



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: FEBRUARY 14, 2019

RE: **Non-Profit Organizations' First Right of Refusal**
Case Number: **2019-001351CRV [Board File No. 181212]**
Initiated by: Supervisor Fewer / Introduced December 11, 2018
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BACKGROUND

The proposed legislation, introduced by Supervisor Sandra Lee Fewer, would amend the Administrative Code to give certain qualified non-profit organizations the first right of refusal to purchase multi-family rental properties or vacant lots in San Francisco. A previous version of the legislation included a reference to the Planning Commission, but the current version has removed that reference, as the proposal does not amend the Planning Code. Though the Planning Commission is not required to take official action on this item, it has been referred to the Planning Commission by the Clerk of the Board under pursuant to [Board Rule 3.23](#) which allows Planning 30 days to review Administrative Code amendments that are land use in nature. Staff is recommending the Commission pass a resolution in support of the ordinance, as it would implement one of the key recommendations of MAP2020 and is a valuable tool for preserving affordable housing and preventing displacement when rental buildings change ownership.

SUMMARY OF LEGISLATION

The concept of right-of-first-refusal is an often discussed but rarely implemented tool for preventing displacement and preserving affordable housing. Washington DC is one of the few large US cities with such a law, the Tenants Opportunity to Purchase Act (TOPA).¹ Similar legislation has been discussed or attempted in many other cities, for example in Somerville, MA, where an effort failed in March 2018.² This proposed legislation combines elements of a typical right-of-first-refusal law with the existing Small Sites program.

Confers right of first refusal to purchase multi-family rental buildings to qualified non-profit organizations

The legislation would create a new section in the Administrative Code giving 'Qualified Nonprofit' organizations (defined below) the right of first refusal on the sale of either of the following:

¹<https://ota.dc.gov/page/tenant-opportunity-purchase-act-topa>

²<http://www.cambridgeday.com/2018/03/06/order-for-right-of-first-purchase-refusal-dies-property-owners-called-idea-process-flawed/>

1. Any residential building containing three or more rental units
2. Any privately-owned vacant lot with the zoned potential for three or more units

Any time a property meeting the above qualifications is put up for sale, the legislation would require the seller to notify all Qualified Nonprofits of the intent to sell the property. Qualified Nonprofits would then have the following rights:

1. Right of first offer

Qualified Nonprofits would have five calendar days to respond as to whether they would like to make an offer on the building. The seller would be required to send Qualified Nonprofits who express interest within this time period information about current tenants in the building. After receiving this information, Qualified Nonprofits would have an additional 25 calendar days to make an offer to purchase the building. The seller free to accept or reject any offer made by a Qualified Nonprofit. If no Qualified Nonprofit makes an offer, or if the seller rejects any offer made by a Qualified Nonprofit, the seller may offer the building for sale to the general public.

2. Right of first refusal

If a seller receives an offer on a qualifying property from any purchaser other than a Qualified Nonprofit that they wish to accept, they must present that same offer, with the same terms and conditions, to all Qualified Nonprofits. Qualified Nonprofits would have five calendar days to accept or reject that offer.

Sellers of qualifying properties who do not notify the City and offer these rights to qualified non-profits would be subject to possible civil action.

Defines “qualified non-profit organization”

The legislation would create eligibility criteria for the types of organizations offered this first right of refusal, as follows:

1. Must be a bona-fide nonprofit, exempt from federal income tax under 23 U.S.C.501(c)(3);
2. Must be able to demonstrate a commitment to the provision of affordable housing for low- and moderate-income San Francisco residents, and the prevention of displacement of such residents;
3. Must be able to demonstrate a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
4. Must be able to demonstrate the capacity to effectively acquire and manage residential real property at multiple locations in San Francisco;
5. Within the previous three years, must have acquired or partnered with another nonprofit organization to acquire at least two residential buildings under MOHCD's Small Sites program.

Creates affordability requirements for units in buildings purchased under the program

Units in buildings purchased by qualified non-profits under this legislation would be subject to the following affordability requirements:

1. Any existing tenants in the building shall be permitted to retain their existing leasehold interest (i.e. the terms of their lease would remain the same)

2. Properties acquired under the program would have a Notice of Special Restrictions placed on the building requiring any units acquired be maintained as “rent-restricted affordable housing” in perpetuity. Similar to the Small Sites program, the mean value of all rents paid in the building shall not exceed 80% of AMI, and gross household income of new tenants in the building shall not exceed 120% of AMI.

