

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF EAST PALO ALTO**

**ADDING CHAPTER 14.25 ENTITLED “EAST PALO ALTO OPPORTUNITY TO  
PURCHASE ACT” TO THE EAST PALO ALTO MUNICIPAL CODE**

**WHEREAS**, the City Council finds that East Palo Alto is experiencing a shortage of affordable housing, especially for extremely low-income, very low-income, low-income and moderate-income residents, and a displacement crisis; and

**WHEREAS**, rapid displacement is evidenced in East Palo Alto by high rates of eviction, increasing rents, and increasing home values; and

**WHEREAS**, there is a disproportionate impact of displacement, homelessness, and unmet affordable housing and homeownership needs in East Palo Alto borne by African American, Latinx, and Pacific Islander communities of color; and

**WHEREAS**, sixty percent (60%) of East Palo Alto’s population are renters, and over half of these renters are cost-burdened, meaning they spend over thirty percent (30%) of their monthly income on rent; and

**WHEREAS**, according to the Bay Area Equity Atlas and the Urban Displacement Project, seventy-two percent (72%) of low-income households in East Palo Alto live in gentrifying neighborhoods; and

**WHEREAS**, due to state law, tenants living in single-family homes and tenants living in buildings built after 1988 are not protected by rent stabilization (although the Just Cause for Eviction provision applies); tenants in rent-stabilized units are not protected from displacement by owner move-in; and when a tenant moves out, the rent for that unit can be raised to market value; and

**WHEREAS**, according to the American Community Survey (2015-2019) and San Mateo County Income Limits, the median household income in East Palo Alto of \$67,087 is less than half the county’s median household income, and most East Palo Alto households fall into the “extremely low-income” to “very low-income” category, or 30-50% AMI, making residents highly susceptible to dramatic shifts in the housing market; and

**WHEREAS**, according to the Center for Responsible Lending, during the foreclosure crisis from 2004-2008, African Americans and Latinxs in California were more than twice as likely as non-Hispanic Whites to lose their homes to foreclosure; and

**WHEREAS**, there is a concentration of properties in East Palo Alto owned by individual and entity investors and the majority of these investors are not residents of the City of East Palo Alto; and

**WHEREAS**, historically, East Palo Alto residents, both owners and renters, have been denied opportunities to build wealth through property ownership due to discriminatory housing policies, including the practice of redlining that impacted longer term residents and continues to impact successive generations of East Palo Alto residents; and

**WHEREAS**, it is a necessary and important public purpose to provide relief for these economic and social ills arising from the housing challenges facing East Palo Alto residents; and

**WHEREAS**, approximately 5.8% of properties in East Palo Alto are owned by East Palo Alto residents with a primary residence elsewhere in the city; and

**WHEREAS**, a limited exemption for these local residents who own other properties within East Palo Alto will promote the purpose of providing relief for these economic and social ills experienced by residents of East Palo Alto; and

**WHEREAS**, Tenant and Community Opportunity to Purchase Act programs have been adopted in a number of jurisdictions including Washington, D.C. and San Francisco to protect residents' ability to stay in a neighborhood in a cost-effective manner; and

**WHEREAS**, the City Council desires to prevent further displacement of East Palo Alto households, to supply a variety of affordable rental and ownership housing options, and to protect the health, safety and general welfare of the public through an opportunity to purchase program; and

**WHEREAS**, this action is exempt from the California Environmental Quality Act ("CEQA"), each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions). Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning.)

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. AMENDMENT TO THE EAST PALO ALTO MUNICIPAL CODE**

The City Council hereby adds Chapter 14.25 (“East Palo Alto Opportunity to Purchase Act”) to the East Palo Alto Municipal Code to read as follows:

**Chapter 14.25  
East Palo Alto Opportunity to Purchase Act**

**14.25.010 Title and Purpose**

- A. This chapter may be referred to as the “East Palo Alto Opportunity to Purchase Act” or “EPA OPA” program.
- B. The purpose of this chapter is to confer upon Tenants, Qualified Non-Profit Housing Organizations, and the City of East Palo Alto an opportunity to purchase upon the transfer or sale of Residential Property to prevent displacement of lower-income tenants, to facilitate ownership for residents, and to create more affordable housing opportunities in East Palo Alto.

