



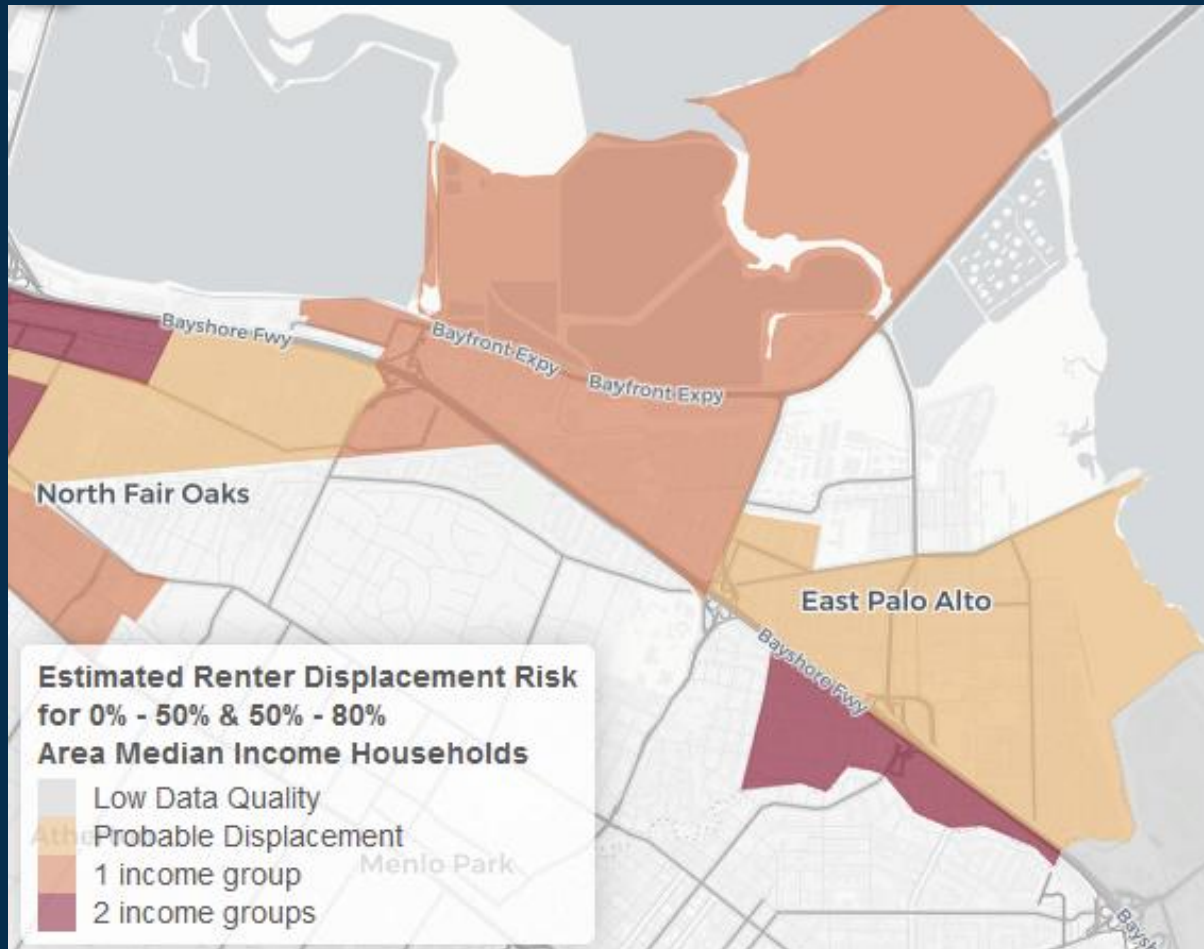
City Council Policy & Action
October 3, 2023

East Palo Alto Opportunity to Purchase Act Study Session

Agenda

- **Background**
- **Policy Overview**
- **Recommendations**
- **Next Steps**

Background: Why Opportunity to Purchase (OPA)?



