

## Community Opportunity to Purchase (COPA) Proposed Program Summary, November 2022 Update

**Important Notes:** This chart outlines proposed parameters for a proposed COPA program. The program parameters would be defined in three places: 1) City Council ordinance; 2) program regulations, to be developed after the Council were to approve the program; and 3) City preservation subsidy loans that would enable nonprofits to acquire buildings – both in the competitive funding award priorities, and individual loan terms and conditions.

All proposed changes for revisions to the program versus the November 2021 version are indicated in **red text** in the summary section below. For more details on the rationale behind each aspect of the program, please see the Appendix section.

### Program Elements

Category / Recommendation	Summary	Rationales for Change/Explanation
<p><b>Applicability</b> (What properties are included under this program?) Staff Recommendation</p> <ul style="list-style-type: none"> <li>• Include all properties with 2+ units</li> <li>• <b>Exempt properties that were built within the last 15 years from COPA</b></li> <li>• Provide reasonable exemptions for specific properties</li> </ul>	<p>Include duplexes, triplexes, and quadplexes (2- to 4-unit properties)</p> <p>Include 5+ unit properties</p> <p>Do not include an upper limit on properties' size</p> <p>Exempt single-family homes from COPA</p> <p><b>Exempt properties built within the last 15 years from COPA (updated on a rolling basis)</b></p> <p>Staff recommends the following exemptions from COPA:</p> <ul style="list-style-type: none"> <li>• <i>Owner-occupied buildings up to 4 units:</i> COPA would not apply to buildings up to 4 units where the owner (seller) of the property has occupied one of the units in the property as their primary residence for at least 365 days prior.</li> <li>• <i>Family transactions:</i> COPA would not apply to transfers of property to direct family members, with 'direct family member' to be defined in the draft ordinance.</li> </ul>	<p>Staff recommends excluding properties from COPA that were built within the last 15 years because newer properties tend to have the highest rents in the market and are therefore unlikely to house low-income families most at risk of displacement from San José.</p> <p>The properties covered under COPA would be updated on an annual rolling basis, and the Certificate of Occupancy date would be used to determine when each property becomes newly included under COPA. Each year the Housing Department would issue notices to building owners whose properties are newly included under COPA</p>

	<ul style="list-style-type: none"> <li>• <i>Properties subject to specified disposition processes:</i> COPA would not apply to the disposition of properties that are subject to formal legal processes including foreclosure, bankruptcy, or disposition of Government-owned properties.</li> <li>• <i>Transactions where control of the property is not transferred or remains with a related party to the seller:</i> COPA would not apply to transfers of partial ownership or ownership shares which do not result in the current owner transferring full control of the property.</li> </ul>	<p>notifying them that they now need to comply with the policy.</p>
<p><b>Timeline</b> (What is the process for this program and how long does it take?)</p> <p>Staff Recommendation</p> <ul style="list-style-type: none"> <li>• For all properties, provide a 15-day mandatory period for Letter of Intent to Make Offer and 25-day mandatory offer period. If a property owner accepts the offer, they must provide the QNP 100 days to close on the property.</li> <li>• <del>For 2 to 4 unit properties, provide a 100-day timeline to close on sale</del></li> <li>• <del>For 5+ units, provide a 140-day timeline to close on sale</del></li> </ul>	<p>The total timeline proposed timeline for <del>all 2-to-4-unit</del> properties is:</p> <ul style="list-style-type: none"> <li>• <b>Letter Statement of Intent:</b> Gives QNP up to <b>15 days</b> from the owner’s notice of sale, which is time for <ul style="list-style-type: none"> <li>○ Qualified Nonprofits (QNPs) from the City-qualified pool look at the building for sale</li> <li>○ QNPs confer and agree on one QNP who wants to make an offer</li> <li>○ That QNP submits a Letter of Intent to make an offer to the property owner or representative.</li> </ul> </li> <li>• <b>Due Diligence/Offer Period:</b> Gives QNP up to <b>25 days</b> to perform due diligence and submit an offer.</li> <li>• <b>Time to Close:</b> Gives QNP up to <b>100 days <del>60 days</del></b> to secure financing and close the transaction.</li> <li>• <b>Time to Counter-Offer Match:</b> If original QNP’s offer is not accepted, owner then markets property as usual. If they get an offer, gives <b>7 days</b> for the original QNP bidder to <b>make a counter-offer to match</b> the third-party offer from the open market.</li> </ul> <p><del>The total timeline proposed for 5+ unit properties is:</del></p> <ul style="list-style-type: none"> <li>• <del>Statement of Intent: Gives QNP up to 15 days from the owner’s notice of sale, which is time for—</del></li> </ul>	<p>Staff heard in stakeholder outreach meetings in fall 2021 that property owners were concerned about the length of time they would be required to wait during the statement of intent and due diligence/offer period. Staff weighed this concern against the needs of nonprofit housing organizations as they acquire properties and found that very short Letter of Interest to Make Offer and offer periods have limited the effectiveness of COPA in San Francisco. Staff concluded that the number of days in the Letter of Interest and offer periods could not be further reduced without limiting the effectiveness of a COPA program.</p> <p>Staff also heard from Community Development Financial Institutions (CDFIs, lenders that commonly lend to nonprofit housing borrowers)</p>

