

1 [Administrative Code - Community Opportunity to Purchase Act]

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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 (COPA) to convert to a limited**
11 **equity cooperative under Subdivision Code Division 11; and exclude from COPA land**
12 **dedications to the City and County of San Francisco.**

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:

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20 Section 1. Chapter 41B of the Administrative Code is hereby amended by revising
21 Sections 41B.1, 41B.3, 41B.5, 41B.6, 41B.7, and 41B.8, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (a) **First Right to Purchase Conferred.** This Chapter 41B shall be construed to
25 confer upon each Qualified Nonprofit a first right to purchase any Multi-Family Residential

1 Building for Sale in the City. This first right to purchase shall consist of both a right of first
2 offer, as set forth in Section 41B.6, and a right of first refusal, as set forth in Section 41B.7.

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

12

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

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

17 (b) **Opportunity for Qualified Nonprofits to Submit Offers.** Before the Seller of a
18 Multi-Family Residential Building may *(1) allow any prospective Purchaser, other than a Qualified*
19 *Nonprofit, to view that Building in person or physically inspect that Building, (2) offer that Building*
20 *for Sale to any prospective Purchaser other than a Qualified Nonprofit, or (3) otherwise solicit*
21 *any offer to Purchase that Building from any Purchaser other than a Qualified Nonprofit, the*
22 *Seller shall notify each Qualified Nonprofit, via e-mail, of its intent to Sell the Building, and*
23 *shall provide each Qualified Nonprofit with an opportunity to make an offer to Purchase the*
24 *Building as set forth in subsections (d)–(f). The Seller shall submit this notification on the*
25 *same calendar day and, to the extent possible, at the same time, to each of the e-mail*

1 addresses included on the Agency's list of Qualified Nonprofits pursuant to Section 41B.4(b).
2 If, within one year of providing the notification required under this subsection (b), the Seller does not
3 execute a written and binding purchase and sale agreement for the Sale of a Multi-Family Residential
4 Building or complete the Sale of a Multi-Family Residential Building, but still intends to Sell the
5 Building, the Seller shall provide each Qualified Nonprofit with a new notification under this
6 subsection (b) of the Seller's continued intent to Sell the Building, and at that time shall provide each
7 Qualified Nonprofit with a new opportunity to Purchase the Building under this Chapter 41B. Every
8 year thereafter, on the anniversary of the first required notification under this subsection (b), if the
9 Building remains for sale, the Seller shall provide each Qualified Nonprofit with a new notification
10 under this subsection (b) of the Seller's continued intent to Sell the Building, and at that time shall
11 provide each Qualified Nonprofit with a new opportunity to make an offer to Purchase the Building as
12 set forth in subsections (d)-(f), until the Building is Sold to a Qualified Nonprofit or a Purchaser, as
13 applicable. If the Seller elects to not Sell the Building, the Seller shall provide each Qualified
14 Nonprofit with written notice that the Seller no longer has intent to Sell the Building, but the Seller
15 shall continue to comply with this Chapter 41B before the Sale of the Building.

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17 (e) **Additional Disclosures.** If, no later than 11:59 p.m. on the fifth full calendar
18 day after a Seller has notified each Qualified Nonprofit of its intent to Sell a Multi-Family
19 Residential Building, any Qualified Nonprofit has, consistent with subsection (d), notified the
20 Seller that the Qualified Nonprofit wishes to further consider whether to make an offer to
21 Purchase the Building, the Seller shall disclose to each such Qualified Nonprofit, via e-mail,
22 the following additional information regarding the Building: (1) the name or names of any tenant
23 or tenants in each rental unit ~~of the Building~~, as well as any available contact information for
24 each tenant, (2) the number of bedrooms and bathrooms in each rental unit, (3) each tenant's move-in
25 date, (4) base rent for each rental unit, (5) Building costs passed through to each tenant, if any, (6)

1 whether each tenant has a written lease or rental agreement, and (7) the annual expenses for the
2 Building, including, but not limited to, management, insurance, utilities, and maintenance.
3 Concurrently with the release of this additional information, the Seller shall provide to each tenant in
4 the Building an information sheet, prepared by the Agency, containing a brief overview of the
5 Community Opportunity to Purchase Act and the Agency's Small Sites Program.