Displacement has been an ongoing challenge facing EPA residents, especially low-income and BIPOC communities.

Rents and Housing prices have risen too quickly for many households .

Tenants of Single-Family Homes and Multifamily properties both need support to stay in EPA.

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
August 2023	Virtual Policy Overview

Policy Structure to Date

EPA OPA Policy			
Code	Section	Code	Section
14.26.010	Title and Purpose	14.26.100	Exercise of Right of First Refusal
14.26.020	Definitions	14.26.110	Closing
14.26.030	Applicability	14.26.120	Contract Negotiation
14.26.040	Exemptions	14.26.130	Long-Term Affordability and Tenant Protections
14.26.050	Qualified Non-Profits	14.26.140	Conduct
14.26.060	Assignment of Rights	14.26.150	Confidentiality
14.26.070	Notice of Intent to Sell; Statement of Interest	14.26.160	Enforcement
14.26.080	Rightsholders and Priority Order	14.26.170	Financial Assistance
14.26.090	Offer to Purchase	14.26.180	Implementation

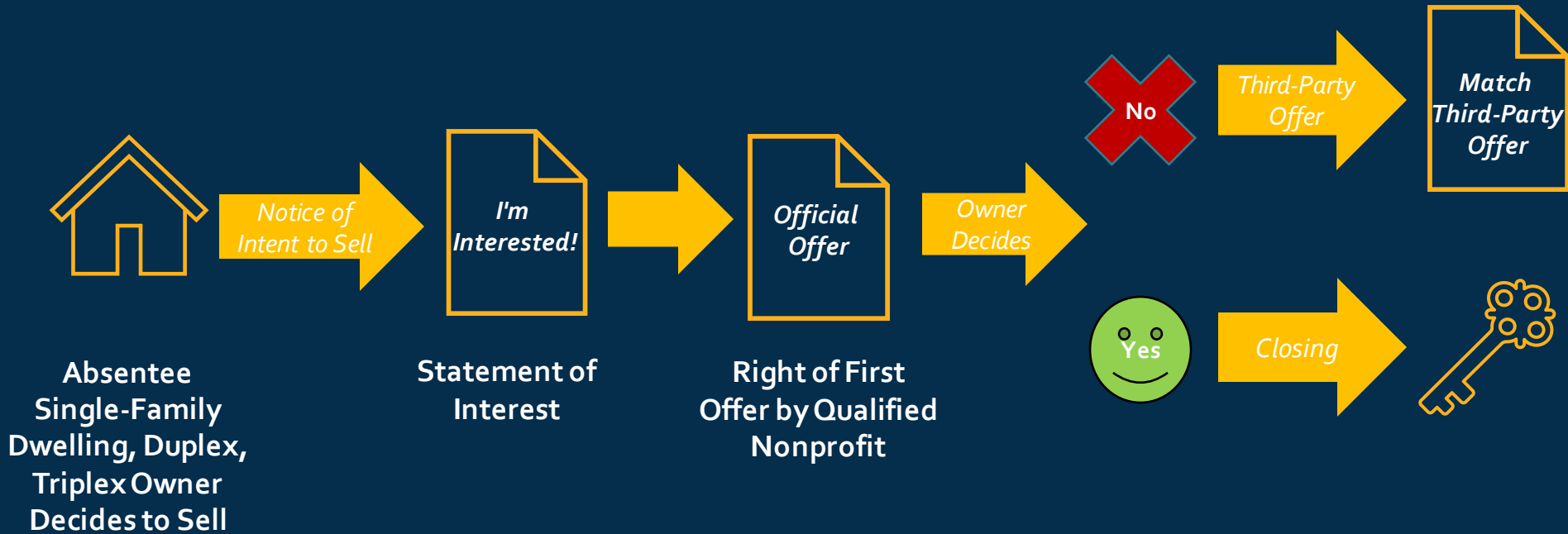
OPA Policy Overview –Scenario 1

Non-Owner-Occupied Single-Family Dwelling with Tenant



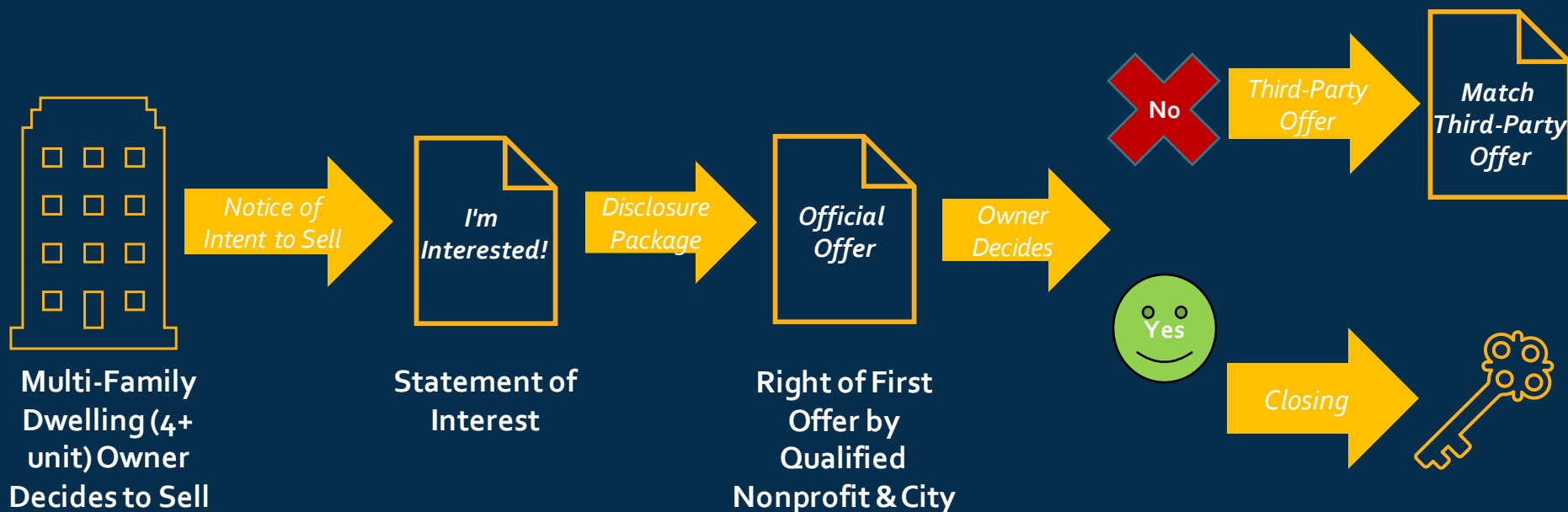
OPA Policy Overview – Scenario 2

Non-Owner-Occupied Dwelling, Duplex, Triplex No Tenant



OPA Policy Overview – Scenario 3

Multifamily Dwelling



Policy Outline for Discussion

- Exemptions & Scale
- Timelines
- Affordability
- Funding
- Qualified Non-Profits

Exemptions – Property Type

1. Owner-Occupied Single-Family Dwellings, including those with an Accessory Dwelling Unit(s)
2. Non-Owner-Occupied Residential Property owned by an East Palo Alto resident. This exemption shall not apply to any Residential Property owned by:
 - a. A real estate investment trust, as defined in Section 856 of the Internal Revenue Code;
 - b. A corporation; or
 - c. A limited liability company in which at least one member is a corporation.
3. Owner-Occupied Condominiums
4. Any Owner-Occupied Duplex with or without any Accessory Dwelling Unit(s)
5. Any Owner-Occupied Triplex with or without any Accessory Dwelling Unit(s)
6. Residential Property owned by the local, state, or federal government
7. Residential Property subject to resale price control under Chapter 18.37 of East Palo Alto's Municipal Code.
8. Residential Property owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