<ul style="list-style-type: none"> <li>For all properties, determine a way to let owners know more quickly if no nonprofit is interested in making a purchase offer</li> </ul>	<ul style="list-style-type: none"> <li><del>Due Diligence/Offer Period: Gives QNP up to 25 days to perform due diligence and submit an offer.</del></li> <li><del>Time to Close: Gives QNP up to 100 days to secure financing and close the transaction.</del></li> <li><del>Time to Match: If original QNP's offer is not accepted, owner then markets property as usual. If they get an offer, gives 7 days for the original QNP bidder to match the third-party offer from the open market.</del></li> </ul> <p>Note that there is <u>no</u> requirement that the property owner sell to a QNP under COPA. If no QNPs are interested in a property, a property owner would only be required to wait 15 days at the start of the process. A property owner who does not want to accept a QNP's offer will not have to wait more than 40 days total to list their property on the open market.</p> <p>Additionally, the timelines regulated by COPA would not preclude a buyer and QNP from negotiating a longer set of timelines for the property, if mutually agreed upon by both properties.</p>	<p>that longer closing timelines are needed for several reasons:</p> <ol style="list-style-type: none"> <li>CDFIs reported that typical closing timelines for nonprofit developers can span from 90 to 120 days, meaning that a closing period of only 60 days will be insufficient.</li> <li>Significant due diligence will occur during the closing period. If public funds are to be responsibly used for property acquisition, it is important to accurately verify the condition of the property in the closing period.</li> <li>A longer closing period means that there are ample opportunities for tenant engagement by the eventual nonprofit buyer, which will improve tenant empowerment outcomes of the program.</li> </ol> <p>Because property owners are not required to accept offers from nonprofits, <b>increasing the time in closing period will only affect the property owners who choose to accept an offer from a nonprofit.</b></p>
<p><b>Buyers/Qualified Nonprofits (QNPs)</b> (Who will be purchasing these properties and what</p>	<p>The City would identify qualified nonprofit buyers that would be reasonably expected to acquire financing, close a real property transaction, and to competently rehabilitate and operate the purchased property.</p>	

<p>kind of requirements should they have?)</p> <p>Staff Recommendation</p> <ul style="list-style-type: none"> <li>• Require joint partnerships between qualified nonprofits and community partners</li> </ul>	<ul style="list-style-type: none"> <li>• The City would pre-qualify a pool of nonprofit developers to participate in the COPA program before opening the program.</li> <li>• If an experienced nonprofit affordable housing developer does not have local San José presence and experience, teams of nonprofit developers plus local community-based organizations (Community Partners) can apply for qualification under the program.</li> </ul> <p>Staff intend to define criteria for QNPs in the regulations, which will ensure that staff can periodically revisit nonprofit lenders' underwriting criteria and ensure that city QNP criteria align with those of likely acquisition lenders.</p> <p>Below are examples of what some likely rRequired characteristics for potential QNPs would be for the accompanying COPA regulations in today's lending environment:</p> <ul style="list-style-type: none"> <li>• 501(c)(3) designation</li> <li>• Demonstrated track record with the purchase, development, and operation of restricted affordable housing <ul style="list-style-type: none"> <li>○ at least 34 completed housing projects, with at least 2 in the past 5 years</li> <li>○ projects of similar size and scope of work preferred</li> </ul> </li> <li>• Demonstrated track record with type of project operations proposed (rental vs. ownership)</li> </ul> <p><u>Desired characteristics for potential QNPs:</u></p> <ul style="list-style-type: none"> <li>• Demonstrated track record of positive tenant engagement, local community engagement, housing policy advocacy</li> <li>• Based in San José with the specific mission of serving communities in San José, as documented in the organization's bylaws or articles of incorporation</li> </ul>	<p>Staff were informed by CDFIs that while they typically expect their borrowers to have successfully completed and managed 4 projects, that exceptions can be granted for organizations that are otherwise qualified to take on this work and for projects with financially viable acquisition and management planning.</p>
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If QNPs have the required characteristics but lack the desired characteristics, a QNP could satisfy the requirements for tenant engagement and specific commitment to San José by partnering with a local community-based organization (Community Partner).

Potential for partnerships to satisfy all desired characteristics

- A nonprofit affordable housing developer and a local community-based organization could form a partnership to meet all COPA program requirements
- Partnerships are not exclusive, and business terms are up to the teams to determine
- Each individual partnership would be reviewed and approved by City staff prior to participation in the COPA process
- Staff recommends establishing the following requirements for the partnership:
  - Real estate development experience requirements must be fully satisfied by one partner in and of itself (i.e., development experience cannot be fulfilled by combining the track records of both partners)
  - The partner with the real estate development experience would need to be liable for all real estate financing commitments and, as such, should have final decision-making authority on all real estate development decisions including compliance with funder obligations
  - Any partners' early exit or replacement would require prior written approval from the City
  - Dissolution of the partnership or material breach of the City-approved partnership agreement could trigger sale of the property [under the City's loan documents].

Support for QNPs and Community Partners

The City recognizes the need to create the conditions for success for QNPs, especially in creating healthy and durable partnerships to convey real estate knowledge.