RECOMMENDATION

The Department recommends that the Commission recommend *approval in concept of the proposed Ordinance* and adopt the attached Draft Resolution urging the Board of Supervisors to continue to refine the legislation in coordination with MOHCD, the Rent Board and implementing parties. The Draft Resolution urges the Board of Supervisors to consider any potential amendments which would increase the ordinance’s effectiveness.

BASIS FOR RECOMMENDATION

Aligns with Department Goals and Priorities

One of the key recommendations of the MAP2020 Action Plan is to create a right-of-first-refusal similar to the proposed legislation, to allow acquisition and preservation of rent-controlled units. Several other Planning Department projects, including the Community Stabilization Strategy and the Housing Affordability Strategies projects, have proposed exploring right-of-first-refusal to prevent displacement and preserve existing affordable homes.

Enables new opportunities to preserve existing affordable housing citywide

San Francisco’s housing affordability crisis will not be solved through any one program, but rather with a multi-pronged set of production, preservation and protection strategies. The proposed legislation would enable an additional strategy for acquiring and preserving affordable housing, though it would not create an additional funding source. The Department is in full support of creating as many strategies as possible, and urges the Board of Supervisors and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units.

IMPLEMENTATION

This ordinance does not appear to implicate the Planning Commission or department staff, and neither would be particularly involved in implementing the ordinance. As such, the Department does not hold expertise to recommend amendments to the ordinance which would result in optimal effectiveness and ease of implementation. For this reason, the Department recommends that the Commission recommend that the Board of Supervisors pursue further refinements of the legislation in coordination with MOHCD, the Rent Board and other implementing parties.

REQUIRED COMMISSION ACTION

This legislation proposes no amendments to the Planning Code, and therefore the Commission is not required to take any action on this item. Under the [Charter Section 4.105](#), the Planning Commission does have advisory responsibilities to the Board of Supervisors on land use and planning matters.

ENVIROMENTAL REVIEW

The proposed amendments to the Administrative Code are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a direct or indirect physical change in the environment.

PUBLIC COMMENT

As of the date of this memo, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

Exhibit A: Board File 181212

Exhibit B: Draft Planning Commission Resolution

1 [Administrative Code - Nonprofit Organizations' First-Right-to-Purchase Multi-Family
2 Residential Buildings]

3 **Ordinance amending the Administrative Code to confer upon certain nonprofit**
4 **organizations a first-right-to-purchase, consisting of both a right of first offer and a**
5 **right of first refusal, over all multi-family residential buildings (and related construction**
6 **sites and vacant lots) in the City, for the purpose of creating and preserving rent-**
7 **restricted affordable rental housing; establishing related procedures for the selection**
8 **of such nonprofits, preservation of rent-restricted affordable housing, and**
9 **implementation and enforcement; and affirming the Planning Department's**
10 **determination under the California Environmental Quality 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.

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

17 Section 1.

18 The Planning Department has determined that the actions contemplated in this
19 ordinance comply with the California Environmental Quality Act (California Public Resources
20 Code Sections 21000 et seq., "CEQA"). This determination is on file with the Clerk of the
21 Board of Supervisors in File No. 181212 and is incorporated herein by reference. The Board
22 affirms this determination.

23 Section 2. The Administrative Code is amended by adding Chapter 41B, consisting of
24 Sections 41B.1 through 41B.14, to read as follows:

25

1 **CHAPTER 41B: COMMUNITY OPPORTUNITY TO PURCHASE ACT**

2
3 **SEC. 41B.1. FINDINGS AND PURPOSE.**

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

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

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

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

19 (e) The purpose of this Chapter 41B (which may be referred to as the “Community
20 Opportunity to Purchase Act”) is to enhance nonprofit organizations’ ability to purchase multi-family
21 residential buildings, at market prices, within a reasonable period of time, and to thereby promote the
22 creation and preservation of affordable rental housing.

23
24 **SEC. 41B.2. DEFINITIONS.**

25 For purposes of this Chapter 41B, the following definitions apply:

1 “Agency” means the Mayor’s Office of Housing and Community Development, or any
2 successor agency, department, or office.

3 “Area Median Income” means the Unadjusted Area Median Income published by the U.S.
4 Department of Housing and Urban Development for the geographic area that includes the City.

5 “City” means the City and County of San Francisco.

6 “Fee Interest” means ownership of real property in fee simple absolute.

