment Code - Small Business Workers' Right of First Offer/First Refusal to Purchase Business]

Ordinance amending the Labor and Employment Code to create a right of first offer and a right of first refusal for certain small business employees to purchase that business via a worker cooperative.

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

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

Section 1. Division 1 of the Labor and Employment Code is hereby amended by adding Article 74, Sections 74.1 through 74.7, to read as follows:

ARTICLE 74

WORKERS' OPPORTUNITY TO PURCHASE ACT

SEC. 74.1. FINDINGS AND PURPOSE.

(a) An estimated 51% of privately held businesses in the United States are owned by individuals nearing retirement age. Over 75% of these businesses lack a succession plan, putting them at risk of third-party acquisition, closure, or asset-stripping. Selling a business to its workers can preserve the owner's and the workers' legacies.

(b) The City recognizes that the sale, closure, or corporate restructuring of businesses can lead to the displacement of workers, the loss of community-serving businesses, and the erosion of the City's economic and cultural fabric.

(c) The formation of worker-owned businesses and the participation of workers in the management of businesses in San Francisco will promote the stabilization of local economies, anchor business activity, and increase productivity. The encouragement of worker-owned and controlled businesses will increase and broaden community investments in the City and encourage new capital formation through worker ownership and control.

(d) The City is committed to the principle that all workers deserve the opportunity to pursue economic self-determination. Accordingly, the City should take active steps to remove obstacles that limit the ability of workers, particularly those from low-income, immigrant, and historically marginalized communities, to build independent, worker-controlled enterprises.

(e) Workers experiencing the sale, merger, change of control, or dissolution of a business that employs them are often negatively impacted in ways that should be recognized and if possible remedied. This Article 74 protects workers' interests during a Sale of a Business. In addition, it advances economic equity by providing systemically marginalized workers, who are disproportionately affected by job loss, exploitation, and displacement, with tools to secure long-term economic stability and workplace self-determination.

(f) This Article 74 is intended to complement the City's already existing commitments to economic empowerment, such as the Legacy Business Program, including the Legacy Business Registry and the toolkit for transitioning to Legacy Businesses to employee ownership; the Office of Economic and Workforce Development; and San Francisco's Community Opportunity to Purchase Act ("COPA").

(g) San Francisco is home to many worker cooperatives, such as Arizmendi Bakery, the STUD, and the Rainbow Grocery Cooperative. It is also home to democratically managed nonprofits, such as Pangea Legal Services. These worker cooperatives and democratically managed nonprofits form an essential part of the City's economic and cultural fabric. They demonstrate that democratic ownership and collective self-governance are viable, resilient, and community-rooted models of enterprise.

(h) Worker ownership and control stabilizes local economies and offers proven benefits in terms of job quality, wealth-building opportunities, civic participation, employee morale, personal dignity, job preservation, and equitable economic development.

(i) Existing federal and state programs and legislation, including the California Employee Ownership Act (SB 1407, 2022), the California Worker Cooperative Act (AB 816, 2015), and proposed legislation such as Massachusetts' S.305 (2025) and Rhode Island's S.0752 (2025), encourage employee ownership but do not guarantee workers an enforceable right to purchase the businesses where they work. While these programs offer important support, they fall short of ensuring that workers are notified, organized, and equipped to intervene in a potential sale.

(j) This Article 74, known as the Workers' Opportunity to Purchase Act (WOPA), gives workers the right to buy a Business as a whole when the Business intends to sell off Business Assets on a piecemeal basis. It creates a proactive legal framework that grants San Francisco small business workers a right of first offer and a right of first refusal in the sale or substantial change in control of their workplace, by providing for structured notice, financial disclosures, and a legally recognized preference and process for worker buyouts and transitions to democratically managed ownership.

SEC. 74.2. DEFINITIONS.

For purposes of this Article 74, the following terms have the following meanings:

"Business" means any activity, enterprise, profession, trade, or undertaking of any nature that meets the following criteria:

(1) Is conducted or engaged in with the object of financial or economic gain, benefit, or advantage, whether direct or indirect;

(2) Pays at least three Workers; and

(3) Is a "small business enterprise" as defined in the Business Tax and Regulations Code, Section 954.1.