To support this work, the City currently is working with partners to develop funding and programming for:

- affordable housing acquisition / rehabilitation / permanent financing
- nonprofit capacity-building to do community development
- tenant engagement to support housing preservation
- developing partnerships between nonprofit developers and other community-based nonprofit organizations.

**Emerging QNPs**

Staff will allow affordable housing and/or community based nonprofit organizations which intend to become QNPs, but which do not yet fully qualify as QNPs, to be eligible under COPA to acquire properties of up to 5 units and to receive property owners' letters of intent to sell for these properties.

These organizations must possess 501(c)(3) designations and can meet **any** of the following criteria to be classified as Emerging QNPs:

- The organization hires experienced consultants to provide project management, asset management, and rehabilitation assistance as appropriate, and the organization is able to provide a property-specific lender-approved plan for asset management and property management
- The organization has successfully purchased, developed, and directly managed 2, rather than 3, properties

Staff heard concerns from community members that the draft COPA framework's requirements for QNPs would exclude emerging local nonprofit housing organizations who are most interested in doing preservation work. Encouraging the growth of more nonprofit housing organizations who are interested in housing preservation work is among the primary goals of the proposed COPA policy.

Additionally, staff heard from CDFI staff that these institutions are sometimes willing to lend to organizations that can prove their

	<ul style="list-style-type: none"> <li>○ The organization has staff with experience in property acquisition and management who will be responsible for project management.</li> </ul> <p>Emerging QNPs would not be required to partner with QNPs or with community-based nonprofit organizations if they meet any of the above criteria and also meet the “desired characteristics for QNPs” described in the previous sections.</p> <p><b>QNP Recertification</b> Staff will re-certify QNPs on a periodic basis to ensure that organizations only remain QNPs if they regularly close on transactions for which they submit letters of intent and if they effectively manage properties acquired through COPA.</p>	<p>qualifications to acquire and manage housing projects through alternative means, including through in-house staff experience or through consultant experience. Typically they will consider these alternative credentials for very small property acquisitions (up to 4 or 5 units).</p>
<p><b>Affordability</b> (What residents will benefit from this program?) Staff Recommendation</p> <ul style="list-style-type: none"> <li>• For rental properties, the program would serve residents between 30% and 80% AMI</li> <li>• For properties that will be turned into ownership opportunities, the program would serve residents between 60% and 120% AMI</li> <li>• Staff are recommending no changes to this portion of the program.</li> </ul>	<p><u>Focus on very low- and low-income households</u></p> <ul style="list-style-type: none"> <li>• <i>COPA is an anti-displacement strategy:</i> Studies indicate that displacement is most damaging to lower-income renter households. For consistency with the <i>Citywide Residential Anti-Displacement Strategy</i> approved by the City Council September 20, 2020, staff recommends that COPA focuses its benefits on <u>very low- and low-income renters</u>, especially those who live in neighborhoods that are experiencing or are at-risk of displacement. <ul style="list-style-type: none"> <li>○ As an example, <del>F</del>for a four-person household in 202<del>21</del>, rental properties would target households earning between <del>\$50,550 and \$134,800</del> <del>\$49,700 and \$117,750</del> per year.</li> </ul> </li> <li>• <i>Portfolio goal:</i> Staff recommends that the Housing Department set an overall portfolio goal of an average 50% AMI income targeting across all COPA projects supported by City funding.</li> <li>• <i>Individual properties:</i> The rents charged and targeted resident incomes for a particular property purchased through the COPA process will be determined by several factors: <ul style="list-style-type: none"> <li>○ Existing resident incomes</li> <li>○ Neighborhood incomes</li> <li>○ Priorities identified in individual City Notices of Funding Availability</li> <li>○ Rents needed to support project feasibility, as determined by the QNP and project funders.</li> </ul> </li> </ul> <p><u>COPA transactions should not result in the displacement of current tenants for reasons of income eligibility</u></p>	

	<p>Based upon feedback from stakeholders, tenants living a building when it is purchased through COPA should be given every reasonable opportunity to stay in the property, regardless of their income:</p> <ul style="list-style-type: none"> <li>Existing residents would not be evicted from their units based on income if their income is outside of the program’s target affordability restrictions</li> <li>If an existing tenant makes less income than the applicable affordability restrictions, their rent would be the lower of their current lease rent or the rent adjusted to the targeted affordability for their apartment, whichever is lower</li> <li>If an existing tenant is over-income for the target program affordability range, the QNP would have the option to keep the over-income tenant’s rents at their current lease rates or set rents at 30% of the household’s monthly income (net a utility allowance, if applicable), whichever is higher.</li> </ul> <p><u>Annual Rent Increases</u></p> <p>Except as described for over-income tenants per above, rent increases would not be allowed to exceed the annual percentage increase allowed under the City’s Apartment Rent Ordinance (i.e., 5% as currently implemented), or the restricted affordable rents as required by any applicable affordable housing funders, whichever is lower.</p> <p><u>Homeownership</u></p> <p>COPA could support QNPs experienced in first-time homebuyer programs for lower-income residents to acquire properties and convert them to affordable homeownership. Because of the large per family subsidies needed to make homeownership affordable to very low-income homebuyers and the need to serve more San José residents, staff has recommended a higher income range for COPA properties that are converted to homeownership opportunities - 60% to 120% of Area Median Income.</p> <ul style="list-style-type: none"> <li>As an example, for a four-person household in 2022, properties acquired through COPA with a plan to convert to ownership would target households earning between \$101,100 to \$202,200 per year.</li> </ul>	
<p><b>Tenant Engagement</b></p>	<p><u>Tenant Engagement Proposal</u></p>	<p>Staff heard in interviews with program staff from the San Francisco Mayor’s Office of Housing and</p>