7 “Multi-Family Residential Building,” or “Building,” means any privately-owned real property
8 in San Francisco improved with three or more residential rental units (whether or not the property also
9 includes non-residential uses), any privately-owned real property on which three or more residential
10 units are under construction, and any privately-owned vacant lot on which the Planning Code and
11 other applicable laws would permit the construction of three or more residential rental units.

12 “Purchase of a Multi-Family Residential Building,” or “Purchase,” means to acquire any
13 interest that is transferred pursuant to the Sale of a Multi-Family Residential Building.

14 “Purchaser” means the individual, individuals, entity, or entities engaged, or seeking to
15 engage, in the Purchase of a Multi-Family Residential Building.

16 “Sale of a Multi-Family Residential Building,” or “Sale,” is defined in Section 41B.3.

17 “Sell” means to engage in the Sale of a Multi-Family Residential Building.

18 “Seller” means the individual, individuals, entity, or entities engaged, or seeking to engage, in
19 the Sale of a Multi-Family Residential Building.

20 “Qualified Nonprofit” is defined in Section 41B.4(a).

21
22 **SEC. 41B.3. “SALE OF A MULTI-FAMILY RESIDENTIAL BUILDING” DEFINED.**

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

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

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

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

15 (b) **Multiple Owners.** For purposes of this Section 41B.3, in any instance in which multiple
16 entities (whether those entities are natural persons, trusts, corporate entities, partnerships, or any other
17 kind of entity, or any combination of different kinds of entities) hold interests in a Multi-Family
18 Residential Building, the transfer of multiple interests by or in those entities shall be considered the
19 transfer of a single interest, if the transfers are made in connection with substantially the same
20 transaction or set of transactions.

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

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

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

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

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

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

14
15 **SEC. 41B.4. QUALIFIED NONPROFITS.**

16 (a) Annual Selection of Qualified Nonprofits. The Agency shall establish a process for
17 certifying, on an annual basis, nonprofit organizations that meet the following criteria:

18 (1) The organization is a bona fide nonprofit, as evidenced by the fact that it is
19 exempt from federal income tax under 26 U.S.C. § 501(c)(3);

20 (2) The organization has demonstrated a commitment to the provision of affordable
21 housing for low- and moderate-income City residents, and to preventing the displacement of such
22 residents;

23 (3) The organization has demonstrated a commitment to community engagement, as
24 evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;

1 (4) The organization has demonstrated the capacity (including, but not limited to,
2 the legal and financial capacity) to effectively acquire and manage residential real property at multiple
3 locations in the City; and

4 (5) The organization has, within the previous three years, acquired or partnered
5 with another nonprofit organization to acquire at least two residential buildings under a “Small Sites”
6 program operated by the Agency consistent with Section 415.5(f)(2)(A) of the Planning Code, or under
7 this Chapter 41B.

8 Nonprofit organizations that the Agency certifies as having met these criteria shall be known as
9 “Qualified Nonprofits.” An organization’s certification as a Qualified Nonprofit shall be valid for a
10 period not to exceed one year, but the Agency shall solicit new applications for Qualified Nonprofit
11 status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to
12 apply for renewed certification as Qualified Nonprofits. In the absence of new information raising
13 doubts about whether the organization qualifies as a Qualified Nonprofit, an existing Qualified
14 Nonprofit’s application for renewed certification as a Qualified Nonprofit shall be routinely and swiftly
15 granted.

16 **(b) Existence and Publication of Qualified Nonprofits List.** The Agency shall publish on
17 its website, and make available upon request, a list of Qualified Nonprofits. In addition to such other
18 information as the Agency may include, this list shall include contact information for each Qualified
19 Nonprofit. This contact information shall include, but need not be limited to, a mailing address, an e-
20 mail address that the Qualified Nonprofit monitors regularly, and a telephone number.

21 **(c) Disqualification of Qualified Nonprofits.** The Agency shall promptly investigate any
22 complaint alleging that a Qualified Nonprofit has failed to comply with this Chapter 41B. If, after
23 providing the Qualified Nonprofit with notice and opportunity to be heard, the Agency determines that
24 a nonprofit organization listed as a Qualified Nonprofit has failed to comply with this Chapter, the
25 Agency may suspend or revoke that nonprofit organization’s certification as a Qualified Nonprofit.