(4) The term "Business" includes a "Business Unit" and a "Business Asset."

"Business Asset" means any of the following:

(1) The majority (over 50%) of all assets of a Business;

(2) The majority (over 50%) of real property of a Business;

(3) The majority (over 50%) of physical assets of a Business;

(4) The majority (over 50%) of the machinery of a Business;

(5) The majority (over 50%) of stock of a Business;

(6) The majority (over 50%) of the intellectual property of a Business.

"Business Unit" means any of the following:

(1) A named department or division of a Business;

(2) One storefront or location of a Business under single ownership that has multiple storefronts and/or locations.

"Notice" means a communication from an Owner to Workers of a Business that notifies the Workers that the Owner intends to Sell a Business, and that meets the following requirements:

(1) Sent by U.S. mail to the Office of Small Business and to the mailing address of all Workers who have provided their mailing address to the Owner, with U.S. Postal Service tracking;

(2) Sent by e-mail to the Office of Small Business and to all Workers who have provided their e-mail addresses to the Owner;

(3) If the Owner uses a physical or online bulletin to communicate with workers, the Owner must post the Notice to such bulletin;

(4) The Notice must comply with the Language Access Ordinance, Administrative Code Chapter 91;

(5) The Notice must state that it is being provided pursuant to this Article 74;

(6) The Notice must state the total number of Workers, as defined in this Section 74.2, at the Business. The following statement complies with this requirement: "The total number of Workers,

including both current and former Workers, as defined in San Francisco Labor and Employment Code Section 74.2, is [number of Workers]."

(7) The Notice must state the deadline under this Article 74 for a Qualified Worker Group to express interest in purchasing the Business, and the contact information of the Owner or their designated agent to receive the Qualified Worker Group's expression of interest. The following statement complies with this requirement: "In San Francisco, under the Workers Opportunity to Purchase Act (WOPA) workers may exercise a right of first offer and right of first refusal to purchase a Business, as defined in Labor and Employment Code Article 74, at market value and operate it as a cooperative. To exercise its rights under this law, a Qualified Worker Group, as defined in Article 74, must give the Owner notice of its interest in purchasing the business, and declare its eligibility as a Qualified Worker Group, within 45 days of the receipt date of this notice at [email address or postal mailing address]. Other Worker Groups, as defined in Article 74, interested in purchasing the Business must also meet this deadline in order to exercise their rights under WOPA."

"Other Worker Group" ("OWG") means a group that includes at least one Worker and less than the majority of the Workers in a Business.

"Owner" means one or more persons, corporations, partnerships, limited liability companies, trustees, or any other association or entity that has beneficial ownership of the Business; and any person, corporation, partnership, limited liability company, trustee, or any other association or entity that, directly or indirectly, owns 50% or more of the equity interests in the Business.

"Qualified Worker Group"("QWG") means the entity that includes a majority of the Workers that work for, or contribute services to, the Business in question. If more than one group identifies itself as a QWG, the group with the greatest number of workers shall be the QWG.

"Sale of a Business" means the sale, long-term loan, license, or other transfer, whether completed in one transaction or a series of transactions over a two-year time period, of a Business. But "Sale of a Business" does not include:

(1) A transfer of the Small Business to a spouse, domestic partner, parent, child, grandparent, or grandchild.

(2) Sale of real property located outside of the City and County of San Francisco.

"Third-Party Purchaser" means any purchaser or prospective purchaser of a Business that is not a Qualified Worker Group or Other Worker Group.

"Worker" means any natural person who has provided at least 800 hours of labor or services to a Business in the twelve months prior to the Owner's Notice of intent to sell the Business, including labor or services at multiple locations of a Business, including but not limited to natural persons who are not currently working at the Business.

"Worker Cooperative" means an organization that meets one of the following criteria:

(1) Is a worker cooperative that is formed and operates pursuant to the Cooperative Corporation Law, California Corporations Code, Section 12200 et seq.; or

(2) Is a Limited Liability Company (LLC) that operates on the following basis:

(A) All persons who meet the definition of Worker-member according to the operating agreement of the LLC have equal voting rights in all decisions brought before the membership, and

(B) Any profits distributed to Worker-members by the LLC are distributed on the basis of their patronage in the company, with patronage measured based on the labor supplied to the LLC; and

(C) "Worker-member" means a Worker who is a voting member and owner according to the operating agreement of the LLC.

