



Legislation Text

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Int. No. 186-A

By Council Members Gerson, The Speaker (Council Member Miller), Brewer, Jackson, Stewart, Lopez, Yassky, Gentile, Clarke, Palma, Gonzalez, Reyna, James, Monserrate, Perkins, Barron, Avella, Reed, Quinn, Vann, Seabrook, Nelson, DeBlasio, Koppell, Martinez, Foster, Weprin, Recchia Jr., Liu, Moskowitz, McMahon, Sanders Jr., Katz, Arroyo, Gioia, Rivera, Boyland, Gennaro and The Public Advocate (Ms. Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to creating a right of first refusal and a first 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, and it does not appear that any new federal programs will be funded to create new 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 and a first opportunity to purchase to low to moderate-income residents 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 First Opportunity to Purchase

§26-801 Definitions.

§26-802 Notification of impending conversion.

§26-803 Notification of bona fide offer to purchase.

§26-804 Appraisal determination.

§26-805 Right of first refusal.

§26-806 First opportunity to purchase.

§26-807 Prior notification.

§26-808 Permanent affordability.

§26-809 Right of transfer.

§26-810 Conversion of property.

§26-811 Penalty.

§26-812 Exclusions.

§26-813 Judicial review.

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

(a) “Affordable” shall mean that rental expenses for dwelling units do not exceed thirty percent of the annual gross household income of the existing tenants, and/or where rental expenses do not exceed the rent

levels allowable pursuant to the rent restrictions applicable to such dwelling units prior to conversion, provided however that dwelling units which become vacant in assisted rental housing should not be rented to households whose income exceeds eighty percent of the New York metropolitan area median income as determined by the United States department of housing and urban development.

(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 American Arbitration Association’s rules for the real estate industry.

(c) “Assisted rental housing” shall mean a privately-owned multiple dwelling or group of multiple dwelling units managed together under the same ownership in which the majority of dwelling units therein are subject to federal, state or city income eligibility restrictions and in which rents for such dwelling 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 dwelling units affordable on a project-based basis. Assisted rental housing programs shall include:

(1) any program created, administered, or supervised by the city or state under article II or article IV of the private housing finance law, but shall not include any multiple dwelling owned or operated by a company organized under article II or article IV of the private housing finance law that was occupied prior to January 1, 1974.

(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; and

(3) housing programs governed by sections 202, 207, 221, 232, 236, or 811 of the national housing act, (12 U.S.C. 1701 et seq.), as they may be amended from time to time;

(d) “Bona fide purchaser” shall mean a person or entity that has tendered a bona fide offer to purchase the assisted rental housing.

(e) “Bona fide offer to purchase” shall mean a good faith and without fraud offer, made in writing

and approved by the department that is tendered by a bona fide purchaser no later than one hundred and twenty days after an appraisal performed pursuant to section 26-804 of this chapter, and that is non-binding on the owner with intent to convert.

(f) “Conversion” or “convert” shall mean the transfer of title, leasing, intention to sell or lease, mortgage pre-payment, withdrawal from an assisted housing program, decision not to extend or renew participation in the program or any other action taken by the owner that would result in the termination of participation by the owner in the assisted rental housing program.

(g) “Household” shall mean all lawful occupants of any dwelling unit as defined in section 27-2004 of this code.

(h) “Household income” shall mean, for any household, the sum of the amount reported separately in the most recent individual or joint tax return for wage or salary income, net self-employed income, interest, dividends, rent received, royalties, social security or railroad retirement benefits or disability benefits and all other income for each member of the household reported on a tax return.

(i) “Department” shall mean the department of housing preservation and development or successor agency.

(j) “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.

(k) “First opportunity to purchase” shall mean the opportunity by a tenant association, or if applicable, a qualified entity, to purchase in good faith and without fraud the assisted rental housing at or below its appraised value before such assisted rental housing becomes subject to conversion.

