



City Council Public Hearing  
November 7, 2023

# East Palo Alto Opportunity to Purchase Act

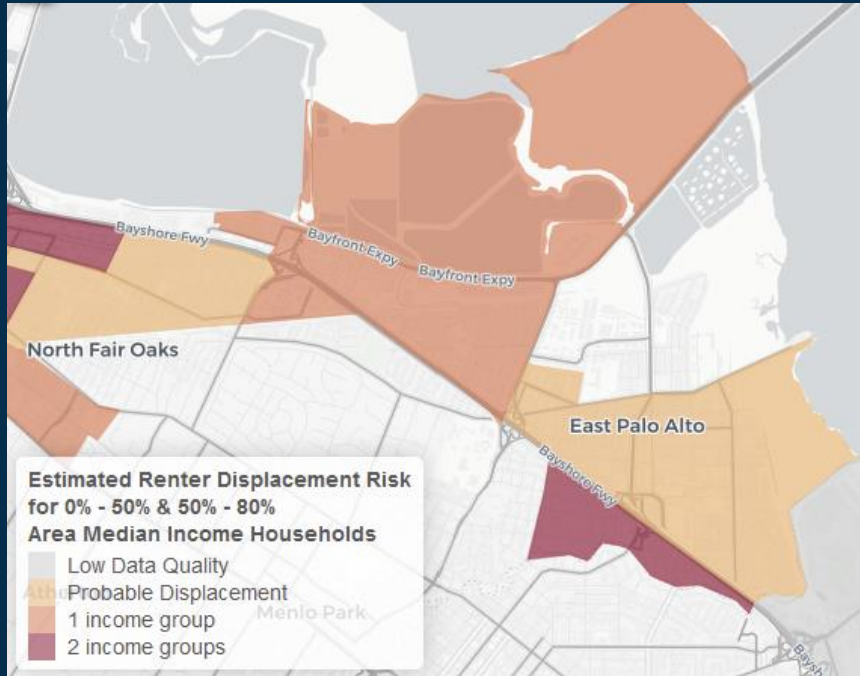
# Agenda

- Background
- Overview of Ordinances
- City Council Discussion and Direction

# Recap

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
<b>October 3, 2023</b>	<b>City Council Direction for COPA and TOPA</b>

# Why Opportunity to Purchase (OPA)?



Source: Urban Displacement Project

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.

# Overview of 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 <sup>1</sup>
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.
<b>Ordinance Split</b>	<b>Split ordinances by single family vs. multifamily housing</b>
<b>Multifamily Timelines</b>	<b>Shorten 4+ unit multifamily timelines by 60 days total (60 day offer period, 90 day right of refusal period)</b>
<b>Means Testing</b>	<b>Qualified Nonprofit Criteria will be reviewed by City Council</b>

# Staff Recommendation

## East Palo Alto Opportunity to Purchase Act (EPA OPA)

- Rights: Right of First Offer, Right of First Refusal\*
- Applicability: 1+ units
- Rightsholders: Tenants, QNPs and the City

Note: All properties owned by East Palo Alto residents are exempt. Additional exemptions also apply.

\*The right of first refusal only applies to multifamily properties.

# Preservation Goals

Discussion Guide Figure 3: Housing Element Preservation Goals

5 years	4 years	3 years	2 years
45 units per year	55 units per year	75 units per year	110 units per year
225 total units preserved	220 total units preserved	225 total units preserved	220 units preserved

EPA OPA as it applies allows for approximately:

32 single-family housing notifications / year  
4 multi-family housing notifications / year

OR

32 single-family units / year  
16 multi-family housing units /year

# Ordinance(s)

- **Alternatives**

- **Tenant Opportunity to Purchase Act (TOPA)**

- Rights: Right of First Offer
    - Applicability: single family housing (1 unit)
    - Rightsholders: Tenants, and the City

- **Community Opportunity to Purchase Act (COPA)**

- Rights: Right of First Offer, Right of First Refusal\*
    - Applicability: multi-family housing (2+ units)
    - Rightsholders: Tenants, QNPs and the City

Note: All properties owned by East Palo Alto residents are exempt. Additional exemptions also apply.

\*The right of first refusal only applies to multifamily properties.



