



Sophie Hahn  
Councilmember District 5

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** September 30, 2024

**Item Number:** 1

**Item Description:** **Adopt Berkeley Municipal Code Chapter 13.89:  
Community/Tenant Opportunity to Purchase Act**

**Submitted by:** **Councilmember Sophie Hahn**

Placing San Francisco's "COPA" (Community Opportunity to Purchase Act) in the record for informational purposes.



**London N. Breed**  
Mayor

**Eric D. Shaw**  
Director

## **COMMUNITY OPPORTUNITY TO PURCHASE ACT (COPA) PROGRAM RULES**

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San Francisco Administrative Code Chapter 41B (the “**Community Opportunity to Purchase Act**” or “**COPA**”) confers on certain qualified nonprofit organizations a first right to purchase Multi-Family Residential Buildings (“**Building**”) for Sale in the City through a **Right of First Offer** (as described in Section 41B.6), and a **Right of First Refusal** (as described in Section 41B.7) for the purpose of creating and/or preserving affordable rental housing. Section 41B.11 charges the Mayor’s Office of Housing and Community Development (“**MOHCD**” or “**Agency**”) with authority to interpret and implement COPA, and specifically with promulgating any appropriate Rules for the implementation of COPA. MOHCD accordingly adopts these Program Rules (“**Rules**”). All section references are to COPA unless specifically set forth under these Rules.

COPA became effective on June 3, 2019, and was subsequently amended under Ordinance 228-20 on November 13, 2020.

Date: October 21, 2021.

### **I. DEFINITIONS**

**A. Defined Terms.** Capitalized terms not otherwise defined under these Rules will have the same meanings set forth under Sections 41B.2 and 41B.3. Definitions set forth herein are meant to complement and clarify terms used in Chapter 41B.

**B. Definition of Building.** The definition for “Multi-Residential Building” or “Building” as defined in Chapter 41B must be read in accordance with the following:

**1. Transfers of Interest in Building with Multiple Owners.** The sale of a Building that has multiple owners will be considered a transfer of a single interest of the Building if the transfer by each owner is made in connection with substantially the same transaction or set of transactions related to the sale of the entire Building. However, the sale of an individual property interest in a Building, such as that of one partial owner in a tenancy in common (regardless of percentage ownership), will not be considered a Building sale if such transfer or sale is not substantially connected with the transaction or set of transactions for sale of all property interests in the Building.

**2. Residential Unit Count.** An unlawful residential unit (i.e. does not conform to legal requirements, such as Building Code standards or permit provisions) will not count toward

the minimum unit count of three (3) or more residential rental units for the purposes of defining a Building covered by COPA. For example, a building with three residential units, but one unit was constructed without permits required by the City, will not be considered a Building under COPA.

**3. Vacant Lot.** The Seller of a vacant lot must comply with COPA if the San Francisco Planning Code and other City laws, including zoning requirements, permits the use as residential and would allow the development of at least three residential units (i.e. by right). For example, a Seller would not need to comply with COPA if a Buyer would need to obtain a variance or conditional use approval to develop 3 units or more on the vacant lot. This section does not apply to any property that is not vacant.

**4. Third Party Agents.** A Seller or Qualified Nonprofit may authorize a third-party agent to act on its behalf, as permitted by law.

## II. QUALIFIED NONPROFIT ORGANIZATIONS

**A. Certification Process.** To certify a nonprofit organization to exercise a Right of First Offer and/or a Right of First Refusal under COPA, MOHCD will review the prospective nonprofit organization's qualifications according to the criteria in Section 41B.4(a). MOHCD will solicit applications to become certified as a Qualified Nonprofit (the "**Application**") at least once each calendar year, at which time existing Qualified Nonprofits whose certification has expired will be allowed to apply for renewed certification. A Qualified Nonprofit's certification will be valid for three (3) years. Assuming there is no information raising doubts about an existing nonprofit organization's entitlement to certification as a Qualified Nonprofit, a MOHCD will routinely and swiftly approve the renewal. MOHCD will publish advance notice of the Application and related process on its website.