<p>(How are residents going to be part of this process?)</p> <p>Staff Recommendation</p> <ul style="list-style-type: none"> <li>• Property owners must notify tenants of their intent to sell their property at the time when they notice QNPs</li> <li>• QNP and Community Partner must demonstrate efforts to engage tenants in property acquisition</li> </ul>	<p>To increase tenant participation in the program, we are proposing to include tenants during every part of the process:</p> <ul style="list-style-type: none"> <li>○ Pre-acquisition period: <ul style="list-style-type: none"> <li>○ Property owners must notify tenants, in addition to notifying QNPs, that they intend to sell their property</li> <li>○ QNPs and/or their Community Partners would be required to reach out to tenants to get to know the property, garner support, and help with things like income verification and outreach.</li> </ul> </li> <li>○ Transaction period: QNPs and/or their Community Partners would be required to have ongoing communication with residents especially about any major changes anticipated for the property or property management policies, like significant rehabilitation plans and the need to submit income information each year.</li> <li>○ Post-acquisition: QNPs and/or their Community Partners would be expected to have ongoing communication with residents about the property operations, tenant lease provisions, and any other issues on which tenants need information. Tenants would receive support and capacity building for resident organizing, the formation of tenant associations, and future conversions to homeownership if proposed and approved in advance by the City.</li> </ul>	<p>Community Development that even with COPA in place, tenants frequently are the impetus for nonprofits engaging in preservation work once the tenants learn that the properties they live in are being sold. In these cases, they proactively seek out the support of local nonprofit housing organizations there to acquire and preserve their properties. There are several examples of properties that are now limited equity cooperative or community land trusts where tenants successfully supported the sale of their property to a nonprofit lender. San José Housing Department staff therefore recommend that tenants also be notified that their property is being sold as a strategy for increasing tenant engagement and empowerment and for increasing opportunities for nonprofit acquisitions.</p>
<p><b>Education, Enforcement, and Incentives</b></p> <p>(How will COPA be administered and regulated? How does the City encourage participation in this program?)</p>	<p><u>Outreach and Education Plan</u></p> <ul style="list-style-type: none"> <li>• To ensure the successful implementation of the COPA program, staff will undertake a robust outreach and education plan if the City Council approves the program. The plan would emphasize collaboration with industry organizations and community groups to disseminate information about the program, and to seek ideas for implementation.</li> <li>• Staff proposes allowing a generous period after the ordinance passes (<del>one up to a 1 year, or when QNPs are qualified, whichever is later,</del> or when QNPs are qualified, whichever is later) before the policy would</li> </ul>	

Staff Recommendations

**Education, Enforcement, and Incentives**

- City will engage in robust education and outreach with support of stakeholders
- City will propose enforcement mechanisms to encourage program participation.
- To encourage property owners to sell properties to Qualified Nonprofit purchasers under COPA, the City will propose incentives to sellers.

become effective. This would allow for ample time for extensive outreach and education prior to any potential enforcement, and the prequalification of a pool of QNPs.

Enforcement with an emphasis on education

- The overriding goal of the COPA program is to keep residents housed and to prevent displacement. In order to achieve that goal, all stakeholders must participate to ensure program efficiency and success.
- Staff's approach to enforcement will have strong emphasis on education and inclusion, not punishment. Staff sees property owners, their representatives, and residents as partners in COPA transactions and will focus on education and remediation before escalating to stronger enforcement methods.
- Due to limited staff capacity, staff will work with interested parties and residents to gain knowledge about compliance with the COPA program. Staff envisions a complaint-based process for enforcement that will proceed with the following enforcement steps:
  - First Offense: Written letter of warning to seller.
  - Second Offense: Fine imposed on seller.
  - Third Offense and more: Scaled increase of fine imposed on seller.
- Private rights of action would also be possible if a property owner displayed repeated, knowing violations of the ordinance after being educated.
- An ongoing challenge for COPA enforcement will be that, by definition, property sales are singular events, and owners may only sell one property. The current proposed enforcement approach may lead to missed preservation opportunities.

Incentives

- To encourage owners' sale of their properties to COPA Qualified Nonprofits, proposed incentives would include:
  - Property's exemption from Measure E Transfer Tax, which would allow sellers to keep more of their sales proceeds.
- Staff recommends inclusion of strong language on QNPs collaboration with property owners in order to facilitate 1031 Exchanges or other tax-advantaged transfer structuring and timelines.
- Staff is also investigating other potential incentives for QNPs to make transactions more economically feasible, including possible City construction tax breaks as part of property rehabilitations.