(l) “Notice” shall mean a written communication addressed to a tenant association, or if no tenant association exists, to each tenant, or if applicable, to a qualified entity, by means of first class and registered mail, or personal delivery upon a tenant association, or if no tenant association exists, upon each tenant, or if applicable, a qualified entity. Each such notice shall be deemed to have been given upon the deposit of such

first class and registered mail in the custody of the United States postal service or upon receipt of personal delivery, and by posting of such notice in the common areas of the 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 that is subject to conversion.

(n) “Qualified entity” shall mean any individual, partnership, limited liability partnership, limited liability corporation, not-for-profit corporation or business corporation, or other entity authorized to do business in New York state and experienced in the management of affordable housing, designated by the tenants residing in at least sixty percent of the occupied dwelling units within the same assisted rental housing to act on its behalf pursuant to section 26-809 of this chapter and approved in writing by the department and which obligates itself and any successors in interest to assume the ongoing responsibility of continuing maintenance and operation of the assisted rental housing as affordable for the duration of the housing’s useful life and in accordance with the purposes of this chapter.

(o) “Right of first refusal” shall mean the right of a tenant association, or if applicable, a qualified entity, to submit a good faith and without fraud offer, in writing to the owner to purchase the higher of the assisted rental housing’s appraised value or the identical price, terms and conditions offered by a bona fide purchaser as approved by the department.

(p) “Tenant” shall mean a lawful occupant who resides within a dwelling unit within such assisted rental housing pursuant to law or a lease recognized by either the owner of such assisted rental housing, the department or a court of competent jurisdiction.

(q) “Tenant association” shall mean an association, whether incorporated or not, for which written consent to forming a tenant association has been given by tenants representing at least sixty percent of the occupied dwelling units within the same assisted rental housing, and which association notifies or has notified the owner of the assisted rental housing and the department of its existence or establishment and has provided

to such owner and the department the names and addresses of at least two of the officers or representatives of such association. Where more than one group of tenants in the same assisted rental housing claims to be the tenant association for such assisted rental housing, the department shall determine which group, if any, is the tenant association for the purposes of this chapter in the same manner as the department certifies a tenant association for the purposes of article II of the private housing finance law.

§26-802 Notification of impending conversion. (a) Notice shall be provided by the owner to the tenant association, or if no tenant association exists, to each tenant, and to the department of the intention of the owner to take any action that will result in the conversion of the assisted rental housing.

(b) Such notice shall be provided no less than twelve months prior to the taking of such action by the owner. Such notice shall include the following information:

(1) The name and address of each owner of the assisted rental housing. For any owner that is a corporation, the notice shall contain the names and addresses of the officers and directors of the corporation and of any person directly or indirectly holding more than ten percent of any class of the outstanding stock of the corporation. For any owner that is a partnership or joint venture, the notice shall contain the name and address of each individual who is a principal or exercises control of such entities.

(2) The address and/or addresses and the name and/or names of the assisted rental housing and the type of program or programs to which the assisted rental housing is subject;

(3) The nature of the action that the owner intends to take that will result in a conversion;

(4) The date on which such action resulting in the conversion is anticipated to take place;

(5) The provision of law, rule or regulation pursuant to which such action is authorized;

(6) The total number and type of dwelling units subject to a conversion;

(7) The current rent schedule for the dwelling units along with an estimation of the rent increases anticipated upon conversion;

(8) The income and expense report for the twelve-month period prior to the notice including capital

improvements, real property taxes and other municipal charges;

(9) The amount of the outstanding mortgage as of the date of the notice;

(10) The two most recent inspection reports from the real estate assessment center of the United States department of housing and urban development, for the assisted rental housing or group of multiple dwelling units operated together under the same ownership for which such inspection reports are required, or, the reports of 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;

(11) A statement of notice in a manner approved by the department which advises a tenant association, or if no tenant association exists, advises each tenant, of the first opportunity to purchase as required by section 26-806 of this chapter, or of the right of first refusal, as required by section 26-805 of this chapter;

(12) Such other information the department may require.

