



Legislation Details (With Text)

File #:	Int 0623-2003	Version:	*	Name:	Creating a right of first refusal and an opportunity to purchase.
Type:	Introduction	Status:		In control:	Filed Committee on Housing and Buildings
On agenda:	12/3/2003				
Enactment date:		Enactment #:			
Title:	A Local Law to amend the administrative code of the city of New York, in relation to creating a right of first refusal and an opportunity to purchase.				
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Indexes:					
Attachments:					

Date	Ver.	Action By	Action	Result
12/3/2003	*	City Council	Introduced by Council	
12/3/2003	*	City Council	Referred to Comm by Council	
12/31/2003	*	City Council	Filed (End of Session)	

Int. No. 623

By Council Members Gerson, Brewer, Jackson and Stewart

A Local Law to amend the administrative code of the city of New York, in relation to creating a right of first refusal and an opportunity to purchase.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. The Council of the City of New York hereby finds that the increasing scarcity of affordable housing in the City makes it crucial to preserve existing subsidized housing units. Private owners are electing to prepay subsidized mortgages or to opt out of project-based subsidy programs at an alarming rate. No longer constrained by such programs, owners are putting their buildings up for sale, with the new purchasers forcing out low- and moderate-income tenants as the buildings open to market rents.

One in ten federally subsidized assisted rental housing units in New York City has been or is in the process of being removed from the affordable housing stock, according to data compiled by the Community

Service Society. Compounding this problem, the federal government has eliminated funding for programs designed to promote the preservation of subsidized housing. In the face of such conversions from affordable housing to market rate housing, some city and state governments have enacted legislation granting a right of first refusal to purchasers who will maintain the buildings as housing for low- and moderate-income residents. The City of New York has an obligation to safeguard against the loss of affordable housing and the Council is enacting this local law to help ensure that the assisted rental housing stock is maintained for the people of New York.

§2. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 9 to read as follows:

Chapter 9

Right of First Refusal and Opportunity to Purchase

§26-801. Definitions.

§26-802. Notification of impending conversion.

§26-803. First opportunity to purchase

§26-804. Right of First Refusal.

§26-805. Conversion of property.

§26-806. Penalty.

§26-801. Definitions. For the purposes of this section, the following definitions shall apply:

a. “Affordable” shall mean housing which does not cost the tenants of a dwelling unit more than thirty percent of their annual gross household income.

b. “Appraised value” shall mean the value as determined by a majority vote of an advisory panel of three appraisers who shall perform such appraisal in accordance with the uniform standards of professional appraisal practice.

c. “Assisted rental housing” shall mean a privately-owned multiple dwelling or development in which the majority of rental units therein are subject to federal, state or city income eligibility restrictions and in which such rental units are controlled, regulated or assisted by a federal, state or city agency pursuant to a regulatory agreement or rental assistance agreement designed to make such rental units affordable on a project-based basis. Assisted rental housing programs shall include, but not be limited to:

(1) any program created, administered, or supervised by the city or state under article II or article IV of the private housing finance law;

(2) any program providing project-based assistance under section eight of the United States housing act of 1937, as it may be amended from time to time;

(3) mortgage insurance programs under sections 207, 221, 232 or 236 of the national housing act, (12 U.S.C. 1701 et seq.), as they may be amended from time to time; and

(4) any of the above, or any other assisted rental housing program in which the owner and the tenant association have agreed to impose rent restrictions after the program’s original expiration date and such agreement is in force at the time that this section is enacted.

d. “Bona fide purchaser” shall mean a person or entity that has tendered a good-faith offer to purchase the assisted rental housing, and whose offer the owner has decided to accept.

e. “Conversion” or “convert” shall mean the sale, transfer, mortgage pre-payment, program withdrawal, opt-out or any other action with regard to assisted rental housing that would result in the termination of a multiple dwelling’s or development’s status as assisted rental housing.

f. “Department” shall mean the department of housing preservation and development.

g. “Financial assistance” shall mean any benefits received as a result of an assisted rental housing program that act to maintain affordable rents in the assisted rental housing.