**B. Application.** Prospective nonprofit organizations must submit an Application for certification in the form and manner prescribed by MOHCD and publicly available on its website, accompanied by the following information and documentation:

- 1) A copy of a letter from the Department of Treasury Internal Revenue Service that confirms its tax-exempt status under 26 U.S.C. § 501(c)(3);
- 2) A profile describing: (1) mission, length of existence, staff experience, and characteristics of its Board of Directors, (2) any changes in activities, budget, and, if applicable, accreditation and licensing, and (3) its commitment to affordable housing and anti-displacement efforts;
- 3) Evidence of relationships with neighborhood-based organizations and/or tenant counseling programs, and a list of at least (3) neighborhood-based or tenant counseling organizations with which the applicant has collaborated on anti-displacement work in the City, giving adequate role descriptions and specific examples of collaboration for each;
- 4) Narrative describing the applicant's experience with, and capacity, including but not limited to financial and legal capacity, to effectively acquire and manage any Multi-Family Residential Building in the City; and
- 5) Documentation demonstrating that the applicant has acquired, or partnered with another housing development organization to acquire, at least two (2) residential buildings within the last five (5) years that have received funding from MOHCD.

**C. Publication.** MOHCD will publish on its website, and make available upon request, a list of Qualified Nonprofits with the following contact information it has on file for each:

1. A mailing address,
2. An e-mail address that the Qualified Nonprofit monitors regularly, and
3. A telephone number.

Qualified Nonprofits must update MOHCD regarding changes in their contact information.

### III. GENERAL REQUIREMENTS.

A. **Effective Date.** The effective date of COPA is June 3, 2019 (“**Effective Date**”).

B. **Commencement of Rights and Obligations.** Neither COPA nor these Rules will be construed to impair any contract, including any amendments or extensions to such contract, or affect any property interest held by anyone other than the Seller of a Building (including, but not limited to, any interest held under a mortgage, deed of trust, or other security interest; any option to purchase; or any right of first offer or right of first refusal), in existence before the Effective Date. Qualified Nonprofits may exercise their rights under COPA commencing on **September 3, 2019** (the “**Commencement Date**”). A Seller that has executed a written and binding purchase and sale agreement for a Building with a Purchaser that is not a Qualified Nonprofit (“Third Party Purchaser”) prior to the Commencement Date will not be required to comply with COPA; provided however, if such purchase and sale agreement is terminated and/or expires after the Commencement Date, such Seller will be required to comply with COPA prior to offering the Building for Sale. A Seller that has offered or listed its Building for Sale but has not executed a purchase and sale agreement prior to the Commencement Date, must upon the Commencement Date comply with the Right of First Refusal required by COPA and described herein. Upon request, the Seller will exhibit the Building to each Qualified Nonprofit that has expressed interest in the Building and cooperate with efforts to inspect the condition of the Building.

C. **Confidential Information.** Nothing under COPA permits or requires the disclosure of information where such disclosure is otherwise prohibited by law. In addition, a Qualified Nonprofit and a Seller each have an independent obligation to comply with all federal and state laws regarding personal identifying information. With the exception of the notice to Sell a Building under Section 41B.6(c), a Qualified Nonprofit will maintain any information obtained from a Seller under COPA, including, but not limited to, disclosures made under Section 41B.6(c) and (e), and terms and conditions of an offer of Sale made under Section 41B.7(b) as confidential to the extent required by law (collectively, “**Confidential Information**”), except that a Qualified Nonprofit may, if otherwise permitted by law, share such Confidential Information with other Qualified Nonprofits to facilitate Qualified Nonprofits’ exercise of the rights conferred by COPA.

D. **Assignability of Contractual Rights.** A Qualified Nonprofit who has entered into a purchase agreement with a Seller under COPA may only assign such purchase agreement to another Qualified Nonprofit.