1
2 **SEC. 41B.5. GENERAL PROVISIONS.**

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

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

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

19
20 **SEC. 41B.6. RIGHT OF FIRST OFFER.**

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

1 **(b) Opportunity for Qualified Nonprofits to Submit Offers.** *Before the Seller of a Multi-*
2 *Family Residential Building may offer that Building for Sale to any Purchaser other than a Qualified*
3 *Nonprofit, or otherwise solicit any offer to Purchase that Building from any Purchaser other than a*
4 *Qualified Nonprofit, the Seller shall notify each Qualified Nonprofit, via e-mail, of its intent to Sell the*
5 *Building, and shall provide each Qualified Nonprofit with an opportunity to make an offer to Purchase*
6 *the Building as set forth in subsections (d)–(f). The Seller shall submit this notification on the same*
7 *calendar day and, to the extent possible, at the same time, to each of the e-mail addresses included on*
8 *the Agency’s list of Qualified Nonprofits pursuant to Section 41B.4(b).*

9 **(c) Related Disclosures.** *When the Seller, pursuant to subsection (b), notifies each*
10 *Qualified Nonprofit, via e-mail, of its intent to sell a Multi-Family Residential Building, the Seller shall*
11 *also provide each Qualified Nonprofit with the following information:*

- 12 **(1) The number of rental units in the Building;**
- 13 **(2) The address or location of each rental unit; and**
- 14 **(3) The rate of rent due for each unit.**

15 **(d) Time for Qualified Nonprofits to Express Interest.** *No later than 11:59 p.m. on the fifth*
16 *full calendar day after a Seller has, pursuant to subsection (b), notified a Qualified Nonprofit, via e-*
17 *mail, of its intent to Sell a Multi-Family Residential Building, that Qualified Nonprofit shall notify the*
18 *Seller and every other Qualified Nonprofit, via e-mail, as to whether or not that Qualified Nonprofit*
19 *wishes to further consider whether to make an offer to Purchase the Building. If, after 11:59 p.m. on*
20 *the fifth full calendar day after a Seller has notified each Qualified Nonprofit of its intent to Sell the*
21 *Building, no Qualified Nonprofit has so notified the Seller, the Seller may immediately proceed to offer*
22 *the Building for Sale to, and to solicit offers of Purchase from, prospective Purchasers other than*
23 *Qualified Nonprofits, subject to the right of first refusal set forth in Section 41B.7. If, at or before*
24 *11:59 p.m. on the fifth full calendar day after a Seller has notified each Qualified Nonprofit of its intent*
25 *to Sell the Building, each Qualified Nonprofit has notified the Seller that the Qualified Nonprofit does*

1 not wish to further consider whether to make an offer to Purchase the Building, the Seller may likewise
2 immediately offer the Building for Sale to, and solicit offers of Purchase from, prospective Purchasers
3 other than Qualified Nonprofits, subject to the right of first refusal set forth in Section 41B.7.

4 (e) **Additional Disclosures.** If, no later than 11:59 p.m. on the fifth full calendar day after a
5 Seller has notified a Qualified Nonprofit of its intent to Sell a Multi-Family Residential Building, the
6 Qualified Nonprofit has, consistent with subsection (d), notified the Seller that the Qualified Nonprofit
7 wishes to further consider whether to make an offer to Purchase the Building, the Seller shall disclose
8 to the Qualified Nonprofit, via e-mail, the name or names of any tenant or tenants in each rental unit of
9 the Building, as well as any available contact information for each tenant.

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

16 (g) **Seller Free to Accept or Reject Offer.** The Seller is free to accept or reject any offer of
17 Purchase submitted by a Qualified Nonprofit under subsection (e). Any such acceptance or rejection
18 shall be communicated in writing. If the Seller rejects all such offers of Purchase, or if the 25-day
19 period described in subsection (e) has elapsed and no Qualified Nonprofit has submitted an offer of
20 Purchase, the Seller may immediately offer the Building for Sale to, and solicit offers of Purchase from,
21 prospective Purchasers other than Qualified Nonprofits, subject to the right of first refusal set forth in
22 Section 41B.7.

23 (h) **Seller's Acceptance of Offer.** If the Seller accepts an offer of Purchase submitted by a
24 Qualified Nonprofit, the Qualified Nonprofit shall have 60 days to conduct due diligence and secure
25 financing related to the Purchase, unless the Seller and the Qualified Nonprofit have expressly agreed

1 otherwise in writing. At the end of this 60-day period (or any other period to which the Seller and the
2 Qualified Nonprofit have expressly agreed in writing), the Seller shall proceed to Sell the Multi-Family
3 Residential Building to the Qualified Nonprofit in a manner consistent with the Qualified Nonprofit's
4 offer of Purchase.