h. “First opportunity to purchase” shall mean the right to submit an offer to purchase assisted rental housing before such assisted rental housing becomes subject to conversion by any act of the owner or by the

unavailability of any assisted rental housing program used to support such assisted rental housing.

i. “Notice” shall mean a written statement, sent by first class mail by the owner to each tenant, the tenant association, and the department, of the owner’s intent to convert assisted rental housing.

j. “Right of first refusal” shall mean the right to purchase the assisted rental housing at the higher of its appraised value or the amount offered by a bona fide purchaser.

k. “Tenant” shall mean a resident of assisted rental housing, who is eighteen years of age or older, and who lives in a dwelling unit within such assisted rental housing pursuant to a lease recognized by either the department, the owner of such assisted rental housing or a court of competent jurisdiction.

l. “Tenant association” shall mean a group of tenants that has formed a not-for-profit corporation, cooperative corporation, or other entity pursuant to the not-for-profit corporation law or the business corporation law and that represents tenants residing in at least a majority of the dwelling units within the same assisted rental housing.

m. “Owner” shall mean any person or entity, or combination of such persons or entities, or any agent of such persons or entities, that has a controlling interest in assisted rental housing at the time such assisted rental housing becomes eligible for conversion.

n. “Qualifying not-for-profit corporation” shall mean a not-for-profit corporation whose purposes include the acquisition and management of affordable housing.

§26-802 Notification of impending conversion. a. Notice shall be provided at least eighteen months prior to any action by the owner that will result in the conversion of assisted rental housing. Such notice shall also state the assisted rental housing program or programs to which the assisted rental housing is subject, the anticipated date of the expiration of any rental restrictions that will or may result in conversion, the current rent and the anticipated new rent for the unit, if known. Such notice shall also include the following:

(1) The two most recent inspection reports from the real estate assessment center of the federal department of housing and urban development, for those multiple dwellings or developments for which such

inspection reports are required, or when no such inspection reports exist, the two most recent comprehensive building-wide inspection reports that may have been conducted by the department or by the New York state division of housing and community renewal when such comprehensive building-wide inspection reports exist;

(2) An income and expense report for the previous twelve months;

(3) An itemized list of apartment sizes; and

(4) The amount of the outstanding mortgage.

b. Written notice shall also be provided by the owner to the tenants, tenant association and the department at least ninety days prior to the owner entering into a contract for the sale or transfer of any assisted rental housing that will result in the conversion of such assisted rental housing. Such notice shall state the amount of any offer made by a bonafide purchaser but need not reveal the identity of the bona fide purchaser.

c. Written notice shall be provided by the owner to the tenant association and the department within fifteen days of the time the owner becomes aware that the assisted rental housing program will be discontinued or funds from the program will be reduced or become unavailable.

d. (i) The department shall convene an advisory panel to determine the appraised value of the assisted rental housing within thirty days of the department's decision or the tenant association's decision to submit an offer to purchase such assisted rental housing pursuant to §26-803 of this chapter or to assert the right of first refusal pursuant to §26-804 of this chapter.

(ii) The advisory panel shall consist of one appraiser to be selected by the owner, one appraiser to be selected by the tenant association and one appraiser to be selected either by mutual agreement between the owner and the tenant association or by mutual agreement between the appraiser that was selected by the owner and the appraiser selected by the tenant association if such condition is deemed acceptable to the owner and the tenants association and is agreed upon in writing, except that in the case of where there is no agreement between the owner and the tenant association or between the appraiser that was selected by the owner and the appraiser selected by the tenant association, then the appraiser will be selected by the department. In the

instance when either the owner fails to provide an appraiser within fifteen days of the notice of intent to convene or when the tenant association fails to provide an appraiser within fifteen days of the notice of intent to convene, then the department shall select the appraiser on behalf of the party or parties that failed to select an appraiser.

(iii) The department shall make such appraised value publicly available within thirty days from the time that such advisory panel was convened.

