



City Council Policy & Action
July 18, 2023

East Palo Alto Opportunity to Purchase Act Update

Agenda

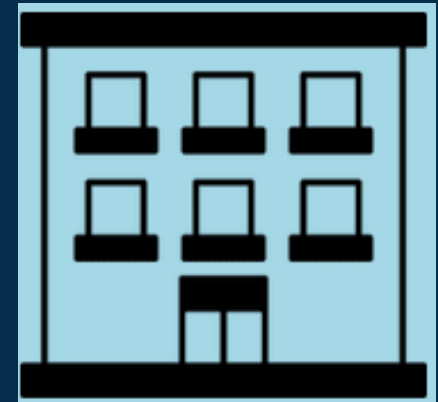
- Background
- Report Back
 - Right of First Refusal
 - Property Tax Revenue
 - 1031 Exchanges
- Recommendations
- Next Steps

Background: What is Opportunity to Purchase (OPA)?

One part helps tenants purchase the home or building where they live.

Another part is very important for neighbors who can't afford to buy – it helps affordable housing providers and/or the City purchase a residential building when an owner is ready to sell, and convert it into permanently affordable housing.

1. Requires the owners to notify tenants of sale,
2. Gives tenants the chance to make the first offer,
3. Gives tenants a tiebreaker if they can match the best competing offer



Background: Why OPA?



OPA Objectives:

- Combat displacement short term and long term
- Promote community stability
- Increase homeownership opportunity for EPA residents
- Preserve affordable housing

Glossary

- **Potential Eligible Purchasers ("PEP")** – A Tenant, Non-Profit Housing Provider, or the City in cases where OPA applies.
- **Rightsholders** – A Tenant, Non-Profit Housing Provider, or the City in cases where OPA applies; this term is used when speaking about one of the specific rights that OPA grants.
- **Right of First Offer** – The right to make the first competitive offer to purchase a property.
- **Right of First Refusal ("ROFR")** – The right of a Potential Eligible Purchaser to match a Third-Party Offer.
- **Third-Party Offer** – An offer submitted by a party other than a Rightsholder/Potential Eligible Purchaser.
- **1031 Exchange** – A capital gains tax deferral strategy for investment property transactions which enables investors to defer taxes if certain IRS rules are met.

Background: Outreach & Input Process

EPA OPA Milestones	
Date	Description
October 2018	City's Affordable Housing Strategy approved with 200 unit preservation goal
June 2019	Resolution No. 5128, authorizing Partnership for the Bay's Future for a Challenge Grant for Housing Protection and Preservation ("Challenge Grant").
November 2019	City awarded Challenge Grant (work from February 2020- January 2022)
January 2021	City Council priority: "Advancing the Concept of TOPA/COPA and Other Homeownership Opportunities."
July 2021	Authorization to apply for Partnership for the Bay's Future Breakthrough Grant.
July 2021 – September 2021	9 Affinity Group meetings (67 participants); 2 Focus Group meetings (19 participants)
October 2021	Policy & Action. City Council direction to bring back a proposed OPA Ordinance.
November 2021	Public Hearing on November 16, 2021.
December 2021	Virtual community meeting on December 1, 2021 Virtual office hours on December 3 and December 6, 2021. Public Hearing on December 7, 2021. Public Hearing on December 22, 2021.
January 2022	Staff office hours on January 13 and 14, 2022. Public Hearing on January 25, 2022 (David Rosen & Associates presentation).
March 2022	Public hearing on March 1, 2022. Latest version of the Ordinance reviewed.
March 2023	Affordable Housing Preservation funding conversation on March 21, 2023.
May 2023	Community Forum with PCRC on May 30, 2023.
June 2023	Policy Discussion with PCRC on June 13, 2023.
July 2023	City Council Policy Discussion

Background: City Council Direction

City Council direction at March 1, 2022 Public Hearing :

- Research on Right of First Refusal ("ROFR") for single family homes ("SFHs")
- Affordable housing preservation models

