



# Memorandum

**TO:** COMMUNITY & ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** October 18, 2021

Approved

Date

10/18/21

**SUBJECT: COMMUNITY OPPORTUNITY TO PURCHASE PROGRAM DRAFT  
GUIDELINES REPORT**

## **RECOMMENDATION**

It is recommended that the Committee accept the status report on the development of guidelines for the Community Opportunity to Purchase Program.

## **OUTCOME**

Committee members will receive a status of staff's work on the development of a Community Opportunity to Purchase program, which would require notification of residential building sales to qualified nonprofits and give them a right of first offer to purchase. This work was directed by the City Council in its approval of the Citywide Residential Anti-Displacement Strategy in September 2020.

## **BACKGROUND**

On September 22, 2020, [the City Council approved](#)<sup>1</sup> staff's proposed Citywide Residential Anti-Displacement Strategy (Anti-Displacement Strategy). The Anti-Displacement Strategy focuses on steps that the City can take to help prevent and mitigate the displacement of lower-income

<sup>1</sup> <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4635014&GUID=843B7A57-FFCE-411F-81C5-49D3378215A5&Options=&Search=>

residents from San José. The City Council's direction included that staff focus its work on the top three recommendations:

1. Support COVID-19 Recovery Eviction Relief and Mitigation Measures for Renters and Homeowners
2. Create a Neighborhood-based Tenant Preference
3. Explore a Community Opportunity to Purchase Program (Right of First Offer to Purchase)

The City Council also directed staff to return to the City Council with an update on progress on the first three recommendations in six months, as well as provide quarterly updates to both the Community and Economic Development Committee and the Neighborhood Services and Education Committee. Accordingly, Housing Department staff have provided several updates, including status reports on the Community Opportunity to Purchase Program (COPA), to the City Council as follows:

- Neighborhood Services and Education Committee on March 11, 2021
- Community and Economic Development Committee on March 22, 2021
- City Council on March 30, 2021
- Neighborhood Services and Education Committee on August 12, 2021
- Community and Economic Development Committee on August 23, 2021

To help get robust feedback from a variety of stakeholders to design the proposed program, the City has worked since March 2021 with its community engagement consultants, Baird + Driskell, to create and facilitate an Anti-Displacement Implementation Working Group process. The Working Group has two parts – a smaller, invite-only Technical Advisory Committee (TAC), and a large, open Stakeholder Advisory Committee (SAC).

By the end of October 2021, staff and the consultant team will have conducted 16 formal large stakeholder meetings (nine TAC meetings and seven SAC meetings), involving approximately 45 organizations and 200 different attendees. Staff have ensured that interpretation services in Spanish and Vietnamese have been available for all meetings. In addition to these large meetings, as of the end of October, staff will have held 38 additional smaller stakeholder meetings to discuss program design issues in greater depth.

## **ANALYSIS**

The following information provides updates on what work staff is doing to explore and design a COPA program. While the draft design of the program is still underway, the purpose of this memorandum is to share data that informs the program design and the need for the program at this time.

**COPA Defined**

In short, a COPA program would give a qualified nonprofit buyer the right to make a first offer on a residential property covered by the program that is up for sale. The purpose of COPA is to enable more properties to become restricted affordable, to the extent that City subsidies were available, and be owned by mission-oriented nonprofit organizations that would cooperate with the City to keep them affordable in perpetuity.

Under COPA, property sellers first would provide notice of the sale to a group of qualified nonprofit developers and community organizations that are pre-qualified by the City under the program. Pre-qualified buyers would have a defined amount of days to indicate they want to make an offer to purchase, and only one offer could be made from the group. If no COPA qualified buyer indicated interest within that timeframe, the property would sell as usual. If a COPA buyer did indicate interest, it would have a certain number of days to make an offer, perform due diligence, and close the sale. However, sellers could still reject an offer they did not find acceptable, and then entertain any offer as usual. Finally, COPA would allow the nonprofit that bid on a property, but had their bid rejected by the seller, the ability to match the final offer made through an open market bidder.

***Data helps to inform a COPA program design***

Following is background information on San José's real estate market and the types of properties where renters live in our City. There is also information indicating that property sales to investors are associated with the displacement of renters, disproportionately hurting people of color. This information indicates the timeliness of a COPA program in San José to help mitigate displacement. The data also helps to form the basis for details of a draft COPA program.

***San José renters live in a variety of types of homes***

When considering how COPA could be structured in San José, staff first looked at the types of residences where local renters live. The data indicates that almost one-third of renters live in rented single-family homes, condominiums, and townhomes, and almost one-third live in small properties with two to 19 apartments.