Exemptions – Transfer Type

1. An inter vivos transfer, between spouses, domestic partners, parents and children, siblings, nieces and nephews, and/or grandparents and grandchildren.
2. A transfer to, or solely for the benefit of, charity.
3. A transfer of legal title or an interest in an entity holding legal title to a Residential Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage.
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.
5. A transfer by devise, descent, or operation of the law upon the death of a natural person
6. A transfer pursuant to court order or court-approved settlement.
7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.
8. Any transfer of a fractional interest in a Residential Property that is less than fifty percent (50%) of an undivided interest in the Residential Property.
9. Any transfer in which the transferee receives a low-income housing credit pursuant to 28 U.S.C. § 4
10. A transfer of a Residential Property made for the purpose of either: (a) paying for imminently necessary health care expenses of an Owner of the Residential Property, or (b) an emergency circumstance placing the Owner in financial hardship and at imminent risk of foreclosure or bankruptcy

Scale of Qualifying Properties

Exemptions limit the universe of properties to which OPA applies among total transactions

Regional housing market conditions (e.g. supply, demand) result in different volumes of total sales year to year

2017-2021 estimates (Source – Property Radar):

- **Absentee-Owned Single-Family Homes Sales:** ~28 per year
- **Absentee-Owned Condominium Sales:** ~ 4 per year
- **Absentee-Owned Multifamily Property Sales:** ~4 per year

Question(s) + Recommendation(s)

- Question 1: Does the council have any feedback on exemptions?
- Question 2: Because of the need for sufficient volume of qualifying transactions for efficacy, should council amend list of exemptions over time?
- Staff Recommendation: Monitor volume of notifications by property type, if exemptions double cover or limit universe too restrictively, consider removing redundancies during implementation.

Property Tax Implications of OPA: Example

- A Housing Provider purchases 1 unit (Value ~\$965,000) through OPA to rent at affordable rates
 - Annual Countywide Property Tax (~\$9,650) would be exempted
 - EPA's expected 16%: ~\$1,544
- Purchaser leverages Affordable Housing Preservation funds (for example Foreclosure Intervention Housing Preservation Program)
 - FIHPP provides up to \$500,000/unit multi family, \$600,000/unit single family
 - Purchaser renovates and operates building as affordable housing

ASSESSMENT INFORMATION		VALUES
Land		\$229,156
Improvements		\$735,824
Fixtures		\$0
Personal Property		\$0
Taxable Value		\$964,980
Exemptions		\$0
Value After Exemptions		\$964,980
Tax Saved Due to Exemptions		\$0.00
TAXING AGENCY		AMOUNT
Countywide Tax (Secured)	1.00000000%	\$9,649.80
MidPen Open Space Bond	0.00130000%	\$12.54
Ravenswood ESD Bond	0.04150000%	\$400.46
Sequoia UHSD Bond	0.02860000%	\$275.98
SMCCD Bond	0.01930000%	\$186.24
General Tax Total	1.09070000%	\$10,525.02
FEDCA&NPDES STORM FEE	650-363-4100	\$7.60
EPA SANI DISTRICT	650-325-9021	\$1,600.00
SFBRA MEASURE AA	800-676-7516	\$12.00
RAVENSWOOD MEAS Q PTAX	866-807-6864	\$217.60
EPA GARBAGE SVC	650-853-3108	\$649.90
SMC MOSQ ABMNT DIST	800-273-5167	\$3.74
SEQUOIA UHSD MAINT	800-273-5167	\$28.08
EPA LOC STORM WATER	650-853-3108	\$20.14
Total Tax Payable		\$0.00
1	DUE NOVEMBER 1, 2022	2
	AFTER December 12, 2022 ADD 10% PENALTY TO YOUR PAYMENT	
\$0.00	\$0.00	

STATEMENT PORTION FOR YOUR RECORDS

Question(s) + Recommendation(s)

- Staff Recommendation: Monitor Transactions and evaluate property tax revenue against funding and financing which support acquisition and rehabilitation preservation.