### IV. RIGHT TO PURCHASE

A. **Right of First Offer.** COPA grants a Qualified Nonprofit a Right of First Offer with respect to any Building for Sale in the City. The exercise of the Right of First Offer, as well as the obligations of the Seller, will be consistent with the following:

1. **Seller’s Obligation to Provide Notice.** Before the Seller of a Building may allow any prospective Purchaser, other than a Qualified Nonprofit, to view that Building in person or physically inspect that Building, offer the Building for Sale to a prospective Purchaser other than a Qualified Nonprofit, the Seller will provide each Qualified Nonprofit with an opportunity to make an offer to Purchase the Building by providing a written notice via E-mail on the same calendar

day, and to the extent possible at the same time, to each e-mail address on MOHCD's list of Qualified Nonprofits (the "**Notice of Sale**"). That Notice of Sale must contain at least the following:

- (i) Seller's intent to sell the Building;
- (ii) The number of residential rental units in the Building;
- (iii) The address of each rental unit; and
- (v) The rate of rent due for each unit;

2. Time for Qualified Nonprofits to Express Interest. By no later than 11:59 PM on the fifth (5th) full calendar day after Seller has delivered a Notice of Sale, a Qualified Nonprofit may provide written notice via E-mail to the Seller to express that it wishes to further consider making an offer to Purchase the Building. If, upon expiration of the foregoing five-day deadline, no Qualified Nonprofit has provided written notice to the Seller that it wishes to further consider whether to make an offer to Purchase the Building, the Seller may immediately proceed to offer the Building for Sale to other Purchasers. If, within one year of providing the required Notice of Sale, and the Seller does not execute a written and binding purchase and sale agreement for the sale of a Building or complete the sale of Building, but still intends to Sell the Building, the Seller shall provide each Qualified Nonprofit with a new Notice of Sale indicating Seller's continued intent to Sell the Building, and at that time shall provide each Qualified Nonprofit with a new opportunity to Purchase the Building under this Chapter 41B. Every year thereafter, on the anniversary of the first required Notice of Sale, the Seller shall provide each Qualified Nonprofit with a new notification of the Seller's continued intent to Sell the Building, and at that time shall provide each Qualified Nonprofit with a new opportunity to make an offer to Purchase the Building, until the Building is Sold to a Qualified Nonprofit or a Purchaser, as applicable. If the Seller elects to not Sell the Building, the Seller shall provide each Qualified Nonprofit with written notice that the Seller no longer has intent to Sell the Building, but the Seller shall continue to comply with this Chapter 41B before the Sale of the Building

3. Additional Disclosures by Seller. Provided that a Qualified Nonprofit has timely expressed an interest in Purchasing the Building via E-mail, the Seller must additionally disclose to each such Qualified Nonprofit via E-mail the following:

- (i) Name(s) and any available contact information for any tenant(s) in each rental unit, as well as any available contact information for each tenant (however, see Section III(C) above);
- (ii) The number of beds and baths of each unit;
- (iii) The move-in dates of each tenant;
- (iv) Base rent for each rental unit;
- (v) Building costs passed through to each tenant, if any;
- (vi) Whether each tenant has a written lease or rental agreement; and
- (vii) The annual expenses for the Building, including, but not limited to, management, insurance, utilities, and maintenance (items (i) through (vii), collectively, "**Tenant Disclosures**")

Seller may also provide additional information about the Building in its discretion.

4. Offer by Qualified Nonprofit. Provided that a Qualified Nonprofit has timely expressed an interest in Purchasing the Building via E-mail, the Qualified Nonprofit may submit a written offer to the Seller within twenty-five (25) calendar days of receipt of the Tenant Disclosures. Upon receipt of an offer, the Seller may, in writing:

- (i) Reject any offer of Purchase submitted by a Qualified Nonprofit, and if the Seller rejects all such offers, the Seller may immediately offer the Building for Sale to

other Purchasers, subject to the Right of First Refusal set forth in Section 41B.7 and as described below; **OR**

- (ii) Accept an offer of Purchase submitted by a Qualified Nonprofit by executing a purchase and sale agreement, and the Qualified Nonprofit will have at a minimum sixty (60) days from receipt of the acceptance to conduct due diligence and secure financing related to the Purchase, unless otherwise expressly agreed upon in writing. Thereafter, the Seller and the Qualified Nonprofit will proceed with establishing a date to complete the transaction (i.e. closing date) pursuant to the terms and conditions of the parties' purchase and sale agreement.