**14.25.020 Definitions**

“**Absentee Owner(s)**” means an owner (or owners) of a residential property who do not occupy the residential property as the owner’s (or owners’) principal residence.

“**Accessory Dwelling Unit (ADU)**” means a separate dwelling unit providing complete independent living facilities for one or more persons containing living, sleeping, kitchen and sanitation facilities as defined in and subject to the provisions in Chapter 18.96.

“**Administrative Guidelines**” means any requirements for implementation and administration of this chapter adopted by the City.

“**50% AMI Income Household**” means households whose income does not exceed fifty percent (50%) of the Area Median Income, adjusted for family size and as published annually by the City.

**“Bona Fide Offer to Purchase”** means an offer to purchase a property or the interest in the property that is either:

(1) In cases in which a First Offer made by a Rightsholder is acceptable to an Owner, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(2) In cases following the expiration of marketing prohibition in which a Third-Party Offer is acceptable, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(3) In cases involving the exercise of the Right of First Refusal, an offer to purchase for the Rightsholder at a price and other material terms that are substantially equivalent to those accepted by an Owner in an arm’s length Third-Party Offer.

**“City”** means the City of East Palo Alto, including any departments within the City that are assigned any responsibilities under this chapter.

**“Condominium”** means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential structure located on the real property in compliance with Civil Code Section 783. A condominium may include, in addition, a separate interest in other portions of the real property.

**“Day or Days”** means calendar day(s) unless otherwise stated.

**“Dwelling Unit”** means a structure or the part of a structure that is used as a residence that provides complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

**“Duplex”** means a single building that contains two dwelling units or two dwelling units on a single parcel. Duplex does not include accessory residential units.

**“First Offer”** means an offer made by a Rightsholder (Tenant, Qualified Non-Profit Housing Organization, or the City) during the Offer Period.

**“Junior Accessory Dwelling Unit (JADU)”** means an accessory dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence, as defined in Chapter 18.96.

**“Low-Income Households”** are households whose income does not exceed sixty percent (60%) of the Area Median Income, adjusted for family size and as published annually by the City.

**“Listing or Marketing”** means adding the property to the Multiple Listing Service (MLS) or any other private or public online database, or adding or disseminating information about the property, with the intent of informing Third-Parties or their representatives about the opportunity to purchase, promoting the property, or any actions that promote or facilitate communications from prospective buyers.

**“Median-Income Households”** are households whose income does not exceed eighty percent (80%) of the Area Median Income, adjusted for family size and as published annually by the City.

**“Moderate-Income Households”** are households whose income does not exceed one hundred and twenty percent (120%) of the Area Median Income, adjusted for family size and as published annually by the City.

**“Multiple-Family Dwelling”** means any property with two or more dwelling units.

**“Non-Exempt”** means a residential property or a transfer that is not exempt under provisions of this chapter.

**“Notice of Intent to Sell”** means a required notice from a non-exempt residential property owner of their intent to sell a residential property, to be provided to the Rightsholders prior to listing or marketing the residential property for sale.

**“Offer Period”** means the time allotted, as varied by building type following the timely submittal of a Statement of Interest by a Rightsholder, during which Rightsholders may make First Offers to purchase the property.

**“Owner”** means any natural person, corporation, association, partnership, joint venture, limited liability company, trustee, business entity and its respective agents, or any other entity, who is the owner of record of a residential property.

**“Owner-Occupied Single-Family Dwelling”** means a single-family dwelling that is occupied by the owner(s) as the owner’s or owners’ principal residence.

**“Owner-Occupied Duplex”** means a duplex in which at least one unit is occupied by the owner(s) as the owner’s or owners’ principal residence.

**“Owner-Occupied Triplex”** means a triplex in which at least one unit is occupied by the owner(s) as the owner’s or owners’ principal residence.

**“Pre-Marketing Period”** means the time before a non-exempt residential property owner may list or market the residential property to prospective Third-Party Purchasers, which may include the Statement of Interest Period and/or the Offer Period.

**“Principal Residence”** means a residential dwelling that is occupied and is the usual place of return of a natural person. A dwelling qualifies as a primary residence when the person has lived in the dwelling for more than fifty percent (50%) of the time in the year prior to the proposed sale; and the person acknowledges the dwelling as the person’s primary residence by voter registration, address on tax returns, homeowner’s exemption, and/or mailing address.