SEC. 74.3. COMMUNICATIONS BETWEEN OWNER, QUALIFIED WORKER GROUP AND OTHER WORKER GROUPS, AND OFFICE OF SMALL BUSINESS.

(a) When an Owner decides to Sell a Business, it shall provide Workers with a Notice within the time specified in Section 74.4.

(b) If no QWG provides a timely response to an Owner's Notice, an OWG may exercise the rights of and hold the obligations of a QWG under this Article 74, except as specified in this Article.

(1) If an OWG does not exercise its rights within the time required by Section 74.4(b), it will not be eligible to exercise the rights of a QWG.

(2) Competing OWGs. If multiple OWGs timely inform the Owner of their intent to purchase, the OWG with the largest number of Workers shall exercise all rights of the QWG.

(c) The Office of Small Business shall publish on its website a list of Businesses that have provided Notices under this Article 74 within the past 36 months. The website shall include the address of each such Business and the total number of Workers at each such Business.

SEC. 74.4. RIGHT OF FIRST OFFER.

*(a) **Workers' Right to Receive the First Offer from the Owner.***

The QWG shall have a right of first offer with respect to any Sale of a Business in San Francisco, as set forth in this Section 74.4. Before an Owner may extend, solicit, or accept any offer to purchase its Business from a Third-Party Purchaser, the Business shall provide the Notice specified in Section 74.2.

*(b) **Time for QWG to Express Interest.***

(1) No later than 11:59 p.m. on the forty-fifth day after a Business has sent a Notice, the QWG may notify the Owner or their agent, via e-mail or U.S. mail, that the QWG is interested in making an offer to purchase the Business as a Worker Cooperative.

(2) If, after 11:59 p.m. on the forty-fifth calendar day after a Business has sent a Notice, the Business has not received such an expression of interest under subsection (b)(1), the Owner may

immediately proceed to offer to sell the Business to, and to solicit offers of purchase from, Third-Party Purchasers. However, before the Owner extends or accepts any binding offer to a Third-Party Purchaser, the Owner must notify the QWG, if any, of its right of first refusal of any such offers, as set forth in Section 74.5.

(3) If more than one group of Workers timely expresses interest in purchasing the Business, the Owner shall deliver a written notification at the end of the 45-day period to all Workers that timely responded, identifying the qualifying QWG.

(c) ***Preliminary Disclosures.*** *If the QWG expresses interest under subsection (b), the Owner shall provide each Worker within the QWG with the following information via e-mail:*

(1) A list of assets to be sold; and

(2) Financial information. Unless the parties agree otherwise, the Owner shall disclose the following financial information and may condition such disclosure on a confidentiality agreement with all recipients to protect the Business's confidential and trade secret information:

(A) Two years of tax returns for the Business or Business Unit, as applicable;

(B) Gross annual revenue for the past two fiscal years or since the date of incorporation, whichever is the shorter time period;

(C) Net income or loss for the past two fiscal years or since the date of incorporation, whichever is the shorter time period;

(D) Accounts receivables aging report, if applicable;

(E) List of assets worth over $5,000 owned by the Business;

(F) All current liabilities, including without limitation loans, debts, and liens; and

(G) A statement of any known impending changes to leases, taxes, or major expenses.

*(d) **Time for QWG to Make Offer.** Upon receiving the preliminary disclosures described in subsection (c), the QWG shall have 45 calendar days to submit an offer to purchase the Business. Any such offer shall be contingent on the QWG's reasonable satisfaction after completing due diligence review and its ability to secure financing consistent with subsection (f), unless the parties expressly agree otherwise in writing.*

*(e) **Owner May Reject Offer.** The Owner may reject the QWG's offer made under subsection (d). Any such rejection shall be communicated in writing. If the Owner rejects such an offer, or if the QWG does not timely submit such an offer, the Owner may immediately offer the Business for Sale to, and solicit offers of purchase from, prospective Third-Party Purchasers, subject to the right of first refusal set forth in Section 74.5.*

*(f) **Exclusive Negotiation Period to Finalize Purchase and Sale.***

(1) If the Owner elects to move forward with negotiating the Sale of the Business to the QWG, the parties may enter into an exclusive negotiation agreement, under which the QWG shall have 180 days to conduct due diligence, secure financing related to the Purchase, and form a Worker Cooperative to purchase the Business, unless the Owner and the QWG expressly agree otherwise in writing.