**Table 1: Distribution of San José Renters Across Residence Types**

<b>Building Type</b>	<b>Number of San José Renter Households</b>	<b>Percent of San José Renter Households</b>
<b>Single Family</b>	31,439	22%
<b>Condos/Townhomes</b>	13,900	10%
<b>2- to 4-unit apartment complex</b>	17,667	13%
<b>5- to 19-unit apartment complex</b>	26,455	19%

<b>Building Type</b>	<b>Number of San José Renter Households</b>	<b>Percent of San José Renter Households</b>
<b>20- to 49-unit apartment complex</b>	13,112	9%
<b>50+-unit apartment complex</b>	36,381	26%
<b>Total</b>	<b>140,514</b>	<b>100%</b>

Source: 2019 5-year American Community Survey data

This data indicates the benefit of a San José COPA program applying to a range of building types and that a focus on smaller properties would reach many renters.

***Timelines and sales prices per unit for the smallest properties indicate competitiveness of that market segment***

To better understand San José’s existing sales market, staff analyzed property sales data to determine prices per unit and the length of time to sell properties. The analysis broke out this data by the number of units considered by lenders to be ‘multifamily’ (5+ units) and then smaller properties referred to as ‘single family’ (1 to 4 units). Staff also used three different sources of data, and three different periods of time given the anomalies of recent COVID-era data.

The smallest properties trade the fastest, while larger properties using structured financing take longer to sell. While there are imperfections in the sales data and some inconsistencies among sources, this analysis of San José property sales data indicates the following approximate, rounded averages:

**Table 2: Approximate Sales Prices and Days to Close for San José Rental Properties**

<b>Type of rental home</b>	<b>Percentage of San José’s rental stock</b>	<b>Sales price per unit (rounded)</b>	<b>Average days to close</b>
Single family homes	32%	\$1.4 million	11 days
Condos & townhomes		\$825,000	18 days
2- to 4-unit complexes	13%	\$500,000	60 days
5+-unit complexes	55%	\$296,000	119 days

Sources: CoStar, PropertyRadar.com, and Zillow/MLS

This data confirms that the smaller the property, the higher the price per unit and the shorter the average time to sell the property. While rented single-family homes, condominiums and townhomes constitute one-third of the City’s rental stock, this would be a difficult segment to include in a COPA program given the competitiveness of the market. Staff will take these prices and market timelines into account when putting forth the COPA program proposal.

***The apartment market is recovering, particularly in lower-rent apartments, which are attractive investments***

San José’s rental apartment market has been experiencing higher than normal vacancy rates, as have other U.S. markets, because of COVID. Higher than normal vacancies have been present across all classes of buildings since spring 2020, likely due to a variety of factors. Workers with flexible jobs allowing remote work chose to leave their apartments to work from other locations. Other residents at a range of incomes levels who have been unable to pay rent in full also have negotiated partial payments in exchange for vacating their units,<sup>2</sup> as they could not be officially evicted due to the State’s eviction moratorium.

However, vacancy rates have been uneven across types of properties, staying far lower for older and lower-rent properties than for newer properties. Vacancies consistently have been far higher for the highest-rent buildings<sup>3</sup> than for the rest of the market. In the fourth quarter of 2020, vacancies peaked at 18.1% for Class A multifamily buildings in San José. In the same quarter, however, buildings in Classes B, C and F had far lower vacancy rates – between 6.2% and 6.6%.<sup>4</sup> While these rates all are above the benchmark vacancy rate of 5% considered to indicate a healthy rental market, this data illustrates that the recent real estate crisis has been far less severe for properties with more reasonable rents than for new, high-rent properties.

While this data focuses on physical vacancies, it is also clear that there are many units in the San José market occupied with residents who have been unable to pay rent in full due to effects of COVID-19. Data as of October 8, 2021, indicates that more than 7,700 San José households have applied for rent relief through the State’s emergency rent assistance program since May 2021. Another approximately 5,300 very low- and extremely low-income households in Santa Clara County have applied to the local emergency rent assistance program. These figures are no doubt only a portion of lower-income and higher income residents who have not paid rent in full over the past few months. Therefore, it is reasonable to expect that some financially-struggling properties will be sold by owners who are no longer able or willing to operate profitably. These sales may occur over the coming months, to the extent that this assistance could not fully make whole the non-payment of rent in our market.