**“Qualified Non-Profit” or “Qualified Non-Profit Housing Organization”** means an organization that is exempt from Federal Income Tax under 26 USC Section 501(c)(3), or a California cooperative corporation that has the capacity to acquire, provide and manage affordable housing for low, very low, and extremely low income households as defined by the City’s annual Area Median Income calculations, has a commitment to prevent displacement, has a demonstrated commitment to community engagement, and is certified by the City through an application process.

**“Rent”** means the consideration, including security deposit, cleaning deposit and any other deposits, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Rent includes monies and the fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

**“Residential Property”** means any property containing one or more dwelling units and located in the City.

**“Right of First Offer”** means the Rightsholder's right to make a first offer to purchase a residential property, during the Offer Period following timely submittal of a Statement of Interest, prior to its listing or marketing to a broader audience by the Owner.

**“Right of First Refusal”** means the Rightsholder’s right to match a Third-Party Purchaser’s Bona Fide Offer to Purchase. Single-Family Dwellings are exempt.

**“Rightsholder”** means Tenant, Qualified Non-Profit Housing Organization, or the City in reference to the Right of First Offer and Right of First Refusal as conferred in this chapter.

**“Single-Family Dwelling”** means a building, structure or dwelling unit (e.g. accessory dwelling unit), or portion of a building, structure, or dwelling unit principally designed for the residential habitation of one household, with all secure entrances leading to the same set of interior common areas.

**“Statement of Rights and Obligations”** means a statement provided by a Qualified Non-Profit to a Tenant that assigns their rights under this chapter, or by a Qualified Non-Profit that purchases a residential property under this chapter, outlining its responsibilities as the Rightsholder and/or Subsidized Purchaser.

**“Subsidized Purchaser”** is any Rightsholder (Tenant, Qualified Non-Profit, or City) receiving public or private subsidy to support a purchase.

**“Tenant”** means a renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

**“Third Party”** means any person or entity that is not a Rightsholder and not the Owner/Seller of the property.

**“Third-Party Offer”** means any offer made by a person or entity for a Residential Property other than a Rightsholder.

**“Third-Party Purchaser”** means any person or entity other than a Rightsholder that has entered into a bona fide contract of sale for a Residential Property.

**“Triplex”** means a single building that contains three dwelling units or three dwelling units on a single parcel. Triplex does not include accessory dwelling units.

#### **14.25.030 Applicability**

This chapter applies to the sale or transfer of all Residential Property in the City unless otherwise exempted.

#### 14.25.040 Exemptions

A. Exempt Residential Property. Residential Property not subject to the requirements of this chapter:

1. Owner-Occupied Single-Family Dwellings, including those with an Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied the Single-Family Dwelling or the ADU as the Owner's Principal Residence for at least one (1) year or more.
2. Non-Owner-Occupied Residential Property owned by an East Palo Alto resident, when the Owner has occupied a Residential Property within East Palo Alto as the Owner's Principal Residence for at least one (1) year or more. 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 when the Owner has occupied the Condominium as the Owner's Principal Residence for at least one (1) year or more.
4. Any Owner-Occupied Duplex with or without any Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied any Dwelling Unit on the property as the Owner's Principal Residence for at least one (1) year or more.
5. Any Owner-Occupied Triplex with or without any Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied any Dwelling Unit on the property as the Owner's Principal Residence for at least one (1) year or more.
6. Residential Property owned by the local, state, or federal government.
7. Residential Property subject to resale price control under Chapter 18.37.



8. Residential Property owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

B. Exempt Transfers. Transfers of Residential Property not subject to the requirements of this chapter:

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, nieces and nephews, and/or grandparents and grandchildren.
2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate 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. This exemption does not supersede any rights to purchase afforded to Rightsholders under California Civil Code Sections 2924(f)-(h), 2924(m)-(n), or 2929.3.
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. § 42.

10. A transfer of a Residential Property with no more than four (4) Dwelling Units 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 and the Owner has occupied the Residential Property as the Owner's Principal Residence for at least one (1) year or more. For purposes of this subsection only, "Owner" shall be limited to a natural person having an undivided interest in the Residential Property of at least fifty percent (50%). An Owner may claim this Exempt Transfer within one (1) year of having vacated the Residential Property where the Owner demonstrates the existence of the conditions set forth in this subsection.