(c) During the twelve- month notification period provided for in subdivision b of this section the owner may not sell or contract to sell the assisted rental housing, but may engage in such discussions with other interested parties.

(d) Notice shall not be required of an owner who intends to maintain the property as assisted rental housing or intends to transfer, lease or refinance a mortgage in order to maintain the property as assisted rental housing.

(e) Where an owner decides not to convert the assisted rental housing program, such owner may withdraw the notice of intention to convert the assisted rental housing program, subject to the terms of any accepted offer to purchase or executed purchase and sale agreement, and to existing statutory and common law remedies. In such event, the owner shall give notice to the tenant association, or if no tenant association exists, to each tenant, or if applicable, to a qualified entity, and to the department. However, should the owner at any time decide to take an action that will result in conversion, the twelve- month notice period of this section as

well as all other applicable requirements of this chapter shall be complied with.

(f) Notwithstanding any of the above, if any applicable supervening statute or program has a notice requirement substantially similar to any notice requirement of this section, then the notice requirement under this section shall be that of the supervening statute or program.

(g) Notwithstanding any of the above, if the notices required by this section requires more information than is required by any applicable supervening city, state or federal statute or program, then such additional information shall be provided within the time period established by the supervening statute or program.

§26-803 Notification of bona fide offer to purchase. (a) If the owner receives a bona fide offer to purchase and intends to consider, or respond to such bona fide offer to purchase, then notice shall be provided by the owner to a tenant association, or if no tenant association exists, to each tenant, or if applicable, a qualified entity, and the department, no more than fifteen days from the date that such bona fide offer to purchase is delivered to the owner. Such notice shall contain the following information:

- (1) The name and address of the proposed bona fide purchaser; and
- (2) The price and terms and conditions of the offer;

(b) The owner shall not be required to provide notice in accordance with subdivision a of this section if the bona fide purchaser making the offer agrees to maintain the assisted rental housing as affordable. The bona fide purchaser shall be required to inform the department as to how such bona fide purchaser intends to keep the assisted rental housing as affordable.

§26-804 Appraisal determination. (a) The department shall convene an advisory panel, which advisory panel shall determine the appraised value of the assisted rental housing within thirty days of a tenant association's, or if applicable, a qualified entity's notice to the owner and the department pursuant to subdivision a of section 26-805 or subdivision a of section 26-806 of this chapter.

- (b) The advisory panel shall consist of one appraiser selected by the owner, one appraiser selected

by the tenant association, or if applicable, a qualified entity, and one appraiser to be selected either by mutual agreement between the owner and the tenant association or if applicable, a qualified entity, or by mutual agreement between the appraiser that was selected by the owner and the appraiser selected by the tenant association, or if applicable, a qualified entity, if such condition is deemed acceptable to the owner and the tenants association, or if applicable, a qualified entity, 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 if applicable, a qualified entity, or between the appraiser that was selected by the owner and the appraiser selected by the tenant association, or if applicable, a qualified entity, then the appraiser will be selected by the department. The cost for the appraiser shall be borne by the party responsible for providing such appraiser. However, where the department must select the third appraiser, the cost for such appraiser shall be equally borne by the owner and the tenant association, or if applicable, a qualified entity.

(c) Notice shall be provided by the department to the owner and the tenant association, or if applicable, a qualified entity, fifteen days before the intended date that such advisory panel is to initiate the performance of the appraisal. In the instance when either the owner fails to provide an appraiser within fifteen days of such notice or when the tenant association, or if applicable, a qualified entity, fails to provide an appraiser within fifteen days of such notice then the department shall select the appraiser on behalf of the party or parties that failed to select an appraiser. In such circumstance, the cost for the appraiser selected by the department shall be borne by the party responsible for providing that appraiser.

(d) The department shall promulgate rules for the timely determination of the appraised value and that such rules are to be consistent with the notice requirements mandated under this chapter. The department shall make such appraised value publicly available within fifteen days from the date of such advisory panel's determination.

