

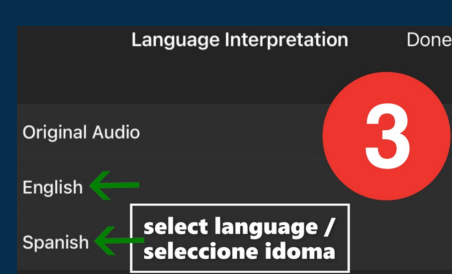
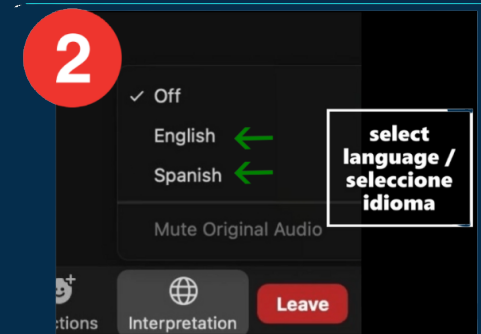
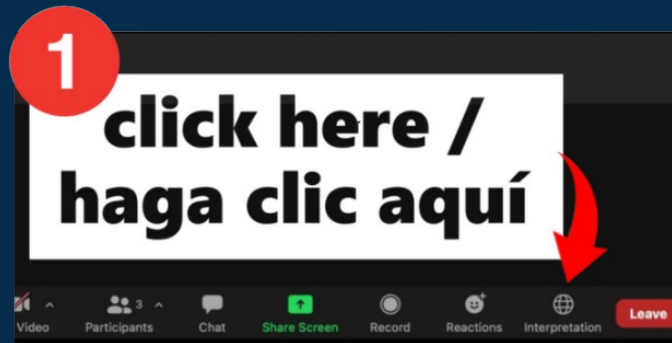


Ordinance Overview

August 10, 2023

East Palo Alto Opportunity to Purchase Act

Interpretation | Interpretación



Submit clarifying questions | Haga preguntas

Fill out Google form at:
<http://bit.ly/OPA-Question>



-or-

Email:
housing@cityofepa.org



Agenda

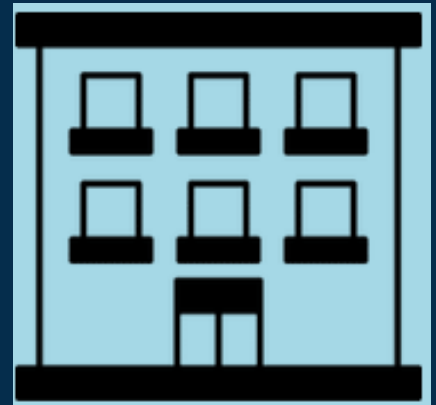
- **Background**
- **City Council Revisions on July 18, 2023**
- **Ordinance Overview**
- **Next Steps**
- **Question & Answer**

Background: What is Opportunity to Purchase (OPA)?

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

Another part helps affordable housing providers and/or the City purchase a residential building and convert it into permanently affordable housing (for EPA residents who can't afford to buy).

1. Requires the owners to notify Rightsholders of sale
2. Gives Rightsholders the chance to make the first offer
3. Gives Rightsholders a tiebreaker if they can match the best competing offer for multi-family properties (does not apply to single family homes)



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

- **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. Formerly known as Potential Eligible Purchaser.
- **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 Rightsholder to match a Third-Party Offer. Only applies to multi-family properties.
- **Third-Party Offer** – An offer submitted by a party other than a Rightsholder.
- **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: Ordinance Revisions

Recommended ordinance revisions at July 18, 2023 City Council meeting:

- Remove Right of First Refusal ("ROFR") for single family homes ("SFHs")
- Add clause on 1031 Exchanges



Updated EPA OPA Policy Components (for City Council consideration in Sept. 2023)