Community Feedback Summary

Additional Community Engagement with PCRC

- May 30, 2023 Community Forum
- June 13, 2023 Policy Discussion

Community Concerns:

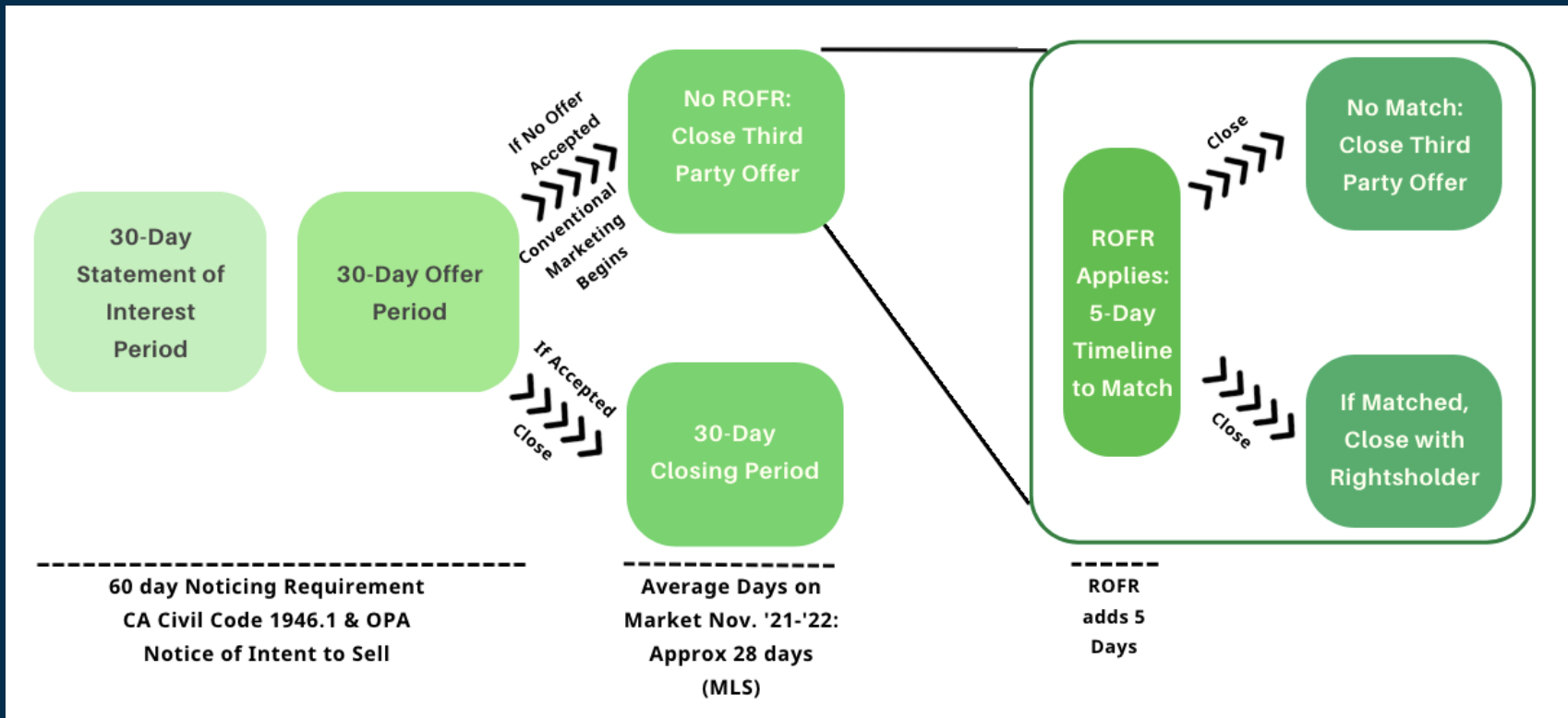
- How OPA works
- Transaction timelines
- Funding/Financing
- Misinformation
- Property values
- Right of First Refusal for single-family homes



Research Summary: “Right of First Refusal” in EPA OPA

- Applies under limited circumstances
- Enables PEP to match price & terms of an accepted Third-Party offer, giving a tiebreaker advantage to the PEP

Timeline and Process for ROFR (SFHs)



Economic Impact of Right of First Refusal (ROFR) on Home Prices?