**B. Right of First Refusal.** Section 41B.7 grants a Qualified Nonprofit a Right of First Refusal with respect to any Building, when a Qualified Nonprofit has previously:

- (i) timely exercised its Right of First Offer and submitted an offer to Purchase a Building pursuant to Section 41B.6 (as described above), **OR**
- (ii) not been given notice and opportunity to make an offer to Purchase a Building pursuant to Section 41B.6 (as described above).

Qualified Nonprofits that were notified of the Seller's original offer to Sell, but declined to express an interest or exercise their Right of First Offer pursuant to Section II, will not enjoy the Right of First Refusal. In accordance with Section 41B.7, a Seller's obligation and the exercise of the Right of First Refusal by a Qualified Nonprofit will consist of the following:

1. Notification by Seller of Offer to Sell to a Third-Party Purchaser; Disclosures. Whenever the Seller of a Building (a) receives from a Purchaser other than a Qualified Nonprofit ("**Third Party Purchaser**") an offer to Purchase that the Seller then wishes to accept, or (b) offers to Sell the Building on terms and conditions that a Third Party Purchaser has expressed a written desire to accept, the Seller must offer to Sell the Building on the same terms and conditions to any Qualified Nonprofit eligible for the Right of First Refusal. The Seller's offer of Sale must be submitted in writing, via E-mail, on the same calendar day (and, where possible, at the same time), to all Qualified Nonprofits entitled to the Right of First Refusal under Section 41B.7. The written offer should be in the form of a copy of the Third-Party Purchaser offer (with Third Party Purchaser information redacted). In addition, Seller will provide all Qualified Nonprofits entitled to the Right of First Refusal under Section 41B.7 with all disclosures provided from the Seller to the Third-Party Purchaser, and if Seller has not previously provided the disclosures required under Section 41B.6 within the past year of the offer to Sell the Building, Seller will provide such disclosures with the offer of Sale.

2. Terms and Conditions of the Offer; Material Changes. An offer of Sale to Qualified Nonprofits must contain the same terms and conditions as those described in the previous offer between the Seller and Third-Party Purchaser. These terms and conditions will include, but are not limited to, identical price, time frame to close the Sale, commission to the Purchaser's broker, and they should not be inconsistent with the timeframes described in Sections 41B.7(c) and (d). If, in proceeding to Sell to the original Third-Party Purchaser, the parties agree to material changes to the offer of Sale and/or the offer of Purchase, the offer is considered a new offer. The Seller must then present all Qualified Nonprofits with this new offer, and the Right of First Refusal process herein described is renewed. The material changes to a contract are unique to each transaction and will inevitably vary on a case by case basis. For the purpose of this section, "material changes" will generally mean changes to the significant terms of a contract that a Qualified Nonprofit justifiably relied on to make a decision to not accept a Seller's offer for a Building. As an example,

material changes may include, but are not limited to, changes to the parties to the contract, the financial terms, the property, or performance under the contract.

3. Time for Qualified Nonprofits to Accept Offer. A Qualified Nonprofit that has previously:

(i) exercised its Right of First Offer will notify the Seller and every other Qualified Nonprofit, via e-mail, of its decision to accept or reject the Seller's offer of Sale no later than 11:59 p.m. on the fifth calendar day after a Seller has submitted notice of an offer of Sale; **OR**

(ii) **NOT** had an opportunity to exercise its Right of First Offer will have until 11:59 p.m. on the thirtieth (30th) calendar day after the Seller's offer of Sale to either accept or reject the offer, and must notify the Seller and each Qualified Nonprofit of its decision via E-mail.