5
6 **SEC. 41B.7. RIGHT OF FIRST REFUSAL.**

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

11 **(b) Written Offer of Sale to Qualified Nonprofits; Terms and Conditions Set by Market.**
12 Except as provided in subsection (f), whenever the Seller of a Multi-Family Residential Building
13 receives from a Purchaser other than a Qualified Nonprofit an offer to Purchase the Multi-Family
14 Residential Building that the Seller wishes to accept, and whenever the Seller of a Multi-Family
15 Residential Building makes an offer to Sell the Multi-Family Residential Building that a Purchaser
16 other than a Qualified Nonprofit expresses a desire to accept, the Seller shall, before any such offer of
17 Purchase or Sale may be accepted, offer to Sell the Building to each Qualified Nonprofit. This offer of
18 Sale to Qualified Nonprofits shall contain the same terms and conditions (including, but not limited to,
19 price) as the offer of Purchase previously received by the Seller which the Seller wishes to accept or the
20 offer of Sale previously made by the Seller which a Purchaser has expressed a desire to accept, except
21 that the terms and conditions in the offer of Sale to Qualified Nonprofits shall not be inconsistent with
22 the applicable timeframe described in subsection (c) or (d). The offer of Sale to Qualified Nonprofits
23 shall be submitted in writing, on the same calendar day (and, to the extent possible, at the same time),
24 to each of the e-mail included on the Agency's list of Qualified Nonprofits. If the Seller has not
25

1 previously made the disclosures set forth in Section 41B.6(c) and Section 41B.6(e) with respect to the
2 Multi-Family Residential Building, the Seller shall include those disclosures with the offer of Sale.

3 **(c) Time for Qualified Nonprofits to Accept Offer, in General.** Except as provided in
4 subsection (d), no later than 11:59 p.m. on the fifth full calendar day after a Seller has submitted an
5 offer of Sale to a Qualified Nonprofit via e-mail, that Qualified Nonprofit shall notify the Seller and
6 every other Qualified Nonprofit, via e-mail, of its decision to accept or reject the Seller's offer of Sale.
7 If, during this time period, any Qualified Nonprofit decides to accept the Seller's offer of Sale, that
8 Qualified Nonprofit shall immediately notify the Seller and every other Qualified Nonprofit of that
9 decision, via e-mail. After a Qualified Nonprofit notifies the Seller of its decision to accept the Seller's
10 offer of Sale, and notwithstanding any defect in that Qualified Nonprofit's notice to other Qualified
11 Nonprofits, that Qualified Nonprofit shall be deemed to have accepted the offer of Sale, and no other
12 Qualified Nonprofit may accept the Seller's offer of Sale, whether or not the time period described in
13 this subsection (c) has elapsed.

14 **(d) Time for Qualified Nonprofits to Accept Offer, Absent Prior Opportunity to Exercise**
15 **Right of First Offer.** Notwithstanding subsection (c), if Qualified Nonprofits have not previously had
16 an opportunity to exercise the right of first offer set forth in Section 41B.6 with respect to the Sale of a
17 Multi-Family Residential Building (because, for example, the Seller of the Building has received an
18 unsolicited offer to Purchase the Building), each Qualified Nonprofit shall notify the Seller and every
19 other Qualified Nonprofit, via e-mail, of its decision to accept or reject the Seller's offer of Sale no
20 later than 11:59 p.m. on the 30th full calendar day after the Seller has, pursuant to subsection (b),
21 notified the Qualified Nonprofit of its intent to Sell a Multi-Family Residential Building. If, during this
22 time period, any Qualified Nonprofit decides to accept the Seller's offer of Sale, that Qualified
23 Nonprofit shall immediately notify the Seller and every other Qualified Nonprofit of that decision, via
24 e-mail. After a Qualified Nonprofit notifies the Seller of its decision to accept the Seller's offer of Sale,
25 and notwithstanding any defect in that Qualified Nonprofit's notice to other Qualified Nonprofits, that

1 Qualified Nonprofit shall be deemed to have accepted the offer of Sale, and no other Qualified
2 Nonprofit may accept the Seller's offer of Sale, whether or not the time period described in this
3 subsection (d) has elapsed.