<p><b>Other Program Attributes</b></p>	<ul style="list-style-type: none"> <li>○ Property owners must notify the San José Housing Department, in addition to notifying QNPs and tenants, that they intend to sell the property.</li> <li>○ The City’s website should be able to be programmed with an interface for property sellers to easily notify the City and QNPs, and for program notices to be sent.</li> </ul>	<p>In interviews with staff San Francisco Mayor’s Office of Housing and Community Development, San José Housing Department staff were informed that the effectiveness of COPA in San Francisco has been limited because San Francisco’s COPA lacks a mechanism by which staff can learn which properties are becoming available for sale. This poses challenges for staff to assess the effectiveness of the program or to enforce the program. It also makes it difficult if staff wishes to timely assist particularly vulnerable tenants at risk of displacement by identifying nonprofit stewards with capacity to assist these tenants. Per public concerns and suggestions during 2021 public meetings, staff confirmed that the City should be able to program a technology solution to help reduce user error and keep better program data.</p>
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For more information, see the City’s COPA webpage: <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/copa>

**Program Development Next Steps – November 2022 Update**

<p><b>Timeframe for implementation</b> (When will this program take effect?)</p>	<ul style="list-style-type: none"> <li>• Fall/winter 2022 – Phase 3 Outreach (public meetings, stakeholder meetings, and draft framework public review period)</li> <li>• Spring 2023 – Housing &amp; Community Development Commission, City Council Committee (CEDC) and City Council consideration</li> <li>• Spring/summer/fall/winter 2023 – Program implementation</li> <li>• Spring 2024 – Program takes effect after pool of eligible Qualified Nonprofits is approved</li> </ul> <p><b><u>COPA-related City work:</u></b></p> <ul style="list-style-type: none"> <li>• Wide COPA outreach and education campaign, if program is approved</li> <li>• Development of detailed COPA written program regulations and materials and public outreach process</li> <li>• City introduction of / support for potential teams of approval of Qualified Nonprofits and Community Partners</li> <li>• City approval of pool of eligible Qualified Nonprofits</li> </ul> <p><b><u>Preservation-related City work:</u></b></p> <ul style="list-style-type: none"> <li>• Nonprofit capacity-building for community development</li> <li>• Support for tenant engagement with housing preservation</li> <li>• Acquisition and permanent funding sources identified for preservation deals</li> <li>• City determines available funds and frequency for preservation Notices of Funding Availability</li> </ul>
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**Appendix: Background Information and Program Rationale**

<b>Background</b>	
<p><b>Community Opportunity to Purchase Definition and Overview</b> (What is COPA in a nutshell?)</p>	<ul style="list-style-type: none"> <li>• The proposed Community Opportunity to Purchase Program (COPA) would give Qualified Nonprofit Organizations (QNP) an opportunity to make the first offer to buy rental residential properties before properties are put on the open market, and the right to make a final offer to match terms &amp; conditions of a third-party offer.</li> <li>• The purpose of COPA is to increase the supply of restricted affordable properties that are owned by mission-oriented nonprofit organizations that would keep them permanently affordable.</li> </ul>
<p><b>COPA Vision and Purpose</b></p>	<ul style="list-style-type: none"> <li>• San José has experienced a decade-long housing and homeless crisis caused by many factors: increasing rents, regional job growth, inadequate housing growth and greater economic</li> </ul>

<p>(What problem are we trying to solve and why does COPA solve it?)</p>	<p>disparities. These factors have displaced many San José residents from their homes to other parts of the region, state, or country.</p> <ul style="list-style-type: none"> <li>• Displacement impacts San José negatively in numerous ways: lower socioeconomic diversity, anemic population growth, weakening social bonds. To prevent this, the City of San José has a vested interest in addressing displacement and preserving existing lower cost housing to allow people of all incomes to continue to call San José home.</li> <li>• COPA aligns with this anti-displacement goal as it does the following: <ul style="list-style-type: none"> <li>○ <b>Prevents displacement:</b> COPA prevents low-income renter displacement by creating more opportunities for mission-oriented nonprofits to purchase properties and keep existing tenants in place. This avoids many negative outcomes associated with displacement including problems with health, education, employment, and the environment.</li> <li>○ <b>Preserves existing housing and enables perpetual affordability:</b> COPA supports the preservation of existing lower-cost housing, enabling some properties to become permanently affordable through deed restrictions.</li> <li>○ <b>Creates transparency in multifamily transactions:</b> COPA helps daylight multifamily properties that sell without being listed widely, enabling more nonprofits to have the chance to purchase properties. It is estimated that 50% or more of multifamily properties are sold ‘off-listing.’</li> <li>○ <b>Increases tenant engagement:</b> COPA empowers residents with information during building sales and enable them to participate in building issues more actively.</li> <li>○ <b>Supports homeownership and wealth building:</b> COPA is part of a larger City strategy to reduce wealth and homeownership disparities. It will build in a future opportunity for existing tenants to buy from initial nonprofit owners. COPA can also help support nonprofits that want to buy buildings to create tenant homeownership options today.</li> <li>○ <b>Promotes community stability:</b> COPA helps stabilize neighborhoods in San José currently experiencing displacement by keeping more residents housed in place. This keeps their informal networks in place and supports the local businesses they use.</li> </ul> </li> </ul>
<p><b>San José Background and Context</b></p>	<ul style="list-style-type: none"> <li>• In recent years, the City has engaged in a comprehensive effort to address displacement in response to increasing cost pressures on low-income residents.</li> </ul>

(What brought us here and why are we doing this now?)