C. Transfer Exemption Procedures. The Owner shall submit a Certificate of Exemption signed under penalty of perjury to the City after deciding to sell and before marketing the property, self-certifying one of the exemptions described in subsection B. A Certificate of Exemption must be accompanied by supporting documents as set forth in the Administrative Guidelines. The City shall make the template Certificate of Exemption publicly available, including on the City website. This section shall not be construed to or used in a manner that unreasonably delays an Owner's valid and lawful transfer of a real property interest under Exempt Transfers.

#### **14.25.050 Qualified Non-Profits**

A. Certification, Term, and Renewal. 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. A list of Qualifying Non-Profits shall be published on the City's website.

B. Disqualification of Qualified Non-Profits. 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 may decide whether to exercise their discretion to recommend to City Council to limit, suspend, or revoke that organization's certification as a Qualified Non-Profit.

**14.25.060 Assignment of Rights**

- A. A Tenant living in a Non-Exempt Single-Family Dwelling with Absentee Owner(s) may assign rights to a Qualified Non-Profit.
- B. A Qualified Non-Profit assignee shall sign and submit a “Statement of Rights and Obligations” to the Tenant. The content of the statement shall be set forth in the Administrative Guidelines.
- C. The assignment of rights may occur at any time during the Statement of Interest Period and/or Offer Period no later than the end of the Offer to Purchase period.
- D. Neither Qualified Non-Profit assignees nor the assignor shall accept any payment or reward in exchange for the assignment of rights under this section. An offer to rent (or continue renting) the Single-Family Dwelling at terms favorable to a Tenant or Qualified Non-Profit assignee, including at an affordable rate, shall not be considered payment or reward.

**14.25.070 Notice of Intent to Sell; Statement of Interest**

- A. Notice of Intent to Sell. An Owner of a Non-Exempt Residential Property shall provide all Rightsholders a Notice of Intent to Sell prior to listing or marketing a Residential Property for sale. The City shall make the template Notice of Intent to Sell available on the City website. The Notice of Intent to Sell shall be sent to each Rightsholder as set forth in the Administrative Guidelines, and shall include the following:
  - 1. A statement that the Owner intends to sell the Residential Property.
  - 2. A statement describing the rights of Rightsholders and stating the deadlines for exercising those rights.
  - 3. Instructions for submitting a Statement of Interest, including the address and email address where a Statement of Interest may be sent.
- B. Statement of Interest. A Rightsholder may respond to the Notice of Intent to Sell by submitting a Statement of Interest during the thirty (30) day Statement of Interest Period. The purpose of the Statement of Interest is to notify the Owner of the Rightsholder’s interest in exercising the Right of First Offer and/or Right of First Refusal. To be eligible to submit a Statement of Interest, within the first fifteen (15) days of receiving the Owner’s Notice of Intent to Sell, a Rightsholder shall notify the Owner by reliable means of communication (established by

Administrative Guidelines) of the Rightsholder’s intent to submit a Statement of Interest. A Rightsholder subsequently has the remainder of the thirty (30) day Statement of Interest Period to deliver the Statement of Interest to the Owner of the Residential Property. The template Statement of Interest shall be available on the City website.

- C. Disclosure Package. Within five (5) days of sending a Notice of Intent to Sell to Rightsholder, the Owner must provide a disclosure package, as required by applicable law, and that may include documents and information set forth in the Administrative Guidelines, and at minimum, an itemized list of annual income and expenses, including but not limited to rent and other income collected, and costs of management, insurance, utilities, maintenance, and repairs.
- D. Effect of Statement of Interest. Receipt of a timely Statement of Interest by the Owner and transmission of a disclosure package to the Rightsholders shall initiate the Offer Period during which rightsholders can exercise Right of First Offer as follows:

<b>Dwelling Type</b>	<b>Offer Period</b>
Single Family	30 calendar days
Multiple 2-3 Units	60 calendar days
Multiple 4+ Units	60 calendar days

During the Offer Period, Rightsholders may submit an offer to purchase the property pursuant to Section 14.25.090.

- E. Prohibition on Listing or Marketing Property During the Statement of Interest Period and Offer Period. Before the Owner of a Residential Property may offer, list, market, or solicit offers for that property for sale to any purchaser other than a Rightsholder, the Owner shall notify each Rightsholder of the intent to sell the property. The Owner is prohibited from offering, listing, marketing, or soliciting offers until the Right of First Offer has been exercised or waived by each of the Rightsholders.