Element	Ordinance	
Applicability	Applies to: <ul style="list-style-type: none"> • Few single-family properties from outside investors (non-East Palo Alto residents) • Duplexes, triplexes, 4+ unit buildings 	
Exemptions	Among other things, it exempts: <ul style="list-style-type: none"> • Properties, including single-family homes owned by East Palo Alto residents • Transfers between spouses, domestic partners, parents and children, siblings, grandparents and grandchildren, and/or nieces and nephews. • Emergency financial and health situations. 	
Qualified Nonprofit Criteria	<ul style="list-style-type: none"> • Criteria broadly written in ordinance, allowing City Council to provide guidance and direction in Administrative Guidelines, and adjust and improve criteria as needed. 	
Assignment of Rights	<ul style="list-style-type: none"> • SFH tenant(s) have a right to choose and assign their right to an organization they want to partner with. No payment or reward in exchange is allowed. An offer to continue renting in favorable terms, at an affordable rate, is not considered payment or reward. 	
Priority Order	<ul style="list-style-type: none"> • In cases where there is a tie, priority is given in the following order: Tenants, QNPS, City. 	
Process	Non-Exempt Single-Family Homes <ul style="list-style-type: none"> • Notice of Intent to Sell • Statement of Interest • Right of First Offer & Owner Acceptance or Rejection • Closing if Owner Accepts 	Non-Exempt Multi-Family Properties <ul style="list-style-type: none"> • Notice of Intent to Sell • Statement of Interest • Right of First Offer & Owner Acceptance or Rejection • Owner Listing or Marketing & Third-Party Offer • Right of First Refusal • Closing

Updated EPA OPA Policy Components (for City Council consideration in Sept. 2023)

Element	Ordinance
Timelines*	1 unit: 15-90 days 2-3 unit: 15-207 days 4+ unit: 15 –267 days
Contract Negotiation	Clarifying "Bargaining in Good Faith"
Income Levels/ Affordability Requirements	For tenant purchases, affordability requirements apply only when using public funds or nonprofit assistance. QNPs and City have permanent affordability requirements for their purchases. Using City's Inclusionary Housing policy for guidance on income limits (rental and ownership).
Conduct	Rightsholders cannot sell or receive anything in exchange for waiving rights. Rightsholder that makes a Right of First Offer is obliged to work with the Owner in good faith to facilitate the exchange.
Confidentiality	Information exchanged must be kept confidential to greatest extent permitted by law.
Enforcement	Owner certification and filing copy with City. Civil action and remedies.
Implementation	City Council will initially approve the Administrative Guidelines, and thereafter, may delegate to the City Manager the authority to amend " .

Note: Timelines are the maximum an EPA OPA transaction can take from Day 1 of the Offer Period to the last day to Close, and can be shortened with agreement between involved parties.

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Incorporation of City Council & Community Feedback & Other Ordinance Elements

Figure 6: Draft EPA OPA Ordinance Revisions
between October 2021 – July 2023

Affordability	Affordability limit to include Low-Income Households for future vacancies added to Section 14.26.120.B
Affordability	Affordability requirements factor when public funds support purchase
Applicability/ Exemptions	Exemptions added: Owner-occupied 1–3-unit properties regardless of ADUs, properties owned by East Palo Alto residents, Family Transfers (including nieces and nephews), Foreclosures due to state law, Health Emergencies
Other	Eliminate appraisal process for both SFH and multifamily properties
Enforcement	Increase contract purchase deposit from 1% to 3%
Implementation	Council, not City Manager, certifies and re-certifies Qualified Non-Profits
Implementation	Owners, in addition to buyers, can pursue legal action to enforce ordinance
Implementation	City Council, not City Manager, approves Administrative Guidelines
Implementation	1031 Exchange Good Faith Effort Requirements

Incorporation of City Council & Community Feedback & Other Ordinance Elements

Figure 6: Draft EPA OPA Ordinance Revisions
between October 2021 – July 2023

ROFR	Clarified that ROFR is triggered by Seller's intent or attempt to accept a Third-Party Offer, as differentiated from receipt of an offer
ROFR	Create 15% ROFR cap
ROFR	ROFR does not apply for single family homes
Timelines	Timelines reduced overall to 90 days (SFH) to 280 days (Larger Multifamily)
Timelines	Statement of Interest Period reduced to from 30 days to 15 days, with contingent 15 additional days if applicable.
Timelines	Allow for further shortening of timelines with consent from both parties when there is only one Rightsholder
Timelines	ROFR timeline eliminated for SFH; reduced to 20 days for QNP or City purchase
Timelines	Rightsholder must submit timely letter of interest in order to submit First Offer; ROFR only applies in cases where First Offer is submitted accordingly

Case Study 1

Properties of three or fewer units (ADUs don't factor in unit count) with owner living in the unit or in East Palo Alto.



