



City Council Public Hearing
January 25, 2022

East Palo Alto Opportunity to Purchase Act

Agenda

- **Background/Staff Direction**
- **Summary of Milestones to Date**
- **David Rosen & Associates Findings Summary**
- **Overview of Key Recommended Changes to the Ordinance**
- **Summary of Key Ordinance Changes To-Date**
- **Recap/Scenarios**
- **Qualified Nonprofits Criteria & Foreclosures**
- **Recommendations/Next Steps**

City Council Direction

City Council direction at Public Hearing held December 22, 2021*:

- 1.) Return with updated Ordinance
- 2.) Engage David Rosen & Associates for analysis of EPA OPA
- 3.) Clarify Qualified Nonprofits process and foreclosures

*January 18 Public Hearing continued to January 25, 2022

EPA OPA Milestones to Date

Figure 1: EPA OPA Milestones

June 4, 2019	Council adopted Resolution No. 5128, authorizing the City Manager to submit an application to the Partnership for the Bay's Future (PBF) for a Challenge Grant for Housing Protection and Preservation ("Challenge Grant").
November 2019	The City was awarded a Challenge Grant. PBF Fellow began work in February 2020 and continued through 2020 and 2021.
January 2021	City Council adopted as one of its Council Priorities, "Advancing the Concept of TOPA/COPA and Other Homeownership Opportunities."
July 20, 2021	Staff provided an update on Challenge Grant progress to City Council and received authorization to apply for a Partnership for the Bay's Future Breakthrough Grant.
July 2021 – September 2021	Nine Affinity Group meetings (67 participants) and two Focus Group meetings (19 participants) were conducted to gather community input. Participants consisted of homeowners, tenants, landlords, and real estate agents.
October 5, 2021	Policy & Action City Council item to provide a report on OPA progress and seek direction on development of an ordinance. City staff were directed to bring back a proposed EPA OPA Ordinance for hearing.
November 16, 2021	Public hearing for EPA OPA Ordinance. City Council directed staff to hold a community meeting on EPA OPA and return to the next City Council meeting with an updated Ordinance.
December 1, 2021	Community meeting via Zoom on OPA with 276 participants and 72 speakers.
December 3 & 6, 2021	Staff hosted virtual office hours to provide residents and stakeholders with an additional opportunity to ask questions or express concerns.
December 7, 2021	Public hearing for EPA OPA. Staff presented on recommended changes to the Ordinance based on City Council direction and extensive community feedback. City Council took over two hours of public comment from 128 speakers and continued the item to December 22.
December 22, 2021	Public Hearing and First Reading of EPA OPA Ordinance. Staff proposed several amendments to the Ordinance based on extensive public feedback since the first draft was published for consideration at the November 16, 2021 City Council meeting. ¹
January 13 & 14, 2022	Staff hosted accessible office hours to receive further community input.

David Rosen & Associates Findings

Presented by Nora Lake-Brown,
Principal, DRA

- 37 years consulting experience in real estate market, economic and financial feasibility analysis.
- Financial/development consultant on more than \$3.5 B of affordable and market-rate housing, commercial, and mixed-use real estate transactions.
- Advised in 45 states and more than 300 jurisdictions, including more than 75 jurisdictions in California.
- Economic consultant to East Palo Alto since 2013.

DRA OPA RESEARCH AND ANALYSIS

CITY OF EAST PALO ALTO

JANUARY 25, 2022

Appreciation in Single-Family Median Home Prices for Existing Homes

East Palo Alto, Selected Bay Area Counties and California

2012 to 2021

	Dec. 2012	Dec. 2020	Nov. 2021	Percent Increase		
				2012 to 2020	2020 to 2021	2012 to 2021
East Palo Alto	\$285,000	\$938,000	\$1,030,000	229%	10%	261%
San Mateo County	\$775,000	\$1,700,000	\$2,222,500	119%	31%	187%
Santa Clara County	\$681,000	\$1,375,000	\$1,692,500	102%	23%	149%
San Francisco County	\$864,795	\$1,581,000	\$1,900,000	83%	20%	120%
California	\$365,840	\$717,930	\$782,490	96%	9%	114%