Approximately 80% of San José’s apartment stock is in Class B and C properties.<sup>5</sup> And it is this lower-rent market segment that has been attracting attention, even during the pandemic:

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<sup>2</sup> Negotiations for lease terminations escalated dramatically for nonprofit legal services professionals serving Mountain View in late 2020.

<sup>3</sup> High-rent properties are generally called “Class A,” or “5 Star” by CoStar.

<sup>4</sup> CoStar data, Jan. 4, 2021.

<sup>5</sup> CoStar data, Jan. 4, 2021 (rounded down from 84%, as CoStar does not survey some very small buildings).

- “Buyers right now are looking for those value-add assets where they can make improvements and increase rental income while providing much-needed and much sought-after housing in a growing Western market.”<sup>6</sup>
- “Despite the onslaught of the pandemic-induced recession, multifamily property values have continued to outperform most other property types and have actually accelerated. Investor demand has been especially strong, cap rates have been driven to historic lows and there are bidding wars for institutional quality assets, especially in secondary markets...Investment capital is pouring into apartments, which are experiencing strong income growth.”<sup>7</sup>

San José remains a target for multifamily investments given its underlying strengths, according to CoStar and Marcus & Millichap. Further, San José’s lower-rent properties currently are selling better than high-rent properties:

- “San José ranks as the third most expensive major [rental] market in the country, trailing behind only neighboring San Francisco and the New York metro.”<sup>8</sup>
- “Investors expressed much greater confidence in the South Bay relative to San Francisco over the past year largely because of the more wide-open nature of the market.”<sup>9</sup>
- “Mid- to lower-tier assets are still outperforming in terms of occupancy rates. Demand for affordable housing is robust, and developers have not provided ample workforce housing due to rising construction costs and a lack of public funding.”<sup>10</sup>
- “Investors [in multifamily properties] have continued to be cautious in 2021, with a limited number of transactions taking place. The activity that is taking place is isolated in lower quality 1, 2, and 3 Star assets.”<sup>11</sup>
- Year-over-year as of June 2021, San José saw a “... decrease in Class A and B transactions” but “The number of Class C properties that changed hands remained constant year over year.”<sup>12</sup>

Given this data, Class B and C properties are expected to continue to sell, and potentially increase in sales volume. Therefore, it is an advantageous time to explore a COPA program that increases transparency of these sales and improves nonprofit buyers’ opportunities to make offers on properties up for sale.

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<sup>6</sup> Evelyn Jozsa, “What San Jose Investors Are Looking for Now,” *Multi-Housing News*, Oct 16, 2020, <https://www.multihousingnews.com/post/what-san-jose-investors-are-looking-for-now/>.

<sup>7</sup> Jay Maddox, “Why Multifamily Values Will Continue to Defy Gravity,” *Multi-Housing News*, Oct. 13, 2021, <https://www.multihousingnews.com/post/why-multifamily-values-will-continue-to-defy-gravity/>.

<sup>8</sup> CoStar, “Multifamily Market Report 3Q 2021 San José CA,” Oct. 13, 2021, p.7.

<sup>9</sup> Marcus & Millichap, San José Metro Market Report – Multifamily 3Q/21, p.2.

<sup>10</sup> CoStar, p.2.

<sup>11</sup> CoStar, p.14.

<sup>12</sup> Marcus & Millichap, p.2.

***Displacement can occur when properties are sold at high prices***

Investors purchase properties with the intention of raising rents as a regular practice. Property listings usually include the number of vacant units to make the property more attractive to buyers, as new tenants' lease rates can be set to whatever the market will bear. In addition, there are a plethora of blogs, guidance articles and industry magazine articles on multifamily 'repositioning' and 'value-add' financings that all focus on rent increases as a core strategy.<sup>13</sup> While dramatic increases in rents are limited to 5% for existing San José residents under the City's Apartment Rent Ordinance (ARO), homes not covered by ARO are vulnerable to higher rent increases. Rentals outside of the ARO program include single-family homes, duplexes, townhomes, condominiums, and buildings brought online after September 1979. In addition, due to the State Costa-Hawkins law, when an existing resident leaves an apartment covered by ARO, the new resident's rent can be reset to whatever market-rate rent is for that home.