Single Family Home



Duplex



Triplex

All exempt

Case Study 2 - TOPA

Let's say you're an owner living in San Francisco who owns eight properties in East Palo Alto...



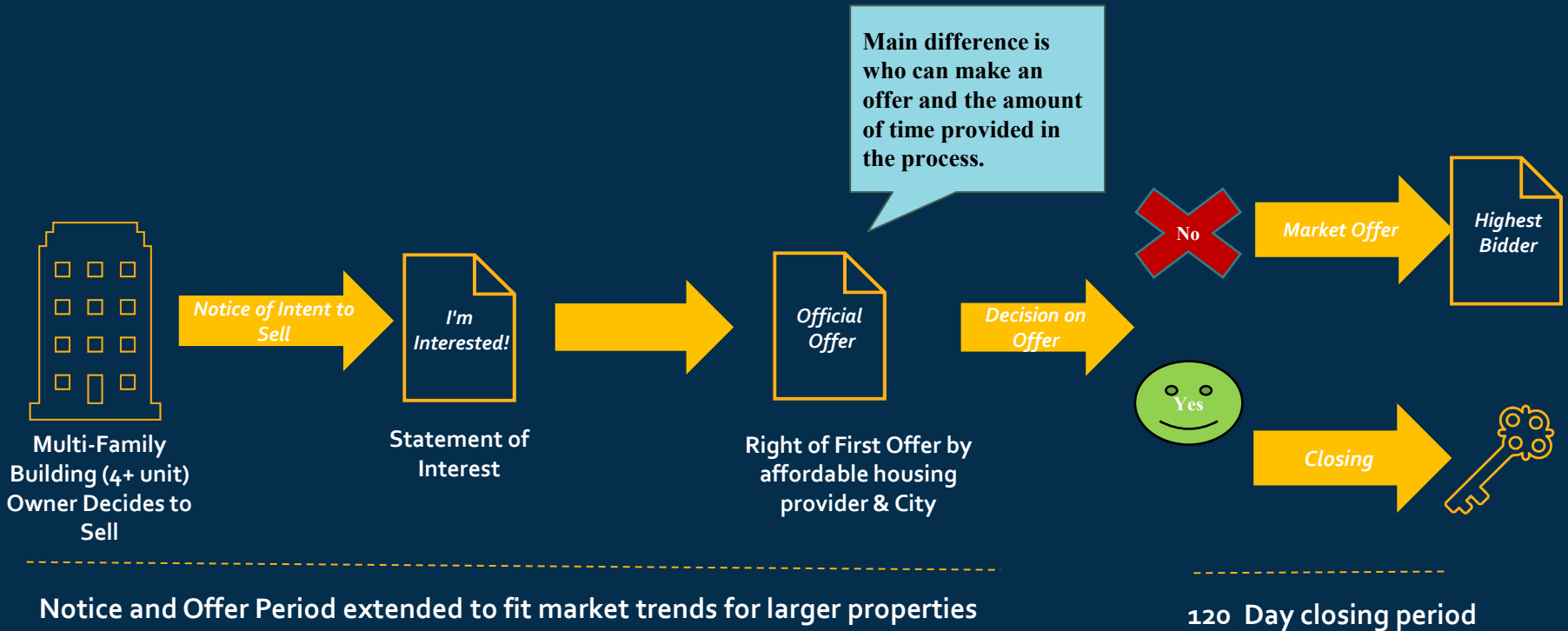
Existing 60 Day Notice Period for Selling a property with Tenants

30 Day closing period

Note: ROFR does NOT apply to SFH sales per Council's direction on July 18, 2023.

Case Study 3 - COPA

Let's say you own and want to sell a 20-unit multi-family building in East Palo Alto...



