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.*

<table>
<thead>
<tr>
<th>Corporate-Owned LLC Properties (Non-Exempt)</th>
<th>Properties Owned by Natural Person(s)-Owned LLCs (Exempt)*</th>
<th>Properties Owned by LLC's (Exempt &amp; Non-Exempt)</th>
</tr>
</thead>
<tbody>
<tr>
<td>~230 total</td>
<td>~13 total</td>
<td>~243 total</td>
</tr>
<tr>
<td>95% of residential parcels owned by LLC's</td>
<td>5% of residential parcels owned by LLC's</td>
<td>5% of East Palo Alto's housing stock</td>
</tr>
</tbody>
</table>

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:

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

* 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:

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

Source: LISC Twin Cities & CNHED Report, 2021
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:

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>East Palo Alto</td>
<td>$285,000</td>
<td>$938,000</td>
<td>$1,030,000</td>
<td>261%</td>
</tr>
<tr>
<td>San Mateo County</td>
<td>$775,000</td>
<td>$1,700,000</td>
<td>$2,222,500</td>
<td>187%</td>
</tr>
<tr>
<td>Santa Clara County</td>
<td>$681,000</td>
<td>$1,375,000</td>
<td>$1,692,500</td>
<td>149%</td>
</tr>
<tr>
<td>San Francisco County</td>
<td>$864,795</td>
<td>$1,581,000</td>
<td>$1,900,000</td>
<td>120%</td>
</tr>
<tr>
<td>California</td>
<td>$365,840</td>
<td>$717,930</td>
<td>$782,490</td>
<td>114%</td>
</tr>
</tbody>
</table>

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

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