- In 2018-19, the City participated in PolicyLink’s Anti-Displacement Policy Network, a cohort of 10 cities working on policy and program interventions to slow down and mitigate the negative effects of displacement.
- As a result of the City’s participation in the PolicyLink cohort and the deep community engagement that staff did with community partners, staff developed a suite of recommendations that the City could take to slow and mitigate displacement in San José. This *Citywide Residential Anti-Displacement Strategy* was adopted by the City Council in September 2020.
- As part of the strategy, the City Council directed staff to prioritize four policies. The #3 recommendation is **Exploring a Community Opportunity to Purchase Program (COPA)**.
- COPA was strongly supported among residents during community outreach. Additionally, the City received more resources to explore this program when it was selected as a recipient for a Partnership for the Bay’s Future Challenge Grant in early 2020.
- Since the City Council’s direction, staff has researched existing programs, convened two community engagement groups (described below), and held a series of independent stakeholder meetings to develop draft parameters for this program.
- Current real estate market conditions may increase the urgency of the need for this program. COVID-19 has hit both many tenants and property owners hard, but San José’s multifamily rental market has been strengthening and rents have generally increased in the past year. In addition, BART is anticipated to be built in a long east/west corridor through the center of the City over the next 10+ years. This combination of conditions will likely increase rents and sales of residential properties, especially in certain areas. As properties sell, renters are at higher risk of being displaced through even higher rents.

**Opportunity to Purchase Programs in Other Jurisdictions**

(Has this been done before, and how do other cities structure their programs?)

As part of our policy development process, staff researched existing and proposed Opportunity to Purchase programs. Below are short summaries of the policies in relevant jurisdictions:

- **San Francisco:** In 2019, San Francisco enacted a Community Opportunity to Purchase Act (COPA). The policy was adopted to assist affordable housing developers in their efforts to acquire, rehabilitate, and preserve existing housing.
  - The program is supported by an overall preservation system that includes dedicated funding from the City government, mission-driven nonprofit housing developers with a focus on preservation, and an external acquisition financing partner (San Francisco Housing Accelerator Fund).
  - The program enables purchases with funding from the Accelerator Fund and the City's Small Site Acquisition Fund. It has 30-80% AMI income limits and is focused on smaller properties (3-25 units).
  - COPA is part of a citywide goal of preserving 1,000 units of existing housing per year in the future.
- **Washington, DC:** First passed in 1980, the District of Columbia's Tenant Opportunity to Purchase Act (TOPA) has resulted in the preservation of 1,400 homes since 2015.
- Coupled with local housing production trust fund, spends up to \$25 million per year.
- Focused on 5- unit buildings, it includes an opportunity to purchase for 2- to 4-unit buildings, and single-family homes if the tenant is disabled or elderly.
- Has longer timelines (up to 265-360 days for the process) to accommodate tenant association requirement.
- **Berkeley:** *Currently under consideration (expected 2023)*
  - May potentially apply to all properties with exceptions for owner-occupancy, family and inheritance transfers.
  - Tenants can assign rights to qualified nonprofit and the program timeline allows for tenant organizing to select that qualified nonprofit partner.
  - Likely to be paired with funding from affordable housing bond and small site programs
- **Other jurisdictions under consideration:** Oakland, East Palo Alto, Minneapolis, Somerville MA, State of MA, [State of New York](#)

<p><b>Community Outreach and Process</b> (How did you come up with these recommendations and who was part of the process?)</p>	<ul style="list-style-type: none"> <li>• To help gain robust feedback from a variety of stakeholders to design the proposed program, the City <del>has</del> worked <b>since from March 2021 to October 2021</b> with its community engagement consultants, Baird + Driskell, to create and facilitate an Anti-Displacement Implementation Working Group process. <b>Staff work and meetings with the public and stakeholders continued through January 2022.</b></li> <li>• The Working Group <del>hads</del> two parts: <ul style="list-style-type: none"> <li>○ a smaller, invite-only Technical Advisory Committee (TAC), and</li> <li>○ a large, open Stakeholder Advisory Committee (SAC), starting with invitees who previously expressed interest in anti-displacement work.</li> </ul> </li> <li>• From April to October 2021, staff held: <ul style="list-style-type: none"> <li>○ 15 formal Working Group meetings (nine TAC meetings and seven SAC meetings) <ul style="list-style-type: none"> <li>▪ involving over 50 organizations, 160 different attendees, and over 200 invitees</li> <li>▪ Staff made available interpretation services in Spanish and Vietnamese for all SAC meetings.</li> </ul> </li> <li>○ 38 additional smaller stakeholder meetings to discuss program design issues in greater depth, as of the end of October 2021.</li> </ul> </li> <li>• Stakeholder groups with whom staff have met include: <ul style="list-style-type: none"> <li>○ Industry professionals and representatives: realtors, brokers, small apartment building owners, small apartment building property managers, for-profit developers, and lenders</li> <li>○ Community-based organizations: affordable housing developers, tenant advocates, community advocates, policy organizations, and leaders.</li> </ul> </li> </ul>
<p><b>Applicability</b>  (What properties are included under this program)</p>	<p><u>Include duplexes, triplexes, and quadplexes (2- to 4-unit properties)</u></p> <p>Staff recommends that COPA include 2- to 4-unit properties for the following reasons:</p> <ul style="list-style-type: none"> <li>• <i>Many renters live in 2- to 4-unit properties:</i> 13% of San José’s renter households live in 2- to 4-unit properties, and these types of properties are even more present in certain areas of the City.</li> <li>• <i>Small properties could possibly be entry-level homeownership opportunities:</i> With COPA and structured City financing, 2- to 4-unit properties could be potentially converted to affordable homeownership opportunities. Community land trust participation could help this model work as</li> </ul>



