



MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Alice Kennedy, Housing Commissioner

Date: July 11, 2023

Re: City Council Bill 22-0250 The Councilmember Mary Pat Clarke Opportunity to Purchase Act

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 22-0250 for the purpose of repealing City Code, Article 13, Subtitle 6 {"Tenant's Right of First Refusal"} as obsolete and replacing it with a subtitle establishing a tenant's opportunity to purchase certain rental facilities; defining certain terms; establishing certain exemptions from the subtitle; providing for certain rules of interpretation; authorizing the Commissioner of the Department of Housing and Community Development to adopt rules and regulations to carry out the subtitle; requiring that a landlord provide a notice of offer of sale to certain persons on deciding to sell a rental facility; establishing certain procedures for landlords and tenants in instances where a party submits a statement of interest to purchase a rental facility; allowing for the landlord to require certain earnest money deposits; permitting the assignment of certain rights; prohibiting a waiver of certain rights absent agreed-on consideration; requiring certain disclosures if a rental facility is transferred to a party other than a tenant; requiring certain reports; providing for certain penalties; and generally relating to providing tenants with the opportunity to purchase certain rental facilities.

If enacted, City Council Bill 22-0250 would provide tenants with the opportunity to purchase certain rental facilities. The Bill would repeal and replace the existing Subtitle of the Housing and Urban Renewal Code, concerning a single-family residential tenant's right to purchase their leased premises, with an updated subtitle that provides tenants with the opportunity to purchase rental facilities. The Bill would apply to all single-family dwelling units, the right to purchase would be transferrable and the Bill requires the disclosure of contracts of sale to the Housing Commissioner for property transfers. The Bill also lays out the tenant's deadline to accept the offer to purchase and it resets anytime there is a material change in terms. The Bill increases the penalty from \$500 to \$1,000 for any person who violates any provision of the subtitle and they may be subject to a fine for each violation. The right of first refusal gives tenants interested in purchasing their own dwellings a court option if the property owner attempts to sell to someone other than the owner of the right of first refusal.

Presently, Article 13, Subtitle 6, Tenant's Right of First Refusal, in the City Code, permits landlords seeking to voluntarily transfer their single-family residential rental property to first

offer the current tenant the opportunity to purchase the property. This Bill would apply to all dwelling units, not just single-family homes.

The Bill requires disclosures to the Housing Commissioner about property transfers prior to the settlement on the sale of a rental facility to another party. The landlord will be required to provide a written offer of sale to the tenant within the rental facility and the Commissioner of DHCD.

DHCD is seeking clarification on the appropriateness of the use of the Building Code definition of “dwelling unit” and recommends an amendment to replace the Bill language with “single family” dwelling unit. One can’t purchase an individual dwelling unit in a multi-unit building. If the intent of this bill is to support tenants in purchasing single family residential homes in which they are renting, or possibly, smaller two-unit properties, or three-unit properties. The sponsor may consider changing how the property being sold and offered is defined.

For example, in a 50-unit building, if the landlord gets an offer to purchase, the landlord would need to send offer to purchase notice to all 50 dwelling units. If it is a property with 200 dwelling units – the offer to purchase would have to go to all 200 units.

DHCD recommends the sponsor consider focusing on single-family dwelling unit properties or possibly properties with four or less dwelling units and changing how this is defined to replace (C) with single family dwelling unit.

Current language in bill:

(C) DWELLING UNIT. 14 “DWELLING UNIT” HAS THE MEANING STATED IN § 202.2.23 OF THE BALTIMORE CITY BUILDING CODE.

Current reference in Building Code:

202.2.23 Dwelling unit. “Dwelling unit” means a single unit that provides or that is designed or intended to provide complete, independent living facilities for 1 or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Proposed new area of Building Code:

202.2.22.4 1-family dwelling; single-family dwelling unit. “1-family dwelling” or “single family dwelling unit” means a building that contains only 1 dwelling unit and is used only for that purpose.

