

FREQUENTLY ASKED QUESTIONS

Please note that the City of San José does not currently have a COPA program in effect. All aspects of a proposed program are in still in development. This FAQ gives information about the process and some of the factors under consideration in the development of the DRAFT program. The City Council would need to approve a COPA program.

1. Why is COPA needed?

The moment at which an apartment owner sells their property can create a housing emergency for renter families who call that place home. This is because currently, buyers of apartment buildings are almost always investors whose primary interest in buying property is to generate a financial return. To do so, investors often rehabilitate properties and raise rents significantly. These rent increases can cause financial stress for existing residents and, especially for lower-income renters, greatly increase their risk of being displaced from San José.

COPA would open up opportunities for other kinds of buyers to make fair value offers on residential buildings occupied by tenants at risk of displacement. Under COPA, families would gain pathways to permanent residential stability because these city-vetted buyers would be required to make all units in the building permanently affordable.

COPA is an important building block within a larger affordable housing preservation system the City is helping to create. Affordable housing preservation efforts are highly effective at addressing residential displacement because they maximize the likelihood that families can stay in their homes and neighborhoods where they already live. Buying existing housing and restricting its affordability is also more cost-effective, faster, and environmentally friendly than building new affordable housing.

2. How would COPA help San José to promote racial equity in housing?

People of color – especially Latino/a/x and Black families – are disproportionately at risk of displacement from San José due to the long legacy of housing discrimination perpetrated by the government and private sector actors. By consequence, 47 percent of Latino/a/x households and 45 percent of Black households in San José lived in areas experiencing ongoing displacement or at-risk of displacement, according to data from the Urban Displacement Project.¹

COPA is an anti-displacement strategy that will primarily benefit renters, lower-income households, and housing cost-burdened households, who are all disproportionately people of color in San José.

3. What would COPA change?

With COPA in place, San José would grow its local restricted affordable housing stock and help prevent the displacement of families who currently live here. COPA would support permanently affordable rentals and wealth-building opportunities for lower-income households.

COPA would increase opportunities for mission-driven housing organizations to preserve existing housing in the local market by doing two things: creating defined time windows for Qualified Nonprofits to make offers to buy properties; and by increasing transparency in real estate listings for buyers seeking to create long-term restricted affordable housing.

COPA would create defined time windows for mission-driven housing organizations to make offers and, if an offer is accepted, to complete the purchase. This is needed because unlike traditional

¹ Urban Displacement Project Typologies Race Data, Race by Census Tract, June 2020

buyers, mission-driven housing organizations need to carefully determine on a case-by-case basis what funding a property qualifies for from a combination of governmental, private, and philanthropic sources, while guaranteeing that the units will remain permanently affordable to existing tenants.

COPA would additionally help mission-driven housing organizations learn about properties that are going up for sale. Many multifamily properties are not even listed publicly somewhere before they sell. Estimates are that 50% or more of sales occur 'off listing.'² COPA would give a better chance for teams of experienced mission-driven housing organizations and local community partners to buy buildings, keep tenants in place, and turn those homes into permanently affordable housing.

4. **What kinds of properties would COPA apply to?**

Under the drafted COPA proposal, COPA would apply to all properties citywide with 2+ units that were built more than 15 years ago. This date of applicability would be updated each year.

COPA would not apply when a property owner seeks to transfer their property to a direct relative. COPA would also not apply when an owner sells their owner-occupied property of 4 units or fewer, or when selling only a partial ownership share in a property.

5. **What would COPA require property owners to do?**

COPA would require property owners to give City-approved mission-driven housing organizations (called "Qualified Nonprofits") the right to make a first offer on a property and, if the seller is negotiating with another party, the right for the Qualified Nonprofit to make a final counter-offer. Sellers need to observe a prescribed process for allowing Qualified Nonprofits to make an offer, including by (1)

² <https://www.wealthmanagement.com/multifamily/market-sales-gain-traction-cre-owners-and-buyers>

notifying the City and QNPs that they are ready to sell their property, (2) waiting for a Letter of Interest to Make an Offer from a Qualified Nonprofit (and if applicable, waiting for the offer), and (3) if also negotiating with a third-party seller, giving time for a final counter-offer. For more information on the applicable COPA timelines and process, please see the process flowchart provided on the [City of San José's COPA website](#).