Timelines

- Opportunity to Purchase Policies nationwide include timelines which enable rights-holders adequate time to arrange finances and make competitive offers.
- Timelines for EPA OPA vary by building type, as larger buildings require greater due diligence

Figure 4: EPA OPA Timeframes

	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

Question(s) + Recommendation(s)

- Staff Recommendation: Finalize Timelines as recently updated inclusive of the removal of Right of First Refusal for Single Family Homes.

Affordability

Affordability requirements apply for properties purchased with public funding/financing support, requiring rented units to be rented at an average of 50% the Area Median Income.

Permanent affordability standards shall be evidenced by one of the following:

1. A restrictive covenant placed on the deed to the Residential Property that runs with the land and is enforceable by the City against the purchasers and their successors;
2. A Community Land Trust lease, which is a ninety-nine (99)-year renewable land lease with affordability and Owner-occupancy restrictions; or
3. Affordability covenants in land leases or other recorded documents which run with the land and are enforceable.

Question(s) + Recommendation(s)

- Question: If in the future there are changes to be made to affordability requirements –
 - Does council prefer future changes to the affordability requirements be made by Council ordinance amendment?
 - or by Council resolution?
- Staff Recommendation: Include explicit affordability requirements in Ordinance Text (as is current) and permit changes by council resolution.

Funding

- Affordable Housing Preservation Funding: see March 2023 Staff report
 - Foreclosure Intervention Housing Preservation Program
 - California Anti Displacement and Preservation Program (passed CA Senate, working through CA Assembly)
 - Regional Housing Bond - Bay Area Housing Finance Authority

- First Time Homebuyer Funding
 - CA Dream for All program
 - San Mateo County CDBG funding
 - HEART's First Time Homebuyer Program

Question(s) + Recommendation(s)

- Question: For affordable housing preservation deals which may benefit from supplemental local funding support like Predevelopment funding or otherwise, should Council consider dedicating local funding to support affordable preservation as an anti-displacement strategy?
- Staff Recommendation: Discuss City funding to supplement state and regional funding for affordable preservation during discussion for Affordable Housing Strategy 2024-2029

Qualified Non-Profit Housing Providers

- Concern: Risk of Saturation of Non-Profit ownership of EPA properties
- “The City Council shall certify and recertify Qualified Non-Profits through the Administrative Guidelines which establish the application process. A Non-Profit organization’s certification as a Qualified Non-Profit shall be valid for five (5) years. The City Manager or designee shall solicit new applications for Qualified Non-Profit status at least once each calendar year, at which time existing Qualified Non-Profits shall be eligible to apply for renewed certification.”
- “The City Manager or designee shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If after providing the Qualified Non-Profit with notice and opportunity to respond, the City Manager or designee determines that an organization listed as a Qualified Non-Profit has failed to comply with the requirements of this Chapter, the City Manager or designee shall bring a recommendation to City Council to limit, suspend, or revoke that organization’s certification as a Qualified Non-Profit.”
- Exemptions limit Non-Profit purchases

Question(s) + Recommendation(s)

- Question: Does council have additional feedback on Qualified Non-Profit Housing Providers?
- Staff Recommendation: Maintain recommended language in ordinance to allow for flexibility in Administrative Guidelines.

