



City Council Public Hearing
March 1, 2022

East Palo Alto Opportunity to Purchase Act

Agenda

- **Background/Staff Direction**
- **Recommendations**
- **Next Steps**

City Council Direction

City Council direction at Public Hearing held January 25, 2022:

1. Continue the public hearing
2. Provide clarification on applicability of Ordinance to LLCs and trusts
3. Consider adding nieces and nephews to exempt transfer language
4. Further review Right of First Refusal/economic impact of Ordinance

OPA Clarifications: LLCs

EPA OPA applies to investor-, corporate- and absentee-owned properties, and exempts all properties owned by East Palo Alto residents.

Ordinance uses the same language as state law (AB 1482) to describe non-exempt properties (see Ordinance subsection 14.26.040.A.2):

- *A real estate investment trust, as defined in Section 856 of the Internal Revenue Code;*
- *A corporation; or*
- *A limited liability company in which at least one member is a corporation.*

LLCs owned by natural persons living in EPA are not included here and may be exempt.*

Corporate-Owned LLC Properties (Non-Exempt)	Properties Owned by Natural Person(s)-Owned LLCs (Exempt)*	Properties Owned by LLC's (Exempt & Non-Exempt)
~230 total	~13 total	~243 total
95% of residential parcels owned by LLC's	5% of residential parcels owned by LLC's	5% of East Palo Alto's housing stock

Source: PropertyRadar. "Properties" here is used as a short-hand for residential parcels.

* LLCs owned by natural persons are not included under the non-exempt definition and *may* be exempt. The draft ordinance requires that owners be natural persons who have lived in East Palo Alto as a principal residence for one or more years for the exemptions to apply.

OPA Clarifications: Revocable Trusts

A person deciding to transfer their home into a revocable trust (e.g. "X Family Trust") is an exempt transfer scenario. *

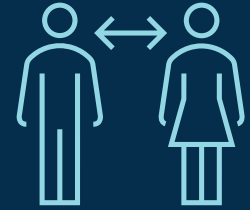
See Exempt Transfers subsection 14.26.040.B.4:



A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

*Must provide documentation to City when claiming exempt transfer.

Exempt *inter vivos* Transfers



As currently written, Ordinance exempts property transfers to family members from the OPA. City Council may recommend to include "nieces and nephews" to the family members exemption:

Section	Change
Subsection 18.26.040.B.1. Exempt Transfers.	<i>An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, * and/or grandparents and grandchildren, and/or nieces and nephews.</i>

* Note that stepchildren are recognized as children.

“Right of First Refusal” in EPA OPA

“A right in a contract where the seller must give the other party the chance to match the offer that a third party has given to buy a certain asset” (Black's Law Dictionary)

EPA OPA provides a right of first refusal under limited circumstances, with provisions that add certainty to the process for the owner. In EPA OPA, the Right of First Refusal allows a Potential Eligible Purchaser (“PEP”) to match a third party's offer when the following conditions are met:



1) PEP has submitted a timely Statement of Interest.



2) PEP has submitted a timely Offer.



3) A Third-Party Purchaser makes an offer within 15% of the PEP’s offer, and the owner is willing to accept that offer.



4) PEP submits matching offer within 5 days.*



If any one of the conditions above are not met, the owner can proceed to sell to the Third-Party Purchaser without going through the ROFR process.

Proposed ordinance states: *An Owner interested in accepting a Bona Fide Offer to Purchase from a Third-Party Purchaser shall disclose that offer to any Potential Eligible Purchaser that submitted a Statement of Interest and an Offer within fifteen percent (15%) of the offer received by the Owner from the Third-Party Purchaser.*

Economic Impact of “Right of First Refusal” or “ROFR” on Home Prices?

- Literature review shows several studies offering a theoretical framework: key findings/anticipated effects on outcomes of negotiations/contracts with ROFR
 - Small number of studies demonstrating relationship between existence of ROFR and prices
- Limited empirical evidence and published studies, especially in U.S. real estate, makes it difficult to extrapolate findings to make substantial claim regarding a ROFR impact on house prices in East Palo Alto

Other Jurisdictions with Right of First Refusal

Some within an OPA ordinance, some as standalone policy:

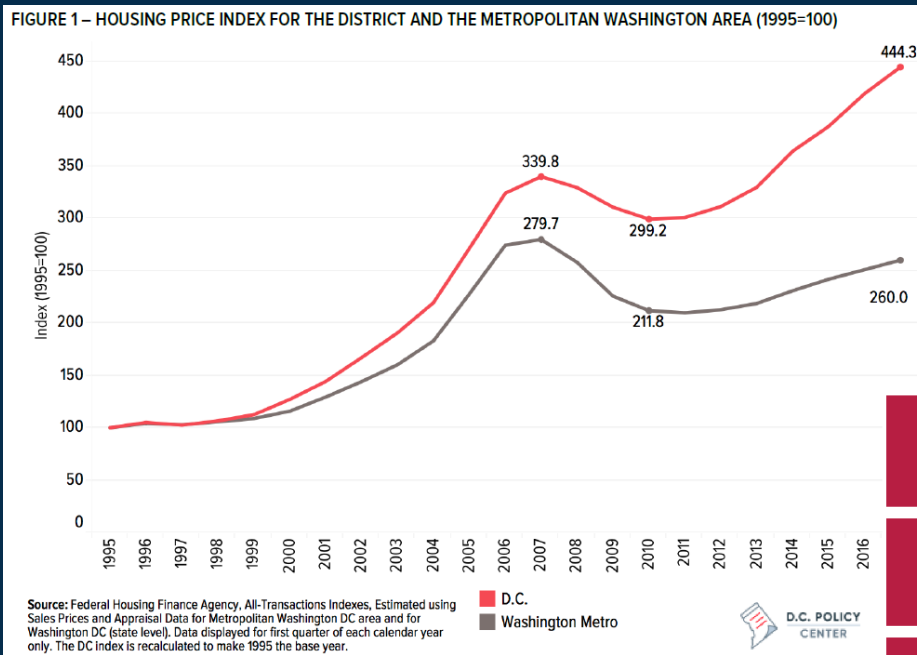
Figure 22: Opportunity to Purchase Policy Elements in Other Jurisdictions

Jurisdiction	Policy Name	Year Enacted	Policy Objective	Housing Type	Type of Right	Right to Exercise	Affordability Restrictions	Assign Rights
Baltimore, MD	Right of First Refusal	1979	Tenant rights	1 unit	Right of First Refusal	Tenant	No	
Washington, DC	Tenant Opportunity to Purchase Act (TOPA)	1980	Tenant rights	1, 2-4, and 5+ units	Right to Purchase and Right of First Refusal	Tenants	No	Yes
Montgomery County, MD	Right of First Refusal	1981	Preservation of affordable housing	4+ units	Right of First Refusal	Tenants or Housing Opportunities Commission	Yes	
Takoma Park, MD	Tenant Opportunity to Purchase Act (TOPA)	1986	Tenant rights	1, 2-6, 7+ units	Right of First Refusal	Tenant Association, Tenant, or City	No	Yes
New Hampshire	Manufactured home park right to purchase	1988	Tenant rights	Manufactured home parks	Right of First Refusal	Tenants	No	No
Minnesota	Manufactured home park right to purchase	1991	Tenant rights	Manufactured home parks	Right of First Refusal	Tenants	No	No
Washington, DC	District Opportunity to Purchase Act (DOPA)	2008; regulations issued 2018	Preservation of affordable housing	5+ units	Right to Purchase subordinate to TOPA	Qualified Developer	Yes	Yes, to a Qualified Developer
Prince George's County, MD	Right of First Refusal	2013	Preservation of affordable housing	20+ units	Right of First Refusal	County	No	Yes
Chicago, IL	Single-Room Occupancy Preservation Ordinance	2014	Preservation of affordable housing	SROs	Right of First Offer	Registered Developer	Yes	No
San Francisco, CA	Community Opportunity to Purchase Act (COPA)	2019	Preservation of affordable housing	3+ units	Right of First Offer and Right of First Refusal	Qualified Nonprofit Developer	Yes	No

Housing Markets in Jurisdictions with an OPA

Findings: 1.) Very limited data 2.) Relationship between policies and overall housing market trends unclear 3.) Very limited applicability to East Palo Alto

Evidence from Washington, DC:



Between 1995-2018, house prices in D.C. increased 4.5-fold, compared to 2.6-fold increase in greater Washington Metro area

East Palo Alto home value trends:

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	% Increase 2012-2021
East Palo Alto	\$285,000	\$938,000	\$1,030,000	261%
San Mateo County	\$775,000	\$1,700,000	\$2,222,500	187%
Santa Clara County	\$681,000	\$1,375,000	\$1,692,500	149%
San Francisco County	\$864,795	\$1,581,000	\$1,900,000	120%
California	\$365,840	\$717,930	\$782,490	114%

Source: D.C. Policy Center Housing Report, 2018

East Palo Alto home prices are trending up. EPA house prices saw a 3.6-fold increase between 2012-2021, compared to 2.9-fold increase county-wide.

Source: David Rosen & Associates Report, 2022

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 at next meeting for City Council adoption



- Staff work on administrative guidelines and funding source
 - City was awarded Breakthrough Grant



- Ordinance takes effect July 1, 2022

Questions/Discussion