



City Council Meeting
October 5, 2021

East Palo Alto Opportunity to Purchase Act

Why are we here?

- Tonight, staff is recommending that Council direct staff to develop an East Palo Alto Opportunity to Purchase Act ordinance (“EPA OPA policy”).
- Staff will present recommendations for an OPA policy for City Council consideration.
- Staff seeks City Council feedback on two key policy questions:
 1. Income restrictions
 2. Qualified nonprofit requirements

Background

Oct
2018

- **October 2018** – goal to “Advance the Concept of TOPA/COPA and Other Homeownership Opportunities” proposed in City’s Affordable Housing Strategy. It was adopted as a City Council priority for 2021.

June
2019

- **June 2019** - City of East Palo Alto applied for Partnership for the Bay’s Future Challenge Grant for housing protection and preservation, with community partners EPACANDO, PAHALI, YUCA and CLSEPA.

Fall
2019

- **Fall 2019** – City of East Palo Alto selected as 1 of 7 Challenge Grant recipients and assigned a Fellow. Challenge Grant goal includes:

Oct
2021

- (3) designing and supporting the passage of a local preservation ordinance – a Tenant Opportunity to Purchase Act/Community Opportunity to Purchase Act (“TOPA/COPA policy”)
- **February 2022** – Completion of Challenge Grant period

What is an EPA OPA Policy?

An EPA Opportunity to Purchase Act would:



- Give tenants, non-profit organizations, or the City the first opportunity to purchase a residential property when the owner decides to sell



- Keep homes affordable and EPA residents in the community

Note: This policy is known as a Tenant Opportunity to Purchase Act (TOPA), Community to Purchase Act (COPA), or District Opportunity to Purchase Act (DOPA) in other jurisdictions.

Why an EPA OPA?

Status Quo

Limited Tenant Protections Due to State Law

Tenant Displacement

Investor Ownership

Flipping Inflates Home Prices

Fewer Opportunities for First Time Homebuyers

OPA Policy

Provides another legal tool for:

Tenants to Stay in Place

Community Ownership

Permanent Affordability

First-Time Homeownership

Opportunities for Low-Income Households

Elements of an OPA Policy

- While OPA policies differ across jurisdictions, they have the same basic framework. This includes:
 - Notice of Intent to Sell & Statement of Interest
 - Right of First Offer
 - Right of First Refusal
 - Incentive to Accept Offer
 - Extended Timelines



Washington DC & SF COPA

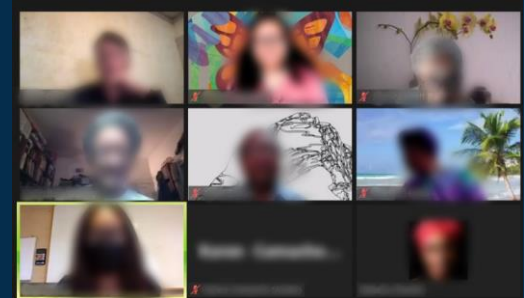
| | Washington, DC TOPA (1980) | San Francisco COPA (2019) |
|----------------------------------|---|---|
| When TOPA/ COPA Applies | When owner chooses to sell | When owner chooses to sell |
| Who is Eligible | Tenants | Qualified Nonprofits (QNP)s only |
| Property Type | Properties with 5+ units; 2-4 unit buildings and single-family homes if tenant is disabled or elderly | Properties with 3+ units or lots where zoning allows 3+ units |
| Timeline | 90 – 300+ days | 90 – 120 days |
| Affordability Requirement | No permanent affordability requirement | Permanent affordability |
| Incentives | None | Partial transfer tax exemptions and federal tax benefit |
| City Investments | Up to \$10M/year spent | Up to \$25M/year spent |
| Units Preserved | 3,500+ units since 2002 | 400 units through small sites program since 2014 |

Outreach



- Outreach began August 2020; put on pause due to pandemic
- 9 Affinity Group Meetings (July 2021 - August 2021)

- Anamantangi Polynesian Voices
- East Palo Alto Council of Tenants
- El Comité del Lado Oeste
- Envision-Transform-Build
- Nairobi Steering Committee
- Nuestra Casa's Constituents
- Rotary Club of East Bayshore
- Tenant Advisory Body
- Youth United for Community Action



- 2 Focus Group Meetings (August 2021 – September 2021)

