

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Robert Collins, Executive Director, Rent Board

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: August 25, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Fewer on August 18, 2020:

File No. 200948

Ordinance amending the Administrative Code to require sellers of multifamily residential buildings to provide a new right of first offer and right of first refusal to qualified nonprofit organizations if a multifamily residential building is not under contract or remains unsold after one year and after each year thereafter; require sellers to provide additional disclosures to qualified nonprofit organizations; provide information to current tenants, and assist qualified nonprofits with due diligence; and allow multifamily residential buildings acquired by qualified nonprofit organizations under the Community Opportunity to Purchase Act to convert to a limited equity cooperative under Subdivision Code, Division 11.

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: erica.major@sfgov.org.

cc: Eugene Flannery, Mayor's Office of Housing and Community Development
Amy Chan, 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 sellers of multifamily**
 4 **residential buildings to provide a new right of first offer and right of first refusal to**
 5 **qualified nonprofit organizations if a multifamily residential building is not under**
 6 **contract or remains unsold after one year and after each year thereafter; require sellers**
 7 **to provide additional disclosures to qualified nonprofit organizations; provide**
 8 **information to current tenants, and assist qualified nonprofits with due diligence; and**
 9 **allow multifamily residential buildings acquired by qualified nonprofit organizations**
 10 **under the Community Opportunity to Purchase Act to convert to a limited equity**
 11 **cooperative under Subdivision Code, Division 11.**

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

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

18 Section 1. Chapter 41B of the Administrative Code is hereby amended by revising
 19 Sections 41B.1, 41B.5, 41B.6, 41B.7, and 41B.8, to read as follows:

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

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

23 (b) This crisis has profoundly negative effects on the City. It causes dislocation,
 24 which frays the social ties that bind our neighborhoods and communities together. It forces
 25 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
2 in 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) ~~One of~~ Obstacles to the creation and preservation of affordable rental housing
7 include off-market sales and ~~is~~ rapid turnover in the City’s real estate market. Nonprofit
8 organizations seeking to create and preserve affordable housing may be willing and able to
9 pay market prices to purchase residential buildings for sale, but nevertheless find themselves
10 unable to purchase such buildings before they leave the market. Nonprofit organizations
11 serving the broader public interest must often move more deliberately and borrow purchase
12 money from non-traditional lenders in such real estate transactions than private entities
13 concerned solely with profit.

14

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

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

20 (b) **Confidential Information Protected.** With the exception of the notice to Sell a
21 Building under Section 41B.6(b), ~~Any~~ information obtained from a Seller by a Qualified
22 Nonprofit under this Chapter 41B—including, but not limited to, disclosures made under
23 Section 41B.6(c) and (e), and terms and conditions of an offer of Sale made under Section
24 41B.7(b)—shall be kept confidential to the ~~maximum~~ extent ~~permitted~~ required by law, except
25 that a Qualified Nonprofit may, if otherwise permitted by law, share such information with

1 other Qualified Nonprofits to facilitate Qualified Nonprofits' exercise of the rights conferred by
2 this Chapter. Nothing in this Chapter permits or requires the disclosure of information where
3 such disclosure is otherwise prohibited by law.

4

5 **SEC. 41B.6. RIGHT OF FIRST OFFER.**

6 (a) **General Construction.** This Section 41B.6 shall be construed to confer upon
7 each Qualified Nonprofit a right of first offer with respect to any Multi-Family Residential
8 Building for Sale in the City, as set forth in this Section.