4 (e) **Qualified Nonprofit's Acceptance of Offer.** If, in accordance with subsection (c) or (d),
5 as applicable, a Qualified Nonprofit notifies the Seller that the Qualified Nonprofit has decided to
6 accept the Seller's offer of Sale, the Seller shall proceed to Sell the Multi-Family Residential Building
7 to that Qualified Nonprofit in a manner consistent with the offer of Sale. A Qualified Nonprofit that so
8 notifies the Seller (that is, before any other Qualified Nonprofit so notifies the Seller) shall be obliged
9 to Purchase the Multi-Family Residential Building in a manner consistent with the offer of Sale.

10 (f) **Qualified Nonprofits' Rejection of Offer.** If, at or before the deadline set forth in
11 subsection (c) or (d), as applicable, each Qualified Nonprofit has notified the Seller that it does not
12 wish to accept the Seller's offer of Sale, the Seller may immediately proceed with the Sale of the Multi-
13 Family Residential Building, consistent with the offer of Purchase or offer of Sale that the Seller
14 previously received from, or made to, a Purchaser other than a Qualified Nonprofit, as described in
15 subsection (b). If, after the deadline set forth in subsection (c) or (d), as applicable, no Qualified
16 Nonprofit has notified the Seller that it has decided to accept the Seller's offer of Sale, the Seller may
17 likewise immediately proceed with the Sale of the Multi-Family Residential Building, consistent with
18 such offer of Purchase or offer of Sale. If, however, the Seller does not proceed with the Sale of the
19 Building in a manner consistent with such offer of Purchase or offer of Sale, and instead receives from
20 a Purchaser other than a Qualified Nonprofit a materially different offer to Purchase the Multi-Family
21 Residential Building that the Seller wishes to accept, or makes a materially different offer to Sell the
22 Multi-Family Residential Building that a Purchaser other than a Qualified Nonprofit expresses a desire
23 to accept, that materially different offer of Purchase or offer of Sale shall be considered a new offer of
24 Purchase or offer of Sale for purposes of subsection (b).

1 (g) Conditional Third-Party Sales Agreements Permitted. *If, as described in subsection*
2 *(b), the Seller of a Multi-Family Residential Building receives from a Purchaser other than a Qualified*
3 *Nonprofit an offer to Purchase the Multi-Family Residential Building that the Seller wishes to accept,*
4 *or if the Seller of a Multi-Family Residential Building makes an offer to Sell the Multi-Family*
5 *Residential Building that a Purchaser other than a Qualified Nonprofit expresses a desire to accept,*
6 *that offer of Sale or offer of Purchase may be accepted subject to the contingency that no Qualified*
7 *Nonprofit exercises the right of first refusal conferred by this Section 41B.7. In such a circumstance,*
8 *the Seller and the Purchaser shall each expressly acknowledge, in writing, that the Purchaser’s*
9 *Purchase of the Multi-Family Building will not occur if a Qualified Nonprofit exercises the right of first*
10 *refusal conferred by this Section.*

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

13 (a) Existing Tenants Protected. *Following the Purchase of a Multi-Family Residential*
14 *Building by a Qualified Nonprofit under the first right to purchase conferred by this Chapter 41B, each*
15 *existing residential tenant in the Building shall be permitted to retain that tenant’s existing leasehold*
16 *interest according to the terms (including, but not limited to, duration) of that tenant’s existing lease.*

17 (b) Affordable Housing Preserved. *Any Multi-Family Residential Building Purchased by a*
18 *Qualified Nonprofit under the first-right-to-purchase conferred by this Chapter 41B shall be*
19 *maintained as rent-restricted affordable housing in perpetuity. For purposes of this subsection (b),*
20 *“rent-restricted affordable housing” shall mean that the mean value of all rents paid by residential*
21 *tenants in the Building shall not exceed 80% of Area Median Income, and that the gross household*
22 *income of new tenants in the Building shall not exceed 120% of Area Median Income. The Agency*
23 *shall establish procedures to ensure that each Building acquired under this Chapter is subject to a*
24 *Notice of Special Restrictions setting forth the manner in which that Building shall be preserved as*
25 *rent-restricted affordable housing.*

