

REVISED LEGISLATIVE DIGEST

(1/15/2019)

[Administrative Code - 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; establishing related procedures for the selection of such nonprofits, preservation of rent-restricted affordable housing, and implementation and enforcement; 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.

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. 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 contemplates potential incentives to encourage sales to Qualified Nonprofits outside the context of the ordinance's right of first refusal, including the potential for a partial exemption from the City's transfer tax and 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.