well. Smaller properties have a lower overall price, and therefore could be of an appropriate scale for land trusts (or other ownership-focused QNPs) making initial entry into the San José market.

- *The market for 2- to 4-unit properties is less competitive than the single-family homes market:* Many property owner advocates recommended during our Working Group sessions that 2- to 4-unit properties be excluded from COPA because, like single-family homes, 2- to 4-unit properties are expensive and sell very quickly. However, data shows that including these small properties is more feasible and more cost-effective than single-family homes. Single-family homes close in less than 2 weeks, but 2- to 4-unit properties close in approximately 2 months. Single family homes are approximately 3 times as expensive than 2- to 4-unit properties on a per unit basis.

Include 5+ unit properties

Larger (5 units and up) multifamily properties have the lowest per unit prices and the longest times on market. Therefore, these properties would be the most efficient use of public funds, and COPA would be compatible with current market timelines.

Do not include an upper limit on properties' sizes

Staff recommends that including an upper limit on property size is not necessary. ~~The new (as of November of 2022) exclusion of properties that are more than 15 years old from COPA will result in many larger properties being exempted from the policy, given that a large share of larger properties were constructed relatively recently. The availability of public funding to enable purchases of buildings through COPA will be limited.~~ This limitation will therefore form a practical limit on the number of and size/cost of larger buildings able to be acquired for affordable housing through COPA. However, enabling COPA to apply to buildings of over 50 units would have the following benefits:

- *Tax credits could be used in the future on larger buildings:* Buildings with 50 to 60 units are generally the minimum size to use Low Income Housing Tax Credits. Including larger properties in the program would increase the program's appeal to affordable housing developers, who strongly prefer having a future option of using tax credits on properties.
- *Flexibility allows for different strategies:* Preserving key properties in neighborhoods experiencing displacement would be helped by COPA being flexible in its upper limit. An

occasional opportunity in a strategic location may arise, and it would increase the likelihood for these buildings to be acquired by nonprofit developers and preserved if they were covered by COPA.

Exclude single family homes from COPA

Staff recommends the exemption of single-family units from COPA for the following reasons:

- *Per unit cost of acquisition:* Single-family homes will typically cost more than \$1 million per unit. This high cost per unit would quickly consume future City resources dedicated to COPA acquisitions and result in fewer units preserved.
- *Time on market:* Properties typically complete sale within 3 weeks of being put on market, so the COPA timeline would be a more significant alteration of the current market timeline.
- *Volume of sales:* The high annual volume of single-family home sales, with thousands of annual transactions, would be an administrative burden for staff to track for COPA administrative compliance to determine if the property were owner- or renter-occupied.

Many property owner advocates recommended during Working Group sessions that rental single-family homes be covered by COPA because single-family homes are a significant proportion of the City's rental housing stock (i.e., over 30% of rental units) and there is an undersupply of affordable housing for larger families. However, because of the reasons stated above, staff recommends these units be exempted from the COPA program.

Exemptions for specific properties and transactions

Staff recommends the following exemptions from COPA:

- *Owner-occupied buildings up to 4 units:* COPA would not apply to buildings up to 4 units where the owner (seller) of the property has occupied one of the units in the property as their primary residence for at least 365 days prior.
- *Family transactions:* COPA would not apply to transfers of property to direct family members, with 'direct family member' to be defined in the draft ordinance.

	<ul style="list-style-type: none"><li>• <i>Properties subject to specified disposition processes:</i> COPA would not apply to the disposition of properties that are subject to formal legal processes including foreclosure, bankruptcy, or disposition of Government-owned properties.</li><li>• <i>Transactions where control of the property is not transferred or remains with a related party to the seller:</i> COPA would not apply to transfers of partial ownership or ownership shares which do not result in the current owner transferring full control of the property.</li></ul>
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**Timeline**

(What is the process for this program and how long does it take?)

**COPA Timeline Process**

Opportunity to Purchase programs at their core create a process for specific parties (usually tenants, affordable housing developers and community organizations) to get the first chance to bid on a property. The process can vary from location to location, but it generally involves the following steps:

- *Notice of Sale:* the property owner or their representative notifies parties that they intend to sell their rental property.
- *Letter of Interest:* approved parties notify the property owner that they are interested in potentially purchasing
- their property. Most properties never receive a Statement of Interest and therefore proceed to a public listing.
- *Due Diligence and Offer:* if the property receives a Statement of Interest from an interested party, that party is given some time to do due diligence on the property including estimating rehabilitation costs, assessing existing rents and identifying needed subsidy based on existing rents. The interested party then makes an offer to the property owner.
- *Time to Secure Financing and Close:* if the property owner accepts the offer, the interested party is given some period of time to secure financing and to close on the property. If the property owner rejects the offer, the property owner may seek a private offer on the open market. Once the property owner has secured an offer on the open market, the property owner must allow the interest party to make an equal counteroffer ~~(right of first refusal)~~.