There also is evidence that renters can be displaced when properties sell, especially in high-cost markets. This makes sense, as high purchase prices are backed by large amounts of debt that require higher rents to pay the debt. A new academic study of changes in Atlanta found that "neighborhoods with investor purchases of multifamily residential properties have 33% higher odds of an eviction spike in the same year."<sup>14</sup> Further, these neighborhoods changed demographically over time. The study indicated a decrease of 166 Black residents and a gain of 109 White residents over a six-year timeframe in Atlanta.<sup>15</sup>

Similarly, Oakland has experienced significant loss of Black households over a time in which real estate prices rose steeply. Between 2000 and 2017, Oakland lost 30% of its Black population.<sup>16</sup> During this time, Census data also indicated that that 62.5% of Black households and 58% of Latino households in Oakland were housing cost-burdened, as compared to 42.7% of White households.<sup>17</sup> Evictions following investor purchases that were financed based on higher rent projections became so pronounced in Oakland that the California Reinvestment Coalition and the Anti-eviction Mapping Project conducted a study on this issue in 2018. Their report noted, "The financing provided by banks is used by these serial evictors and other borrower landlords to purchase property, increase rents to untenable levels by ignoring tenant protections or using loopholes in local and state policy, and evict tenants."<sup>18</sup>

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<sup>13</sup> Examples: "Repositioning Your Investment Property for BIG Profits," <http://apartmentvestors.com/blog/repositioning-big-profits>; "The Three-Step Repositioning Process For Adding Value To Your Multifamily Properties," <https://jakeandgino.com/what-is-the-rat-race-and-how-you-can-exit-this-race-2/>.

<sup>14</sup> Elora Lee Raymond, Ben Miller, Michaela McKinney & Jonathan Braun (2021), "Gentrifying Atlanta: Investor Purchases of Rental Housing, Evictions, and the Displacement of Black Residents," *Housing Policy Debate*, 31:3-5, 818-834, DOI: [10.1080/10511482.2021.1887318](https://doi.org/10.1080/10511482.2021.1887318).

<sup>15</sup> Raymond et al., p.818.

<sup>16</sup> KQED, "How Many are Being Displaced Due to Gentrification," Feb. 9, 2017, <https://www.kqed.org/news/11307279/how-many-are-being-displaced-by-gentrification-in-oakland>

<sup>17</sup> PolicyLink, "Oakland's Displacement Crisis: As Told by the Numbers."

<sup>18</sup> Kevin Stein et al., "Disrupting Displacement Financing in Oakland and Beyond," June 2018, p.2, <https://calreinvest.org/wp-content/uploads/2018/07/Disrupting-Displacement-Financing.pdf>.

A COPA program, and/or its companion City preservation funding, could contain features to help prevent this type of displacement. It could require new nonprofit building owners to offer existing lower-income tenants rents that they could afford, and then limit the rate of future rent increases.

***Other jurisdictions’ programs and proposals help inform San José’s potential program***

In considering the overall framework for a potential COPA program, staff has regularly drawn on details from several jurisdictions – both those with operating programs for COPA or a Tenant Opportunity to Purchase (TOPA), and those that are currently proposed or recently considered.

**Table 3: COPA and TOPA Programs in Other Locations by Status**

<b>In Operation</b>	<b>Proposed / Under Development</b>	<b>Recently Considered</b>
Washington D.C. (TOPA)	Berkeley (COPA/TOPA)	New York City, NY
San Francisco	Oakland	State of New York
	East Palo Alto	Cambridge, MA
	Somerville, MA (TOPA)	
	Minneapolis, MN (TOPA)	
	Commonwealth of Massachusetts ( <a href="#">S.890</a> )	

Given that San Francisco’s program has been in operation just over one year, staff is working on getting performance data from that city’s staff. However, it is still early to draw many conclusions from their experience.

COPA and TOPA programs tend to have a standard set of program elements. The following table identifies these elements and some details for each.

**Table 4: COPA Program Elements**

<b>Program Element</b>	<b>Definition &amp; Details</b>
<b>Applicability</b>	Buildings that would be subject to the program <ul style="list-style-type: none"> <li>• Usually determined by number of apartments</li> </ul>
<b>Exemptions</b>	Buildings <u>not</u> subject to the program <ul style="list-style-type: none"> <li>• Example: Family transfers &amp; inheritances</li> <li>• Example: Owner-occupied very small properties that serve as the primary residence for the owner</li> </ul>
<b>Incentives</b>	Incentives given to property owners that sell to a nonprofit buyer <ul style="list-style-type: none"> <li>• Example: Reduction of local transfer tax applicable to the sale</li> </ul>
<b>Timeline &amp; Process</b>	Defines steps of the transaction & amount of time. Timelines may vary depending on number of apartments in the property or whether buyer is