Notwithstanding the different time periods above, and notwithstanding any defect in the Qualified Nonprofit's notice to other Qualified Nonprofits, the first Qualified Nonprofit to accept via email the offer from the Seller will be deemed to have accepted the offer, and no other Qualified Nonprofit may accept the Seller's offer.

4. Acceptance or Rejection of Offer.

(i) If a Qualified Nonprofit notifies the Seller that it wishes to **accept** the Seller's offer of Sale, the Seller must proceed to Sell the Building to that Qualified Nonprofit and that Qualified Nonprofit will be obliged to Purchase.

(ii) If each Qualified Nonprofit that has received an offer of Sale notifies (or fails to timely notify) the Seller that **it does not wish to accept** an Offer, the Seller may proceed with the offer of Purchase previously received from, or offer of Sale previously made to, the original Third-Party Purchaser.

5. Conditional Third-Party Sales Agreements Permitted. If the Seller of a Building receives from a Third-Party Purchaser an offer to Purchase that he or she wishes to accept, or if the Seller makes an offer to Sell that a Third-Party Purchaser wishes to accept, the respective offer to Purchase and/or offer of Sale may be accepted with the contingency that no Qualified Nonprofit exercises its Right of First Refusal.

## V. PRESERVATION AS RENT-RESTRICTED AFFORDABLE HOUSING

A. **Existing Tenants Protected.** Each existing residential tenant in the Building will be permitted to retain that tenant's existing leasehold interest, including subleases, according to the terms of that tenant's existing lease.

B. **Affordable Housing Preserved.** A nonprofit that has purchased a Building under the First Right to Purchase conferred by Chapter 41B must maintain the Building as rent-restricted affordable housing in perpetuity. A Qualified Nonprofit may convert such Multi-Family Residential Building maintained as rent-restricted affordable housing into a limited equity housing cooperative under Subdivision Code Division 11, provided that such Qualified Nonprofit shall fully comply with the requirements of Subdivision Code Division 11 and such Multi-Family Residential Building shall remain restricted as affordable housing consistent with this Section in perpetuity under a new Notice of Special Restriction.

- C. **Restriction on Rent.** The average of all rent and utilities paid by all residential tenants must not exceed the amount that is equal to 30% of 80% of Area Median Income, as adjusted for household size. Qualified Nonprofits have the sole responsibility to ensure that such average is maintained for a Building purchased under COPA. Gross household income of any new tenants in the Building will not exceed 120% of Area Median Income, as adjusted for household size.
- D. **Notice of Special Restrictions.** The Notice of Special Restrictions will restrict the Building as affordable housing and provide that no existing residential tenants at the time of the Purchase or new residential tenants following the Purchase may be evicted without just cause consistent with the substantive provisions of Administrative Code Section 37.9(a). If a Qualified Nonprofit has Purchased a Building under Chapter 41B, the Qualified Nonprofit must record at closing a Notice of Special Restrictions in the form as set forth in Appendix A, as the senior lien on the Building, and provide a copy to MOHCD as proof of recordation, and a title report confirming the lien position of such Notice of Special Restrictions.
- E. **Marketing and Tenant Selection Plan.** No later than sixty (60) days after the Effective Date of Sale, Borrower must deliver to the City for the City's review and approval an affirmative plan for ongoing marketing of the Units and a written Tenant selection procedure for ongoing renting of the Units based on MOHCD's then-current form (the "Marketing and Tenant Selection Plan") all in compliance with the restrictions in form and substance acceptable to the City. Borrower must obtain the City's approval of reasonable alterations to the Marketing and Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing and Tenant Selection Plan, as approved by the City.
- F. **Lottery and Preferences.** To the fullest extent permitted by law, the Owner shall comply with the City's implementation of Preferences pursuant to San Francisco Administrative Code Chapter 47, as well as MOHCD's Housing Preferences and Lottery Procedures Manual, as amended from time to time.
- G. **Affirmative Marketing.** Owner's Marketing and Tenant Selection Plan shall address how Owner intends to market vacant Units and any opportunity for placement on a waiting list, if applicable. The Marketing and Tenant Selection Plan shall include as many of the following elements as are appropriate to the Project, as determined by the City:
1. A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.
  2. A plan that satisfies the requirement to give preference in occupying units in accordance with the Preferences and Lottery Manual and the Preferences Ordinance.
  3. Advertising in local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.
  4. Notices to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.
  5. Notices to SFHA.
  6. Notices to MOHCD
  7. To the extent practicable, without holding Units off the market, the community outreach efforts listed above must take place before advertising vacant Units or open spots on the Waiting List to the general public.