The duties newly assigned to the Commissioner will require the hiring of an additional full-time employee to assist landlords meet the reporting requirements, collect and compile the data required in the Commissioner’s Annual Report for the Mayor and City Council and to take on any other additional duties necessary to meet the bills requirements. DHCD will need time to develop new processes and procedures to allow Landlords to easily report in person or through

an online portal, which may require the expansion of one of our existing IT reporting systems or the purchase of new software.

The Commissioner's annual report would be required to include the total number of transfers subject to the subtitle, including transfers to parties other than a tenant, disaggregated by zip code and any recommendations for legislative or policy amendments to better ensure that city tenants are benefiting from the enactment of the Bill.

DHCD is seeking additional clarification on the timelines associated with the notice requirements. A contract of sale has very specific dates and timeframes associated with it, if the offer to sell to the tenant is made AFTER a landlord has a signed contract of sale, that contract will immediately be in jeopardy based on the timelines set forth in this legislation. Many contracts of sale have 30-45 days between contract ratification and settlement, and there are penalties and risks if the timelines in that contract are not met. DHCD suggests that the offer of sale to the tenant be made when a landlord receives an offer from a third party, and before that contract is ratified.

DHCD would like additional consideration of the necessity to legislate a specific earnest money deposit percentage in the bill. An earnest money deposit is customary with a contract of sale, and there are generalized understanding of what amount that might be, is it necessary to legislate a specific percentage in this bill? If a tenant is purchasing a \$200,000 property, they may have \$1500 and be able to make that as the earnest money, and not have to pay \$2000.

The Law department has recommended an amendment to address the question of transferability of the right of first refusal to others. The Law Department's Bill report suggests that such an exemption should not exist for the third party who receives the right from the tenant because the third-party's interest in the property would spring up at an undetermined time in the future. DHCD supports the Law Department's amendment.

This Ordinance takes effect on the 30th day after the date it is enacted. DHCD recommends an amendment to the enactment date and suggests that the Bill take effect 180 days after enactment in order for DHCD to have time to standup the program, create the reporting portal and educate the public.

In order to protect tenants, DHCD recommends adding language about providing a tenant with an information sheet about obtaining a real estate agent and understanding agency in the State of Maryland. If a landlord has their real estate agent assist in this, the tenant may not understand fully that the landlord agent is representing the interests of the landlord, and not the tenant.

Conclusion

DHCD recognizes that many Baltimore renters struggle to pay for housing, leaving their families at risk of instability and even homelessness. This Bill may offer a pathway for additional housing stability for Baltimore's renters, by allowing the renter currently residing in the property the right

to buy it on market terms. The enhanced rights of first refusal for tenants may encourage increased homeownership throughout Baltimore.

Transitioning tenants into their homes as homeowners is a key strategy to creating housing stability in our city. As part of the Middle Neighborhoods Strategy DHCD's Office of Homeownership & Housing Preservation provides a variety of resources and opportunities for homeowners and future homeowners in Baltimore City such as; Weatherization and Energy Efficiency improvements that lower utility bills and make homes safer and more comfortable, Housing Rehabilitation and Repairs that address emergencies, code violations, and health and safety issues for owner-occupied properties, Lead remediation for the eligible owner- and tenant-occupied properties and Homeownership Incentives such as closing cost and downpayment assistance to make buying a home more affordable. Most of these programs are only available to homeowners.

City Council Bill 22-0250 could potentially support other City programs that encourage home ownership for renters such as Live Baltimore's Buy Back the Block program which provides grants to eligible Baltimore City residents who purchase homes in the areas where they currently rent. The \$10,000 home purchase grant could reduce the amount of money needed up front to buy a home and the \$20,000 home purchase & renovation grant could reduce the amount of money needed to buy and renovate a home.

Baltimore's renters—are housing cost-burdened, meaning they spend more than 30 percent of their income on housing. It is important to look to ways to provide additional housing stability for Baltimore's renters. DHCD supports efforts around this issue and with additional consideration and amendment, we would welcome the opportunity to continue the conversation around the passage and implementation of this legislation.

DHCD **does not object** to the passage of City Council Bill 22-0250.



AK/sm

cc: Ms. Themelis, Nina, *Mayor's Office of Government Relations*