- Concern:
 - Single-family home values in East Palo Alto
 - Some buyers may not be indifferent about a tiebreaker, which can discourage those buyers

Analysis

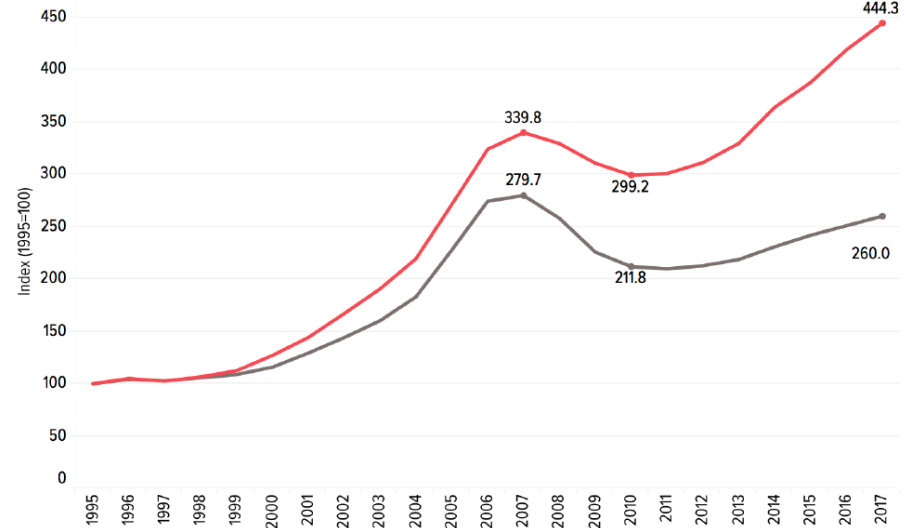
- Property value trends
- Mitigation factors

Housing Markets in Jurisdictions with an OPA

Property value trends demonstrates that in jurisdictions which have adopted these policies, property values do not decline but in fact do continue to increase in value

Washington, DC:

FIGURE 1 – HOUSING PRICE INDEX FOR THE DISTRICT AND THE METROPOLITAN WASHINGTON AREA (1995=100)



Source: Federal Housing Finance Agency, All-Transactions Indexes, Estimated using Sales Prices and Appraisal Data for Metropolitan Washington DC area and for Washington DC (state level). Data displayed for first quarter of each calendar year only. The DC Index is recalculated to make 1995 the base year.

■ D.C.
■ Washington Metro



San Francisco:



Source: Multiple Listing Service, 2019-2021

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

“Right of First Refusal” in EPA OPA

Existing ROFR Mitigations in EPA OPA

- Exemptions (8 for property type, 10 for transfer type)
- Reduced timeline for ROFR execution (shortest of policies nationwide)
- 115% Limit on ROFR Application (high Third-Party offers cancel ROFR)

Recommendations on ROFR:

Concern: Intensity of demand sensitivity could outweigh intensity of demand support

Recommendation: Staff recommend removing the Right of First Refusal for Single Family Homes

EPA OPA Timeframes as of March 1, 2022 Ordinance			
	1 unit	2-3 unit	4 unit
Statement of Interest	15-30 Day	15-30 Day	15-30 Day
First Offer	30 Day	60 Day	90 Day
First Refusal Match	5 Day	20 Day	20 Day
Closing	30 Day	90 Day	120 Day

EPA OPA Timeframes with Staff's Recommended Ordinance Amendments			
	1 unit	2-3 unit	4 unit
Statement of Interest	15-30 Day	15-30 Day	15-30 Day
First Offer	30 Day	60 Day	90 Day
First Refusal Match	Not Applicable	20 Day	20 Day
Closing	30 Day	90 Day	120 Day