#### **14.25.080 Rightsholders and Priority Order**

A. Before the Owner of a Residential Property may list or market that property for sale to any purchaser, the Owner shall give all Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase. The Owner is not required to give the Rightsholder(s) an opportunity to purchase when the Owner has received an unsolicited offer unless the Owner takes any action to accept the unsolicited offer.

B. The priority order for Rightsholders for Tenant-Occupied Single-Family Dwellings and Condominiums from Absentee Owner(s) not maintaining a Principal Residence in City is Tenants, Qualified Non-Profits, and the City:

1. Notice of Intent to Sell. The Owner must provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this chapter.
2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest to Purchase.
3. Right of First Offer.
  - a. In the event a Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, the statement shall be given priority over any Statement of Interest submitted by a Qualified Non-Profit or the City. Nothing prohibits the Tenant(s) from assigning their Right of First Offer to a Qualified Non-Profit during the Statement of Interest period. A Qualified Non-Profit may be conferred a Right of First Offer if a Tenant assigns in writing the Tenant's Right of First Offer, or executes a written waiver of the Tenant's Right of First Offer, or no Tenant submits a Statement of Interest.
  - b. In the event no Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) submitted by Qualified Non-Profit(s) shall be given priority over any statement submitted by the City.
  - c. In the event no Tenant or Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, any Statement of Interest submitted by the City shall be given priority.

4. Right of First Refusal.

- a. No Right of Refusal is conferred to Rightsholders for Single-Family Dwellings and Condominiums.

C. The priority order for Rightsholders for Non-Tenant Occupied Single Family Dwellings and Condominiums, Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City is Qualified Non-Profits and the City.

1. Notice of Intent to Sell. The Owner is required to provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this chapter.
2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest.
3. Right of First Offer.
  - a. In the event any Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) shall be given priority over any statement submitted by the City.
  - b. In the event no Qualified Non-Profit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered, and the City may proceed with the Right of First Offer process.
4. Right of First Refusal.
  - a. The Right of First Refusal is applicable only for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City. The Right of First Refusal is not applicable for Single-Family Home Dwellings and Condominiums (with or without tenants) and residential properties and transfers exempt under Section 14.25.040.

- b. In the event the Owner rejects the offer(s) submitted by all Rightsholders and takes any action to move forward with a qualifying Third-Party Offer, the Owner must notify all the Rightsholders, who timely submitted a Statement of Interest and a First Offer, and give priority in the order described for the exercise of Right of First Refusal.
- c. In the event the Qualified Non-Profits do not submit a match to the Bona Fide Offer to Purchase for the exercise of Right of First Refusal, the City’s offer to match Third-Party price and terms in the exercise of Right of First Refusal will stand.

**14.25.90 Offer to Purchase**

A. Submission of Offer to Purchase. The Rightsholder may deliver to the Owner of the Residential Property an offer to purchase the property at any time prior to the expiration of the Offer Period. The Owner may accept or reject any offer to purchase received from a Rightsholder subsequent to the steps set forth in Section 14.25.080.

<b>Dwelling Type</b>	<b>Offer Period</b>
Single Family	30 calendar days
Multiple 2-3 Units	60 calendar days
Multiple 4+ Units	60 calendar days

B. Acceptance of Offer to Purchase. Upon acceptance of an offer to purchase a Residential Property, the Rightsholder shall make reasonable and good faith efforts to close escrow on the transaction. The timeline for close of escrow is:

<b>Dwelling Type</b>	<b>Close of Escrow</b>	<b>Extended Escrow Period</b>
Single Family	30 calendar days	60 calendar days* + any agreement between the parties
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

\*If the Rightsholder provides written documentation that the lender requires a commercial loan for the purchase of the property.

C. Termination of Right of First Offer. Upon rejection of all offers to purchase made within the Offer Period, or the closure of the Statement of Interest Period and/or Offer Period by expiration or waiver of rights by all qualifying Rightsholders, the Owner may list and market for sale the Residential Property and may solicit and conditionally accept any Third-Party Offer, subject to the requirements of Section 14.25.100.