Estimated Five-Year Change in Assessed Valuation in the City of East Palo Alto

	Estimated Increase (Decrease) In Assessed Valuation Over Five Years (% of 2021 Total AV)
“Worst Case” Loss of AV Due to Purchase of Absentee-Owned SFD and Condo Units by Nonprofits Under TOPA ¹	(\$67 Million) 1.8%
Increase in AV Due to Resale of Existing Owner-Occupied Units at Market Price	\$183 Million 4.9%
Increase in AV from 800 Units of Market-Rate Housing in Development Pipeline	\$560 Million to \$800 Million 15% to 22%

¹“Worst Case” scenario is considered highly unlikely because

- It assumes 100% of absentee-owned homes and condos are purchased by nonprofits and converted to affordable rental housing qualifying for a 100% welfare tax exemption. Qualifying affordable ownership units will be assessed at affordable home price.
- No adjustment was made for absentee-owned units owned by East Palo Alto residents that are excluded from the OPA, which will overestimate the result.
- There are insufficient capital subsidies to cover the “affordability gap” between market price and the affordable home price or renter supportable mortgage as affordable housing.

Estimated Capital Subsidy Required to Subsidize Purchase of Absentee-Owned Homes by Nonprofit Housing Corporations

Subsidy Required to Make All Units Affordable as Renter or Owner Units at the Following Target Income Levels:

	50% AMI	80% AMI	120% AMI
Renter	\$131 Million	\$97 Million	\$52 Million
Owner	\$145 Million	\$115 Million	\$65 Million

Of more than \$23 Billion in available traditional state and federal subsidy sources for homeless and affordable housing over the next two years in California, none is eligible for use for TOPA purchases

1031 Exchanges

- Exchanges only apply to sale of an investment property and replacement purchase of another like-kind investment property.
- 1031 Exchange time limits are measured from when the property to be sold (“relinquished property”) closes.
 - Sale of a property by an East Palo Alto resident under a 1031 Exchange will not be affected by OPA timelines unless they also are purchasing a replacement investment property in East Palo Alto.
- For East Palo Alto residents selling one investment property and purchasing another investment property in East Palo Alto, the OPA timeline is adequate to complete a 1031 Exchange.
 - Measured from when the relinquished property closes, the Exchangor has 45 days to nominate (identify) potential replacement properties and a total of 180 days (including the 45-day nominating period) to acquire the replacement property. The 97-day time limit proposed for OPA fits within this 180-day time frame.

Overview of New Changes to Ordinance

Key Ordinance Amendments (direction given at December 22nd City Council meeting)	
<i>Applicability/Exemptions</i>	Exempt properties from the Ordinance that are owned by East Palo Alto residents.
<i>Applicability/Exemptions</i>	Exempt households with emergency circumstances from the Ordinance.
<i>Timelines</i>	Break down the 30-day Statement of Interest period into two phases of 15 days each, requiring Potential Eligible Purchasers to express interest in exercising their rights under the Ordinance within the first 15 days after receiving a Notice of Intent to Sell, followed by a Statement of Interest 15 days thereafter (if applicable).
<i>Timelines</i>	Allow for shortening of the EPA OPA timelines with the consent of both parties in cases where there is only one Potential Eligible Purchaser.
<i>Timelines</i>	Shorten the timelines overall, with the goal of a 90-day maximum timeline for single family
<i>Other</i>	<i>Staff Amendments</i> - Further clarify Ordinance*