Additional Policy Frameworks

Ownership Model	Description	Advantages	Disadvantages
Opportunity to Purchase Act	Rightsholders purchase (and in the case of multifamily, manage buildings as permanently affordable housing).	Faster Transactions, no need to create new resident ownership structure, ability to leverage outside funding.	Lack of tenant asset building and resident control over management, difficulty finding organizations to buy smaller buildings, high costs of buildings, renovation costs.
Limited Equity Housing Cooperatives (LEHCs)	Tenants form democratically controlled cooperative corporation that owns the building.	Homeownership opportunities for low-income families and individuals, resident control over housing quality and conditions, ability to build equity.	Need for leadership development and ongoing oversight of coops, lack of access to Low-income housing tax credit financing. Co-op formation can take 2-5 years even when residents have professional support.
Below Market Rate Condos	Tenants buy their own unit individually as condominiums.	Providing a familiar form of homeownership, resident control over housing quality and conditions, opportunity to build equity through mortgage paydown and appreciation.	Need for regulatory approval, need for individual residents to qualify for a mortgage, building inspections can trigger expensive repairs.
Tenants in Common	Residents share ownership of the whole building and share responsibility for joint mortgage.	Ability to Set up quickly with no new subdivision map or corporation, security of housing and housing costs over long term, resident control over housing quality and conditions, equity building.	Difficulty for residents to qualify for TIC mortgage, residents share responsibility for each other's mortgage payments, won't work with LIHTC or most other affordable housing programs.
Community Land Trust	A nonprofit organization holds ownership of land and structures tenure of buildings based on agreements with residents	Ability to retain affordability of housing over time, some degree of resident control over housing quality and conditions.	Residents don't have conventional ownership and have limited opportunity for equity, many residents may not be interested in co-management.

Question(s) + Recommendation(s)

- Question: What additional policies might Council wish to consider to address Homeownership and/or Affordable Housing Preservation?
- Staff Recommendation: Discuss City funding to supplement state and regional funding for affordable preservation during discussion for Affordable Housing Strategy 2024-2029

Policy Structure to Date

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14.26.060	Assignment of Rights	14.26.150	Confidentiality
14.26.070	Notice of Intent to Sell; Statement of Interest	14.26.160	Enforcement
14.26.080	Rightsholders and Priority Order	14.26.170	Financial Assistance
14.26.090	Offer to Purchase	14.26.180	Implementation

Question(s) + Recommendation(s)

- Question: Does Council wish to see an updated draft ordinance at a future public hearing?
- Question: Does Council wish for staff to begin drafting administrative guidelines, toolkits?
- Staff Recommendation: Use October 17, 2023 Public Hearing for First Reading of EPA OPA.

Next Steps



- If directed, staff will return on October 17 for introduction of draft Ordinance



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

Overview of Draft EPA OPA Ordinance Revisions To-Date

Figure 3: Draft EPA OPA Ordinance Revisions To-Date*

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 are accepted to support purchase.
Applicability/ Exemptions	Exemptions added: Owner-occupied properties, 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.
Other	Add language requiring facilitation of 1031 Exchange.
Enforcement	Increase contract purchase deposit from 1% to 3%.
Implementation	Council, not City Manager, certifies and re-certifies Qualified Non-Profits.
Enforcement	Owners, in addition to buyers, can pursue legal action to enforce ordinance.
Implementation	City Council, not City Manager, approves Administrative Guidelines

Figure 3: Draft EPA OPA Ordinance Revisions To-Date*

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 Removed from SFH properties.
Timelines	Timelines reduced overall from 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 Potential Eligible Purchaser.
Timelines	ROFR timeline reduced to 5 days for SFH properties; to 20 days for QNP or City purchase.
Timelines	Potential Eligible Purchasers must submit timely letter of interest in order to submit First Offer; ROFR only applies in cases where First Offer is submitted accordingly.