6. **What impact will COPA have on property owners?**

Property owners will retain their right to accept or decline any purchase offer made on their property. They will continue to set the terms and conditions of sale. Additionally, property owners retain their right to transfer their properties to direct family members, as COPA would not apply in this situation.

COPA would require owners to follow a prescribed process with defined timelines. However, in return, COPA could provide some benefits to property owners. Because COPA would increase the audience receiving sales listings, property owners may find the program expands the number of buyers interested in their properties. Owners could also increase the likelihood of their existing renters remaining in place if they sell to a Qualified Nonprofit.

7. **Could COPA support homeownership for lower-income residents?**

COPA could support alternative paths to ownership that serve a greater diversity of residents than today's homeownership market. While it would require public subsidy and capacity building with local organizations, future Qualified Nonprofit buyers could include limited equity cooperatives and community land trusts. These organizations are able to resell units or whole properties to existing tenant families at reasonable costs. Additionally, rental buildings

acquired under COPA could eventually be converted to ownership opportunities.

Buildings that continue to function as rental properties after a COPA acquisition could also include asset-building features for its residents. For example, a portion of rent could be placed into an investment vehicle, allowing renters to gradually accrue assets as an alternative to building equity through traditional homeownership.

8. **How will COPA be funded?**

For offers to be made through COPA, Qualified Nonprofits must be able to access affordable housing subsidies, which are essential to the success of COPA and all affordable housing preservation efforts. Similar to the City's programs that currently fund new construction of affordable housing, the City of San José would use existing funding sources such as [Measure E](#) and potentially [commercial linkage fees](#) to fund the acquisition and rehabilitation of buildings housing under COPA. These same sources would also pay for program administration. The City plans to issue its first acquisition/rehabilitation Notice of Funding Availability in 2023.

Like San José, many cities across the state are now developing housing preservation programs and are advocating for more sources of funding. Within the next few years, there is additionally a strong possibility that the City's funds will be able to leverage forthcoming regional and state funding sources for housing preservation efforts.

9. **Does COPA affect 1031 exchanges?**

COPA would have no impact on property owners looking to use a 1031 exchange strategy while selling a property subject to COPA. In a 1031 exchange, property owners have 45 days to "swap" their property for another property to receive a deferral of capital gains tax. However, this 45-day period only begins when the sale of the

original property has been *completed*. The timelines regulated under COPA prior to closing will therefore not impact the property owner's ability to complete a 1031 exchange, whether selling to a Qualified Nonprofit or to another party.

COPA would also not have a significant impact on “reverse 1031 exchanges” in which third-party buyers seek to acquire properties in San José that are subject to a COPA process. **Real estate industry specialists in San Francisco, which adopted a COPA program in 2019, have reported that COPA has not resulted in complications for reverse 1031 exchanges for property owners or buyers.**³ This is because properties can only be advertised to third-party buyers following the Letter of Intent period (and offer period, if an owner receives a Letter of Intent). This means that third-party buyers, including those seeking reverse 1031 transfers, discover properties for sale at a different part of the listing process. By that time, Qualified Nonprofits would either have passed up on an opportunity to make an offer – freeing up the property for another offer – or they would have made an initial offer by the time that a third-party buyer seeking a reverse 1031 transfer were to learn about the property in question.

After the Letter of Intent and offer periods, transactions would proceed in a substantially similar manner to what would occur without COPA. Buyers seeking a prospective reverse 1031 exchange would be able to reliably enter into contract on the property and complete a transaction after the waiting period.

³ Interview with Richard Hurlbert, July 2022.