1
2 **SEC. 41B.9. INCENTIVES.**

3 **(a) Access to Buyers.** *The Agency shall endeavor to maintain and publicize the list of*
4 *Qualified Nonprofits described in Section 41B.4 in a manner that, to the maximum extent feasible,*
5 *promotes the existence of the Qualified Nonprofits as a readily accessible pool of potential buyers for*
6 *Multi-Family Residential Buildings. The Agency shall, to the maximum extent permitted by law and*
7 *otherwise feasible, publicize the existence of this list in a manner intended to facilitate voluntary sales*
8 *to Qualified Nonprofits in a manner that avoids or minimizes the need for a broker, other search costs,*
9 *or other transaction costs.*

10 **(b) Partial City Transfer-Tax Exemption.** *The Board of Supervisors may, by ordinance,*
11 *provide that a Qualified Nonprofit's Purchase of a Multi-Family Residential Building under the right of*
12 *first offer set forth in Section 41B.6 is exempt from the increased rate of tax imposed by Business and*
13 *Tax Regulations Code Section 1102(d)–(f), to the extent permitted by, and in a manner consistent with,*
14 *Section 1102.*

15 **(c) Potential Federal Tax Benefits.** *Any Qualified Nonprofit that Purchases a Multi-*
16 *Family Residential Building under the right of first offer set forth in Section 41B.6 shall, to the*
17 *maximum extent permitted by law and otherwise feasible, be obliged to work with the Seller in good*
18 *faith to facilitate an exchange of real property of the kind described in 26 U.S.C. § 1031, for the*
19 *purpose of facilitating the Seller's realization of any federal tax benefits available under that section of*
20 *the Internal Revenue Code.*

21 **(d) Information to Sellers.** *The Agency shall produce an information sheet describing the*
22 *benefits of a Seller's decision to accept a Qualified Nonprofit's offer of Purchase made in connection*
23 *with the right of first offer set forth in Section 41B.6. The information sheet shall further explain that,*
24 *even if a Seller does not accept a Qualified Nonprofit's offer to Purchase a Multi-Family Residential*
25 *Building pursuant to the right of first offer set forth in Section 41B.6, the Building will still be subject to*

1 the right of first refusal set forth in Section 41B.7. The information sheet shall contain a field in which
2 the Seller may acknowledge, in writing, that the Seller (or the Seller's authorized representative) has
3 read and understood the information sheet. A Qualified Nonprofit that makes an offer to Purchase a
4 Multi-Family Residential Building under the right of first offer set forth in Section 41B.6 shall include a
5 copy of, or link to, this information sheet with that offer of Purchase, but any failure to comply with this
6 Section 41B.9(d) shall have no effect on a Qualified Nonprofit's exercise of the right of first offer set
7 forth in Section 41B.6.

8
9 **SEC. 41B.10. ENFORCEMENT.**

10 **(a) Seller Certification.** Every Seller of a Multi-Family Residential Building in the City
11 shall, within 15 days of the Sale of that Building, submit to the Agency a signed declaration, under
12 penalty of perjury, affirming that the Sale of that Building substantially complied with the requirements
13 of this Chapter 41B. Each such declaration shall include the address of the relevant Building; the
14 Agency shall publish all such addresses on its website at least once per week. Failure to file the
15 declaration required by this subsection (a) shall be an infraction punishable to the maximum extent
16 provided by Section 36900(b) of the California Government Code.

17 **(b) Civil Action.** In the event that a Seller Sells a Multi-Family Residential Building without
18 substantially complying with the requirements of this Chapter 41B, a Qualified Nonprofit may institute
19 a civil action, in a court of competent jurisdiction, to remedy that violation of this Chapter, in a manner
20 consistent with subsections (c) and (d).

21 **(c) Remedies.** Remedies in a civil action brought under this Section 41B.10 shall include,
22 but need not be limited to, the following, which may be imposed cumulatively:

23 **(1) Damages in an amount sufficient to remedy the harm to the Qualified Nonprofit.**
24 There shall be a rebuttable presumption that this amount is equal to the difference between the price of
25 the relevant Multi-Family Residential Building at the time of the Sale made in violation of this Chapter

1 41B, and the price for which the Qualified Nonprofit could purchase that Multi-Family Residential
2 Building at the time when damages are awarded;

3 (2) If the Seller's violation of this Chapter was knowing or willful, mandatory civil
4 penalties in an amount proportional to the culpability of the Seller and the value of the relevant Multi-
5 Family Residential Building. There shall be a rebuttable presumption that this amount is equal to 10%
6 of the Sale price of the Multi-Family Residential Building for a first willful or knowing violation of this
7 Chapter, 20% of the Sale price for a second willful or knowing violation, and 30% of the Sale price for
8 each subsequent willful or knowing violation. Civil penalties assessed under this subsection (b)(2)
9 shall be payable to the Citywide Affordable Housing Fund established by Section 10.100-49 of the
10 Administrative Code;

11 (3) Reasonable attorneys' fees; and

12 (4) Such other remedies as might be available under State law, except to the extent
13 that any such remedies would be inconsistent with subsection (d).