- *Questions and group discussions included: outcomes/goals, type of policy, tenant power, permanent affordability, income levels, sales price, incentives, exemptions, property type, financing, timing/timelines, qualified nonprofit requirements, disclosures, and more.*

Community Input



| Policy Considerations | Community Feedback |
|---------------------------------|--|
| Right of First Refusal | Leaning toward a COPA for practical considerations. Community requested that the City also have an opportunity to purchase. Tenants living in single family homes (many of whom are multi-generational households) should also have an opportunity to purchase, with opportunity to assign their right to a qualified nonprofit. |
| Property Type | Have EPA OPA policy apply to all housing types, including single family homes. |
| Affordability Restrictions | Require permanent affordability, unless private tenant funds are used. |
| Income Levels | At 30-50% AMI. Only two people said they wanted to see housing for households that made more than 80% AMI. |
| Sales Price | Provide appraisal option to ensure asking price is within range.. |
| Transaction Timeline | Provide as much time as possible in the early stages of the process, including the statement of interest and offer period, with different timelines by property size. |
| Eligible Transfers / Exemptions | Inheritance or sale or transfer to close family members. Concerns about creating potential loopholes. |
| Qualified Nonprofit | Require partnerships between organizations to create greater accountability. |
| Incentives | Look into potential incentives, understanding that values should be enough incentive. |
| Financing | Provide acquisition/rehab funding and funding for tenant technical assistance. New campaign similar to Measure V. |
| Disclosures | Important for owner to disclose insurance costs, potential sewer repair costs, and other potential costs. |

Recommendations

Staff recommends that Council adopt a TOPA/COPA policy (“East Palo Alto Opportunity to Purchase Act” or “EPA OPA”) that applies:

1. **TOPA** on all tenant-occupied single-family homes (with tiered rights for qualified nonprofits and the City if tenants do not express interest in purchasing);
2. **COPA** on all single-family homes without tenants (with a tiered right for the City if QNPs do not express interest in purchasing); and
3. **COPA** on all multi-family properties with 2+ units (with a tiered right for the City if QNPs do not express interest in purchasing).

Recommendations

| | Washington, DC TOPA (1980) | San Francisco COPA (2019) | Proposed EPA OPA |
|--------------------------------------|---|--|--|
| When TOPA/ COPA Applies | When owner chooses to sell | When owner chooses to sell | When owner chooses to sell |
| Who is Eligible | Tenants | Qualified Nonprofits (QNP) only | Tenants, QNPs, and City |
| Property Type | Properties with 5+ units; 2-4 unit buildings and single family homes if tenant is disabled or elderly | Properties with 3+ units or lots where zoning allows 3+ units | Properties with 1+ units |
| Timeline | 90 – 300+ days | 90 – 120 days | 100 – 270 days |
| Affordability Requirement | No permanent affordability requirement | Permanent affordability | Under TOPA, only when using public funds or nonprofit assistance; permanent affordability requirement for QNP and City purchases |
| Incentives | None | Partial transfer tax exemptions and federal tax benefit | Transfer tax exemption and/or other |
| City Investments | Up to \$10M/year spent | Up to \$25M/year spent | For future discussion |
| Units Preserved | 3,500+ units since 2002 | 400 units through small sites program since 2014 | N/A |