(e) In the instance where the owner and the tenant association, or if applicable, a qualified entity, have mutually agreed upon an appraised value for the assisted rental housing prior to the convening of the

advisory panel, the owner and the tenant association, or if applicable, a qualified entity, may in writing apply to the department for a waiver from subdivisions a through d of this section. The department shall make a determination upon such application for a waiver within fifteen days from receipt of such application.

§26-805 Right of first refusal. (a) A tenant association, or if applicable, a qualified entity, shall notify the owner and the department in writing of its intent to exercise its right of first refusal within sixty days from receipt of notice from the owner pursuant to subdivision a of section 26-802 of this chapter.

(b) The tenant association, or if applicable, a qualified entity, following notice by the owner in compliance with subdivision a of section 26-802 of this chapter, shall have one hundred twenty days from the date of the notice of the determination of the appraised value to submit its offer to purchase.

(c) The tenant association, or if applicable, a qualified entity, following notice by the owner in compliance with subdivision a of section 26-803 of this chapter, shall have one hundred twenty days from the date of a bona fide offer to purchase to submit its offer to purchase.

(d) If through no fault of a tenant association, or if applicable, a qualified entity, or the owner, the time periods provided for in subdivisions b or c of this section need to be extended, then such time periods may be extended by the department. Should such time period be extended past the notice period provided for in subdivision a of section 26-802 of this chapter, then the provisions of the applicable assisted rental housing program shall remain in full force and effect to the extent permitted by law.

(e) Unless the owner and a tenant association, or if applicable, a qualified entity, otherwise agree to purchase the assisted rental housing below its appraised value, the owner shall sell such assisted rental housing at the appraised value or at the price contained in a bona fide offer to purchase price as approved by the department.

(f) The department shall promulgate rules for the timely completion of all lending program applications, credit reviews and loan closings.

(g) If a tenant association, or if applicable, a qualified entity, does not submit its offer in writing to

the owner and the department within the time periods stated in subdivisions b or c of this section following notice by the owner in compliance with subdivision a of section 26-802 of this chapter, then such right will be deemed waived and the owner shall have no further obligations under this section. However, where a tenant association, or if applicable, a qualified entity, has previously submitted a notice in accordance with subdivision a of this section decides not to exercise such right, it may withdraw such notice by giving written notice to that effect to the owner and to the department.

§26-806 First opportunity to purchase. (a) A tenant association, or if applicable, a qualified entity, shall notify the owner and the department in writing of its intent to exercise its right of first opportunity to purchase within sixty days from receipt of notice from the owner pursuant to subdivision a of section 26-802 of this chapter.

(b) The tenant association, or if applicable, a qualified entity, following notice by the owner in compliance with subdivision a of section 26-802 of this chapter, shall have one hundred twenty days from the date of the notice of the determination of the appraised value to submit its offer to purchase.

(c) If through no fault of a tenant association, or if applicable, a qualified entity, or the owner, the time period provided for in subdivision b of this section needs to be extended, then such time period may be extended by the department. Should such time period be extended past the notice period provided for in subdivision a of section 26-802 of this chapter, then the provisions of the applicable assisted rentalhousing program shall remain in full force and effect to the extent permitted by law.

(d) Except where the owner and a tenant association, or if applicable, a qualified entity, agree to a purchase price of the assisted rental housing at an amount below the appraised value, any offer made pursuant to this section shall be accepted by the owner.

(e) If a tenant association, or if applicable, a qualified entity, does not submit its offer in writing to the owner and the department within the time periods stated in subdivision b of this section following notice by the owner in compliance with subdivision a of section 26-802 of this chapter, then such right will be deemed

waived and the owner shall have no further obligations under this section. However, where a tenant association, or if applicable, a qualified entity, has previously submitted a notice in accordance with subdivision a of this section decides not to exercise such right, it may withdraw such notice by giving written notice to that effect to the owner and to the department.