(2) The Owner shall make any financial disclosures required by the exclusive negotiation agreement, which may include, without limitation:

(A) The past five years' tax returns for the Business or Business Unit, as applicable, or all tax returns since the date of incorporation;

(B) A list of current employee addresses and positions, including job titles, employment status (i.e., full-time, part-time), and associated salary or hourly wage ranges;

(C) Annual income statements for up to the last five years, or since the date of incorporation;

(D) Annual balance sheets for up to the last five years, or since the date of incorporation;

(E) Annual cash flow statements for up to the last five years, or since the date of incorporation;

(F) Current vendor and supplier contracts;

(G) Current lease agreements;

(H) Current accounts receivable and payable;

(I) Inventory valuation;

(J) List and value of capital assets;

(K) Current employee benefit plans; and

(L) Current insurance policies.

(3) At the end of this exclusive negotiation period, and subject to the terms of the exclusive negotiation agreement, if the QWG has formed a Worker Cooperative to purchase and operate the Business and wishes to complete the purchase of the Business, the Owner shall sell the Business to the Worker Cooperative in a manner materially consistent with the QWG's offer of purchase. If any conflict exists between this Section 74.4 and the terms of the exclusive negotiation agreement, the terms of the exclusive negotiation agreement shall prevail.

SEC. 74.5. RIGHT OF FIRST REFUSAL.

(a) A QWG that previously exercised a right of first offer under Section 74.4 but did not purchase the Business is entitled to a right of first refusal in the purchase of that Business, as set forth in this Section 74.5.

(b) ***Written Offer of Sale to QWG; Terms and Conditions Set by Market.*** *Before an Owner of a Business may enter into an agreement to sell the Business to a Third-Party Purchaser, the Owner must offer via e-mail to sell the Business to the QWG. Any such offer to the QWG shall contain the same material terms and conditions as those acceptable to the Third-Party Purchaser, except that the*

terms and conditions offered to the QWG shall be consistent with subsection (c). If in the past 12 months the Owner has not previously made the disclosures set forth in Section 74.4, the Owner shall include those disclosures with any offer required by this subsection (b).

*(c) **Time for QWG to Accept Offer.** No later than 11:59 p.m. on the forty-fifth day after an Owner has presented an offer of Sale to the QWG under subsection (b), the QWG shall notify the Owner via e-mail whether it accepts or rejects the offer. To accept the offer, the QWG must, within this same 45-day period, form a Worker Cooperative for the purpose of accepting the offer.*

*(d) **QWG's Acceptance of Offer.** If, under subsection (c), the QWG accepts the Owner's offer, the Owner shall sell the Business to that Worker Cooperative on terms and conditions materially consistent with that offer.*

*(e) **QWG's Rejection of Offer.** If, at or before the deadline in subsection (c), the QWG notifies the Owner that it rejects the offer, the Owner may immediately sell the Business, on terms materially consistent with the offer between the Owner and the Third-Party Purchaser, as described in subsection (b).*

*(f) **Lapse of Deadline to Respond.** If, after the deadline in subsection (c), the QWG has not accepted the Owner's offer, the Owner may immediately sell the Business to a Third-Party Purchaser, on terms materially consistent with the offer between the Owner and the Third-Party Purchaser, as described in subsection (b). If the Owner wishes to complete the sale to the Third-Party Purchaser on materially different terms, that materially different offer of purchase or sale shall be considered a new offer of purchase or offer of sale for purposes of subsection (b).*

*(g) **Contingency Third-Party Sales Agreements Permitted.** If, as described in subsection (b), the Owner and a Third-Party Purchaser reach mutually agreeable terms for sale of the Business, the Owner and the Third-Party Purchaser may agree to the sale, subject to the contingency that the QWG does not exercise the right of first refusal conferred by this Section 74.5. In such a circumstance, the*

Owner and the Third-Party Purchaser shall each expressly acknowledge in writing that the sale of the Business is subject to this contingency.