#### **14.25.100 Exercise of Right of First Refusal**

- A. The Right of First Refusal is applicable only for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City. The Right of First Refusal is not applicable for Single-Family Home Dwellings and Condominiums (with or without tenants), and residential properties and transfers exempt under Section 14.25.040.
- B. The Right of First Refusal is not applicable to accepted or conditionally accepted Third-Party Offers which exceed 115% of the highest rejected First Offer made by a Rightsholder.
- C. Disclosure of Third-Party Offer to Purchase. An Owner interested in accepting a Third-Party Offer less than or equal to one hundred fifteen percent (115%) of the highest First Offer received, shall disclose terms of that Third Party Offer to any Rightsholder that submitted a First Offer. Within two (2) days of signaling intent and/or taking action to accept of the Third-Party Offer, the Owner shall disclose to each Rightsholder that submitted a First Offer all material terms, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser; provided, however, that any confidential information not necessary to comply with the requirements of this section shall be redacted from such offers.
- D. Right of First Refusal. Any Rightsholder that submitted a Statement of Interest and an Offer may have the Right of First Refusal. When an Owner takes action to accept a Third Party Offer at a price less than or equal to one hundred fifteen percent (115%) of the First Offer, the Rightsholder may exercise a Right of First Refusal and match the Third Party Offer within the time period set forth in this section. To exercise its Right of First Refusal, the Rightsholder must make an offer of substantially equivalent price and terms except for the time to close escrow as described in this section and the deposit amount as described in Section 14.25.110; provided, however, the financing of the Rightsholder's purchase shall



not be considered a material term of the Offer to Purchase so long as it does not affect the net value of the Sale to the Owner.

- E. Time to Exercise Right of First Refusal. Subsequent to accepting, conditionally accepting, or taking any action to accept a Third-Party Offer less than or equal to 115% of the highest rejected First Offer, the Owner shall disclose the terms of that offer and provide any Rightsholder that submitted a Statement of Interest and an Offer these minimum amounts of time to match the Third-Party Offer:

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

The acceptance of a Rightsholder's First Offer to Purchase by an Owner extinguishes any Right of First Refusal of other Rightsholders.

#### **14.25.110 Closing**

- A. Time to Close Escrow. Upon acceptance of the Offer to Purchase, the Rightsholder shall have these minimum amounts of times to close escrow:

<b>Dwelling Type</b>	<b>Close of Escrow</b>	<b>Extended Escrow Period</b>
Single Family	30 calendar days	60 calendar days* + any agreement between the parties
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

\*If the Rightsholder provides written documentation the lender requires a commercial loan for the purchase of the property.

- B. Rejection of Offer or Failure to Close. If each Rightsholder entitled to receive an Offer to Purchase waives or fails to exercise the Right of First Offer within the time set forth in this section, or if an Owner rejects any and all First Offers made by Rightsholders during the Offer Period, or if a Rightsholder that submits an accepted Offer to Purchase

fails to close escrow within the time set forth in this section, the Owner may immediately proceed with the sale or transfer of the Residential Property to a Third-Party Purchaser.

C. Notwithstanding any other provision of this section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement preserves the Right of First Refusal as conferred by this chapter.

#### **14.25.120 Contract Negotiation**

A. **Bargaining in Good Faith.** The Rightsholder and Owner shall bargain in good faith. The following constitute prima facie evidence of not bargaining in good faith:

1. The failure of an Owner to offer the Rightsholder a price or term substantially equivalent to that offered to a Third Party, without a reasonable justification for so doing;
2. The failure of an Owner to make a contract with the Rightsholder substantially equivalent to the price and terms of a Third-Party contract within the time periods specified in this chapter, without a reasonable justification for so doing; or
3. The intentional failure of a Rightsholder or an Owner to comply with the provisions of this chapter, including but not limited to Rightsholders making offers without intention to close, or Owners soliciting Third-Party Offers to disqualify the Right of First Refusal without the intention to close.

B. **Reduced Price.** If the Owner sells or contracts to sell the Residential Property to a Third-Party Purchaser for a price more than fifteen percent (15%) less than the price of the highest rejected First Offer by a Rightsholder or for other terms which would constitute not bargaining in good faith, the sale or contract is void and the Owner shall comply anew with all applicable requirements of this chapter .