§26-807 Prior notification. Notwithstanding any other provision of this chapter, where an owner has given notice prior to the effective date of this chapter and the intent of such notice is to initiate a procedure to withdraw the assisted rental housing from a program set forth in subdivision c of section 26-801 of this chapter, and such notice was properly given in accordance with any other applicable provision of law and more than forty-five days remain prior to the expiration of the time period applicable to such notice, a tenant association, or if applicable, a qualified entity, may complete any action authorized by sections 26-804, 26-805 and 26-806 of this chapter at any time prior to the expiration of such time period.

§26-808 Long term affordability. A tenant association, or if applicable, a qualified entity, including all successors in interest, which chooses to exercise the rights provided for in section 26-805 or section 26-806 of this chapter will be obligated to maintain the assisted rental housing as affordable.

§26-809 Right of transfer. (a) During the notice period provided for in section 26-802 of this chapter, the tenants, by written consent of the tenants residing in at least sixty percent of the occupied dwelling units within the same assisted rental housing, may transfer the rights established by section 26-805 and section 26-806 of this chapter to a qualified entity.

(b) Notice of such transfer shall be provided to the owner and the department in writing within sixty days from receipt of notice from the owner pursuant to section 26-802 of this chapter.

§26-810 Conversion of property. Notwithstanding the provisions of section 26-805 and section 26-806 of this chapter, when a conversion occurs, an owner or bona fide 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 terms and conditions 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.

§26-811 Penalty. An owner found to have violated any provision of this chapter shall, in addition to any other monetary and/or equitable damages for which the owner may be liable, be liable for a civil penalty of five thousand dollars per month per dwelling unit in the assisted rental housing, and shall also pay to a tenant association, or if no tenant association exists, each tenant, or if applicable, a qualified entity, fees and costs incurred in bringing an enforcement proceeding. The total civil penalties may not exceed one hundred thousand dollars per dwelling unit. Nothing in this section shall be interpreted as prohibiting the tenant association, or if no tenant association exists, the tenants, or if applicable, a qualified entity, from seeking injunctive relief against a non-compliant owner. Such proceeding shall be brought in a court of competent jurisdiction.

§26-812 Exclusions. (a) Nothing in this chapter shall affect any existing agreement between a tenant association and an owner regarding the management and operation of the assisted rental housing or the transfer of the assisted rental housing to a tenant association or similar organization in effect on the effective date of this chapter, except that any renewal, modification or amendment of such agreement occurring on or after the effective date of this local law shall be subject to the provisions of this chapter.

(b) Nothing in this chapter shall affect any existing agreement between an owner and one or more governmental entities relating to the management and operation of a multiple dwelling that is not otherwise subject to the private housing finance law or to federal law.

(c) Nothing in this chapter shall affect an owner or purchaser who wants to refinance in order to maintain participation in an assisted rental housing program.

(d) The provisions of this chapter shall not apply to a purchase by a governmental entity implementing its powers of eminent domain; a judicially supervised sale or transfer of property; any

bankruptcy proceedings; or operation of law.

(e) The provisions of this chapter shall not apply where a notice as described in section 26-807 of this chapter was properly given in accordance with any other applicable provision of law and forty-five or fewer days remain prior to the expiration of such applicable notice period.

§26-813 Judicial Review. Any person aggrieved by an appraisal determination made pursuant to section 26-804 of this chapter, or by the failure of the department to approve a bona fide offer to purchase, may, within thirty days of the appraisal determination or action by the department, seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the assisted rental housing is located. In the event that a court may find that the appraisal or action by the department constitutes the equivalent of a taking without just compensation, the court shall require that a new appraisal or determination be made. The time periods set forth in this chapter shall be tolled during the pendency of such a proceeding and until a new appraisal or determination, if needed, is made.

§3. If any sentence, paragraph, section or part of this local law shall be adjudged invalid by a court of competent jurisdiction such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part deemed invalid.

§ 4. This local law shall take effect ninety days after its enactment into law except that the commissioner of housing preservation and development shall take all actions, including the promulgation of rules, necessary for the implementation of this local law prior to such effective date.

6/14/05 11:00pm