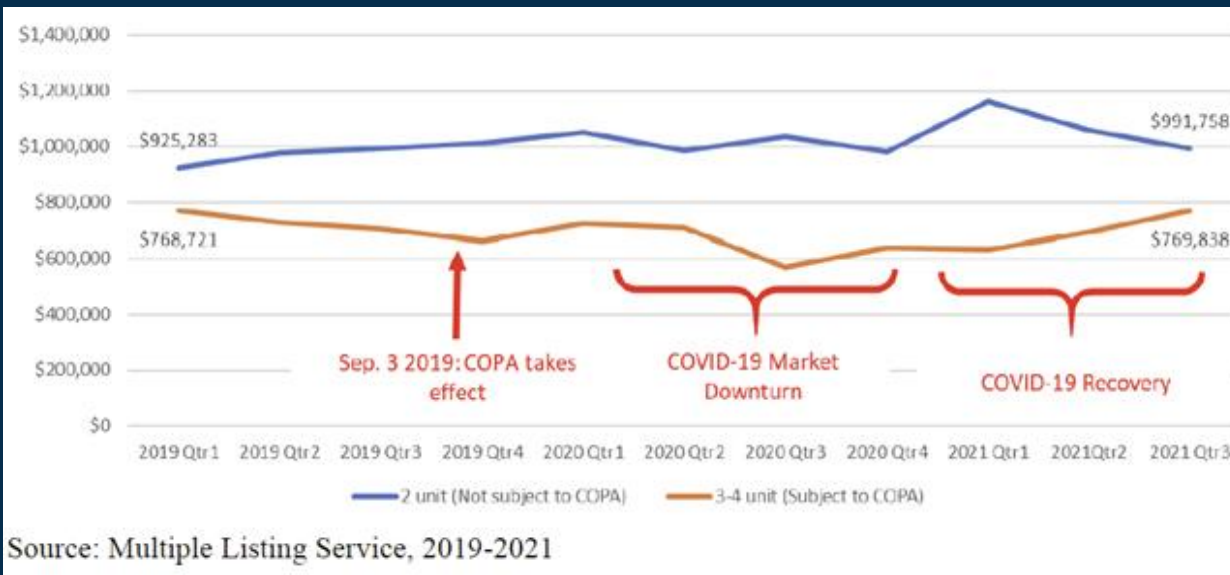
Glossary

- **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.

Housing Markets in Jurisdictions with an OPA

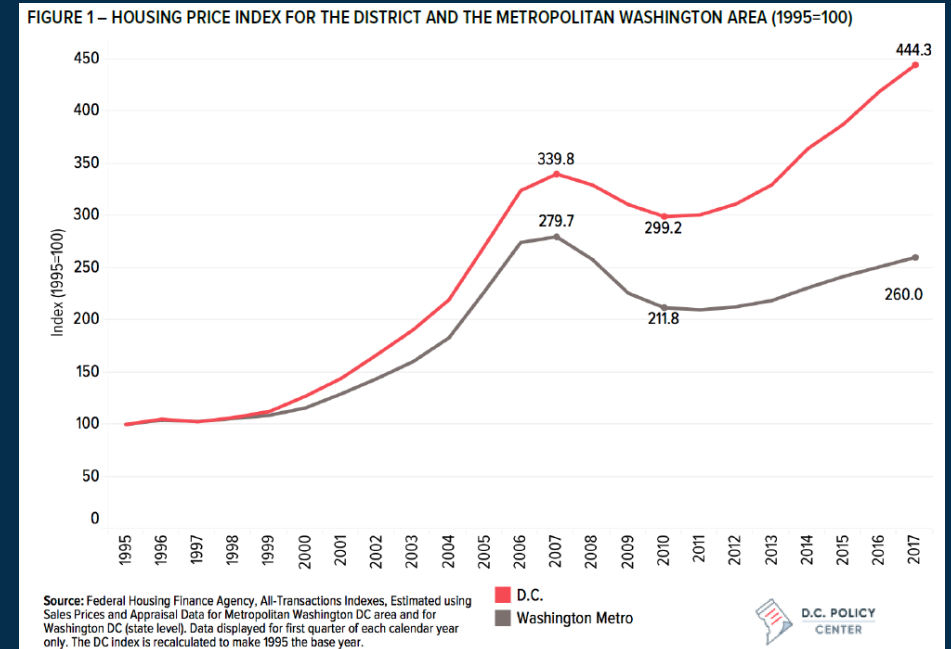
Property value trends demonstrates that in jurisdictions which have adopted these policies, property values do not decline but in fact do continue to increase in value

San Francisco:



Source: Multiple Listing Service, 2019-2021

Washington, DC:



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** **D.C. POLICY CENTER**

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