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Instances Where ROFR is Disqualified for Multifamily



No Statement of Interest -
NO ROFR

Rightsholders submit
Statement of Interest

Rightsholders submit
Statement of Interest

Rightsholders submit
Statement of Interest

Rightsholders submit
Statement of Interest

No timely offer -
NO ROFR

Rightsholders submit
timely first offer

Rightsholders submit
timely first offer

Rightsholders submit
timely first offer

Third Party Purchaser
Buys

Third Party Purchaser
Buys

Seller Accepts Local
Offer - **NO ROFR**

3rd party offer exceeds
15% of first offer

Seller seeks additional
offers and accepts one

Third Party Purchaser
Buys - **NO ROFR**

Fail to match within 5
days - **NO ROFR**

Third Party Purchaser
Buys

Instances Where ROFR is Exercised for Multifamily



Notify Potential Purchasers / 60 days before tenant must move

Rightsholders submit Statement of Interest

30 Day Statement of Interest period Ends

Rightsholders submit timely offer

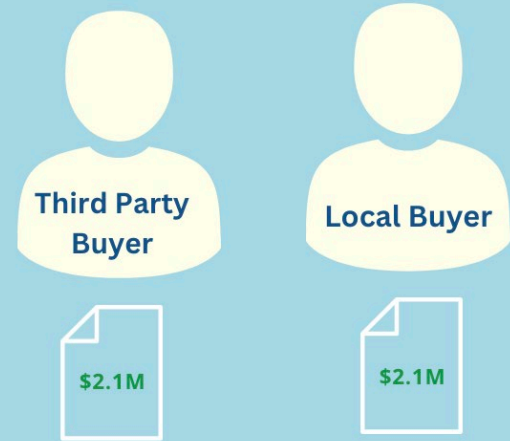
Example: \$2 Million

30 Day Offer Period Ends / Renovation for Listing and Marketing can begin

Seller seeks additional offers and accepts one

Example: \$2.1 Million

Local Buyer Matches Offer within 20 Days - **ROFR Exercised**



“Right of First Refusal” in EPA OPA

– no longer applies to SFHs

“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 Rightsholder to match a third party's offer when the following conditions are met:



1) Rightsholder has submitted a timely Statement of Interest.



2) Rightsholder has submitted a timely Offer.



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



4) Rightsholder submits matching offer within 20 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 Rightsholder 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.

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 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

Updated Timelines Tenant Opportunity to Purchase

**Figure 2: EPA OPA Timelines for Non-Exempt Single-Family Dwellings
(Tenant, Nonprofit Housing Provider, and City as Rightsholders)**

Statement of Interest Time for Rightsholders to submit a statement indicating interest in purchasing.	15 days (additional 15 days if applicable)
Initial Offer Time for Rightsholder(s) to submit an Offer to Purchase.	30 days
Close Time for the Rightsholder and the Owner to close the transaction.	30 days
Total	15 – 90 days

Proposed Timelines Update for Multi-Family Dwellings

**Figure 4: EPA OPA Timelines for Non-Exempt Multi-Family Dwellings
(Non-Profit Housing Provider and City as Rightsholders)**

Policy Element	2-3 Unit	4+ Unit
Statement of Interest Time for Rightsholders to submit a statement indicating interest in purchasing.	15 days (additional 15 days to complete delivery)	15 days (additional 15 days to complete delivery)
Disclosure Package Time for Owner to send Rightsholders a disclosure package with information about the property.	0 – 5 days (during Statement of Interest Period)	0 – 5 days (during Statement of Interest Period)
Initial Offer Time for Rightsholder(s) to submit an offer to purchase.	60 days	90 days
Disclosure of Third Party Offer Price and Terms Time for Owner to send a copy of Third-Party Purchaser's Offer to Rightsholders.	0 – 2 days	0 – 2 days
Right of First Refusal/Match 3rd Party Offer Time for Rightsholder(s) to match the Third-Party Purchaser's Offer.	20 days	20 days
Close Time for the Rightsholder(s) and the Owner to close the transaction.	90 days	120 days
Total	15 – 207 days	15 – 267 days

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 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

Recommendations:

- Council direction to:
 - Add ordinance language to support 1031 Exchange transactions (see below)
 - Develop "1031 Exchange Best Practices for EPA OPA" implementation toolkit

- *Example:*

“Any Rightsholder 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.”

Summary

The proposed Ordinance:

1. Creates a tiered structure of rights based on property type;
2. Applies to single-family dwellings and multi-family dwellings with exemptions;
3. Was informed by community feedback from homeowners, landlords, tenants, and City Council feedback.

Next Steps



- Study session late September 2023



- If directed, staff will return with Public Hearing on draft Ordinance for City Council adoption



- Staff work on administrative guidelines and funding source

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