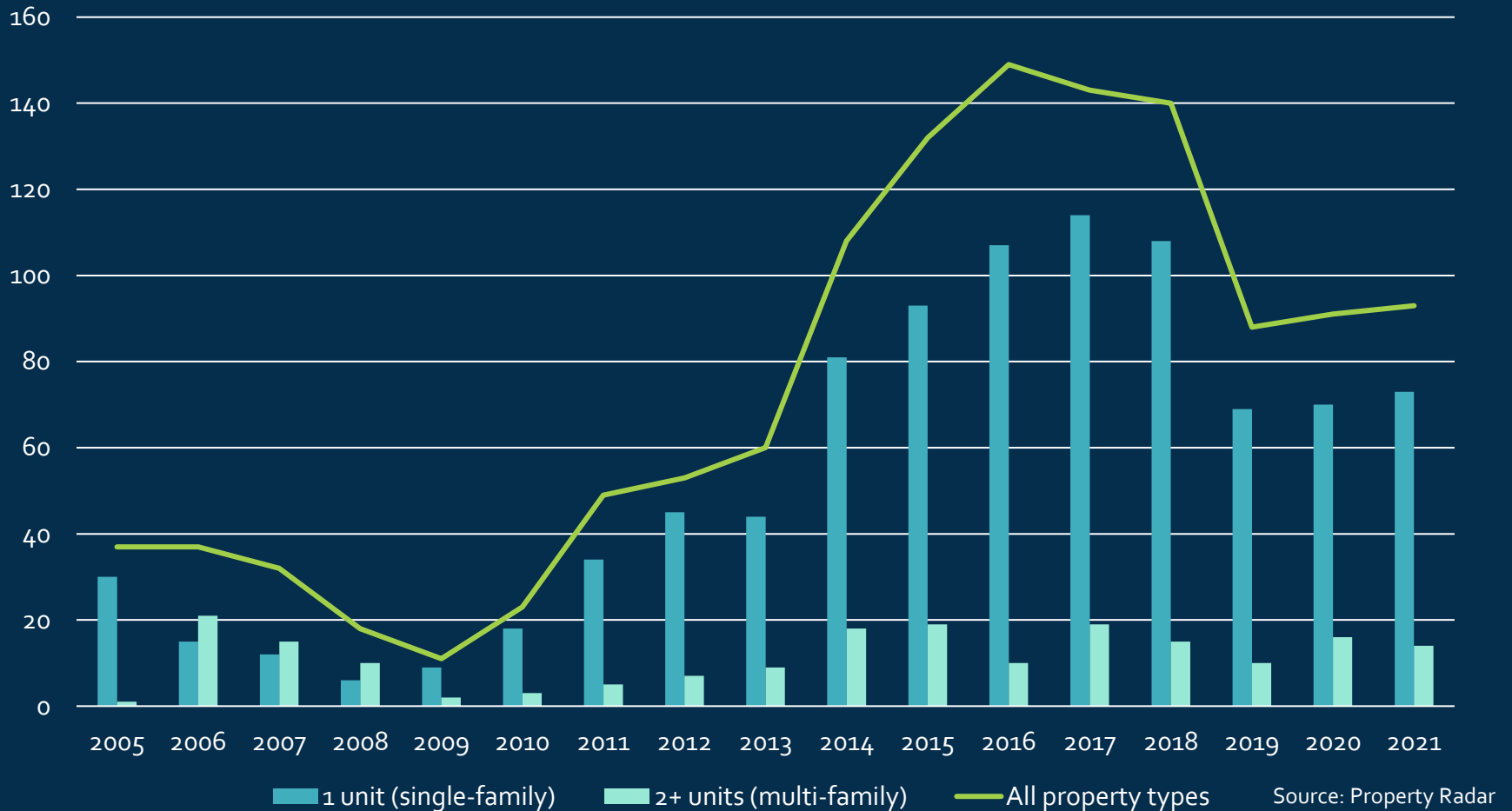
Recommended Timelines

| | Washington, DC TOPA (1980) | San Francisco COPA (2019) | Proposed EPA OPA Timelines |
|---|---|---|--|
| Statement of Interest | 20 days (1 unit) 15 days (2-4 units) 45 days (5+ units) | 5 days | 30 days |
| Initial Offer | 25 days (1 unit) 90 days (2-4 units)* 120 days (5+ units)* | 25 days | 30 days (1 unit) 60 days (2-3 units) 90 days (4+ units) |
| Right of First Refusal/ Match 3rd Party Offer | 15 days | 5 days if QNP had exercised right of first offer; 30 days if QNP had not | 10 days (1 unit) 30 days (2+ units) |
| Close | 45 days (1 unit)* 90 days (2-4 units)* 120 days (5+ units)* | 60 days (unless otherwise agreed upon in writing) | 40 days (1 unit, TOPA) 90 days (1-2 units, COPA) 120 days (4+ units, COPA) |
| Total | 90 – 300+ days | 90 – 120 days | 100 – 270 days |