Proposed Timelines Update for Tenant Opportunity to Purchase

**Figure 2: EPA OPA Timelines for Non-Exempt Single-Family Dwellings
(Tenant as Potential Eligible Purchaser)**

Statement of Interest Time for Tenant to submit a statement indicating interest in purchasing.	30 days 15 days (additional 15 days if applicable)
Initial Offer Time for tenant to submit an Offer to Purchase.	30 days
Right of First Refusal/Offer to Purchase Time for Owner to send a copy of Third-Party Purchaser's Offer.	0-2 days
Right of First Refusal/Match 3rd Party Offer Time for Tenant to match the Third-Party Purchaser's Offer.	10 days 5 days
Close Time for the Tenant and the Owner to close the transaction.	40 days 30 days
Total	30 – 112 days 15 – 97 days

Proposed Timelines Update for QNP or City Opportunity to Purchase

Figure 3: EPA OPA Timelines for Non-Exempt Single-Family Dwellings (Qualified Nonprofit or City as Potential Eligible Purchaser)

Statement of Interest Time for QNP or City to submit a statement indicating interest in purchasing.	30 days 15 days (additional 15 days if applicable)
Initial Offer Time for QNP or City to submit an Offer to Purchase.	30 days
Right of First Refusal/Offer to Purchase Time for Owner to send a copy of Third-Party Purchaser's Offer.	0 – 2 days
Right of First Refusal/Match 3rd Party Offer Time for QNP or City to match the Third-Party Purchaser's Offer.	10 days 5 days
Close Time for the QNP or City and the Owner to close the transaction.	90 days 30 days (60-day extension if applicable)
Total	30 – 162 days 15 – 157 days (extension included)

Proposed Timelines Update for Multi-Family Dwellings

Figure 4: EPA OPA Timelines for Non-Exempt Multi-Family Dwellings
(Qualified Nonprofit or City as Potential Eligible Purchaser)

Statement of Interest Time for QNP or City to submit a statement indicating interest in purchasing.	30 days 15 days (additional 15 days if applicable)
Disclosure Package Time for Owner to send Potential Eligible Purchasers a disclosure package with information about the property.	0 – 5 days
Initial Offer Time for QNP or City to submit an Offer to Purchase.	60 days (2-3 units) 90 days (4+ units)
Right of First Refusal/Offer to Purchase Time for Owner to send a copy of Third-Party Purchaser’s Offer.	0 – 2 days
Right of First Refusal/Match 3rd Party Offer Time for QNP or City to match the Third-Party Purchaser’s Offer.	30 days 20 days
Close Time for the QNP or City and the Owner to close the transaction.	90 days (2-3 units) 120 days (4+ units)
Total	30 – 217 days (2-3 units) 15 – 207 days (2-3 units) 30 – 277 days (4+ units) 15 – 267 days (4+ units)

Additional Recommended Changes

Additional Recommended Changes Noted in Staff Report

Section 14.26.110.E	<i>Deposit. The Owner shall not require the Potential Eligible Purchaser to pay a deposit of more than three percent (3%) of the contract sales price to make a contract. The deposit is refundable in the event of a good faith failure of the Potential Eligible Purchaser to perform under the contract unless otherwise provided in the contract.</i>
Section 14.26.090.C	<i>Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the Notice Period, or (2) the expiration of the Notice Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B of this Section, the Owner may list and market for sale the Residential Property and may solicit and conditionally accept offers from a Third-Party Purchaser, subject to the requirements of Section 14.26.100.</i>
Section 14.26.020	<i>"Non-Exempt" means a residential property or a transfer that is not exempt under Section 14.26.040 of this Chapter.</i>
Section 14.26.070	<i>Consolidate paragraphs and update language in Section 14.26.070 ("Tenant, Qualified Nonprofit and City Opportunity to Purchase") to clarify which residential properties the Ordinance applies to.</i>