9 (b) **Opportunity for Qualified Nonprofits to Submit Offers.** Before the Seller of a
10 Multi-Family Residential Building may *(1) allow any prospective Purchaser, other than a Qualified*
11 *Nonprofit, to view that Building in person or physically inspect that Building, (2) offer that Building*
12 *for Sale to any prospective Purchaser other than a Qualified Nonprofit, or (3) otherwise solicit*
13 *any offer to Purchase that Building from any Purchaser other than a Qualified Nonprofit, the*
14 *Seller shall notify each Qualified Nonprofit, via e-mail, of its intent to Sell the Building, and*
15 *shall provide each Qualified Nonprofit with an opportunity to make an offer to Purchase the*
16 *Building as set forth in subsections (d)–(f). The Seller shall submit this notification on the*
17 *same calendar day and, to the extent possible, at the same time, to each of the e-mail*
18 *addresses included on the Agency's list of Qualified Nonprofits pursuant to Section 41B.4(b).*
19 *If, within one year of providing the notification required under this subsection (b), the Seller does not*
20 *execute a written and binding purchase and sale agreement for the Sale of a Multi-Family Residential*
21 *Building or complete the Sale of a Multi-Family Residential Building, but still intends to Sell the*
22 *Building, the Seller shall provide each Qualified Nonprofit with a new notification under this*
23 *subsection (b) of the Seller's continued intent to Sell the Building, and at that time shall provide each*
24 *Qualified Nonprofit with a new opportunity to Purchase the Building under this Chapter 41B. Every*
25 *year thereafter, on the anniversary of the first required notification under this subsection (b), if the*

1 Building remains for sale, the Seller shall provide each Qualified Nonprofit with a new notification
2 under this subsection (b) of the Seller's continued intent to Sell the Building, and at that time shall
3 provide each Qualified Nonprofit with a new opportunity to make an offer to Purchase the Building as
4 set forth in subsections (d)-(f), until the Building is Sold to a Qualified Nonprofit or a Purchaser, as
5 applicable. If the Seller elects to not Sell the Building, the Seller shall provide each Qualified
6 Nonprofit with written notice that the Seller no longer has intent to Sell the Building, but the Seller
7 shall continue to comply with this Chapter 41B before the Sale of the Building.

8

9 (e) **Additional Disclosures.** If, no later than 11:59 p.m. on the fifth full calendar
10 day after a Seller has notified each Qualified Nonprofit of its intent to Sell a Multi-Family
11 Residential Building, any Qualified Nonprofit has, consistent with subsection (d), notified the
12 Seller that the Qualified Nonprofit wishes to further consider whether to make an offer to
13 Purchase the Building, the Seller shall disclose to each such Qualified Nonprofit, via e-mail,
14 the following additional information regarding the Building: (1) the name or names of any tenant
15 or tenants in each rental unit ~~of the Building~~, as well as any available contact information for
16 each tenant, (2) the number of bedrooms and bathrooms in each rental unit, (3) each tenant's move-in
17 date, (4) base rent for each rental unit, (5) Building costs passed through to each tenant, if any, (6)
18 whether each tenant has a written lease or rental agreement, and (7) the annual expenses for the
19 Building, including, but not limited to, management, insurance, utilities, and maintenance.
20 Concurrently with the release of this additional information, the Seller shall provide to each tenant in
21 the Building an information sheet, prepared by the Agency, containing a brief overview of the
22 Community Opportunity to Purchase Act and the Agency's Small Sites Program.

23 (f) **Time for Qualified Nonprofits to Make Offer.** Upon receipt, via e-mail, of the
24 disclosures described in subsection (e), each such Qualified Nonprofit (that is, each Qualified
25 Nonprofit that has, consistent with subsection (d), notified the Seller that the Qualified

1 Nonprofit wishes to further consider whether to make an offer to Purchase the Building) shall
2 have 25 additional calendar days to decide whether to make an offer to Purchase the
3 Building, and to submit any such offer to the Seller. Any such offer of Purchase shall be
4 presumed to be contingent upon the Qualified Nonprofit's ability to conduct due diligence and
5 secure financing in a manner consistent with subsection ~~(g)~~(h), unless the Seller and the
6 Qualified Nonprofit expressly agree otherwise in writing.