*with extension provisions

Applicability

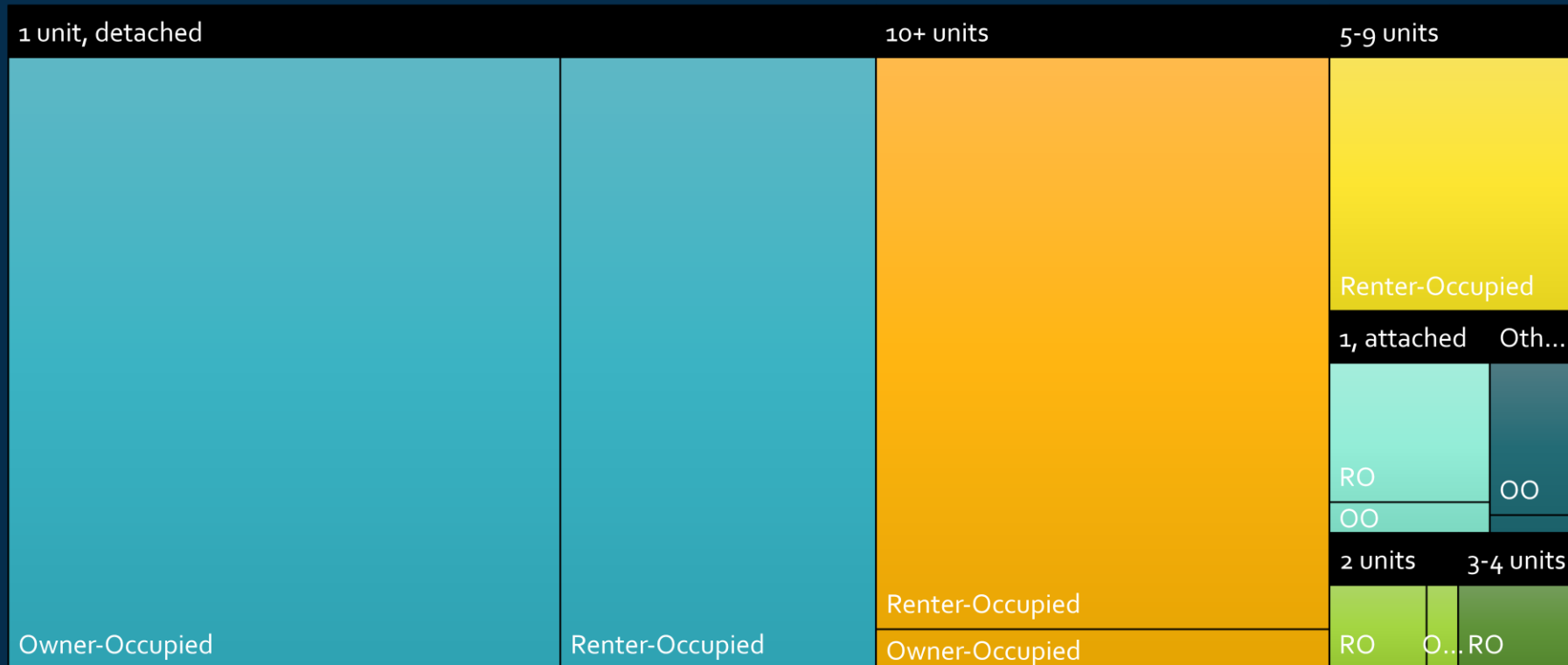
Housing Sales in East Palo Alto by Property Type (2005-present)



Applicability

East Palo Alto Housing Stock by Unit Size (2019)

- 1 unit, detached
 - 2 units
 - 5-9 units
 - Other (mobilehome or other type of housing)
- 1, attached
 - 3-4 units
 - 10+ units



Summary

- The recommended EPA OPA policy is a tool to give tenants, qualified nonprofits, and the City an opportunity to purchase.
- Staff recommend an EPA OPA policy that:
 1. Applies to all residential property sales;
 2. Creates a tiered structure of rights based on property type;
 3. Was informed by community feedback from homeowners, landlords, and tenants.
- Staff are aware that an EPA OPA policy requires time and resources to implement. The City has applied for a Partnership for the Bay's Future Breakthrough Grant to support policy implementation (application response anticipated in late Fall).

Staff is Seeking Direction

1. Upon resale or vacancy, what income restrictions should be applied to create affordability on properties acquired through a qualified nonprofit or City purchase?
2. What should be the qualification requirements for nonprofits to become certified as "qualified nonprofits"?
(see Qualified Nonprofits Criteria Attachment)

Next Steps



- City Council direct staff to work on a draft ordinance tonight



- Staff present draft ordinance and gather input from Council in November



- City Council adopt ordinance by end of 2021
- Staff work on guidelines and funding source in early 2022



- Ordinance implementation mid- to late- 2022

Questions/Discussion