<b>Program Element</b>	<b>Definition &amp; Details</b>
	tenant organization (longer) or nonprofit housing developer (shorter). Steps include: <ul style="list-style-type: none"> <li>• Days for nonprofit buyer to indicate intention to make an offer</li> <li>• Days for nonprofit buyer to make an offer</li> <li>• Days for the owner to accept or reject the nonprofit’s offer</li> <li>• Days for the nonprofit buyer to secure financing and conduct due diligence</li> <li>• Days for the nonprofit buyer to close on the sale</li> <li>• [If original nonprofit offer is not accepted] Days for the original nonprofit bidder to match a third-party offer obtained on the property from the open market</li> </ul>
<b>Affordability</b>	Resident incomes that are the target for the program <ul style="list-style-type: none"> <li>• Always compatible with public funding programs for preservation</li> <li>• May be higher if homeownership of units is a specific objective</li> <li>• Example: Lower-income (at or below 80% of Area Median Income)</li> <li>• Example: Lower-and moderate-income residents (at or below 120% of Area Median Income)</li> </ul>
<b>Qualifications of Buyers</b>	Qualifications and experience required for nonprofit buyers to participate in the program. Also includes City’s role in approving eligible buyers. <ul style="list-style-type: none"> <li>• Example: 501(c)(3) designation</li> <li>• Example: Experience owning certain number of properties with similar size and scope of work</li> <li>• Example: Demonstrated commitment to democratic residential control, such as support for co-op creation on other property</li> </ul>
<b>Tenant Rights</b>	Range widely; TOPA programs include many rights. <ul style="list-style-type: none"> <li>• Example: Tenants have the first right to make a purchase offer, and may assign the right to a nonprofit developer</li> <li>• Example: A certain percentage of tenants must indicate support for a nonprofit buyer</li> </ul>
<b>Enforcement</b>	City’s role in enforcement (proactive vs. complaint basis), remedies, and whether third parties are involved in enforcement.

Members of both the TAC and SAC have discussed each of these program elements and have expressed their opinions. Staff continues to seek additional input on details and alternatives that would affect both a proposed COPA program, as well as on two other critical pieces needed for this program to work reliably:

1. A public and private preservation financing system for affordable housing that is regularly available, so that nonprofits can make credible offers on properties under the program, purchase properties, and increase the stock of restricted affordable homes; and

2. Capacity building and support services for community organizations that want to be involved in COPA, so that their staff can work with capable nonprofit development partners, knowledgeable advise San José renters about the program and its opportunities, and choose to learn about preservation through these partnerships.

Given the diversity of members and the number of parties and different interests that would be involved in a COPA program, there is no one set of program elements that would fully satisfy all parties. Staff will seek to strike a balance in proposing a program.

**Next Steps**

Staff is currently wrapping up planned TAC and SAC meetings on COPA, holding additional stakeholder meetings to gain more in-depth feedback, and starting to draft the program description for a public comment period starting in November 2021. Other milestones are as follows:

<b>Actions</b>	<b>Timing</b>
Concluding TAC and SAC meetings on COPA	End Oct.
More individual and group stakeholder meetings	Oct. to Jan.
Prepare draft program description for public review	Oct. to Nov.
Public review period & refinements	Nov. to Dec.
Draft program to Housing & Community Development Commission	Jan. / Feb.
Draft program to Community & Economic Development Committee	Jan. / Feb.
Draft program to City Council	Feb. / Mar.

See **Attachment A** for an overview of the workplan to create the draft program, get feedback, gain approvals, and educate the community about it.

**CONCLUSION**

San José’s recovering apartment market conditions, and the potential for displacement due to rent escalations upon residential property sales, indicates the importance of considering a COPA program at this time. This memorandum identifies COPA program elements that will be developed, and next steps for the proposal’s consideration.

**EVALUATION AND FOLLOW-UP**

Pursuant to the City Council’s direction, staff will return to the Community and Economic Development Committee with a Citywide Anti-Displacement Strategy quarterly progress update in November 2021, including additional updates on COPA. Staff plans to return to Community

and Economic Development Committee early next year with a draft proposed program for the Committee's consideration prior to going to the City Council.

### **CLIMATE SMART SAN JOSÉ**

The recommendation in this memorandum aligns with one or more of Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the October 25, 2021, Community and Economic Development Committee meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

Staff will engage the Housing and Community Development Commission and solicit feedback on specific recommendations for the COPA program as it is developed over the next few months.

### **CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

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The principal author of this memorandum is Kristen Clements, Division Manager. For questions, please contact [kristen.clements@sanjoseca.gov](mailto:kristen.clements@sanjoseca.gov) or (408) 535-8236.

Attachment A: Updated Workplan for Community Opportunity to Purchase Program