# Shortened Multifamily Timelines

Dwelling Type	Statement of Interest Period
Multiple 2-3 Units	15-30 calendar days
Multiple 4+ Units	15-30 calendar days

Dwelling Type	Offer Period
Multiple 2-3 Units	60 calendar days
Multiple 4+ Units	60 calendar days

Reduced from 90 to 60

Dwelling Type	Close of Escrow	Extended Escrow Period
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

Reduced from 120 to 90

Dwelling Type	Exercise of Right of First Refusal
2-3 Units	20 calendar days
4+ Units	20 calendar days

# Means Testing

## Criteria for Affordable Housing Providers to become Qualified Nonprofits

### Proposed Language for Administrative Guidelines – Certification of Qualified Nonprofits

Pursuant to Chapter 14.26.050 of the East Palo Alto Municipal Code, the City Council shall certify and recertify Qualified Nonprofits via an application process as set forth in the Administrative Guidelines.

This application process for Qualified Nonprofits shall, at a minimum, require nonprofit organizations to meet the following threshold eligibility criteria by demonstrating the following:

- a. The organization is exempt from federal income tax under 26 USC Section 501(c)(3), or a California cooperative corporation;
- b. The organization has capacity to acquire, provide and manage affordable housing for extremely low, very low, and low income households;
- c. The organization has a commitment to the provision of affordable housing for extremely low, very low, low, and moderate income residents, and to preventing the displacement of such residents;
- d. The organization has a commitment to community engagement and experience working in East Palo Alto directly or with East Palo Alto-based organizations;
- e. The organization has at least five (5) years of experience acquiring and developing affordable residential properties, or is partnering with another organization to acquire and develop, affordable residential properties.

Not all Affordable Housing Providers qualify as eligible purchasers under this criteria.

# Means Testing

## Existing Means Testing for Good Faith Efforts

- Provisions to deter bad faith actors
- Loan Eligibility requirements
- Qualification Process for Non-Profit Housing Providers
- Disqualification of Non-Profits for non-compliance

### **Staff Recommendation:**

No Additional means Testing/Good Faith Effort until evidence demonstrates need

# Additional Clean-Up Changes

## Consistent Timelines, Section (e.g. 14.25.090)

- Staff will delete mention of Notice Period to increase clarity and consistency. Notice Period is initially the Statement of Interest Period (up to 30 days). In Section 14.25.090, it refers to the Statement of Interest Period and Offer Period combined, totaling up to 60 calendar days for single-family housing and 90 days for multifamily housing.

## Recordation of Compliance Status (Section 14.25.160)

- Remove recordation requirement in favor of a notarized seller declaration (before close of escrow).

# Additional Clean-Up Changes

- Effective Date / Administrative Guidelines (e.g. 14.25.070, 14.25.080)
  - Change effective date to the sooner of Council adoption of administrative guidelines by resolution, or 60 days after second reading (e.g. effective date of January 22, 2024, after November 21, 2024 Second Reading).
  - The Administrative Guidelines will include: statement of interest, disclosure package, certificate of exemption, seller declaration, qualified nonprofit criteria, etc.
  - Revise where needed. For example, under 14.25.070.C, clarify that disclosure package must include disclosures required by "applicable law" and any other information in the administrative guidelines.
  - Add effective by resolution:

## 14.25.180 Implementation

- A. The City Council shall initially approve the **Administrative Guidelines**, by resolution, necessary to implement the requirements of this Chapter. Thereafter, the City Council may delegate to the City Manager the authority to amend the **Administrative Guidelines** as needed.

# Summary

The proposed Ordinances:

1. Create a tiered structure of rights based on property type;
2. Apply to properties not owned by East Palo Alto residents;
3. Were informed by community feedback from homeowners, landlords and representatives, tenants, and City Council feedback.

# Recommendation

1. Waive the First Reading and introduce an ordinance(s) titled, **as amended by motion this evening:**
  - a. **“East Palo Alto Opportunity to Purchase Act (EPA OPA),”** for real residential property, adding Chapter 14.25 to the East Palo Alto Municipal Code; or
  - b. **“Tenant Opportunity to Purchase Act (TOPA),”** for single-family housing, adding Chapter 14.26 to the East Palo Alto Municipal Code; or
  - c. **“Community Opportunity to Purchase Act (COPA),”** for multifamily housing, adding Chapter 14.27 to the East Palo Alto Municipal Code;
2. Direct the City Manager to return with Administrative Guidelines for the City Council’s consideration; and
3. Find that the adoption by the City Council of the amendments is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.

# Next Steps



- Ordinance revisions and second reading



- Staff work on guidelines and funding sources



- Implementation after effective date



# Questions/Discussion

# Additional Revisions

# Evaluation

## 14.25.180 Evaluation

By operation of law, this Ordinance shall be evaluated in its entirety commencing ~~five~~ **two** years from the effective ~~date of adoption~~. Upon evaluation the City Council may by an affirmative vote take action to retain or revise the Ordinance and any amendments thereto, or portions thereof.