Property Tax Revenue

- Concern: Reduction in Property Tax Revenue
- Analysis:
 - Welfare Tax Exemption used by some affordable housing providers to keep units affordable
 - Not every OPA transaction will qualify for Welfare Tax Exemption
 - e.g. Homeownership by individuals
 - City can evaluate Property Tax change based on funding and financing support and anti-displacement objectives
 - Volume of transactions will be influenced by funding and financing availability

1031 Exchanges

1031 Exchange: capital gains tax deferral strategy for investment properties requiring timely transactions to qualify

- 45-days to identify a replacement property
- 180 days to close on a replacement property

Concern: Timelines may impact some 1031 Exchange transactions

Analysis: Instances where 1031 Exchange applies

EPA OPA Timeframes for SFH as of March 1, 2022 Ordinance	
	1 unit
Statement of Interest	15-30 Day
First Offer	30 Day
First Refusal Match	5 Day
Closing	30 Day

Recommendations:

- Add ordinance language to support 1031 Exchange transactions (see below)
- Direct staff to develop "1031 Exchange Best Practices for EPA OPA" implementation toolkit
- *Example:*

“Any Potential Eligible Purchaser that Purchases a Residential Building under the right of first offer set forth in Section 14.26.090 shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Seller in good faith to facilitate an exchange of real property of the kind described in 26 US. C. § 1031, for the purpose of facilitating the Seller's realization of any federal tax benefits available under that section of the Internal Revenue Code.”

Recommendation Summary:

- Remove Right of First Refusal for Single Family Homes
- Add ordinance language for 1031 Exchanges
- Direct staff to return with draft ordinance

Next Steps



- If directed, staff will return with Ordinance at next meeting for City Council adoption.



- Staff work on administrative guidelines, toolkits for homeownership and affordable housing preservation.

Questions/Discussion

EPA OPA Updates

Visit www.cityofepa.org/housing and select “East Palo Alto Opportunity to Purchase Act (EPA OPA)” to see updates.

HOUSING

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+ Housing Element Update

Below Market Rate Housing Program

East Palo Alto Opportunity to Purchase Act (EPA OPA)



Updates

City Council Meeting on July 18, 2023

7/14/2023 Update: The City Council will hold a Policy & Action discussion on the potential East Palo Alto Opportunity to Purchase Act (EPA OPA) policy on Tuesday, July 18, 2023. Staff recommendations include removing the Right of First Refusal (ROFR) applicability on single-family homes due to public input. To read the staff report,

SUPPORTING DOCUMENTS

- 07.14.23 - PCRC Report (5 MB)
- 06.13.23 - Policy Discussion PowerPoint Presentation (6 MB)
- 05.30.23 - Community Forum PowerPoint Presentation (819 KB)
- 05.30.23 - Diapositivas del Foro Comunitario (2 MB)
- 03.11.22 - Press Release on March 1, 2022 City Council Meeting (124 KB)
- 03.01.22 - City Council Meeting PowerPoint Presentation (466 KB)
- 01.25.22 - City Council Meeting PowerPoint Presentation (742 KB)
- 12.07.21 - City Council Meeting PowerPoint Presentation (349 KB)
- 12.01.21 - Public Community Meeting PowerPoint Presentation (1 MB)
- 11.16.21 - City Council Meeting PowerPoint Presentation (366 KB)
- 10.05.21 - City Council Meeting PowerPoint Presentation (441 KB)
- Emails Received (June 13, 2023) (808 KB)
- Emails Received (March 1, 2022) (4 MB)
- Emails Received (January 25, 2022) (22 MB)
- Letters Received (January 25, 2022) (8 MB)
- Emails Received (December 7, 2021) (935 KB)
- Letters Received (December 7, 2021) (3 MB)
- Emails Received (December 3, 2021) (2 MB)
- Letters Received (December 3, 2021) (4 MB)
- EPA OPA Frequently Asked Questions (December 3, 2021) (284 KB)
- Emails Received (July 18, 2023) (679 KB)

<https://www.cityofepa.org/housing/page/east-palo-alto-opportunity-purchase-act-epa-opa-o>