Ordinance Language Corrections

Section	Correction
Section 14.26	Addition of findings or "Whereas" regarding exemption of East Palo Alto residents.
Section 14.26.060	<ul style="list-style-type: none"> • Addition of "Non-Exempt" in other subsections (e.g. Section 14.26.060.A: <i>A Tenant living in a Non-Exempt Single-Family Dwelling with Absentee Owner(s) may assign rights under this Chapter to a Qualified Nonprofit.</i>)
Other (throughout 14.26 Chapter, including Sections 14.26.010, 14.26.040, 14.26.070, 14.26.080.B)	<ul style="list-style-type: none"> • Capitalization of terms defined in Definitions section or in headings (e.g. Right of First Offer, Right of First Refusal, Owner-Occupied, Single-Family Dwelling, Dwelling Unit, Principal Residence, Condominiums, Offer to Purchase, etc.) • Editing of "a year" --> "one (1) year" • Writing of numbers (e.g. (1) --> one (1) or one --> one (1)) • Re-numbering to accommodate changes elsewhere in Ordinance • Correction of typos (e.g. 50J(3) --> 501(c)3)

Overview of Previous Changes to Ordinance

Key Ordinance Amendments since November 16, 2021 (presented at December 7 & 22 City Council meetings)

1. Eliminate Appraisal section.
2. Clarify receipt of an unsolicited offer.
3. Clarify requirement for timely Statement of Interest and timely Offer to trigger rights.
4. Create a 15% Margin Rule for matching offer.
5. Create City Council certification process for Qualified Nonprofits.
6. Increase contract purchase deposit amount from 1% to 3%.
7. Clarify owners can also pursue legal actions to enforce the Ordinance.
8. Clarify process for Administrative Guidelines.

Recap/Scenarios



*Do you live in East Palo Alto?
If yes, all the properties you own are exempt.*



*Are you selling due to a health emergency?
If yes, you can make an exempt sale/transfer.**

*Are you selling due to a financial emergency?
If yes, you must have lived in East Palo Alto for at least one year, and sought the exemption within one year of vacating your unit to make an exempt sale/transfer.*



Properties owned by real estate investment funds, corporations, or LLCs are not exempt.

Qualified Nonprofit Criteria

Ordinance sets baseline for nonprofit housing organizations to qualify:

- *501(c)(3) organizations that demonstrate capacity to acquire, provide, and manage affordable housing and a commitment to 1.) preventing displacement and 2.) community engagement*
- Nonprofits must follow application process outlined in Administrative Guidelines AND be certified by the City Council

Staff recommend language for Administrative Guidelines, as a public process, to achieve transparency in selection of QNPs:

- Exempt from federal income tax under 26 USC Section 501(c)(3), or a California cooperative corporation;
- Capacity to acquire, provide and manage affordable housing for extremely low, very low, and low income households;
- Commitment to the provision of affordable housing for extremely low, very low, low, and moderate income residents, and to preventing the displacement of such residents;
- Commitment to community engagement and experience working in East Palo Alto directly or with East Palo Alto-based organizations;
- Minimum 5 years experience acquiring and developing affordable residential properties, or partnership with another organization to acquire and develop, affordable residential properties.

Foreclosures

- Current state law covers financial emergencies due to foreclosure proceedings (e.g. SB 1079)
- Residents undergoing a foreclosure process may use the Foreclosure Intervention Housing Preservation Program (FIHPP)
- Due to current and future state regulations on foreclosures, the City must exempt Ordinance applicability on the transfer by foreclosure sale or deed in lieu of foreclosure.
- The Ordinance states that the exemption set forth on foreclosures *does not supersede any rights to purchase afforded to Potential Eligible Purchasers under the California Civil Code Sections 2924(f)-(h), 2924(m)-(n), or 2929.3 (or SB 1079).*

Recommendation

Waive the first reading and introduce an Ordinance titled “East Palo Alto Opportunity to Purchase Act” (“EPA OPA”), adding Chapter 14.26 to the East Palo Alto Municipal Code.

Next Steps



- If directed, staff will return with Ordinance for Second Reading and adoption



- Staff work on guidelines and funding source



- Ordinance takes effect in July 2022

Questions/Discussion