For a more detailed flowchart, please refer to the COPA Process Flowchart in the Appendix.

Balancing interests of nonprofit developers, property owners, tenants, and nonprofit tenants' rights advocates

To determine appropriate timelines for the acquisition of properties under the COPA program, staff began by researching the existing process of other jurisdictions that implemented or proposed Opportunity to Purchase programs. Staff also reached out to experts, property owners, residents, community groups, and affordable housing developers to gain knowledge and garner feedback to shape timelines for the policy:

- *Property Owners:* Staff engaged property owners who made it clear that they do not want to see excessive delay or process as part of this program. They expressed a preference for speed, simplicity, and efficiency in the process. Property owners also explained they often used the proceeds from one property to invest in another to defer certain taxes, a process allowed under Section 1031 of the Internal Revenue Code. They thought that COPA should not interfere with these ‘1031 exchange’ transactions. They also commented that many “mom and pop” landlords own only a few properties and rely more heavily on their properties for income and as part of their overall net worth, so COPA should not create competition for these owners.
- *Tenants and Community Groups:* Staff also engaged with representatives of resident and community groups who expressed support for longer timelines that allow for tenant outreach and community engagement. Residents and community groups also supported longer timelines to give residents the time to organize and decide on the best path forward during COPA transactions. They asserted that while there are few, if any, tenant co-operatives today in San José, the COPA program should accommodate co-ops if and when they get the resources to form.
- *Affordable Housing Developers:* Staff also received feedback from affordable housing developers on their use of brokers and usual existing timelines for acquiring properties. Affordable housing developers stressed that an important factor in timelines for acquisition is the availability of potential long-term funding for prospective projects. They also communicated a willingness to work with community partners to help with resident outreach, but cautioned against increasing tenant engagement requirements beyond the current proposal as additional requirements would make it more difficult to keep to tight deadlines.

Two different timelines for smaller and larger properties

- Based on our research and feedback from stakeholders, staff is proposing **the following timeline ~~two timelines~~** for Qualified Nonprofits (QNP) to make offers and close on building sales, based on property sizes.

*Timeline for all properties under COPA*

- *Although smaller properties tend to sell quicker than larger properties, staff were informed in interviews with Community Development Financial Institutions (CDFIs) that nonprofit housing organizations typically require the same number of days to close regardless of the*

size of the property. CDFIs are the institutions which are most likely to originate loans for QNPs who utilize COPA.

- Aligning the COPA closing timelines with the recommendations of CDFIs increases the likelihood that a QNP who makes an offer on a property will be able to successfully close on the property.
- Taking this information into consideration, staff recommend a closing time period of 100 days for all properties and are not recommending changes to any other element of the closing timelines.
- A longer closing time period for owners of 2-4 unit properties will only affect the property owners who choose to accept offers from QNPs. For any property owner who chooses to reject a QNPs' offer, the amount of time that property owners would be required to wait before listing their property is unchanged relative to the draft COPA framework from fall 2021.

Shorter timeline for 2- to 4-unit properties:

- ~~As indicated previously, smaller properties sell much quicker than larger properties. The current average time on market for 2- to 4-unit properties is 60 days.~~
- ~~Taking into consideration the speed of the current market and property owners' concerns, staff is proposing a timeline for small properties that is shorter than for larger transactions.~~
- ~~The proposed timeline's period to close (up to 60 days) would be similar to existing market closing and escrow periods.~~

Longer timeline for 5+ Units:

- ~~Larger properties take longer to sell on the open market because of demand and the need for more structured financing. Though the timelines vary by property size, multifamily properties with 5+ units sell in an average of 119 days.~~
- ~~To support COPA's objective to engage and empower tenants as part of the process, a longer timeline also will allow the QNP making an offer, or its nonprofit Community Partner, time to do necessary outreach to more existing residents than on a smaller property.~~
- ~~The proposed timeline's period to close (up to 100 days) would be similar to existing market closing and escrow periods.~~

<b>Tenant Engagement</b>	<p data-bbox="630 190 1906 227">COPA and Tenant Engagement</p> <p data-bbox="630 259 1906 332">As the focus of COPA is to stabilize tenants and keep them in place, the program can be a powerful tool for engaging residents. The program can help with:</p> <ul data-bbox="672 349 1906 535" style="list-style-type: none"><li data-bbox="672 349 1906 381">• Empowering tenants with information</li><li data-bbox="672 381 1906 414">• Reducing fear of adverse impacts (evictions, large rent increases)</li><li data-bbox="672 414 1906 446">• Increasing participation in property upkeep and maintenance</li><li data-bbox="672 446 1906 479">• Creating a process for decision making and addressing collective issues</li><li data-bbox="672 479 1906 535">• Helping residents to access resources like organizing and legal support.</li></ul>
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