C. **Financial Assurances.** The Owner may not require the Rightsholder to prove financial ability to perform as a prerequisite to entering into a contract. The Owner may not require the Rightsholder to pay the purchase price in installments unless the Owner provides deferred purchase money financing on terms reasonably acceptable to the Rightsholder. The Owner may require the Rightsholder to prove that the Rightsholder, either alone or in conjunction with a Third-Party, has comparable financial ability to the Third-Party Purchaser before the Owner will be required to grant deferred purchase money financing to the Rightsholder on the same terms and conditions conditionally accepted between the Owner and the Third-Party Purchaser. If the Rightsholder can

prove comparable financial ability alone, the Owner may not require the Rightsholder to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the Owner granting deferred purchase money financing at settlement.

D. Transfers of Interest in a Partnership or Corporation and Master Leases. In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale but which does not involve a transfer of record title to the real property, the Owner shall be bargaining in good faith if the Owner offers the Rightsholder the opportunity to acquire record title to the real property or offers the Rightsholder the opportunity to match the type of transfer or agreement entered into with the Third Party. With respect to either type of offer, all provisions of this chapter apply.

E. Deposit. The Owner shall not require the Rightsholder to pay a deposit of more than three percent (3%) of the contract sales price to make a contract. The deposit is refundable in the event of a good faith failure of the Rightsholder to perform under the contract unless otherwise provided in the contract.

#### **14.25.130 Long-Term Affordability and Tenant Protections in Properties Purchased Pursuant to this Chapter**

All Residential Properties purchased pursuant to this chapter, except for Single-Family Dwellings purchased with no subsidy, shall be subject to rental affordability restrictions and restrictions on the resale value of a given property.

A. Subsidized Purchaser(s). In exchange for the rights conferred by this chapter, Subsidized Purchasers shall sign and submit a Statement of Rights and Obligations, available on the City website, agreeing to maintain the Residential Property as permanently affordable. This Statement of Rights and Obligations shall be recorded.

B. Rental Units. If, upon purchase, the average rental rate of the units in the property, based on the existing tenancies of the non-purchasing Tenants exceeds a rent affordable to 50% AMI households, the new Owner shall rent each vacant unit to 50% AMI income households until the 50% AMI rental rate average is achieved. Future rental rates of any vacant units shall not exceed a rent affordable to Low-Income Households. These affordability levels may be amended by Council resolution.

C. Owned Multiple-Family Units. The sales price shall be calculated based on Chapter 18.37 and the inclusionary housing guidelines. The sales price for any vacant

units shall be set at an affordable price to Median Income Households and to Moderate Income Households, with the first vacant unit restricted to Median Income Households. The resale or transfer of ownership units shall be subject to long-term affordability covenants consistent with Section 18.37.100.

D. Permanent affordability standards shall remain in force in perpetuity or for no less than ninety-nine (99) years and be renewable. The 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.

E. The sale of a Residential Property pursuant to this chapter shall not impair the rights of any Tenant under Chapter 14.04 or any other applicable state law or local law. Further, any Tenant who resides in any unit at the time of the sale of a Residential Property under this chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this section.

F. All covenants created in accordance with this section shall be recorded with the San Mateo County's Recorder's Office.

G. Required Filing to Certify Compliance with Affordability Restrictions. In the case that permanent affordability restrictions materialize as a covenant enforceable by the City, the Owner(s) of the Residential Property shall file a document every three (3) years with the City in which the Owner(s) affirmatively state the rents for each unit in the Residential Property.

#### **14.25.140 Conduct**

A. The sale or transfer of any Residential Property subject to this chapter is prohibited unless an exemption applies and the Owner complies with Section 14.25.040. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c) shall be considered a sale or transfer of Real Property for purposes of this Chapter.

B. A Tenant or Rightsholder is prohibited from receiving any consideration in exchange for foregoing any right afforded to them under this chapter or sell a waiver of any such right.

C. An Owner shall not coerce a Rightsholder to waive their rights, retaliate against or harass a Tenant seeking to exercise their rights, or engage in conduct intended to prevent a Tenant from exercising their rights under this chapter.

D. Any agreement between the Owner and a Rightsholder to shorten the time periods provided for exercise of any right afforded under this chapter is prohibited unless all other Rightsholders have waived their rights under this chapter. Notwithstanding the foregoing, any Rightsholder may affirmatively indicate they have no interest in a Residential Property prior to the expiration of any deadlines and in accordance with the Administrative Guidelines. Nothing in this section shall prohibit an agreement to extend the deadlines set forth herein.