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

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

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

22 (b) **Written Offer of Sale to Qualified Nonprofits; Terms and Conditions Set by**
23 **Market.** Except as provided in subsection (f), whenever the Seller of a Multi-Family
24 Residential Building receives from a Purchaser other than a Qualified Nonprofit an offer to
25 Purchase the Multi-Family Residential Building that the Seller wishes to accept, and whenever

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

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23 (d) **Time for Qualified Nonprofits to Accept Offer, Absent Prior Opportunity to**
24 **Exercise Right of First Offer.** Notwithstanding subsection (c), if Qualified Nonprofits have
25 not previously had an opportunity to exercise the right of first offer set forth in Section 41B.6

1 with respect to the Sale of a Multi-Family Residential Building (because, for example, the
2 Seller of the Building has received an unsolicited offer to Purchase the Building), each
3 Qualified Nonprofit shall notify the Seller and every other Qualified Nonprofit, via e-mail, of its
4 decision to accept or reject the Seller’s offer of Sale no later than 11:59 p.m. on the 30th full
5 calendar day after the Seller has, pursuant to subsection (b), notified the Qualified Nonprofit of
6 its intent to Sell a Multi-Family Residential Building. The Seller shall provide to each Qualified
7 Nonprofit, via e-mail, the terms and conditions of such offer of Sale and the disclosures required by
8 Section 41B.6(c), Section 41B.6(e), and Section 41B.7(b). Upon request, the Seller shall exhibit the
9 Building to each Qualified Nonprofit that has expressed interest in the Building and cooperate with
10 efforts to inspect the condition of the Building. If, during this time period, any Qualified Nonprofit
11 decides to accept the Seller’s offer of Sale, that Qualified Nonprofit shall immediately notify
12 the Seller and every other Qualified Nonprofit of that decision, via e-mail. After a Qualified
13 Nonprofit notifies the Seller of its decision to accept the Seller’s offer of Sale, and
14 notwithstanding any defect in that Qualified Nonprofit’s notice to other Qualified Nonprofits,
15 that Qualified Nonprofit shall be deemed to have accepted the offer of Sale, and no other
16 Qualified Nonprofit may accept the Seller’s offer of Sale, whether or not the time period
17 described in this subsection (d) has elapsed.

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

21 Any Multi-Family Residential Building Purchased by a Qualified Nonprofit under the
22 first-right-to-purchase conferred by this Chapter 41B shall be maintained as rent-restricted
23 affordable housing in perpetuity. For purposes of this Section 41B.8~~subsection (b)~~, “rent-
24 restricted affordable housing” shall mean that the mean value of all rents paid by residential
25 tenants in the Building shall not exceed 80% of Area Median Income, and that the gross

1 household income of new tenants in the Building shall not exceed 120% of Area Median
2 Income. A Qualified Nonprofit may convert such Multi-Family Residential Building maintained as
3 rent-restricted affordable housing into a limited equity housing cooperative under Subdivision Code
4 Division 11, provided that such Qualified Nonprofit shall fully comply with the requirements of
5 Subdivision Code Division 11 and such Multi-Family Residential Building shall remain restricted as
6 affordable housing consistent with this Section in perpetuity under a new Notice of Special Restriction.
7 The Agency shall establish procedures to ensure that each Building acquired under this
8 Chapter is subject to a Notice of Special Restrictions that: (a) sets forth the manner in which
9 that Building shall be preserved as rent-restricted affordable housing, and (b) provides that no
10 existing residential tenants at the time of the Purchase or new residential tenants following the
11 Purchase may be evicted without just cause consistent with the substantive provisions of
12 Administrative Code Section 37.9(a).

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

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

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: /s/
4 KEITH NAGAYAMA
5 Deputy City Attorney
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