7

8 **SEC. 41B.7. RIGHT OF FIRST REFUSAL.**

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

14 (b) **Written Offer of Sale to Qualified Nonprofits; Terms and Conditions Set by**
15 **Market.** Except as provided in subsection (f), whenever the Seller of a Multi-Family
16 Residential Building receives from a Purchaser other than a Qualified Nonprofit an offer to
17 Purchase the Multi-Family Residential Building that the Seller wishes to accept, and whenever
18 the Seller of a Multi-Family Residential Building makes an offer to Sell the Multi-Family
19 Residential Building that a Purchaser other than a Qualified Nonprofit expresses a desire to
20 accept, the Seller shall, before any such offer of Purchase or Sale may be accepted, offer to
21 Sell the Building to any Qualified Nonprofit that has previously made an offer of purchase
22 under Section 41B.6(f) with respect to that Building, or that was not previously given the
23 opportunity described in Section 41B.6(b) with respect to that Building. Any such offer of Sale
24 to a Qualified Nonprofit shall contain the same terms and conditions (including, but not limited
25 to, price, time frame to close the Sale, and commission to the Purchaser's broker) as the offer of

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

14

15 (d) **Time for Qualified Nonprofits to Accept Offer, Absent Prior Opportunity to**
16 **Exercise Right of First Offer.** Notwithstanding subsection (c), if Qualified Nonprofits have
17 not previously had an opportunity to exercise the right of first offer set forth in Section 41B.6
18 with respect to the Sale of a Multi-Family Residential Building (because, for example, the
19 Seller of the Building has received an unsolicited offer to Purchase the Building), each
20 Qualified Nonprofit shall notify the Seller and every other Qualified Nonprofit, via e-mail, of its
21 decision to accept or reject the Seller's offer of Sale no later than 11:59 p.m. on the 30th full
22 calendar day after the Seller has, pursuant to subsection (b), notified the Qualified Nonprofit of
23 its intent to Sell a Multi-Family Residential Building. The Seller shall provide to each Qualified
24 Nonprofit, via e-mail, the terms and conditions of such offer of Sale and the disclosures required by
25 Section 41B.6(c), Section 41B.6(e), and Section 41B.7(b). Upon request, the Seller shall exhibit the

1 Building to each Qualified Nonprofit that has expressed interest in the Building and cooperate with
2 efforts to inspect the condition of the Building. If, during this time period, any Qualified Nonprofit
3 decides to accept the Seller’s offer of Sale, that Qualified Nonprofit shall immediately notify
4 the Seller and every other Qualified Nonprofit of that decision, via e-mail. After a Qualified
5 Nonprofit notifies the Seller of its decision to accept the Seller’s offer of Sale, and
6 notwithstanding any defect in that Qualified Nonprofit’s notice to other Qualified Nonprofits,
7 that Qualified Nonprofit shall be deemed to have accepted the offer of Sale, and no other
8 Qualified Nonprofit may accept the Seller’s offer of Sale, whether or not the time period
9 described in this subsection (d) has elapsed.

10

11 **SEC. 41B.8. PRESERVATION AS RENT-RESTRICTED AFFORDABLE HOUSING;**
12 **TENANT PROTECTIONS.**

13 Any Multi-Family Residential Building Purchased by a Qualified Nonprofit under the
14 first-right-to-purchase conferred by this Chapter 41B shall be maintained as rent-restricted
15 affordable housing in perpetuity. For purposes of this Section 41B.8~~subsection (b)~~, “rent-
16 restricted affordable housing” shall mean that the mean value of all rents paid by residential
17 tenants in the Building shall not exceed 80% of Area Median Income, and that the gross
18 household income of new tenants in the Building shall not exceed 120% of Area Median
19 Income. A Qualified Nonprofit may convert such Multi-Family Residential Building maintained as
20 rent-restricted affordable housing into a limited equity housing cooperative under Subdivision Code
21 Division 11, provided that such Qualified Nonprofit shall fully comply with the requirements of
22 Subdivision Code Division 11 and such Multi-Family Residential Building shall remain restricted as
23 affordable housing consistent with this Section in perpetuity under a new Notice of Special Restriction.