E. Any Rightsholder that Purchases a Residential Building under the right of first offer set forth in Section 14.25.090 shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner 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 Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.

#### **14.25.150 Confidentiality**

Any information exchanged between Owner(s) and Rightsholders intended to facilitate the sale of property including, but not limited to, disclosures, any intent to sell, and terms and conditions of an offer of sale, shall be kept confidential to the greatest extent permitted by law. This section shall not prohibit disclosure of information necessary to effectuate the purpose of this chapter to any Owner, Tenant, Qualified Non-Profit, or to the City or its agents or contractors, nor shall this chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

#### **14.25.160 Enforcement**

A. **Owner Certification.** Before close of escrow, the Owner(s) shall cause to be executed, through the escrow company that facilitates the sale of the property, a notarized signed declaration, under penalty of perjury, affirming that the sale of that property substantially complied with the requirements of this chapter. Owner shall instruct the

escrow company to file a copy of the Owner Certification with the City. The City will publish addresses of all such sales on its website.

B. The City Attorney, any non-exempt Owner subject to the provisions of this chapter, and/or any Rightsholder may bring a civil action to enforce this chapter and shall be entitled to the remedies set forth in this section to the greatest extent permitted by law.

C. A prevailing party in any action to enforce this chapter shall be entitled to civil damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may enforce the affordability requirements of this chapter, when applicable. Any court of competent jurisdiction may enjoin a transfer or sale of Property, or rescind a sale of Property, where the Owner failed to comply with requirements of this chapter, and may order that an Owner comply with the requirements of this chapter.

D. Penalties for violation of this chapter:

1. Any violation shall be subject to a civil penalty not to exceed \$1,000 per day, unless such a penalty would not be in the interests of justice, as determined by a court of law. Each failure to provide the required notice or disclosure shall be considered a separate violation for each unit on a Property. Penalties assessed for violations found not willful shall not exceed \$15,000; no such maximum shall apply for willful violations.
2. If the Owner's violation was knowing or willful, mandatory civil penalties equal to ten percent (10%) of the sale price for a first violation; twenty percent (20%) for the second, and thirty percent (30%) for each violation thereafter.

E. Suspension or Disqualification of Qualified Non-Profits. The City 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 be heard, the City determines that a Qualified Non-Profit has failed to comply with this chapter, the City may suspend or revoke a Qualified Non-Profit's certification.

#### **14.25.170 Financial Assistance**

A. The City Manager or designee shall develop guidelines, which shall be subject to approval by the City Council, for providing financial assistance to allow for the acquisition of Residential Property. Financial assistance may be provided to Rightsholders. Nothing in this section commits the City Council to providing a specified level of funding for the acquisition of Residential Property under this chapter.

B. The provision of financial assistance to any Tenant who acquires an interest in a Residential Property pursuant to this chapter must be conditioned on the Tenant's agreement to reside at the Residential Property for at least three (3) years. The City Manager or designee is authorized to impose a lien on the Residential Property to enforce the requirements of this section.

#### **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.

B. The City shall annually post and update the City's website with information on the East Palo Alto Opportunity to Purchase Act process, including information about rights and sales.

C. The City Manager or designee shall develop online and printed forms and databases, Qualified Non-Profit list and registry, and other administrative services to ensure efficient management of the program.

### **SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Adoption of this Ordinance is not subject to CEQA because it is not a "project" which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines. The City Council therefore directs that the Planning Division file a Notice of Exemption with the San Mateo County Clerk.

### **SECTION 4. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

**SECTION 5. EFFECTIVE DATE.**

The Effective Date of this chapter shall be the earlier of City Council adoption of Administrative Guidelines by resolution, or 60 days after ordinance adoption.

**SECTION 6. EVALUATION**

By operation of law, this Ordinance shall be evaluated in its entirety commencing two years from the Effective Date. 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.

**SECTION 7. PUBLICATION.**

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the \_\_\_\_\_ meeting of the City Council of the City of East Palo Alto.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 202\_ by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Lisa Gauthier, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
James Colin, City Clerk

\_\_\_\_\_  
John D. Lê, City Attorney