14 (d) **Limitation on Remedies.** Any remedy imposed in a civil action under this Section
15 41B.10 shall be imposed only against the Seller or a party that has willfully colluded with the Seller to
16 violate this Chapter 41B. In no event shall any such remedy deprive the Purchaser of a Multi-Family
17 Residential Building of any interest in that Multi-Family Residential Building, or otherwise affect any
18 property interest held by the Purchaser, unless the Purchaser willfully colluded with the Seller to
19 violate this Chapter.

20 **SEC. 41B.11. IMPLEMENTATION.**

21 The Agency shall have the power to interpret and implement this Chapter 41B. The Agency
22 shall, within 90 days of the effective date of this Chapter, promulgate appropriate rules or regulations
23 interpreting and implementing this Chapter, including the establishment of procedures to implement
24 this Chapter, in a manner that the Agency deems most appropriate. The Agency may thereafter revise
25 those rules or regulations from time to time.

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SEC. 41B.12. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Chapter 41B, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SEC. 41B.13. CONSTRUCTION WITH OTHER LAWS.

Nothing in this Chapter 41B shall be construed to conflict with any State or Federal law, or with any provision of the Charter.

SEC. 41B.14. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 41B, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3

4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 MATTHEW LEE
8 Deputy City Attorney

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SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution HEARING DATE FEBRUARY 14, 2019

Project Name: Non-Profit Organizations' First Right of Refusal
Case Number: 2019-001351CRV [Board File No. 181212]
Initiated by: Supervisor Fewer / Introduced December 11, 2018
Staff Contact: Paolo Ikezoe, Citywide Division
paolo.ikezoe@sfgov.org, 415-575-9137
Reviewed by: Miriam Chion, Manager of Housing and Community Development
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RESOLUTION RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND 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 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; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND MAKING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on December 11, 2018 Supervisor Fewer introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 181212, which would amend 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 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

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 14, 2019; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act CEQA Guidelines Section 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; now therefore be it

RESOLVED, that the Planning Commission hereby adopts the following findings and recommends the Board of Supervisors **approve** the proposed ordinance.

The Planning Commission hereby adopts the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission finds that the proposed ordinance aligns with the Planning Department's goals and priorities. It implements one of the key recommendations of the MAP2020 Action Plan is to create a right-of-first-refusal similar to the proposed legislation, to allow acquisition and preservation of rent-controlled units. Several other Planning Department projects, including the Community Stabilization Strategy and the Housing Affordability Strategies projects, have proposed exploring right-of-first-refusal to prevent displacement and preserve existing affordable homes.
2. The Commission finds that San Francisco's housing affordability crisis will not be solved through any one program, but rather with a multi-pronged set of production, preservation and protection strategies. The proposed legislation would enable an additional strategy for acquiring and preserving affordable housing, though it would not create an additional funding source. The Department is in full support of creating as many strategies as possible, and urges the Board of Supervisors and other implementing agencies to ensure the ordinance results in a strategy that preserves the maximum number of units.
3. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

Policy 2.4

Promote improvements and continued maintenance to existing units to ensure long term habitation and safety.

OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

Policy 3.1

Preserve rental units, especially rent controlled units, to meet the City's affordable housing needs.

Policy 3.2

Promote voluntary housing acquisition and rehabilitation to protect affordability for existing occupants.

OBJECTIVE 4

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

Policy 4.5

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.6

Acquire and rehabilitate existing housing to maximize effective use of affordable housing resources.

OBJECTIVE 8

BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

Policy 8.1

Support the production and management of permanently affordable housing.

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character. The proposed Ordinance would enable the preservation of existing affordable rental units, and would contribute towards maintaining the economic diversity of our neighborhoods.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would increase the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

AND THEREFORE BE IT FURTHER RESOLVED that the Commission hereby recommends the Board of Supervisors APPROVE the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 14, 2019.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: February 14, 2019