8. An acknowledgement that, with respect to vacant Units, the marketing elements listed above shall only be implemented if there are no qualified applicants interested or available from the Waiting List.

**H. Marketing and Tenant Selection Plan & Tenant Screening Criteria Requirements.**

1. Borrower's Marketing and Tenant Selection Plan shall comply with the requirements of the Tenant Selection Plan Policy. The Marketing and Tenant Selection Plan must be kept on file at the Project at all times.
2. Borrower's tenant screening criteria must comply with the Tenant Screening Criteria Policy.

- I. Waiting List.** Borrower's Marketing and Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list that complies with the Marketing and Tenant Selection Plan (the "Waiting List"). The Marketing and Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but shall limit the number of refusals without cause as approved by the City. Borrower shall at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower shall first attempt to select the new Tenant for such Unit from the Waiting List, and shall only market the Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List must be kept on file at the Project at all times.

## **VI. INCENTIVES**

MOHCD will endeavor to maintain and publicize the list of Qualified Nonprofits in a manner that promotes the existence of the Qualified Nonprofits as a readily accessible pool of potential buyers for the Buildings.

- A. Partial City Transfer-Tax Exemption.** The increased tax rate imposed by subsections (d), (e), and (f) of Business and Tax Rules Code Section 1102 will not apply to a transfer of property under Section 41B.6 of the ordinance.
- B. Potential Federal Tax Benefits.** Any Qualified Nonprofit that purchases a Building under the Right of First offer pursuant to Section 41B.6 will work with the Seller to facilitate the realization of any federal tax benefits available under 26 U.S.C. § 1031.
- C. Information to Sellers.** MOHCD will produce an information sheet that:
1. Describes the benefits of a Seller's decision to accept a Qualified Nonprofit's offer of Purchase.
  2. Explains that even if a Seller does not accept a Qualified Nonprofit's offer to Purchase a Building under the Right of First Offer set forth in Section 41B.6, the Building will still be subject to the Right of First Refusal set forth in Section 41B.7.
  3. Contains an optional field in which the Seller may acknowledge, in writing, that she has read and understands the information sheet.

## **VII. ENFORCEMENT**

- A. Suspension or Disqualification of Qualified Nonprofits.** MOHCD will promptly investigate any complaint alleging that a Qualified Nonprofit has failed to comply with Chapter 41B. If, after providing the Qualified Nonprofit with notice and opportunity to be

heard, MOHCD determines that a Qualified Nonprofit has failed to comply with Chapter 41B, MOHCD may suspend or revoke a Qualified Nonprofit's certification.

- B. Seller Certification.** By no later than fifteen (15) days after any Sale, all Sellers will provide to MOHCD, a signed declaration, under penalty of perjury, affirming that the Sale of that Building substantially complied with the requirements of Chapter 41B. MOHCD will publish all such addresses on its website.
- C. Civil Action.** Qualified Nonprofit may institute a civil action against any Seller who fails to comply with the requirements of Chapter 41B.
- D. Remedies.** Remedies in a civil action brought under Section 41B.10 will include elements listed under Subsection 41B.10.(c).