(iv) The department shall promulgate rules for the timely determination of this appraised value to be consistent with the various notice requirements imposed under this chapter. Such rules shall also provide for the department to issue to the owner and the tenant association a notice of intent to convene such advisory panel.

e. Notwithstanding any of the above, if any applicable supervening statutes or programs have a notice requirement substantially similar to any notice requirement of this section, then the period of notice required under this section shall be that of the supervening statute or program. In the event that the notice required by this section requires more information than is required by a supervening statute or program, then such additional information shall be provided within the time period established by the supervening statute or program. Nothing in this section shall be interpreted as requiring owners to keep a multiple dwelling or development subject to a supervening statute or program for a period in excess of the expiration date allowed by the supervening statute or program. The department shall promulgate rules for various assisted rental housing programs setting forth the time period and the format for the different notice provisions as necessary.

§26-803. First opportunity to purchase. The tenant association and the department, respectively, may exercise the first opportunity to purchase the assisted rental housing at or above the appraised value, following the owner's issuance of any notice pursuant to subdivision a or subdivision c of §26-802 of this chapter. Such first opportunity to purchase shall last ninety days from the date the notice was sent, and may be extended by mutual agreement between the party exercising such right and the owner. The tenant association or the

department may assign its right of first opportunity to purchase to a qualifying not-for-profit corporation. Any offer to purchase that is made pursuant to this section shall be accepted by the owner. In the event that there is simultaneous interest in exercising the first opportunity to purchase, the right of the tenant association and its assignee, if any, shall have the first priority.

§26-804. Right of First Refusal. a. The tenant association of the assisted rental housing and the department, respectively, have a right of first refusal, which may be exercised throughout the ninety-day period described in subdivision b of §26-802 of this chapter, to purchase such assisted rental housing at the higher of its appraised value or the price offered by a bona fide purchaser. Failure to assert the right of first refusal within such ninety-day period constitutes a waiver of that right. By stating in writing its intention to exercise its right of first refusal, the tenant association or the department shall have an additional ninety days from the expiration of the initial ninety-day period to purchase or to produce a bona fide purchaser for the assisted rental housing. Such second ninety-day period may be further extended by mutual agreement between the tenant association or the department, as applicable, and the owner. The tenant association or the department may assign its right of first refusal to a qualifying not-for-profit corporation during any period within which the right of first refusal may be exercised. In the event that there is simultaneous interest in exercising the right of first refusal, the right of the tenant association and its assignee, if any, shall have the first priority.

b. Nothing in this section shall prevent the owner of any assisted rental housing from deciding not to convert such assisted rental housing. In the event of a decision not to convert such assisted rental housing, any notice provided in accordance with subdivision a of this section shall be withdrawn, and any exercise of the right of first refusal is deemed to have been rescinded.

c. Neither the department nor the tenant association shall possess a right of first refusal when a bona fide purchaser, by contract or other written agreement with the seller, agrees to maintain the property as assisted rental housing.

§26-805. Conversion of property. When a conversion occurs, an owner or purchaser shall allow the

current tenant or tenants to remain in their respective dwelling units for the longer of six months from the effective date of the conversion or until the tenant's lease expires, and at the same rent as before such conversion. Such owner or purchaser may, with the agreement of the tenant or tenants, relocate such tenant or tenants to comparable units with comparable rents in accordance with procedures to be established by the rules of the department.

§26-806. Penalty. A civil penalty of five hundred dollars per unit may be imposed upon any owner who fails to timely give any notice required by this chapter.

§3. If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which judgment shall have been rendered.

§4. This local law shall take effect sixty days after its enactment into law and the requirements set forth herein shall be applicable to any assisted rental housing, as defined in section 26-801 of the administrative code of the city of New York, as enacted by section two of this local law, that has not already completed the conversion process as of the third day of December 2003, except that the commissioner of housing preservation and development shall take all actions as necessary for the implementation of this law prior to such effective date.

LS# 1671 & LS# 1755
TNN with ZB (intern)
11/26/03