24 The Agency shall establish procedures to ensure that each Building acquired under this
25 Chapter is subject to a Notice of Special Restrictions that: (a) sets forth the manner in which

1 that Building shall be preserved as rent-restricted affordable housing, and (b) provides that no
2 existing residential tenants at the time of the Purchase or new residential tenants following the
3 Purchase may be evicted without just cause consistent with the substantive provisions of
4 Administrative Code Section 37.9(a).

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

9 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
10 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
11 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
12 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
13 additions, and Board amendment deletions in accordance with the "Note" that appears under
14 the official title of the ordinance.

15
16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18 By: /s/
19 KEITH NAGAYAMA
20 Deputy City Attorney
n:\legana\as2020\2100044\01471893.docx

21
22
23
24
25

LEGISLATIVE DIGEST

[Administrative Code - Community Opportunity to Purchase Act]

Ordinance amending the Administrative Code to require sellers of multifamily residential buildings to provide a new right of first offer and right of first refusal to qualified nonprofit organizations if a multifamily residential building is not under contract or remains unsold after one year and after each year thereafter; require sellers to provide additional disclosures to qualified nonprofit organizations; provide information to current tenants, and assist qualified nonprofits with due diligence; and allow multifamily residential buildings acquired by qualified nonprofit organizations under the Community Opportunity to Purchase Act to convert to a limited equity cooperative under Subdivision Code, Division 11.

Existing Law

Chapter 41B of the San Francisco Administrative Code (the “Community Opportunity to Purchase Act” or “COPA”) requires certain owners of multifamily residential rental buildings (“Building”) to provide qualified nonprofit organizations (a “QNP”) with written notice of such owners intent to sell their Buildings. If a QNP expresses interest in purchasing a Building intended for sale, the owner of the Building must provide the QNP with: (1) information about the Building, and (2) the right to submit the first offer on the Building. If the Building owner and QNP cannot come to an agreement, then the Building owner may offer the Building for sale to any prospective purchaser, but the QNP that provided an offer will have a right of first refusal to match any offer by a prospective purchaser. The Building owner must provide the QNP with the terms and conditions of the offer by the prospective purchaser. If any QNP did not receive written notice of an owner’s intent to sell a Building and was not able to express interest or an offer, such QNP will have the right of first refusal to match an offer by the prospective purchaser. If a QNP acquires a Building under COPA, such QNP must record a restriction against the Building to maintain the Building as affordable rental housing in perpetuity.

Amendments to Current Law

The proposed ordinance would amend COPA to require owners to annually provide each QNP with a new opportunity to submit an offer for a Building if: (1) such Building is not under a binding contract to sell or remains unsold within one year of the initial notice of intent to sell, and (2) the owner continues to intend to sell the Building. If the owner elects not to sell the Building, the owner must provide each QNP with written notice that the Building is no longer for sale, but must comply with COPA if the owner intends to sell the Building again. In addition, the proposed ordinance would prohibit a Building owner from any in-person viewings or physical inspection of the Building to non-QNP purchasers prior to giving each QNP an opportunity to purchase the Building under COPA.

The proposed ordinance would clarify that each QNP must keep information obtained from an owner confidential to the extent required by law. In addition, the proposed ordinance would expand the type of information about a Building that must be provided to a QNP that expresses interest in submitting an offer. This same information must be provided to a QNP that did not receive an opportunity to submit an offer and has a right of first refusal for a Building, and the owner must allow the QNP to inspect the Building.

The proposed ordinance clarifies an owner's obligation to provide a QNP with the same terms and conditions of a third-party offer for a Building under COPA's right of first refusal, as well as providing a QNP such terms in writing and any information about the Building that was provided to the prospective purchaser of the Building.

The proposed ordinance would permit a QNP to convert a Building from rental to an affordable limited equity cooperative under San Francisco Subdivision Code Division 11.

Last, the proposed ordinance would correct certain drafting errors.

n:\legana\as2020\2100044\01471894.docx