SECTION 74.6. ENFORCEMENT.

Any QWG, OWG or Owner of a Business offered for sale may file a civil action to enforce its rights under this Article 74. Any such action shall be brought in the Superior Court of the State of California, County of San Francisco.

SEC. 74.7. NO PRIVATE RIGHT OF ACTION AGAINST CITY.

This Article 74 shall not create any private right of action against the City. The City shall have no duty relating to, and may sustain no liability based on, any failure of any party to comply with this Article.

Section 2. Effective Date. This ordinance shall become effective on the 31st day after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: */s/ Victoria Wong*
VICTORIA WONG
Deputy City Attorney

4916-6802-2476, v. 1

FILE NO. 260961

LEGISLATIVE DIGEST

[Labor and Employment Code - Small Business Workers' Right of First Offer/First Refusal to Purchase Business]

Ordinance amending the Labor and Employment Code to create a right of first offer and a right of first refusal for certain small business employees to purchase that business via a worker cooperative.

Existing Law

Under existing law, small business owners are generally free to sell their businesses to whomever they wish, and on whatever terms they wish.

Amendments to Current Law

The proposed ordinance would provide certain workers at small businesses with a right of first offer and a right of first refusal to purchase the businesses at which they work, if the owner decides to sell the business. Workers would need to form a cooperative to buy the business.

The ordinance defines a "Worker" as a person who has provided at least 800 hours of labor or services to the business in the preceding twelve months. And the ordinance defines a "Small Business" as an entity that pays at least three Workers and has gross receipts of $5,000,000 or less in the City in the past tax year. The ordinance does not apply where the owner sells the business to members of their immediate family. Nor does the ordinance apply to the sale of real property located outside of San Francisco.

The ordinance refers to a majority of the Workers at a Small Business as a "Qualified Worker Group" (QWG). A QWG may exercise a right of first offer by expressing interest in buying the business if the owner decides to sell. If no QWG exists or expresses interest, an "Other Worker Group" (OWG), consisting of less than a majority of Workers, may exercise the rights of a QWG. In this digest, we refer to QWGs and OWGs as "Worker Groups" or "WGs."

Step 1: Right of First Offer. Under the right of first offer, the ordinance would require the owner to give all Workers a notice of intent to sell the business. The notice would trigger a 45-day period for a WG to express interest in buying the business. If no WG timely expresses interest, the owner may offer to sell the business to the buyer of its choice, subject to the right of first refusal provision described below.

If the owner receives such an expression of interest, it may not proceed to sell the business to another buyer and must disclose certain financial information about the business to the WG. The WG then has an additional 45 days to offer to purchase the business. The owner may choose to negotiate the sale with the WG or may reject the offer. If the owner chooses to negotiate and reaches an agreement with the WG, the WG has 180 days to form a cooperative, obtain financing, conduct due diligence, and buy the business.

Step 2: Right of First Refusal. If the owner rejects the WG's offer, it may proceed to entertain offers from other potential buyers. But before accepting a third party's offer, the owner must allow the WG to exercise a right of first refusal. If the owner receives a third-party offer to buy the business, the owner must offer to sell the business to the WG that previously exercised a right of first offer. This sale would be on the same terms and conditions as those acceptable to the third party. If the WG wishes to exercise this right, it then has 45 days to form a cooperative and for the cooperative to accept the offer. If the cooperative does not timely accept, the owner may immediately sell to the buyer of its choice on those same terms and conditions. But if the owner wishes to sell the business on materially different terms, the owner must allow the WG the opportunity to exercise a right of first refusal as to that new offer.

A Worker, QWG, OWG, or business owner may file a civil action in San Francisco Superior Court to enforce the ordinance.

4904-3859-2205, v. 1

RECEIVED IN
BOARD @ 2:45 pm
AK

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):

Chan

Subject:

Labor and Employment Code - Small Business Workers' Right of First Offer/First Refusal to Purchase Business

Long Title or text listed:

Ordinance amending the Labor and Employment Code to create a right of first offer and a right of first refusal for certain small business employees to purchase that business via a worker cooperative.

Signature of Sponsoring Supervisor: