City of San José
Housing & Community Development Commission

District 1 — Roma Dawson (VC)	(C) Alex Shoor — District 2
District 3 — Barry Del Buono	Linh Vong — District 4
District 5 — Ruben Navarro	Andrea Wheeler — District 6
District 7 — Victoria Partida	Huy Tran — District 8
District 9 — Don Jackson	Roberta Moore — District 10
Mayor — Zenia Cardoza	Daniel Finn — CAAC MR
Lived Experience (Mayor) — Sketch Oppie	Ryan Jasinsky — CAAC ML
Lived Experience Alternate (Mayor) — Jerome Shaw	

Commissioners are appointed by corresponding Council Members, but do not need to reside in that Council District.

SPECIAL MEETING AGENDA

5:00 PM
March 16, 2023
Virtual **Zoom Link**

In person: Tower 5th Floor, Room 550
Web ID: **940 5398 8541**
888-475-4499 (Toll Free)

Members of the public have a choice to attend the meeting either in person at the location listed above, or to attend virtually, viewing and listening to the meeting by following the instructions below. Additional instructions are provided below to those members of the Public who would like to comment on items on the agenda.

How to attend the Housing & Community Development Commission Meeting:

1) **In person:** For participants that would like to attend in person, the physical location is listed on the upper left of this page.

2) **Electronic Device Instructions:** For participants who would like to join electronically from a PC, Mac, iPad, iPhone, or Android device, please click this URL: **Zoom Link.**

    a. Use a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer. Mute all other audio before speaking. Using multiple devices can cause an audio feedback.
    b. Enter an email address and name. The name will be visible online and will be used to notify you that it is your turn to speak.
    c. When the Chair calls for the item on which you wish to speak, click on "raise hand." Speakers will be notified shortly before they are called to speak.
    d. When called, please limit your remarks to the time limit allotted.

3) **Telephone Device Instructions:** For participants who would like to join on their telephones, please dial **888-475-4499 (Toll Free)** and when prompted, enter meeting Webinar ID: **940 5398 8541**. You may also **press *9 to raise a hand to speak**.

4) **Public Comments prior to meeting:** If you would like to submit your comments prior to the meeting, please e-mail **Luisa.Cantu@sanjoseca.gov** or call **(408) 535-8357 no less than 90 minutes before the start of the meeting**. Comments submitted prior to the meeting will be considered as if you were present in the meeting.

Note that the times for items shown below are approximate and intended only to notify the Commission of the approximate amount of time staff expects each item might take.
Please note that items may be heard before or after the times shown, and plan accordingly.

APPROX. TIME		AGENDA ITEM
5:00	**I.**	**Call to Order & Orders of the Day** **A.** Chair reviews logistics for Zoom meetings
5:03	**II.**	**Introductions and Roll Call**
5:08	**III.**	**Reports and Information Only** **A.** Director i. Update on recruitment for open Commision seats **B.** Council Liaison **C.** Chair
5:15	**IV.**	**Open Forum** *Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the Commission. Meeting attendees are usually given two (2) minutes to speak during Open Forum; however, the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate due to a large number of speaker requests.*
5:19	**V.**	**Old Business**
	VI.	**New Business**
5:20		**A. Draft Community Opportunity to Purchase Program (COPA) (K. Clements, Housing Department)** **ACTION:** Review the staff report on the draft Community Opportunity to Purchase Program (COPA), which would give the right of first and final offer to qualified nonprofits to purchase properties covered by the program in order to increase the stock of preserved and permanently affordable homes, and make possible recommendations.
7:45	**VII.**	**Open Forum** *Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the Commission (per Section 2.08.2840 of the San José Municipal Code). Meeting attendees are usually given two (2) minutes to speak during Open Forum; however, the time limit is in the discretion of the Chair of the meeting, and may be limited when appropriate due to a large number of speaker requests.*

7:50 VIII. Meeting Schedule

The next **Regular Meeting** for the Commission is scheduled to be held on **Thursday, April 13, 2023, at 5:45 p.m. in a room TBD at San José City Hall, 200 E. Santa Clara St., San José, CA 95113.** Items tentatively expected to be heard are:

- Draft FY 2023-24 Annual Action Plan
- Rent Stabilization Program Annual Report
- Rent Stabilization Program Annual Fees
- Housing Trust Fund Budget
- Measure E Budget

7:55 IX. Adjournment

The City's Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

You may speak to the Commission about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the Commission. Please be advised that, by law, the Commission is unable to discuss or take action on issues presented during Open Forum. Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the Commission unless listed on the agenda, which has been posted not less than 72 hours prior to meeting. Agendas, Staff Reports and some associated documents for the Commission items may be viewed on the Internet at http://www.sanjoseca.gov/hcdc. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Commission.

Correspondence to the Housing & Community Development Commission is public record and will become part of the City's electronic records, which are accessible through the City's website. Before posting online, the following may be redacted: addresses, email addresses, social security numbers, phone numbers, and signatures. However, please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the Housing & Community Development Commission, will become part of the public record. If you do not want your contact information included in the public record, please do not include that information in your communication.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk, 200 East Santa Clara Street, 14th Floor, San José, California 95113, at the same time that the public records are distributed or made available to the legislative body. Any draft resolutions or other items posted on the Internet site or distributed in advance of the Commission meeting may not be the final documents approved by the Commission. Contact the Office of the City Clerk for the final document.

On occasion, the Commission may consider agenda items out of order.

The Housing & Community Development Commission meets every second Thursday of each month (except for July and sometimes December) at 5:45pm, with special meetings as necessary. If you have any questions, please direct them to the Commission staff. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

To request translation or interpretation services, accommodation, or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events, or printed materials, please call (408) 535-1260 as soon as possible, but at least three business days before the meeting. Please direct correspondence, requests, and questions to:

City of San José Housing Department
Attn: Luisa Cantu
200 East Santa Clara Street, 12th Floor
San José, California 95113
Tel: (408) 535-8357
Email: Luisa.Cantu@sanjoseca.gov

Para residentes que hablan español: Si desea mas información, favor de llamar a Luisa Cantu al 408-535-8357.
Tiếng Việt: Xin vui lòng liên lạc Janie Le tại 408-975-4462.
對於說華語的居民: 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

FROM: Rachel VanderVeen

SUBJECT: SEE BELOW

DATE: March 9, 2023

Approved

Date

SUBJECT: DRAFT COMMUNITY OPPORTUNITY TO PURCHASE PROGRAM

RECOMMENDATION

Review the staff report on the draft Community Opportunity to Purchase Program (COPA), which would give the right of first offer to qualified nonprofits to purchase buildings covered by the program in order to increase the stock of preserved and permanently affordable homes, and make possible recommendations.

SUMMARY AND OUTCOME

COPA is a proposed anti-displacement program that seeks to stabilize lower-income renter families when residential property sale occurs. The City Council's approval of COPA would facilitate nonprofit acquisitions of multifamily residential rental buildings, provided that these nonprofits convert the buildings to permanently affordable housing for existing tenant families. Converting existing housing to deed-restricted affordable housing is significantly less expensive and faster than building new affordable housing. Council approval of COPA would improve the ability of nonprofit housing providers to utilize anticipated regional and state funding for affordable housing acquisitions in the coming years. Nonprofit acquisitions of existing buildings also would result in renter families gaining permanently affordable housing without having to move to another building or neighborhood. By facilitating property acquisitions for nonprofit housing providers, COPA would provide the infrastructure for these housing providers to create permanent affordability for up to 240 renter families per year across as many as 30 properties if proposed regional and state funding sources are approved over the next few years. COPA would also support the City in fulfilling its obligation to "affirmatively further fair housing," or in other words, promote housing opportunity for groups that are (or were historically) impacted by housing discrimination.

BACKGROUND

The proposed COPA program is a product of several years of Council-directed research on solutions to address residential displacement. This history is summarized below and is described in greater detail in Attachment B.

On January 27. 2015, the City Council adopted the 2014-2023 Housing Element. Three Housing Element policies and Workplan item #34 are consistent with developing programs and policies to fight low-income residents' displacement, as follows:

- H-1.16: Identity, assess, and implement potential tools, policies, or programs to prevent or mitigate the displacement of existing low-income residents due to market forces or infrastructure investment.
- H-1.18: Develop tools to assess and identify neighborhoods and planning areas that are experiencing or that may experience gentrification to identify where anti-displacement and preservation resources should be directed.
- H-2.1: Support local, state and federal regulations that preserve "at-risk" subsidized and rental-stabilized units subject to potential conversion to market-rate housing and that will encourage equitable and fair policies that protect tenant and owner rights
- Program #34: Consider proposed policies or ordinances to protect low- and moderate-income residents in market-rate and deed-restricted affordable housing from displacement.

On June 12, 2018, the City Council prioritized the issue of displacement within the Housing Crisis Response Workplan, Item #9: Develop Anti-Displacement Strategies.

In November 2018, a public / nonprofit San José team applied for and was chosen to participate in the PolicyLink Anti-Displacement Policy Network (ADPN), a 14-month learning cohort of 10 U.S. cities working to address urban displacement. Staff from three departments and sponsor Councilmember Magdalena Carrasco collaborated closely with community organizations in this work. The San José ADPN team together conducted meaningful listening sessions with community members impacted by displacement and co-wrote a community report on how to address displacement, cited below.

On September 22, 2020, the City Council approved[1] the Citywide Residential Anti-Displacement Strategy (Anti-Displacement Strategy) and approved its 10 recommendations and prioritization of work on the top three recommendations.[2] Development of a COPA policy is Recommendation #3 in the Strategy. The City Council's direction at that meeting was to develop a COPA program proposal with parameters for applicability by property type.

[1] https://sanjose.legistar.com/View.ashx?M=F&ID=8772026&GUID=C6ADD217-83DD-4F7E-B480-056B228DCAF1
[2] https://sanjose.legistar.com/View.ashx?M=F&ID=8772030&GUID=CABC65D7-A63C-4E4B-9010-6A2ED1D7E3BC

From April 2021 to October 2021, staff and consultants facilitated 14 formal meetings of two different advisory committees – one of technical experts in a variety of areas, and one open to the public and community organizations as well as technical experts – to co-design a COPA proposal. (More details are found in the Analysis section.)

On October 25, 2021, Housing Department staff presented an update on the COPA program to the City Council's Community and Economic Development Committee.[3] Committee members directed staff to do additional public outreach regarding the COPA program. Since receiving the City Council's guidance, staff conducted an additional 12 public meetings, including 10 public meetings online and 2 public meetings in person, with an additional 582 total in attendance (308 individuals). Total public participation in designing the COPA proposal since early 2021 has been extensive, with 1,072 total meeting attendees and approximately 480 different individuals.

Between March 2021 and September 2022, staff presented 13 status updates on COPA program development to the City Council's Community Economic Development Committee and Neighborhood Services and Education Committee.

Multiple City plans and initiatives in the past three years have called for the City to pursue or adopt a COPA Program. These include:

- Community organizations and City staff co-authored the San José ADPN public/nonprofit team's "Ending Displacement in San José: Community Strategy Report" in January 2020, which recommended that San José pursue a COPA program.
- The City's Charter Review Commission final report, approved on April 11, 2022, recommended that San José pursue a COPA program.[4]
- The COVID Recovery Task Force report, approved by City Council in December 2022, recommends that the City adopt a COPA program and adequately fund affordable housing preservation as part of the City's homeownership strategy.[5]

In addition, the Draft 2023-2031 Housing Element also includes the implementation of COPA, if approved by City Council, as a strategy for preserving housing and helping to stabilize lower-income rental neighborhoods.[6]

[3] https://sanjose.legistar.com/LegislationDetail.aspx?ID=5152386&GUID=B751E6D2-EA01-4AF6-B442-752CDC3FB8FD
[4] https://sanjose.legistar.com/View.ashx?M=F&ID=10710023&GUID=B384951D-1D2C-4BA0-AD64-DFF86C472568
[5] https://sanjose.legistar.com/View.ashx?M=F&ID=11494873&GUID=7AD5D0AA-CB21-4074-848D-4E50E5AEB9A9
[6] Draft Housing Element, Ch. 3, Table 3-2, Strategy R-4, https://www.sanjoseca.gov/home/showpublisheddocument/89585/637989408846500000

ANALYSIS

The Housing Department has completed its analysis addressing City Council's September 2020 direction. This analysis is presented in the following sections:

A. Summary of the proposed COPA program
B. Problem statement: residential displacement is harming San José residents, especially people of color
C. Why a COPA program would help prevent displacement
D. The City's proposal: Staff's proposed COPA program is based on extensive community and stakeholder input
E. Implications for adopting staff's COPA proposal, including pros and cons
F. Policy alternatives
G. Racial equity impact analysis.

A. Summary of the proposed COPA program

The Community Opportunity Purchase Act (COPA) gives qualified nonprofit buyers the right to make a first offer on a multifamily residential property covered by the program that is up for sale. The purpose of COPA is to enable nonprofits to acquire and rent-restrict more multifamily buildings. COPA's goals are to:

- Prevent the displacement of lower-income renters
- Increase the number of permanently affordable homes and promote renter stability
- Empower tenants
- Provide a tool to support homeownership opportunities and other asset-building opportunities

Residential displacement disproportionately affects communities of color, who were historically denied wealth-building opportunities through equal access to homeownership. According to the Urban Displacement Project, in 2019, 13% of non-Hispanic White residents were living in neighborhoods classified as undergoing displacement or which are probably undergoing displacement. However, the same was true for nearly half (45%) of the City's Hispanic/Latino/a/x population, 34% of the City's Vietnamese population, and 30% of the City's Black population (see Figure 3 in the Analysis section). As a result, anti-displacement policies like COPA represent an opportunity to advance the City of San José's duty to Affirmatively Further Fair Housing and ensure that all racial and ethnic groups can continue residing and working in San José.

COPA would complement existing strategies to build new units of affordable housing by more directly addressing residential displacement

COPA is an affordable housing preservation policy. Affordable housing preservation policies are complementary to affordable housing production and protection policies, which together constitute the "3 P's" of affordable housing. Affordable housing preservation policies like COPA are critical for advancing anti-displacement efforts because they allow renter families to continue living in the same residence while ensuring that their housing costs will be affordable on a permanent basis. Unlike affordable housing production policies, affordable housing preservation policies do not require renter families to move to a different location nor to enter onto a waitlist to access affordable housing.

COPA would apply at the time of a property sale, which is a time when renter families' displacement risk can increase

The proposed COPA program is a balance between helping to combat the displacement of low-income renter families and allowing current property owners to earn a fair sales price when selling their properties. The program's process would begin once owners of covered rental properties decide to sell their property. The sale of a property raises the prospect of some renter families being priced out of their homes because when residential property owners sell to investors in strong markets like San José, these investors often anticipate a return on their investment that is achieved through repeatedly increasing rents on tenant families to the maximum extent allowed under city and state policies. The sale of a property can therefore precipitate a housing emergency for the renter families who call that place home. In a regional context in which there are a shrinking number of rental units affordable to working class and lower income families, renter families who are forced out of their homes may struggle to find another place in San José or even in the region that fits within their budgets.

Nonprofit housing providers are critical to anti-displacement efforts but have difficulty acquiring properties in the current environment

Under current conditions, mission-driven housing developers who are otherwise equipped to acquire multi-family properties face several impediments. First, mission-driven housing providers require more time to issue offers on multifamily properties than traditional real estate investors. This is because prior to making an offer, mission-driven housing providers must perform specific due diligence activities related to maintaining the affordability of a property that are not required of traditional investors (which are summarized in Analysis section C and described in greater detail in Attachment F). Assembling financing for a project is also typically much more complex for nonprofit entities than for traditional buyers and nonprofit buyers are unable to "pre-qualify" for financing in the way that typical homeowners can due to nonprofit lender requirements. Furthermore, real estate investors can sometimes pay for properties in cash, meaning that no financing process is required. As a result, nonprofit housing providers are unlikely to make offers on the same timelines as traditional investors.

A second impediment for mission-driven housing providers to acquire properties with renters at risk of displacement is that they do not receive consistent notifications when these properties are going up for sale. As many as 50% of multifamily properties transact off-market, meaning they sell without ever being advertised. This means that mission-driven housing providers miss out on opportunities to intervene to purchase properties on behalf of renters at risk of displacement.

COPA can support tenant education and engagement efforts, and potentially provide pathways to non-traditional homeownership opportunities

COPA's proposed timelines for property acquisition would provide an additional benefit by allowing time for QNPs to directly contact renters to inquire about their housing needs and their preferences for the future of the property. These timelines also provide opportunities for tenant education and engagement throughout the acquisition process, affording renters agency over the future of their homes, including by allowing them to weigh in on the eventual ownership structure. For example, tenant families could express their preference for continuing to rent or for opting for a limited equity housing cooperative (LEHC) structure or other alternative homeownership structure. Renter families who would otherwise be exceedingly unlikely to have opportunities to own their homes could thus benefit from an alternative homeownership program if cases where residents and QNPs opt to convert rental properties to (LEC). These outcomes would become more likely if the City opts to provide financial support for the creation of tenant associations and for ongoing tenant organizing.

The COPA program proposal was developed via one of the most robust stakeholder engagement processes that Housing Department staff have ever undertaken

Staff convened two participatory committees, a Technical Advisory Committee and a Stakeholder Advisory Committee, which together convened a total of 14 times. Staff held 12 public meetings between December 2021 and February 2023. Total attendance at both Advisory Committee meetings and public meetings includes over 1,100 people, with about 480 of those attendees being unique individuals. In addition, staff have held 42 small stakeholder meetings on the COPA proposal as of the date of this memorandum.

Housing Department staff also conducted extensive research on similar programs that have been implemented in other cities to incorporate best practices into the proposed COPA program. Staff have concluded that well-designed COPA programs have the potential to generate a significant impact in the number of families served. However, the number of homes preserved via COPA would increase as a function of the amount of funding available for housing preservation from local and external sources. In the short-term, while preservation funding will be relatively limited, staff anticipate that COPA could support the acquisition of 10-15 rental units per year. As additional affordable housing preservation funding sources are implemented and more financing is available for QNP acquisitions, staff estimates that COPA could support the acquisition of approximately 240 rental units per year.

B. Problem Statement: Residential displacement is harming San José residents, especially people of color

Because COPA is an anti-displacement policy, this section first reviews data confirming that residential displacement is occurring and summarizes the research on how displacement impacts families and the larger community. This section also reviews the available information on how displacement disproportionately impacts protected classes.

Residential displacement of lower-income households is widespread in San José

The U.C. Berkeley Urban Displacement Project analyzes demographic trends and regularly publishes spatial data on the displacement of lower-income households across the Bay Area and other U.S. cities. The most recent edition of these displacement maps (Figure 1) shows that lower-income renter households have been displaced and/or are at risk of displacement in neighborhoods located in nine of San José's ten City Council districts.[7] While data indicates that displacement is occurring across the city, the areas most impacted by displacement include San José's Downtown and east side neighborhoods, located in Council Districts 3, 5, and 7.

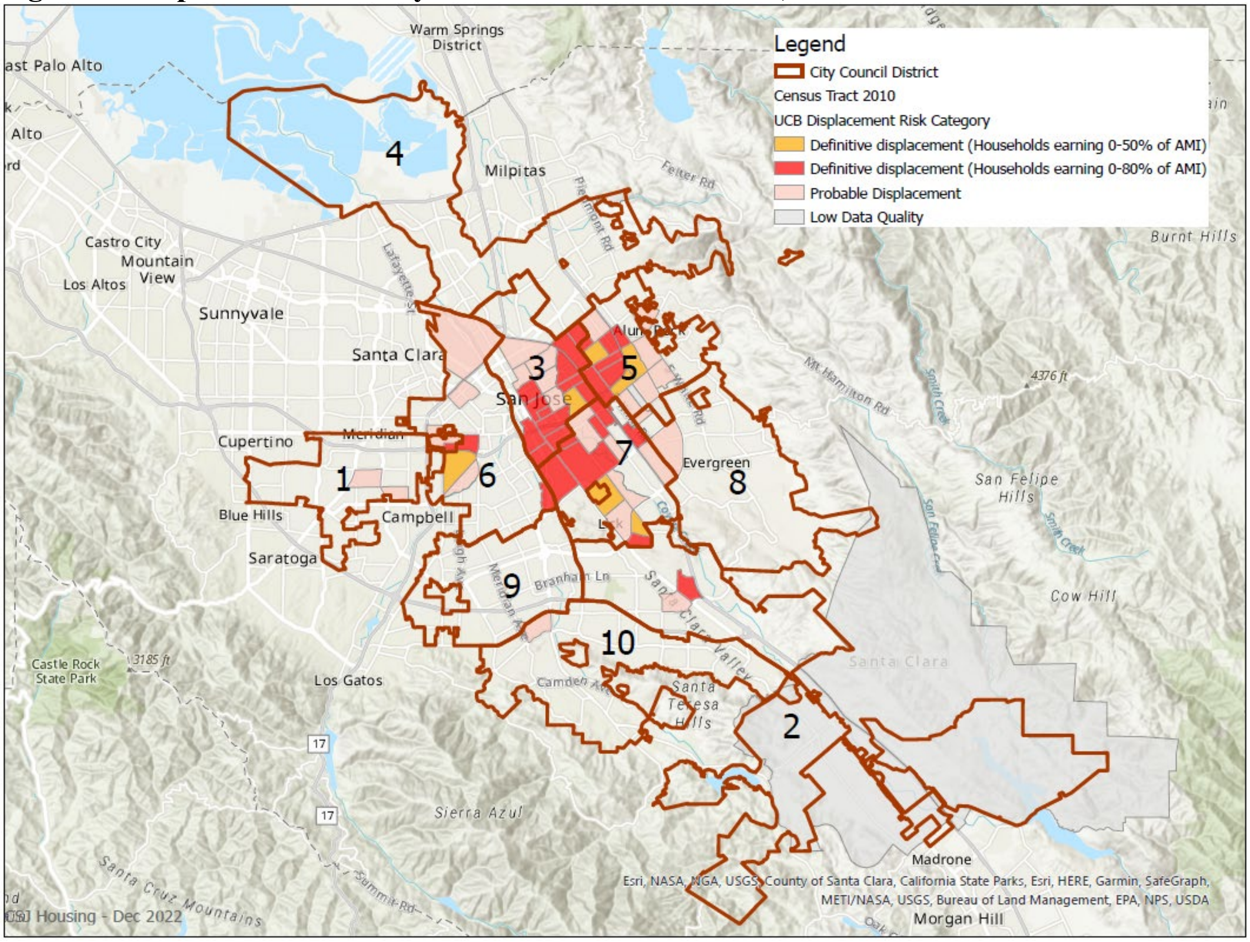
The Urban Displacement Project findings also show that residential displacement is not just impacting the lowest income families in San José: displacement is also impacting families that until recently would have been considered "middle class." According to the Urban Displacement Project data, households earning 50-80% of Area Median Income (AMI) in San José are being displaced in addition to households who are 0-50% of AMI in almost all the neighborhoods where displacement is occurring.[8] This suggests that anti-displacement programs should be available to households earning 50-80% AMI in addition to those earning 0-50% AMI.

In total, there are about 89,000 households earning less than 80% of AMI living in San José, and over 42,500 of them live in areas with "definitive" or "probable" displacement in San José. In other words, 48% of all lower-income households who live in San José are living in neighborhoods identified as definitively or probably undergoing displacement. Figure 1 shows the displacement risk of these areas according to 2019 Census data.

[7] The model from research center's methodology reflects 2019 data and is considered by the researchers to be a conservative estimate of displacement. For more information, see the Urban Displacement Project website at https://www.urbandisplacement.org/maps/california-estimated-displacement-risk-model/

[8] Out of the 33 census tracts where displacement is definitively occurring, displacement of both income categories is happening simultaneously in all but five of these census tracts.

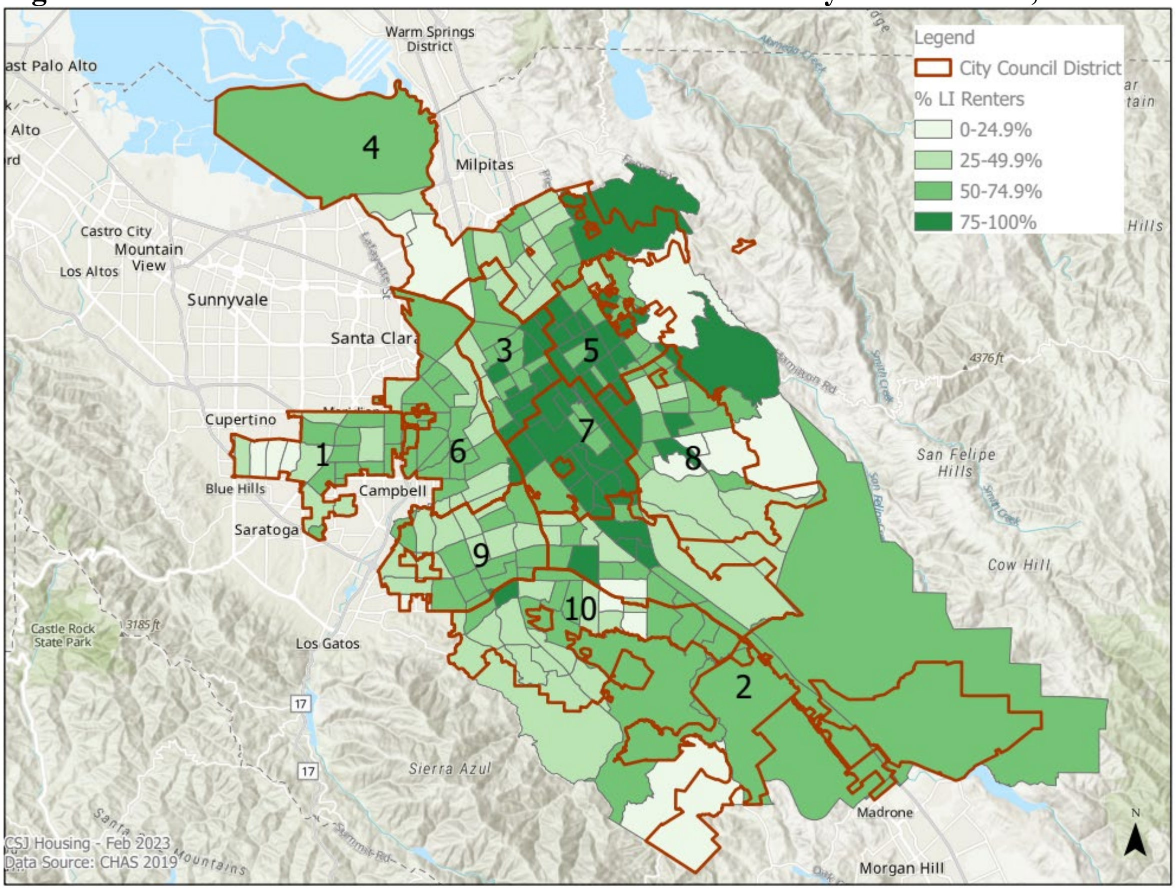
Figure 1: Displacement Risk by Census Tract in San José, 2019



Note: For a household of 1 person in 2019, 0-50% AMI refers to those with annual incomes between $0 and $59,000. For a household of 1 person in 2022, 0-80% of AMI refers to those with annual incomes between $0 and roughly $94,000.
Source: Housing Department staff analysis of Urban Displacement Project data, 2019

Figure 2 shows renter households who are considered lower-income (earning below 80% AMI) as a share of all renter households in each census tract. In about half of San José's neighborhoods, half or more of all renter households are in the lower-income category.

Figure 2: Lower-Income Renters as a Share of All Renters by Census Tract, 2019



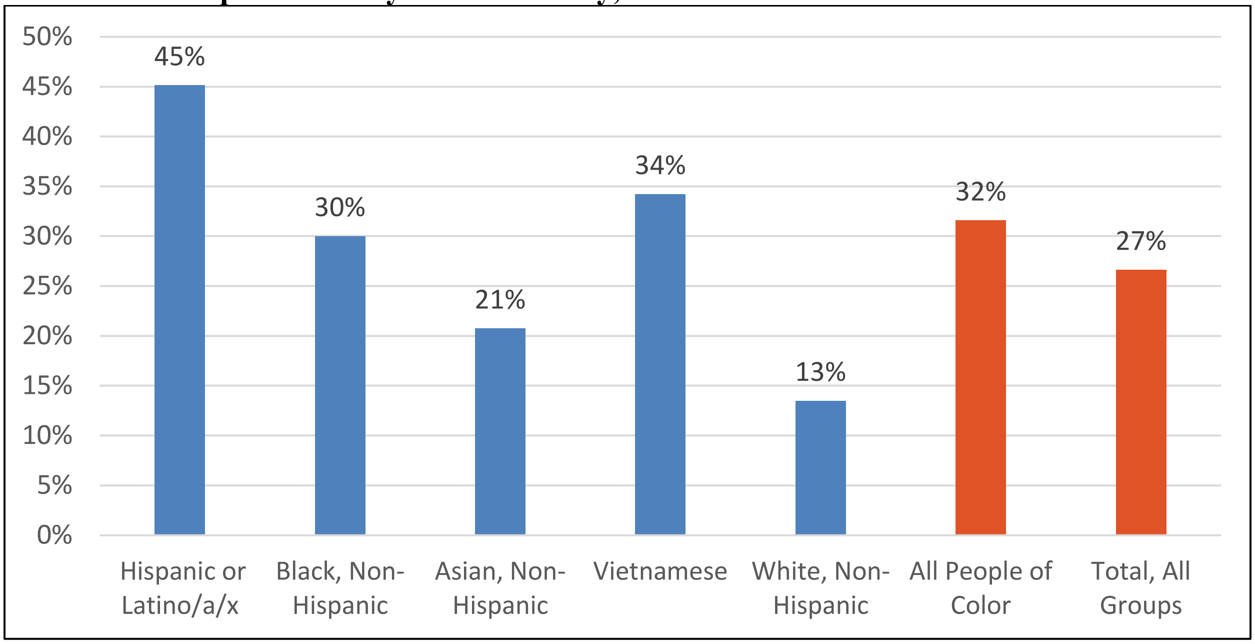
Source: Comprehensive Housing Annual Survey, 2019.

<u>Residential displacement disproportionately impacts San José's communities of color.</u>

The Urban Displacement Project data also shows that people of color in San José are much more likely to live in neighborhoods undergoing displacement than non-Hispanic white residents. Figure 3 shows that while only 13% of non-Hispanic white residents were living in neighborhoods classified as undergoing displacement or which are probably undergoing displacement in 2019, the same was true for nearly half (45%) of the City's Hispanic/Latino/a/x population, 34% of the City's Vietnamese population, and 30% of the City's Black population.[9]

[9] See Figure 1 in Attachment B for detailed data on the share of each racial/ethnic group living in each of the Urban Displacement Project's neighborhood typologies.

Figure 3: Share of San José Residents Living in Neighborhoods Undergoing Displacement or Probable Displacement by Race/Ethnicity, 2019



[1] "People of Color" are defined as all who self-report their ethnicity as Hispanic/Latinx and/or their race as being something other than white. Note that racial/ethnic groups in this chart are not mutually exclusive.
[2] Vietnamese are also included in the "Asian Non-Hispanic" group.
Source: Staff analysis of 2019 5-Year ACS Estimates, using Urban Displacement Project California Displacement Risk Model data, 2022.

As discussed in greater detail in Attachment B and as previously reported in the Housing Department's 2020 Anti-Displacement memo,[10] the fact that people or color disproportionately reside in areas undergoing displacement is a byproduct of historical housing discrimination and disinvestment in communities of color, which limited families' capacity to pass down intergenerational wealth accrued through homeownership. As a result, people of color in San José are disproportionately renters and are disproportionately housing cost-burdened, two key risk factors for higher displacement risk according to the Urban Displacement Project. COPA would therefore be an important tool for the City to rectify longstanding housing injustices and also realize its federally- and state-mandated duty to affirmatively further fair housing.[11]

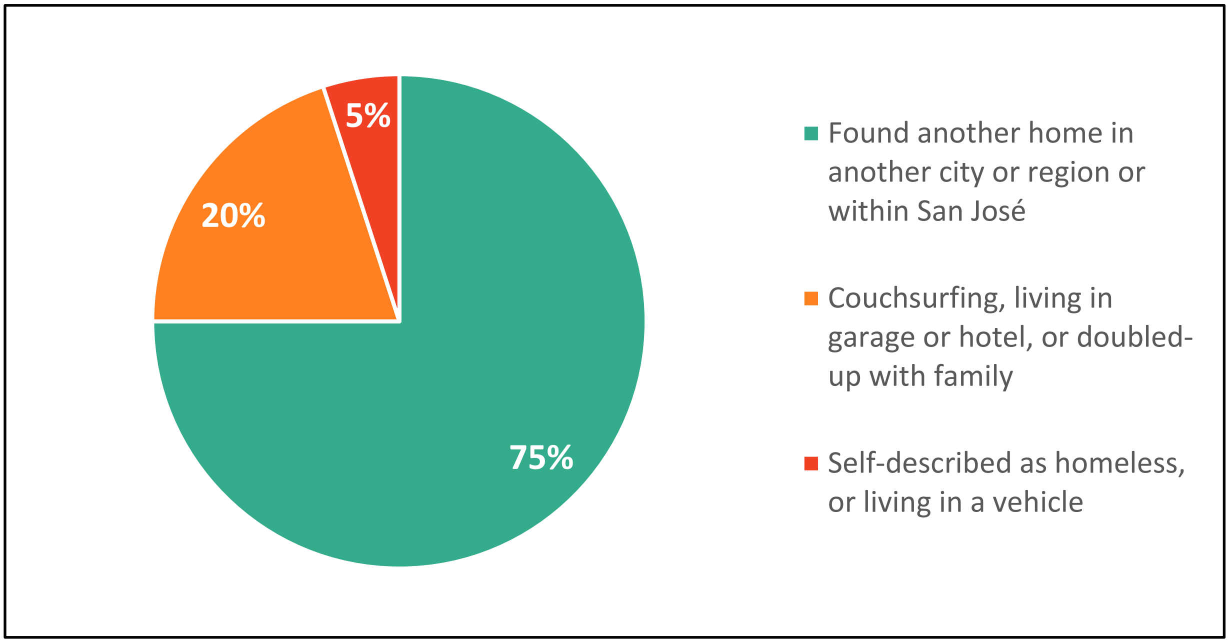
<u>Residential displacement has significant negative consequences not only for renter families but also for the broader community</u>

An estimated quarter of families who are displaced become homeless, and many others are forced to leave their communities altogether. A 2018 Urban Displacement Project longitudinal study that tracked outcomes for low- and moderate-income residents who experienced displacement in Santa Clara County found that displaced households rarely continue living in the

[10] https://sanjose.legistar.com/View.ashx?M=F&ID=8772026&GUID=C6ADD217-83DD-4F7E-B480-056B228DCAF1
[11] https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf

same neighborhoods and that they may even lose housing altogether. Of the displaced renter families in the study, only ten percent of displaced households found a new home in the same neighborhood in which their original home was located. Alarmingly, twenty-five percent of the households in the study became homeless Figure 4, underscoring the significant and sometimes tragic consequences associated with involuntary displacement.[12]

Figure 4: Outcomes for displaced renter families in Santa Clara County, 2018



Source: Urban Displacement Project, 2018

In addition, renters who undergo displacement experience negative health and educational outcomes. Numerous studies have found that residential displacement, and the mere constant worry over housing instability, significantly hurt residents' health and educational outcomes. The emotional toll of displacement and living with the threat of displacement is significant and affects mental well-being, sense of belonging and community cohesion.[13] People experiencing housing insecurity are almost three times more likely to be in frequent mental distress than those

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[12] 5% of respondents in this study reported living in a shelter, vehicle, on the street, or otherwise reported that they were homeless, while another 20% of respondents were considered "marginally housed," defined as living in a motel/hotel, garage, or living with family friends in a "doubled-up" situation, such as sleeping in a living room. While the City of San José Homelessness Response Team does not define these "marginally housed" individuals as homeless, the federal McKinney-Vento definition of homelessness for children and youth defines all of these conditions as homelessness (https://nche.ed.gov/mckinney-vento-definition/). Urban Displacement Project data can be found at https://www.urbandisplacement.org/blog/disruption-in-silicon-valley-the-impacts-of-displacement-on-residents-lives/

[13] 10 Bay Area Regional Health Inequities Initiative (BARHII) and the Federal Reserve Bank of San Francisco, "Housing Stability and Family Health: An Issue Brief," Sep. 2018. https://bd74492d-1deb-4c41-8765-52b2e1753891.filesusr.com/ugd/43f9bc_0f5129be91c84eca86dd52e408b2821b.pdf

who have secure housing.[14] Evictions are very detrimental for mental health, as mothers who experienced an eviction were more likely to report depression even two years after the eviction.[15] Displacement also has been found to increase respiratory and other health issues as families move to more polluted, lower air-quality areas.[16]

Residential displacement results in negative environmental consequences as workers who can no longer afford to live in San José are forced to commute longer distances to their jobs

Because residential displacement can force working households to move to more distant locations, workers who are displaced due to high housing costs commute long distances to retain their livelihoods. A 2021 study commissioned by Caltrans found that the same areas in the Central Valley with large numbers recent-in movers from the inner Bay Area have higher rates of "super-commuting," meaning commuters are traveling 50 miles or more per day to work.[17] This finding confirms that high housing costs in the inner Bay Area result in negative environmental consequences as households are increasingly forced to commute from the Central Valley to reach their work locations in job centers like San José.

Displacement impacts local businesses when their workforces can no longer afford to live near job sites

Displacement also threatens small businesses, particularly because displacement threatens immigrant communities who are regular patrons of the City's ethnic-specific businesses. In the San José metro area, immigrants constitute 48% of all small business entrepreneurs and contribute to the economic vitality and overall quality of life to the neighborhoods they are in.[18] They provide unique and culturally relevant services and goods, create jobs, foster relationships between neighbors, and strengthen the community. The displacement of lower-income residents inevitably affects the small businesses that support them. As demographics and needs change, small businesses are either forced to shift their services or close, further eroding the community's diversity and cultural identity. The emotional toll of displacement and living with the threat of displacement is significant, affecting mental wellbeing, sense of belonging and community cohesion.

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[14] Liu, Y., Njai, R. S., Greenlund, K. J., Chapman, D. P., & Croft, J. B. (2014). Relationships Between Housing and Food Insecurity, Frequent Mental Distress, and Insufficient Sleep Among Adults in 12 US States, 2009. Preventing Chronic Disease, 11, E37. doi:10.5888/pcd11.130334 http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3958143/
[15] Matthew Desmond and Rachel Tolbert Kimbro, Harvard University and Rice University, "Eviction's Fallout: Housing, Hardship, and Health," Feb. 2015, http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf
[16] http://www.rajchetty.com/chettyfiles/movers_paper1.pdf
[17] See "Displacement and Commuting in the Bay Area and Beyond: An Analysis of the Relationship Between the Housing Crisis, Displacement, and Long Commutes." https://www.metrans.org/assets/research/psr-20-03_boarnet_final-report.pdf https://www.metrans.org/assets/research/psr-20-03_boarnet_final-report.pdf
[18] Staff analysis of data published in New American Economy research report, August 2020. https://research.newamericaneconomy.org/wp-content/uploads/sites/2/2020/08/COVID_SanJose.pdf https://research.newamericaneconomy.org/wp-content/uploads/sites/2/2020/08/COVID_SanJose.pdf

There is evidence that the displacement of families with children is a major factor in declining local school enrollment

Demographic data suggests that families with children may experience displacement from San José at higher rates than families without children. The share of San José households that have children under 18 declined from 38% in 2000 to 33% in 2020, shown in Figure 5 below. Similar trends in many cities across the Bay Area are widely attributed to high housing costs, which make the region prohibitively expensive for many families with children to stay in the area.[19, 20]

Figure 5: Share of San José Households with Children Under 18, 2000 - 2020

	2000	**2010**	**2020**	**Percentage change 2000-2020**
Total households	276,598	300,111	324,340	**+17%**
Family households with children under 18	105,935	111,514	105,775	**0%**
Share of households with children under 18	*38%*	*37%*	*33%*	***-5%***

Source: U.S. Census 2000, American Community Survey 2010-2020

Families' inability to afford housing in San José is also borne out by school district enrollment data, particularly in the areas of the City that have high residential displacement rates. While school enrollment in San José (and across the Bay Area) is declining partially because of demographic trends as households have fewer children, the decline cannot be explained by demographic trends alone. Educators and school district officials report that residential displacement of families is one of the key causes of declining enrollment, as families report having to move to lower-cost areas.

Further, county and city school enrollment data strongly suggest that children from lower-income families are leaving the area at a much faster rate than that of higher-income families. Across Santa Clara County, total enrollment declined by 12% between the 2014-15 and the 2012-22 academic years. However, enrollment in public schools across Santa Clara County has declined significantly faster (-15%) than in the County's private schools (-5%). This is a significant finding because public school students are much more likely to be lower income than those enrolled in private schools.

[19] https://www.sfchronicle.com/bayarea/article/Bay-Area-kid-population-17331003.php
[20] https://sanjosespotlight.com/silicon-valley-housing-crisis-linked-to-declining-school-district-enrollment-study-says/

Recent data on school enrollment from San José also suggests that school district enrollment is declining faster in neighborhoods that the Urban Displacement Project has identified as experiencing displacement, including in the Mount Pleasant Elementary School District (-38%), San José Unified School District (-29%), the Franklin McKinley School District (-27%), and the Alum Rock Union Elementary (-26%). These rates of enrollment decline are all significantly higher than the county average and are also higher than rates of decline in wealthier areas of the city, including Cambrian (where enrollment *increased* by 42%) and Union Elementary (-1%). For complete data on the change in elementary school enrollment in San José, see Figure 18 in Attachment B, Section VI.

Children who undergo displacement have negative educational outcomes, including learning delays and lower school completion rates

For children who experience residential displacement, the negative consequences for their socio-emotional development and educational attainment are serious and well-documented. Displaced children experience more absences, lower school completion rates, and increased educational delays or behavioral problems.[7] According to the National Network for Youth, children are an overlooked segment of the population experiencing housing instability, including homelessness (which can be an outcome of residential displacement):

> "Frequent mobility can increase anxiety and is associated with lower student achievement. When students change schools frequently, it is difficult for educators to identify their needs and ensure proper placement. Parents may also have difficulty identifying the difference between academic or social difficulties that result from the stresses of homelessness and mobility."[21]

It is worth noting that as the housing affordability crisis affects public school enrollment rates, there are negative impacts for the entire community. For example, the Alum Rock School District recently voted to close two middle schools because enrollment was projected to decline to 6,600 by 2027, a nearly 50 percent decrease from the 2011-2012 school year.[22] Children who remain in San José are impacted by school closures that sometimes force them to attend more distant schools and are also hurt when their classmates and friends are no longer able to continue living in the city. Personal stories from residents over the past five years that staff has done deep community listening on anti-displacement indicated that local children who have been able to stay in San José were depressed when close friends had to move out of the City to other locations.

[21] National Network for Youth homepage, accessed Dec. 9, 2022. https://nn4youth.org/learn/education/ https://nn4youth.org/learn/education/

[22] San José Spotlight, May 4, 2021. https://sanjosespotlight.com/alum-rock-trustees-vote-to-close-two-san-jose-middle-schools/#:~:text=Facing%20a%20deficit%20of%20more,the%202021%2D22%20school%20year

Residential displacement leads to racial/ethnic re-segregation

Although data on the exact number of San José residents displaced in recent years does not exist, recent years' Census data show net migration[23] patterns where higher-income individuals constitute the majority of annual net migration into the City and where there has been a net loss of lower-income individuals. Per Figure 6, below, these trends have become more pronounced in the past several years. This finding is relevant for racial resegregation because a higher share of people of color has lower incomes, as shown in Attachment B, Section III. Data in Figure 3 (above) also confirms that people of color disproportionately live in displacement risk areas, further consolidating that low-income out-movers in Figure 6 are likely disproportionately people of color.

Figure 6: Net Migration of Individuals, Aged 15-years and Older, by Annual Income

	2016	**2017**	**2018**	**2019**	**2020**	**TOTAL for 5-year Period**
Individuals with annual incomes greater than $75,000	2,162	2,924	3,251	3,469	3,594	15,400
Individuals with annual incomes between $50,000 and $74,999	928	742	681	-237	-983	1,131
Individuals with annual incomes $49,999 and lower	3,131	717	-1,220	-1,307	-2,390	-1,069
TOTAL Net Migration, individuals aged 15-years and older	6,221	4,383	2,712	1,925	276	15,462

Source: American Community Survey, 5-Year ACS data per respective year

Research from several sources confirms that the region is becoming more segregated as low-income households, who are disproportionately people of color, move out of places like San José. A 2016 report from Urban Habitat found a significant regional out-migration of Black and Latinx households to outlying areas of the Bay Area or to neighboring counties like San Joaquin and Stanislaus.[24] Further, a 2018 study from the California Housing Partnership and the Urban Displacement Project found that rising housing costs have led to large increases in Black and Latinx households living in segregated areas with high concentrations of poverty.[25] Between 2000 and 2015, the study found a 15 percentage point increase in the number of Black

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[23] Net migration is the number of persons who moved into the City minus the number of persons who moved out of the City and does NOT include changes in population due to births or deaths or due to changes in classification of individuals (e.g., changes in individual income from the prior year are not accounted for)

[24] Urban Habitat, "Race, Inequality, and the Resegregation of the Bay Area," 2016.
https://urbanhabitat.org/resource/race-inequality-and-the-resegregation-of-the-bay-area/
https://urbanhabitat.org/resource/race-inequality-and-the-resegregation-of-the-bay-area/

[25] California Housing Partnership Corporation and the Urban Displacement Project, "Rising Housing Costs and Re-Segregation in the San Francisco Bay Area," 2018. https://chpc.wpenginepowered.com/wp-content/uploads/2019/02/CHPC_UDP_RegionalReport_FINAL2.pdf https://chpc.wpenginepowered.com/wp-content/uploads/2019/02/CHPC_UDP_RegionalReport_FINAL2.pdf

households and a doubling of the number of Latinx households living in segregated and high poverty neighborhoods in the Bay Area. Another report published in 2018 by the Terner Center[26] found that low-income out-movers tended to move to other areas of California such as the Central Valley. Low-income movers reported fewer options for employment, education, and access to health care compared to where they had previously lived. The report also found that Latinx and Black residents make up a disproportionately large share of low-income out-movers.

This research shows that without policy intervention, the current trend of displacement can result in more segregated and less racially diverse communities.

C. Why the Community Opportunity to Purchase program would help prevent displacement

This section discusses how COPA would be an important tool in the fight against displacement. First, this section outlines how COPA would support preservation of low-cost housing as permanent affordable housing. Second, this section describes how COPA will position City residents and community-based organizations to benefit from forthcoming state and regional resources. Third, this section discusses how COPA has the potential to support lower- and moderate-income families in San José to achieve homeownership. Finally, the analysis reviews findings on Opportunity to Purchase Acts nationally and how a local COPA program would address displacement risk for lower-income families in San José.

COPA is a key component in an affordable housing preservation ecosystem, which is the fastest way to create permanently affordable housing and stabilize households

Affordable housing specialists typically categorize affordable housing interventions into one of three categories: Preservation, Production, and Protection strategies. COPA is an affordable housing preservation strategy.

Although producing new housing and preserving existing housing are complementary strategies, preserving existing properties offers three distinct advantages over building brand new affordable homes that are relevant to the City's goal of preventing residential displacement. First, preserving existing properties and making them permanently affordable allows San José to address displacement on a significantly faster timeline (1-2 years) than building a new affordable housing development from the ground up (4-6 years). Second, preservation efforts ensure that lower income families can stay in neighborhoods where they already live, work, study, and/or have community ties, whereas production policies do not provide this guarantee. Finally, housing preservation is typically significantly less expensive than housing production. Evidence from other Bay Area cities suggests that the cost of acquiring and rehabilitating existing housing units

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[26] Romem, Issi; Kneebone, Elizabeth; Disparity in departure: who leaves the bay area and where do they go? https://ternercenter.berkeley.edu/disparity-in-departure https://ternercenter.berkeley.edu/disparity-in-departure

and make them *permanently affordable* is about 50-70% of what it would cost to build a brand new unit and restrict affordability for only 60 years.[27,28]

The COPA proposal would address several barriers that nonprofit housing providers ("qualified nonprofits") currently face in their efforts to engage in affordable housing preservation

Within the current policy environment in San José, nonprofit housing providers are disadvantaged relative to traditional investors when it comes to identifying and making offers on properties that are up for sale and aligned with their missions. COPA would level the playing field between nonprofit housing providers and traditional investors by ensuring that nonprofits receive notifications about properties with two or more units that are going up for sale, and by providing enough time for nonprofits to conduct necessary due diligence. In exchange for receiving this advance notice and a defined period of time to make an offer, nonprofit housing providers who acquire properties through COPA would make the units permanently affordable for the existing apartment properties where lower-income renter households are living.

COPA would ensure that qualified nonprofits would be notified when apartment properties with renters who are at risk of displacement are becoming available for sale.

Although nonprofit housing providers regularly work with realtors and brokers to identify properties that they may want to acquire, nonprofit housing providers still lack access to information about the availability of properties for sale that house renter families at risk of displacement for several reasons. First, various sources report that 50 percent or more of all multifamily properties sell off-market and are never actually advertised.[29] This means that nonprofit housing providers never receive the opportunity to make an offer on properties that are potentially purchasable and which are home to renter families at high risk of being displaced. Second, there is no centralized real estate listing repository for properties with five or more units, meaning that nonprofit housing providers miss out on properties that are marketed openly but within brokerages that QNPs do not have access to. COPA would address both of these challenges by requiring all property owners to notify QNPs prior to listing their property on the open market.

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[27] https://www.enterprisecommunity.org/sites/default/files/2021-07/preserving-affordability-preventing-displacement.pdf

[28] It is important to note that while the total cost of preserving affordable housing is lower, in the near-term the cost to the City of preserving smaller properties on a per unit basis will likely be higher than the cost of funding new construction affordable projects on a per unit basis. This is because there are currently relatively few regional, state, and federal affordable housing preservation funding sources, like tax credits, which considerably lower the required public loan amounts for new construction. Within the next few years, it is anticipated that significant funding from the regional and state may become available. If so, the total per unit cost to the City of preserving affordable housing on a per unit basis will likely become lower that the cost of funding a unit in a new construction project.

[29] Estimates on the share of multifamily properties that transact off-market range from half of these properties to two thirds (see https://www.wealthmanagement.com/multifamily/market-sales-gain-traction-cre-owners-and-buyers and https://www.globest.com/2022/05/03/two-out-of-three-private-apartment-deals-are-done-off-market/). The share of off-market transactions may also be growing; according to Redfin, off-market purchases of 1- to 4- unit properties increased by 67% in the U.S. between 2019 and 2021 (https://www.redfin.com/news/pocket-listings/).

COPA would ensure qualified nonprofits have enough time to do property identification and to perform the special due diligence necessary to convert multifamily properties to deed-restricted affordable properties.

The property acquisition process for nonprofit affordable housing providers inherently takes more time than for market-rate housing buyers for several reasons. Nonprofit buyers' governance structures require actions to be taken by volunteer boards of directors, which can take time. Potential buyers must determine if the project would qualify for loans from two to four financing sources, both private loans and public subsidies. Lenders' underwriting must analyze a greater number of details and the risks associated with assembling other financing for the project. Potential buyers and their lenders also must do detailed analysis balancing required restricted rents with needed property rehabilitation needs.

During the closing period, affordable housing providers begin the process of gathering tenant income information (to the extent that this is possible). They also hire contractors who can estimate the cost of any needed rehabilitation. Based on this rehabilitation cost estimate, they determine what financing will cover the gap between what renters can afford to pay in rent and the total cost of the property plus rehabilitation costs. During closing there must additionally be time for lenders to perform underwriting with property-specific information. Additionally, nonprofit buyers will simultaneously also educate renters about transitioning to a deed-restricted affordable arrangement during the closing period. Depending on the QNPs approach, they may also involve renters in the transition planning, especially if they intend to convert the rental property into limited equity cooperatives or to another alternative ownership/governance model.

COPA will better position nonprofit housing providers in San José to take advantage of state and regional affordable housing preservation funding

The current moment is a particularly opportune one for San José to adopt a proposed COPA policy. Currently, policymakers across all levels of government are increasingly attentive to the need for housing preservation strategies and funding. COPA would therefore align with funding opportunities that are expected to emerge for housing preservation at the regional, state, and federal levels in the short to medium term. In other words, not adopting COPA would mean that San José could miss out on external funding opportunities for affordable housing, as nonprofit housing providers in the City would struggle to compete with offers from investors and would have more difficulty in using available funding. Figure 7 below shows how the impact of COPA could be significant in a medium- to long-term scenario where regional and state funding is regularly available.

Figure 7: Estimated Preservation Funding Sources and Anticipated Impact for Affordable Housing Preservation

Timeframe	Funding available	Number of properties to be preserved	Number of homes to be preserved
Short-term	$5 million annually, plus $25 million in one-time funds [1]	2 annually, plus additional one-time	10-15 annually, plus additional one-time
Medium- to long-term	$75 million [2], plus $100 million in one-time funds	50 annually	240 units annually, plus 200 one-time

Note: All figures should be regarded as estimates based on available data on building rehabilitation costs and on sales prices for apartment properties sold between 2019 and the second quarter of 2022.
[1] Recurring funds include $5 million in recurring funds allocated from San José's Measure E; one-time funds include 22 million from unallocated Measure E funds and approximately $3 million from BAHFA REAP 2.0 Funds.
[2] Assumes annual funding of up to $20 million annually from a BAHFA preservation funds set aside for San José and up to $50 million in local preservation funds from Measure E and/or the Google Community Stabilization and Opportunity Pathways Funds or other eligible housing sources. One-time funding sources include up to $20 million from the Foreclosure Intervention Housing Preservation Program, up to $30 million from a proposed state budget item for affordable housing preservation (the California Anti-Displacement and Preservation Program), and up to $50 million that advocates in San José have proposed be made available from local sources (such as the Google Community Stabilization and Opportunity Pathways fund).

COPA may help stabilize neighborhoods in advance of planned public transit improvements that will likely cause property values and rents to increase

San José neighborhoods which will host major new regional public transportation improvements such as the BART Silicon Valley Phase II extension will likely see increased housing costs and displacement pressures. Although research findings are mixed, major public investments in transit have been associated with increasing property values and market-rate rents, as the enhanced convenience of transit makes neighborhood more desirable.[30,31] Investors looking to capture increasing property values and rent growth may be more active in anticipation of these price increases. Adopting COPA now would position San José's mission-driven developers to proactively respond to these market changes and ensure that long-time residents of San José will be among those who benefit from these transit improvements.

COPA could be used to support homeownership opportunities for lower- and moderate-income families, further protecting them from displacement

Homeownership traditionally has been an effective strategy for creating residential stability and preventing displacement. COPA could support homeownership per the following:

[30] See the literature review in Section III of the Diridon Affordable Housing Implementation Plan Fal Report. https://www.sanjoseca.gov/home/showpublisheddocument/73671/637581464227630000.
[31] https://www.vta.org/sites/default/files/2019-08/VTA%20Strategic%20Economics%20AD%20study%202019.pdf

COPA could create pathways to ownership for renters by providing support to QNPs for tenure transitions

Based on the findings of a consultant memo on ownership options (see Attachment G) as well as internal staff research, staff anticipate that COPA could support QNPs in converting properties from rental to ownership models in different ways. However, most of the support for tenant ownership in properties acquired through COPA would be determined by details in future Notifications of Funding Availability.

Due to the relatively short timelines specified by COPA, the primary pathway for tenant ownership under COPA is anticipated to be through initial QNP acquisitions of properties as rentals, followed by offer of option to convert to an ownership model within several years of acquisition. This is because each part of the COPA timeline would need to be much longer to support direct tenant acquisitions. In an effort to balance the interests of property owners and renters at risk of displacement, staff have recommended that COPA timelines remain relatively short. However, if the renters of a property subject to COPA desire to try to purchase the building or their units, and if a QNP acquires the property, City support to convert the properties from a rental to tenant ownership model after the initial property acquisition.

According to the consultant memo found in Attachment G, QNPs would need financial and potentially certain expertise assistance to convert a rental property to a tenant ownership model. This would likely be provided by the City or other public lenders. The City could additionally support tenant organizing and education around property conversions, which would also require financial investments. As a result, staff anticipate that most of the details around support for conversions would be established by a future City Notice of Funding Availability for housing preservation. COPA will primarily support alternative ownership models, rather than traditional homeownership models, for lower-income families.

The price of residential properties has increased to the point where a potential homebuyer would need to have an annual income of $308,422 to purchase a median-priced single-family home in San José, and an income of $186,140 to purchase a median-priced condo in San José. Traditional homeownership models therefore are typically only viable for above moderate-income families.

Because COPA is a policy targeted towards displacement prevention for lower-income residents, ownership proposals must be suited to their needs. Alternative ownership models noted in the consultant memo (Attachment G) are likely to be most appropriate for these residents because most lower-income renter families will likely not be able to individually qualify for a large enough mortgage or have enough savings for a down payment.

QNPs that acquire properties via COPA using city subsidies would be required to offer the properties to renters if and when they eventually decide to sell the building

A forthcoming affordable housing preservation NOFA will obligate QNPs which acquire properties through COPA and which receive funding from the City of San José to fulfill certain requirements. One such anticipated requirement is that in the event of an eventual resale, QNPs would be required to provide the right of first offer to renters prior to advertising the property to other potential buyers.

COPA teamed with City funding could encourage new property owners to provide equity-building features with rental stability to allow families to capture benefits typically associated with homeownership

For properties that are not suitable for conversions from rental to ownership models, or where renters are not interested in an ownership model, staff recommend considering renter equity models in which renters receive some of the wealth-building benefits of homeownership while continuing as renters. Under these models, a portion of the rent that renters pay to the property owners is set aside into an investment vehicle that renters can access when needed. Renter equity models in other cities and states have been successfully created by both public sector and community development financial institutions.[32]

Opportunity to Purchase Acts have been found effective at stabilizing lower-income renter families

Opportunity to Purchase Acts have been effectively implemented in other cities, preserving thousands of units since 2015. Of the adopted programs, the two that are best known are that of Washington, D.C., which adopted a Tenant Opportunity to Purchase Program (TOPA) in 1980, and San Francisco, which adopted a COPA in 2019.[33] TOPA programs are similar to COPA programs except that they provide the right of first offer and/or right of first refusal to renters or tenant associations.

A more detailed explanation of the Washington, D.C. TOPA program and the San Francisco COPA program can be found in Attachment C. The key takeaways from the case studies of these Opportunity to Purchase Acts (OPAs) are the following:

- **The impact of OPA programs scales with the amount of funding allocated to housing preservation.** Over 4,000 units have been acquired and preserved via TOPA in Washington, D.C., with over 2,000 of those units acquired since 2015. The large increase in the number of units preserved in recent years coincided with significant new investments that were made in D.C.'s Housing Production Trust Fund.[34]
- **There has been no evidence in either of these major cities that OPA programs result in an aggregate decrease in property values.** In jurisdictions where OPA programs

[32] See https://localhousingsolutions.org/housing-policy-case-studies/building-wealth-and-community-for-renters-in-cincinnati-oh/ and https://nextcity.org/urbanist-news/colorado-ballot-initiative-prop-123-affordable-housing
[33] For a list of other jurisdictions with Opportunity to Purchase Act programs, see this 2021 report from the Coalition for Nonprofit Housing and Economic Development: https://cnhed.org/wp-content/uploads/2021/01/Opportunity-to-Purchase-Policy-Options-for-the-City-of-Minneapolis.pdf
[34] https://mayor.dc.gov/release/mayor-bowser-unveils-unprecedented-400m-investment-housing-production-trust-fund

have been adopted, changes in property values following the passage of these policies have been in line with those in neighboring jurisdictions without OPA policies.

- **Subsidies are required to ensure that nonprofit buyers can acquire properties and stabilize and/or right-size renters' rents.** As with all efforts to increase the number of deed-restricted affordable units, acquiring apartment properties and converting them to permanently affordable housing requires public subsidies to cover the gap between sales prices and the debt that can be supported by renter families' incomes.
- **Opportunity to Purchase Acts can be used to support the conversion of rental properties to Limited Equity Cooperatives.** In Washington, D.C., TOPA has been used to support the conversion of 99 properties from rentals to limited equity cooperatives, providing renter families with the ability to gain ownership stakes in their properties while also guaranteeing their housing stability.[35]
- **A short statement of intent period can reduce the effectiveness of a COPA program.** 234 units across 16 properties have been acquired in San Francisco since 2019. However, stakeholders in San Francisco report that these numbers would likely be higher if QNPs had more than 5 days to respond to property owners letters of intent to sell.[36,37] In response to this feedback, City of San José staff are proposing a letter of intent period of 15 for COPA in our jurisdiction.

D. The City's Proposal: Staff's proposed COPA program is based on extensive community and stakeholder input

This section reviews key COPA program elements, including the timelines that would be regulated under COPA, criteria for determining which organizations can become QNPs, affordability metrics, tenant engagement practices under COPA, plans for ongoing education of property owners and renters regarding COPA, enforcement mechanisms, and incentives to encourage property owners to comply with COPA.

The proposed COPA program was developed by Housing Department staff based on extensive stakeholder and resident feedback, as described in detail in Attachment D. The staff proposal in this section reflects a variety of compromises between the major groups that have been involved in these stakeholder processes, which broadly consist of affordable housing advocates and real estate stakeholders.

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[35] https://shelterforce.org/2020/07/24/giving-tenants-the-first-opportunity-to-purchase-their-homes/

[36] Housing Department staff interviews with San Francisco stakeholders, June – July 2022; see also San Francisco Chronicle, Jan. 24, 2020: https://www.sfchronicle.com/bayarea/article/City-officials-want-landlord-to-delay-sale-of-76-15002958.php

[37] Stakeholders in San Francisco also report that the COVID-19 Pandemic reduced the impact of the COPA program passed in late 2019. Listings of multifamily property sales slowed during this period, as property owners responded to declining rents by holding properties that may have otherwise been put up for sale. As a result, fewer buildings were available for purchase by nonprofits than would have been the case in a normal year.

COPA Timelines

Staff Recommendation for COPA Timelines
Letter of Intent: Gives QNP up to **15 days** from the owner's notice of sale 1. *Offer Period:* If a QNP has submitted a letter of intent, the proposed framework gives a QNP up to **25 days** to perform due diligence and submit an offer. 2. *Time to Close:* If the owner accepts the QNP offer, the proposed framework gives QNP a minimum of **120 days** to secure financing and close the transaction. 3. *Time to Counter-Offer:* If original QNP's offer is not accepted, owner then markets property as usual. If they get an offer, the proposed framework gives **7 days** for the original QNP bidder to make a counter-offer to the third-party offer from the open market.

Stakeholder positions on COPA Timelines	
Affordable housing advocates' position: Increase timelines	**Real estate stakeholders' position:** Reduce timelines
• Longer timelines are important for ensuring that QNPs have sufficient time to consider the property and make an offer. • QNPs interested in facilitating conversions of properties from rental to ownership models need more time to conduct initial tenant engagement and financial feasibility analysis. • Longer timelines allow QNPs to conduct significant tenant engagement and ensure renters are satisfied with plan for property.	• Longer timelines before property owners can list their property on the open market expose property owners to additional risk. This is especially true for parts of the timeline that property owners can't opt out of. • Market movement may occur between the moment when a property owner notifies QNPs and the moment when they are permitted to list their property on the open market.

Rationale for staff recommendation on Timelines
Based on extensive staff research, time periods shorter than what staff have recommended would compromise the efficacy of a COPA policy by not providing sufficient time for QNPs to perform these essential activities. During the letter of intent period, the following will occur: • Qualified Nonprofits (QNPs) will consider the property for sale • QNPs will confer and agree on one QNP that wants to make an offer • The one QNP that wants to make an offer will submit a Letter of Intent to make an offer to the property owner or representative. The offer period is needed for QNPs to draft the offer, submit to their board of directors, and conduct negotiations, as appropriate. The closing period is needed to assess property

Rationale for staff recommendation on Timelines
rehabilitation needs, for nonprofit lenders to conduct property-level underwriting, for QNPs to gather information on tenant incomes, and for QNPs to meet with renters. Additional detailed information about the actions that QNPs would take during each stage of the timeline can be found in Attachment F.

Applicability and Exemptions

Staff recommendation for Applicability and Exemptions
All rental properties with **two or more units,** unless the property is covered by one of the following exemptions: • Transactions where control of the property is not transferred or remains with a related party to the seller • Owner-occupied properties up to 4 units • Properties built within the last 15 years (updated on a rolling basis) • Family transactions (e.g. transfers for property to direct family members) • Properties subject to specified disposition processes (e.g. foreclosure or bankruptcy) • 2- to 4- unit properties if the property owner must sell due to a documented need to pay for medical treatment for themselves or an immediate family member

Stakeholder positions on Applicability and Exemptions	
Affordable housing advocates' position: All rental properties should be subject to COPA	**Real estate stakeholders' position:** As few rental properties as possible should be subject to COPA
• Single-family homes should be included due to the large number of renters who live in these properties and who are not covered by rent stabilization • Properties in foreclosure should be eligible for purchase under COPA	• Properties with 2- to 4- units should not be subject to COPA because of the fast transaction timelines for these properties • Properties that are unlikely to be acquired by nonprofits should not be subject to COPA, e.g. properties with 50 or more units • Owner-occupied properties and properties being transferred to family members should not be subject to COPA

Rationale for staff recommendation on Applicability and Exemptions
• Staff recommend **excluding partial property transfers** because qualified nonprofits are unlikely to be interested in purchasing non-controlling shares in a property, since this would present challenges for converting the properties to deed-restricted affordable housing.

Rationale for staff recommendation on Applicability and Exemptions
• Staff recommend **including 2- to 4- unit properties** because properties with 2 units are not covered under the City's Apartment Rent Ordinance and lower income renter families living in these property types can therefore experience rent increases in excess of 5% per year, placing them at higher risk of displacement than lower income renters living in properties with three or more units. Additionally, households living in two-to-four-unit properties in San José are disproportionately people of color. Including these properties under COPA will therefore advance goals of promoting racial equity by preventing the displacement of lower-income renter families in these properties. • However, staff recommend **excluding 2- to 4- unit properties if they are owner occupied** to ensure that they retain full control over the sale of what is their primary residents and what may be their only property. • Staff recommend **including larger properties** (those with 50 or more units) because nonprofit housing providers that utilize housing tax credits are most interested in acquiring properties in this size category. Housing tax credits are an important source of affordable housing finance, but they can rarely be used for properties with less than 40 to 50 units. Additionally, significant regional and state funding for affordable housing. Finally, larger apartment properties tend to have smaller per unit acquisition and rehabilitation costs than smaller properties due to economies of scale. • Staff recommend **excluding single-family homes** from the policy because on a per unit basis, single-family homes are significantly more expensive to acquire than multi-family apartment units. This means that fewer units of this property type could be preserved with the limited public resources that will be available for affordable housing preservation. Single-family homes currently also have faster transaction timelines than multifamily properties, meaning that the letter of intent and letter of offer periods proscribed under COPA would represent more significant delays relative to market timelines relative to other property types. • Staff recommend **excluding properties 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 the lower income families who are most at risk of displacement from San José. • Staff recommend **excluding properties transferred between direct family members** based on feedback that subjecting these properties to COPA would reduce a wealth-building opportunity for families of color. • Staff recommend **excluding properties in foreclosure processes** due to bureaucratic challenges associated with intervening in the foreclosure process. • Staff recommend **excluding 2- to 4- unit properties if the property owner must sell due to a documented need to pay for medical treatment** for themselves or an immediate family member, based on feedback that smaller property owners may not have alternate assets to liquidate in the event of a medical emergency and the timelines under COPA may therefore represent an unusual burden.

Qualified nonprofit (QNP) criteria

Staff recommendation for QNP Criteria
Staff intend to further refine criteria for QNPs in accompanying COPA regulations and in a Notice of Funding Availability for affordable housing acquisition and rehabilitation, 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. However, based on the current lending environment, the likely required characteristics for potential QNPs would be for the accompanying COPA regulations are below: • 501(c)(3) designation • Demonstrated track record with the purchase, rehabilitation, management, and operation of restricted affordable housing including at least one housing project of a similar type In addition to the required characteristics, QNPs must meet the following desired characteristics or fulfill them by partnering with a local community-based organization (community partner): • Demonstrated track record of positive tenant engagement, local community engagement, housing policy advocacy • 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 Additionally, organizations which do not yet qualify as QNPs but which seek to do so could gain this experience through joint venture partnerships with approved QNPs.

Stakeholder positions on QNP criteria	
Affordable housing advocates' position: QNP criteria should be expansive to maximize the number of organizations that can acquire and preserve affordable housing in San José	**Real estate stakeholders' position:** QNP criteria should ensure that QNPs who submit offers can reliably close on a property
• Emerging nonprofit housing providers in San José should have the opportunity to utilize COPA, especially if they are local organizations • Nonprofit housing providers who lack sufficient experience should be able to hire consultants in lieu of in-house experience to assist with acquisition, management, and/or rehabilitation as needed	• QNPs who lack sufficient experience in real estate may not be able to close escrow after submitting an offer, requiring a property owner to re-list their property and further increasing total time on market

Rationale for staff recommendation on QNP Criteria
• Staff recommend that QNPs have **minimum experience of successfully acquiring and managing one similar project** to align with the underwriting requirements of other key preservation lenders in our market. Having more flexible QNP requirements in the short term ensures that City of San José requirements will not pose an undue impediment to nonprofit housing providers in our market who are otherwise able to leverage external funding. These lenders, as well as the San José Housing Department's underwriters, will scrutinize applicants' project financials to ensure that the properties acquired through COPA will be financially sustainable and will have sufficient reserves to ensure that QNPs can undertake necessary rehabilitation work. • Staff **recommends joint venture partnerships** between more experienced QNPs and emerging, locally-based nonprofit housing organizations as a strategy to support these emerging organizations to become eligible to operate as QNPs. Over time, this will help support San José's affordable housing preservation ecosystem and will increase the number of QNPs that will be eligible to engage in affordable housing preservation in San José. • Staff recommends that **non-local QNPs work with community partners to ensure that QNPs adequately respond to tenant needs.** • Staff retain the authority to modify COPA regulations and Notices of Funding Availability for affordable housing preservation programs if lenders in our market impose stricter underwriting criteria in the future. Staff also plan to periodically review whether QNPs are consistently closing escrow on properties on which they make offers and retain the right to de-certify QNPs that are not successfully closing.

Affordability

Staff recommendation for Affordability
COPA will focus on very low- and low-income households per the following: • *Portfolio goal:* Staff recommends that the Housing Department set an overall portfolio goal of an average 50% Area Median Income (AMI) income targeting across all COPA projects supported by City funding. • *Individual properties*: The target range for rental properties will be 31-80% of Area Median Income and for homeownership properties will be 61-120% of Area Median Income. However, COPA transactions will not result in the displacement of current renters for reasons of income eligibility. • If an existing tenant makes less income than the applicable affordability restrictions, their rent would be their current lease rent or the rent adjusted to the targeted affordability for their apartment, whichever is lower. • 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

Staff recommendation for Affordability
or set rents at 30% of the household's monthly income (net a utility allowance, if applicable), whichever is higher. **Annual rent increases:** Except as described for over-income renters per above, rent increases would not be allowed to exceed 5%, or the restricted affordable rents as required by any applicable affordable housing funders, whichever is lower.

Stakeholder positions on Affordability	
Affordable housing advocates' position: Properties acquired through COPA should have the deepest levels of affordability possible	**Real estate stakeholders' position:** No position
• The City should focus the COPA program on those who are at highest risk of displacement, especially extremely low income and very low income renters	N/A

Rationale for staff recommendation on Affordability
Studies indicate that displacement is most damaging to lower-income renter households and that lower-income renter households are also at higher risk of residential displacement (as discussed in the Analysis section). For consistency with the Citywide Residential Anti-Displacement Strategy approved by the City Council September 20, 2020, staff recommends that COPA focuses its benefits on very low- and low-income renters, especially those who live in neighborhoods that are experiencing or are at-risk of displacement. Staff recommend a portfolio target income that is no lower than 50% of Area Median Income because a lower target income may result in challenges for the financial feasibility of properties acquired through COPA.

Tenant Engagement

Staff recommendation on Tenant Engagement
To increase tenant participation in the program, Staff propose to include renters during every part of the acquisition process: • **Pre-acquisition period:** Property owners must notify renters, in addition to notifying QNPs, that they intend to sell their property. Additionally, QNPs and/or their Community Partners would be required to reach out to renters to get to know the property, garner support, and help with things like income verification and outreach. • **Transaction period:** QNPs and/or their Community Partners would be required to have ongoing communication with residents especially about any major changes

Staff recommendation on Tenant Engagement
anticipated for the property or property management policies, like significant rehabilitation plans and the need to submit income information each year. • **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 renters need information. Renters would receive support and capacity property for resident organizing, the formation of tenant associations, and future conversions to homeownership or limited equity cooperatives if proposed and approved in advance by the City.

Stakeholder positions on Tenant Engagement	
Affordable housing advocates' position: COPA should be a tool for expanding renter families' knowledge and agency in the property acquisition process	**Real estate stakeholders' position:** Tenant engagement should not interfere with negotiations between a buyer and seller
• Renter families should have the right to determine whether the property continues to be managed as rentals or undergoes a tenure conversion when a property is being acquired by a QNP • The City should require QNPs to conduct extensive outreach and receive tenant buy-in regarding the future operating plan for the property (and should have ample time to do so during the closing period)	• Property owners should retain control of their property during the acquisition process, including by restricting potential buyers from contacting existing renters
Rationale for staff recommendation on Tenant Engagement	
• In addition to preventing residential displacement, a goal of COPA is to increase tenant empowerment. • Staff recommend **that property owners notify renters at the same time as QNPs** to ensure that renters are more aware of their rights after a transition of ownership, either to a QNP or to another private owner. Interviews with staff in San Francisco (which passed a COPA policy in 2019) revealed that tenant interest can be a motivating factor for QNPs there to consider acquiring a specific property. • **Staff do not recommend that renters approve QNPs' plans for the proper**ty due to the QNPs need to make time-sensitive decisions informed by property financials • However, **Staff support ongoing QNP engagement with renters** to ensure that renters have sufficient information to make informed requests from the QNPs during the acquisition process.	

Education and Outreach

Staff recommendation for Education and Outreach
Staff proposes a generous period after the ordinance passes (one year, or when QNPs are qualified, whichever is later) before the policy would become effective. The outreach plan would emphasize collaboration with industry organizations and community groups to disseminate information about the program, and to seek ideas for implementation.

Stakeholder positions on Education and Outreach	
Affordable housing advocates' position: Staff should prioritize implementing COPA as soon as possible so that COPA can prevent the displacement of renters families	**Real estate stakeholders' position:** Staff should emphasize proactive outreach on COPA over enforcement
• Renter families at risk of displacement need COPA to be implemented as soon as possible so that QNPs can acquire more properties sooner • There should be broad outreach to renters such that people at risk of displacement generally know about the opportunities presented by COPA	• Staff should do a lot of outreach • Additional outreach and education to real estate stakeholders will reduce the need for any enforcement actions • Professional associations can be helpful with outreach and engagement • City should emphasize language access needs to educate small property owners who speak languages other than English as a first language

Rationale for Staff recommendation on Education and Outreach
Ample time for education and outreach after the passage of a COPA policy would allow for extensive outreach and education prior to any potential enforcement, completion of regulations, and the prequalification of a pool of QNPs. Staff consider education and outreach essential for ensuring the successful implementation of the COPA program.

Enforcement

Staff's recommendation on Enforcement
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.

Stakeholder positions on Enforcement	
Affordable housing advocates' position: Strong enforcement mechanisms must be in place to avoid abuses	**Real estate stakeholders' position:** Staff should de-emphasize enforcement and provide incentives for compliance
• Without enforcement mechanisms, renter families at risk of displacement may miss their opportunity to have the property they live in be acquired by a QNP • Property owners should incur a penalty on their first offense, not just a warning, because some property owners do not own multiple rental properties • Third-party enforcement, likely through nonprofit legal services providers, is important	• Property owners should not be penalized if they unknowingly do not comply with COPA • City should help property owners to avoid inadvertent errors in informing QNPs of property sales • Real estate professionals do not want to be at risk of non-compliance

Rationale for Staff recommendation on Enforcement
• Staff's approach to enforcement will have strong emphasis on education and inclusion before taking an enforcement action. 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. • Staff do no recommend additional enforcement mechanisms due to limited staff capacity to conduct enforcement. However, 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. • A core value that real estate professionals bring to property transactions is that they routinely ensure that clients adhere to all relevant laws and regulations. It is up to the realtor and property owner to decide which of them would bear any penalty if the COPA law were not followed, even though the owner bears ultimate responsibility.

Incentives

Staff recommendation on Incentives
• Staff recommends inclusion of strong language on QNPs collaboration with property owners to incentivize them 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.

Stakeholder positions on Incentives	
Affordable housing advocates' position: No position	**Real estate stakeholders' position:** Property owners should receive incentives to voluntarily comply with COPA
	• Incentives should be provided to make complying with COPA and selling to nonprofits more attractive to property owners. • Incentives should be prioritized over enforcement mechanisms.

Rationale for Staff recommendation for Incentives
Incentives are proposed as a means of encouraging owners to sell their properties to COPA QNPs. Additionally, staff propose these incentives to maximize voluntary compliance with COPA in an effort to reduce the need for enforcement measures.

Implementation

Staff recommendation for Implementation
Staff will pursue creation of a technology interface on the City's website for property sellers to easily notify the City and QNPs, and for program notices to be sent.

Stakeholder positions on Implementation	
Affordable housing advocates' position: Process to receive information about properties should be consistent	**Real estate stakeholders' position:** Process to notify QNP's should be simple, user-friendly, and maximize ease of compliance
• A centralized system will make it easier for nonprofit housing providers to quickly learn which properties are about to be listed for sale • San José's policy should address shortcomings identified in San Francisco's COPA, including that QNPs in San Francisco can't track program effectiveness because there is no centralized repository of COPA notices	• Property-owners expressed concerns that they did not want to send out multiple emails to individual nonprofits and to worry about being found liable if there were typos in an email address • Ideally, technology could also help speed QNPs' responses to property owners to reduce the upfront 15-day waiting period under COPA

Rationale for staff recommendation on Implementation
The web interface for property owners is intended to reduce administrative burden and possible user error for property owners. It will also allow staff to track the effectiveness of COPA over time by enabling staff to measure the number of properties acquired through COPA relative to the total number of COPA notifications.

Additional recommended program features

The City can use its Notices of Funding Availability to support transitions to homeownership models for properties acquired through COPA.

COPA itself would be agnostic as to the initial housing tenure of properties acquired by qualified nonprofits. Staff anticipate that most properties will operate as rentals after acquisition for various reasons.[38] However, there are several ways in which COPA and a forthcoming Notice of Funding Availability for affordable housing preservation can promote conversations from rental to ownership tenures after an initial acquisition. First, staff's proposal is that if a QNP acquires a property through COPA as a rental, that in the event of an eventual re-sale of the property the qualified nonprofit would be required to provide a right of first offer to renters. Second, the Housing Department could ensure that the forthcoming Notices of Funding Availability include supports for conversions to ownership as an eligible use of funds.

Because of the large per-family subsidies needed to make homeownership affordable to lower-income homebuyers and the need to ensure that finite public resources can serve a larger number of San José residents, staff has recommended a target income range of 60% to 120% of Area Median Income for COPA properties that are converted to homeownership opportunities, rather than the 30 to 80% of Area Median Income recommended for rental properties. 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. However, QNPs would also be eligible to convert rental properties to limited equity cooperatives during or after COPA acquisitions. In limited equity cooperatives, residents purchase shares of a residential development, rather than purchasing a unit outright.[39] This model could better serve existing residents who have incomes well below 60% of AMI and who may not qualify for a traditional mortgage could be still access many of the benefits of ownership, although they would receive a reduced amount of homeownership equity under these models.

For more information on homeownership options under COPA, see the consultant memo on COPA Homeownership options in Appendix Section G.

[38] These reasons include that there are few nonprofit housing providers (and potential QNPs) in our market area with experience converting rental properties to ownership condos or housing cooperatives; the fact that tenure conversions (and collective tenant decision-making to opt for such a conversion) can take significant time and will likely not be possible during a 120 day closing period; and because the incomes of existing renters in many properties may be too low to support homeownership and/or they may lack cash for down payments being ineligible for mortgages. Additionally, tenure conversions require significant amount of legal and technical resources, meaning that most qualified nonprofits will be unlikely to opt to transfer ownership to renters without external financial support.

[39] https://localhousingsolutions.org/housing-policy-library/limited-equity-cooperatives/

E. Implications for adopting Staff's COPA proposal, including pros and cons

The impact of adopting a COPA program includes that dozens of renter families in the short term, and potentially thousands in the long term, would gain access to stable, affordable housing. In addition, adopting a COPA policy would help to lay the groundwork for an affordable housing preservation practice in San José over the next few years. Multifamily property owners would be impacted in that they would have to plan further in advance for the sale of their property if they are highly concerned with timing the sale of their property with the market, and they would be required to notify QNPs and observe COPA timelines before accepting any off-market offers.

Number of properties and units potentially subject to COPA in San José

If COPA took effect today, the Housing Department anticipates that an absolute maximum of 8,085 properties would be eligible for COPA at their time of sale (Figure 8). This is the absolute maximum number because a portion of these properties will qualify for one of the exemptions described in Analysis Section C. Exempted properties will not go through a COPA notification process.

Figure 8: Estimated Maximum Number of Properties Eligible Under COPA by Property Type

Property Type	Number of Properties	Share of Properties	Number of Units	Share of Units
Duplexes	1,735	21%	3,470	5%
3-4 units	2,691	33%	10,378	14%
5-49 units	3,497	43%	46,701	61%
50-99 units	106	1%	7,440	10%
100-249 units	51	1%	6,752	9%
250+ units	5	0%	1,588	2%
Total	**8,085**		**76,329**	

Note: These figures overestimate the number of properties that would be subject to COPA because an unknown number of property owners will qualify for exemptions. This data includes all 2+ unit properties estimated to have been constructed in the past 15 years. If COPA were in effect today, properties built between 2008 and 2022 would not be eligible for COPA under the proposed policy because of this 15-year rule.
Sources: San José Multiple Housing Roster, 2022; American Community Survey, 2021

Note that based on sales trends over the last several years, the Housing Department estimates that roughly 250 properties transact in San José each year. However, the number of properties that would be subject to COPA each year would likely be lower than this amount because some of these properties would likely qualify for an exemption under COPA.
Property owners retain the right to sell to whomever these choose

There is no 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.

Overall pros and cons of this COPA proposal are as follows:

Pros of this COPA proposal:

- **Nonprofit housing providers that work in San José would be able to better leverage new preservation funding from regional and state sources with COPA is effect.** This is because they would have certainty that they would be able to submit an offer before a property owner accepts an offer from a third-party. In other words, nonprofits would expend significant time preparing an offer or conducting in-depth due diligence on a property only to discover that the seller has decided to move forward with another third-party buyer who was able to make an offer faster.
- **COPA could eventually prevent the displacement of thousands of renter households.** In the first few years in which a COPA policy is adopted, about 10 families per year might be served based on currently projected funding. However, this would likely increase to about 240 families per year in the medium-to-long term depending on availability of regional/state funding. For a list of all of the confirmed and proposed funding sources that were referenced to generate these estimates, see Attachment H. Preventing the displacement of these families would help to stabilize communities, schools, and local businesses.
- **COPA would increase the number of permanently affordable homes in San José, while simultaneously ensuring that current property owners receive full market value for their properties.** The homes that are preserved through COPA will remain affordable even if a renter family decides that they want to vacate their unit, in contrast to unsubsidized housing units, where rents can legally be set at the highest value that the market will bear.
- **COPA would support the growth of preservation ecosystem, which can deliver affordable housing faster – and prevent displacement more immediately – than affordable housing production.** By providing more predictability for nonprofits in their ability to get offers in, nonprofits might be willing to invest more consistently in their organizations' preservation capacity. This will especially be true once significant recurring funding for preservation is available from local, regional, and state sources.
- **COPA would stabilize renter families without negatively impacting multifamily property sales prices.** In the two American cities that have adopted Opportunity to Purchase ordinances, there has been no evidence that these result in negative impacts for the local property markets. In Washington, D.C., which passed a Tenant Opportunity to Purchase Act in 1980 and where timeframes for letters of intent and for offers are significantly longer than what San José Housing Department staff propose for a local COPA, there is no evidence that TOPA negatively impacts property values. Similarly, in San Francisco, there is no evidence that adopting COPA in 2019 affected property values there. For more information, see Figure 19 in Attachment C.
- **By requiring property owners to notify renter families when they notify QNPs of their intent to sell, renter families would learn more about their rights during an ownership change.** Regardless of whether a property is sold to a QNP or to a private

sector buyer, renter families may benefit from a provision the COPA proposal that requires the property seller to notify them of a planned sale. The tenant notification is an opportunity for renters to be notified of their rights and to gain access to information that can alleviate concerns about their ability to continue living in the property.

<u>Cons of this COPA proposal:</u>

- **All properties subject to COPA would need to wait up to 15 days before being marketed to non-QNP buyers**. Property owners would notify QNPs and then wait up to 15 days before listing their properties on the open market. A small percentage of owners could receive a Letter of Intent that a QNP intends to offer, so those owners would then wait for their offer up to an additional 25 days. Delaying open marketing could mean that a given buyer that wanted a quick purchase and who did not want to wait might opt to buy a different property. It is also possible that interest rates could increase during that time, decreasing the sales price.

  There are several responses to these concerns:

  - To minimize the time involved with the COPA timeline, owners could plan ahead and notify QNPs while still getting their properties ready for open marketing. Most owners prepare for the sale of their property by painting, doing minor repairs, replacing worn fixtures, staging the property, and taking photographs. Owners could notify QNPs of their intent to sell at the same time as doing many of these activities, but they would need to remember to notify QNPs first.
  - Waiting 15 days is a relatively short amount of time. It would be unlikely that market prices for multifamily properties would fundamentally shift in two weeks.
  - It is possible that interest rates could increase in 15 days but depending on interest rate changes and the overall interest rate environment, rates could also decrease during that time.
  - Keeping the time short for the first step in the process minimizes sellers' interest rate risk and exposure to market changes.
  - While a given buyer may not be able to wait for a particular property before making an offer, it is also possible that a new buyer with a similar short timeline would follow after the COPA 15 days had ended. As the majority of properties in San José would be subject to the program, buyers would know what to expect if they want to buy property in San José.
  - Property owners could receive responses from QNPs in fewer than 15 days if the City's website interface helps QNPs respond that they are not interested in making offers on COPA-eligible properties.

- **Prior to accepting any offer from a third-party buyer, owners of properties subject to COPA would be required to first notify nonprofit housing providers of their intent to sell their property.** Under COPA, property owners that receive and who might otherwise accept an off-market offer would first be required to notify QNPs and observe the 15-day letter of intent period. Prior to accepting the off-market offer, a small percentage of property owners may also need to observe a 25-day offer period if they received an expression of interest from a QNP that wants to make an offer. Recent national research indicates that this would impact less than 5% of all 2- to 4- unit properties,[40] and San Francisco staff reported that approximately 10% of properties received QNP letters. Off-market offers may be significantly more common for larger properties; estimates on the number of larger properties that transact off-market range from 50-75%.[41]

Quantitative metrics of program success

While some benefits of a COPA program cannot be quantified (e.g. stress reductions for renter families who have a guarantee of permanent stable housing; value of quality of life improvements for these renter families), below are a list of the quantitative metrics by which the success of COPA could eventually be measured:

- Total number of units made affordable to lower income renter families
- Total number of units made affordable to lower income renter families relative to total neighborhood multifamily housing stock in neighborhoods undergoing displacement
- Number of years of affordability established for units acquired via COPA
- Amount of funding leveraged from external sources (applicable only if external funding programs are approved)
- Value of property rehabilitation and improvements to existing housing stock
- Dollar amount of increased buying power of renter families living in units acquired by nonprofits (e.g., money no longer needed to be spent on housing costs after rents are right-sized).

F. Policy Alternatives

This section reviews policy alternatives that the Housing Department considered but ultimately determined had costs or downsides that outweighed the potential benefits.

Alternative #1: Delay adoption of COPA

Pros: This alternative would allow more time for deliberation regarding the scope and details of a COPA program.

Cons: San José residents have been experiencing stressful displacement and concerns of possible displacement for many years. It is an urgent and everyday threat to many of the City's residents that is deteriorating their quality of life and reducing community organizations' membership. Staff have already been actively researching and soliciting feedback regarding a potential COPA program for over two years, and before that did deep listening together with community partners for over a year before creating the Anti-Displacement Strategy. In addition, staff had to pause

[40] https://www.redfin.com/news/pocket-listings
[41] https://www.wealthmanagement.com/multifamily/market-sales-gain-traction-cre-owners-and-buyers

work on COPA for several months due to Housing Element work in mid-2022. Further delaying implementation of anti-displacement policies like COPA will reduce the City's ability to intervene to protect renter families at risk of displacement, resulting in the displacement of more renter families from their homes or from the city of San José. Finally, external regional and state funding sources are anticipated to be available in the upcoming years. With COPA in place earlier, nonprofit housing providers could potentially better leverage this external funding more effectively.

Reason for not recommending: Further delays to adopting COPA limit San José's ability to help prevent displacement currently occurring. Delays also will limit the City's ability to leverage external funding sources that may become available in upcoming years. Staff proposes an effective date that would be the longer of 12 months or when program implementation work (doing significant outreach with partners, creating regulations, qualifying QNPs to participate, etc.) is completed.

Alternative #2: Exempt properties with between two and four units from COPA

Pros: Properties with between two and four units have higher per unit acquisition costs than properties with five or more units. Assuming finite public resources for preservation, higher per unit acquisition costs would mean that fewer units could be preserved in two-to-four-unit properties relative to properties with five or more units. Two-to-four-unit properties also have faster transaction timelines relative to 5+ unit properties, meaning that the letter of intent and letter of offer periods proscribed under COPA would represent more significant delays relative to market timelines relative to 5+ unit properties. Furthermore, two-to-four-unit properties are already required to be listed on the Multiple Listing Service. As a result, there is better transparency in this segment of the market than there is for properties with five or more units, meaning that nonprofit housing providers that hire a realtor with a subscription to this service should have sufficient access to information regarding properties that are available for purchase.

Cons: Properties with 2 units are not covered under the City's Apartment Rent Ordinance and lower income renter families living in these property types can therefore experience rent increases in excess of 5% per year, placing them at higher risk of displacement than lower income renters living in properties with three or more units. Additionally, households living in two-to-four-unit properties in San José are disproportionately people of color. Including these properties under COPA will therefore advance goals of promoting racial equity by preventing the displacement of lower-income renter families in these properties. Finally, staff are aware that many of these properties have significant rehabilitation needs that are difficult for many existing (for-profit) owners to cover. Public sector subsidies could therefore improve habitability conditions for lower-income renters living in these property types.

Reason for not recommending: Including these properties advances racial equity goals and prevents displacement for particularly vulnerable groups.

Alternative #3: Include single-family homes as eligible properties under COPA

Pros: An estimated 30% of all renter households in the City of San José live in single-family homes. Single-family homes are not covered under the City's Apartment Rent Ordinance, meaning that lower-income renters are at higher risk of displacement because under state law their rents can legally be increased up to 10% per year in most cases. Additionally, single-family homes are a property type that tend to be most suitable for larger families, including intergenerational households.

Cons: On a per unit basis, single-family homes are significantly more expensive to acquire than multi-family apartment units, meaning that fewer units of this property type could be preserved with the limited public resources that will be available for affordable housing preservation. Single-family homes currently also have faster transaction timelines than multifamily properties, meaning that the letter of intent and letter of offer periods proscribed under COPA would represent more significant delays relative to market timelines relative to other property types. Finally, due the volume of single-family homes that transact each year, COPA would become significantly more challenging for staff to administer if single-family homes were included under the policy.

Reason for not recommending: Limited anticipated staff capacity, and less cost-effective use of public resources.

G. Racial Equity Impact Analysis

Significant sections of this memo are dedicated to identifying the racialized impact of displacement (see Analysis Section B) and discussing the historical reasons for which households of color in San José are more likely to be renters and are more likely to be earning lower incomes (see Attachment C). The racial equity implications of COPA will therefore only briefly be discussed in this section.

All available data indicates that displacement disproportionately affects people of color. As a result, adopting an anti-displacement strategy like COPA is anticipated to benefit these households in the City in securing permanently affordable housing and furthering fair housing goals. Staff have identified no potential unintended consequences of adopting COPA that would result in an undue burden on communities of color. In fact, COPA would help build a foundation for a larger affordable housing preservation ecosystem in San José over time, which is anticipated to benefit communities of color due to the disproportionate incidence of displacement in these communities.

Staff will measure progress in achieving racial goals by tracking the number of properties that go through a COPA process, the number of properties ultimately are acquired by QNPs, and the demographics of the neighborhoods in which the properties are purchased to estimate whether the policy is advancing racial equity goals as expected.

EVALUATION AND FOLLOW-UP

A presentation to the Community and Economic Development Committee is scheduled for March 27, 2023, followed by the City Council hearing the COPA program proposal this spring.

PUBLIC OUTREACH

☑ This memorandum will be posted on the Housing Department website for the March 16 Commission meeting.

☑ The Council version of this memorandum will be posted on the City's website for the March 27, 2023 Community and Economic Development Committee.

☑ Outreach was undertaken for this item in addition to the agenda posting described above. These outreach efforts are described below.

Staff's COPA proposal is the result of extensive public outreach and consultation

The COPA development process has featured significant involvement of community groups representing those most impacted by displacement. COPA was identified as early as 2019 as a policy priority among organizations that represent San José residents directly impacted by displacement. These nonprofits include SOMOS Mayfair, SV@Home, Working Partnerships USA, and Sacred Heart. These groups have advocated for COPA due to its potential for stabilizing the homes of lower-income renters who are disproportionately people of color in San José. The San José Housing Department formally partnered with SOMOS Mayfair through the Partnership for the Bay's Future grant program to work on elements of the City's Anti-Displacement Strategy, including COPA. Through this partnership, staff have worked closely with community members to ensure that the COPA program will adequately serve lower-income San José residents who are at high risk of displacement. Housing Department staff will continue to partner with SOMOS Mayfair through at least the remainder of the Partnership for the Bay's Future grant period in May 2024 as policy development on COPA continues and, if the policy is approved, as accompanying regulations are drafted.

Housing Department staff and community outreach consultants Baird + Driskell engaged stakeholders to help design and develop a proposed COPA program from spring 2021 through spring 2023. Once a draft program had been crafted, the Housing Department held a round of public meetings and held open a public review period to gather feedback on the proposed COPA program. Housing Department staff also met with stakeholders individually, often multiple times, to hear their insights on key aspects of program design and further refine the program. In total, 65 meetings were held, about 480 total people participated, and approximately 50 different organizations were represented.

Phase I: Spring – Fall 2021

When City Council approved the 10 recommendations of the Citywide Anti-Displacement Strategy in September of 2020, including COPA, City Council also provided direction to form an Anti-Displacement Working Group to develop those recommendations. The proposed COPA program is the first recommendation developed in the working group model. The Anti-Displacement Working Group consisted of two subgroups:

2) Stakeholder Advisory Committee (SAC), a broad and diverse group, open to the public, that included stakeholders from the public as well as those with expertise in housing policy and real estate.

2) Technical Advisory Committee (TAC), a smaller group of subject matter experts representing relevant stakeholders, dove more deeply into the details necessary for designing the program. Group members were invited based on the depth and diversity of their experiences and the constituencies they represented.

The SAC met 6 times, and the TAC met 8 times. At each meeting, staff presented components or parts of the policy, provided examples of sample practices from other cities, and offered San José-specific data to ground it in the local context. After the presentation, participants offered input. Almost 170 people participated in the meetings and attendance was diverse. Spanish and Vietnamese interpretation was offered at SAC meetings, and one SAC meeting was held entirely in Spanish. The Working Group included community members and leaders from all council districts across the City and included voices of those who will be directly impacted by the policy: apartment owners, renters, housing providers, developers, realtors, and housing advocates. Attendees were approximately evenly split between owners and renters and evenly distributed in age ranges.

In addition to TAC and SAC meetings, all participants were invited to contact Housing Department staff to discuss any additional feedback or questions or share proposals to the program. Housing Department staff also sought out meetings with certain stakeholders for deeper discussions of program details, sometime in preparation for, or in response to feedback received at a TAC or SAC meeting. Stakeholders with whom staff have met included industry professionals and representatives: realtors, brokers, small apartment property owners, large property owners, small apartment property managers, for-profit market-rate developers, lenders, community-based organizations, affordable housing developers, tenant advocates, community advocates, policy organizations, and leaders.

Phase II, Fall 2021 – Winter 2022:

The Housing Department created a webpage to provide background information, meeting notifications, past presentations, and a FAQ in the summer of 2021. A public review period was held between December 21, 2021, and February 9, 2022. During this time 7 public meetings were held, 228 questions/comments were received during meetings, 40 people emailed comments and 6 comment letters were received. Email notices were sent to 9,154 recipients and over 300 people participated in a public meeting.

Phase III: Spring 2022 – Spring 2023

Following a hiatus in spring 2022 while staff needed to redirect their focus to creating the state-mandated Housing Element, Housing Department staff updated the COPA website and FAQs in fall 2022. The Housing Department also resumed public outreach on COPA in November 2022. Five public meetings attended by 270 people were held between November of 2022 and February of 2023. During this period, 8 people emailed the department, 132 questions/comments were received during meetings, and 1 comment letter was received. Email notices were sent to 5,274 recipients.

Please see Attachment D for further details about public outreach for this item.

COMMISSION RECOMMENDATION AND INPUT

The Commission's feedback will be incorporated into the staff memo for the City Council's Community and Economic Development Committee meeting on March 27, 2023, and into the subsequent memorandum to the City Council.

FISCAL/POLICY ALIGNMENT

The proposed policy is consistent with the *Citywide Residential Anti-Displacement Strategy* adopted by the City Council in September 2020, as well as policies and programs under the City's 2014-2023 Housing Element as cited in the Background section. By explicitly addressing the needs of historically disinvested communities, the proposed policy would also be consistent with the City's duty to Affirmatively Further Fair Housing under state and federal law.

/s/
RACHEL VANDERVEEN
Assistant Director, Housing Department

The principal authors of this memo are Kristen Clements, Division Manager; Josh Ishimatsu, Senior Development Officer; Heather Bromfield, Management Fellow; and, Elizabeth Guzman, Senior Development Officer. For questions, please contact Kristen Clements, Division Manager, at kristen.clements@sanjoseca.gov or 408-535-8236.

ATTACHMENTS

A. Additional Background on COPA
B. Additional San José market data and analysis
C. Opportunity to Purchase Acts (OPAs) case studies
D. Public Outreach and Stakeholder Engagement
E. Consultant Summary of COPA Working Group
F. Detailed Breakdown of QNP Activities by Stage of Acquisition
G. Consultant Memorandum on Homeownership Opportunities and Opportunity to Purchase Acts

H. Funding Sources
I. COPA Program Description

ATTACHMENT A – Additional Background on COPA

The proposed COPA program is a product of several years of Council-directed research on solutions to address residential displacement. This history is summarized below.

On March 7, 2017, the City Council established Council Priority Item #13: Anti-Displacement Tenant Preference to set aside affordable housing units to prioritize residents being displaced that live in low-income neighborhoods undergoing displacement and/or gentrification. (This has since been renumbered to Priority #10.)

On June 12, 2018, the City Council prioritized the issue of displacement again within the Housing Crisis Response Workplan, Item #9: Develop Anti-Displacement Strategies.

San José was Part of the National PolicyLink Anti-Displacement Policy Network (ADPN)

In November 2018, San José applied for and was chosen to participate in the PolicyLink Anti-Displacement Policy Network (ADPN), a 14-month learning cohort of 10 U.S. cities working to address urban displacement. The San José ADPN team members included the following: City Councilmember Magdalena Carrasco and staff, Housing Director Jacky Morales-Ferrand and staff, and Planning Building and Code Enforcement Director Rosalynn Hughey and staff; Working Partnerships' Dereka Mehrens, Jeffrey Buchanan, and Asn Ndiaye; Law Foundation's Nadia Aziz and Michael Trujillo; and Planning Commissioner/Executive Director of Silicon Valley Bike Coalition, Shiloh Ballard.

In January 2020, the San José ADPN team released its co-written report entitled "Ending Displacement in San José: Community Strategy Report" (Community Report). The intention of the report was to center the values, lived experiences, and solutions requested by the residents most impacted by displacement in San José. The San José ADPN team assessed the gaps in the City's current housing policies, studied new anti-displacement tools, and worked hard to facilitate meaningful listening sessions in the community with displaced households and in neighborhoods most impacted by development and displacement. The San José ADPN team collaborated with outreach partners SOMOS Mayfair and AV Consulting to reach community members in a culturally competent and inclusive manner to elicit high-quality information.

While City staff was part of the San José ADPN Team, the Community Report is a coalition report, not a City document. However, City staff were key contributors to the displacement analysis in the Community Report, and research, data, and some recommendations from the Community Report are referenced in this memorandum. The Community Report was used to launch the expanded stakeholder outreach conducted by the Housing Department.

Other Council and Committee Actions Have Focused on Displacement and Directed the Housing Department to Explore a Community Opportunity to Purchase Act

On October 1, 2019, the City Council held a study session on the topic of displacement in San José. The study session brought together academic, housing advocates, and real estate industry perspectives to provide a common understanding of the issue of residential displacement in San José. (Small business displacement was also part of the study session.)

In September 2020, Council accepted the Housing Department's Anti-Displacement staff report[1] and approved the 10 recommendations of the Citywide Residential Anti-Displacement Strategy.[2] "Explore the development of a COPA policy" was the third recommendation in anti-displacement workplan.

In the final action on the City's Anti-Displacement strategy, Mayor Liccardo and several other council members directed the Housing Department to consider a COPA policy that would exempt single-family homes, duplexes, and properties with more than 50 units.[3] The Housing Department subsequently researched the share of properties which would be affected by these exclusions and ultimately concluded that duplexes and properties with more than 50 units should be covered under COPA. The rationale for this determination can be found in Analysis Section D.

On October 25, 2021, Housing Department staff presented an update on the COPA program to CEDC.[4] CEDC staff directed the Housing Department to do additional public outreach regarding the COPA program.

Displacement has also become a significant and reoccurring topic in other San José initiatives:

- The new **2020-2025 Community Plan to End Homelessness** has emphasized protecting residents from evictions, displacement, and housing discrimination as ways to prevent homelessness.
- The **2016 Analysis of Impediments to Fair Housing** cites displacement of low-income residents as an impediment to fair housing.
- The **VTA BART Phase II TOD Corridor Strategies and Access Planning Study** specifically analyzed neighborhood vulnerability to displacement at the planned BART station areas. The study found residents in neighborhoods surrounding the planned downtown and Five Wounds BART stations are more likely to be low-income renters and particularly vulnerable to displacement.
- The **Diridon Station Area Plan community engagement process** revealed housing and displacement as the top issue of concern by those who participated in the engagement process. The Affordable Housing Implementation Plan for the Diridon Station Area also will include a "three Ps" framework and will likely contain some compatible or similar strategies to this Citywide Residential Anti-Displacement Strategy.

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[1] https://sanjose.legistar.com/View.ashx?M=F&ID=8772026&GUID=C6ADD217-83DD-4F7E-B480-056B228DCAF1
[2] https://sanjose.legistar.com/View.ashx?M=F&ID=8772030&GUID=CABC65D7-A63C-4E4B-9010-6A2ED1D7E3BC
[3] https://sanjose.legistar.com/View.ashx?M=F&ID=8801284&GUID=9118DFD0-3F03-42B1-AB64-B1CBBE4FF8A2
[4] https://sanjose.legistar.com/LegislationDetail.aspx?ID=5152386&GUID=B751E6D2-EA01-4AF6-B442-752CDC3FB8FD

These include:

- The City's **Charter Review,** approved April 11, 2022, recommended that San José pursue a COPA policy.[5]
- The draft 2023-2031 Housing Element includes the implementation of COPA (if approved by City Council) as a strategy for preserving market-rate and affordable housing (see Chapter 3, Table 3-2, strategy R-4).[6]
- The COVID Recovery Task Force report, approved by City Council in December of 2022, recommends that the City adopt a COPA policy and adequately fund affordable housing preservation as part of the City's homeownership strategy.[7]

[5] https://sanjose.legistar.com/View.ashx?M=F&ID=10710023&GUID=B384951D-1D2C-4BA0-AD64-DFF86C472568
[6] https://www.sanjoseca.gov/home/showpublisheddocument/89585/637989408846500000
[7] https://sanjose.legistar.com/View.ashx?M=F&ID=11494873&GUID=7AD5D0AA-CB21-4074-848D-4E50E5AEB9A9

<u>ATTACHMENT B –</u> <u>Additional Data and Analysis</u>

This section provides additional detail and support for the findings covered in the body of the memo. It reviews additional evidence on the impacts of displacement, reviews data on how displacement disproportionately affects communities of color, and reviews root causes for higher displacement risk .

I. Displacement disproportionately impacts communities of color

As discussed in the analysis included in the main body of the memo, communities of color are disproportionately impacted by displacement. Figure 1 below shows a more detailed data set for Figure 5 in Analysis Section A, showing the breakdown of proportion of population by race/ethnicity for each more different UDP displacement risk category. The data indicates that of the residents who are living in tracts that are "probably" or "definitively" undergoing displacement, roughly half are in the areas that are "probably" undergoing displacement while the other half life in areas that are "definitively" undergoing displacement. This is true across all racial and ethnic groups. The Urban Displacement Project notes that their estimates of displacement should be considered conservative.

Figure 1: Share of San José Residents Living in Neighborhoods Undergoing Displacement or Probable Displacement by Race/Ethnicity, 2019

Displacement Category	**All People of Color [1]**	**White, Non-Hispanic**	**Hispanic or Latinx**	**Black, Non-Hispanic**	**Asian, Non-Hispanic**	**Viet-namese [2]**	**Total, All Groups**
1 Income Group Displacement [3]	5%	1%	7%	4%	3%	6%	**4%**
2 Income Groups Displacement [4]	13%	5%	20%	11%	8%	12%	**11%**
Probable Displacement	14%	7%	18%	15%	10%	16%	**12%**
Total Living in Areas Definitively or Probably Undergoing Displacement	**32%**	**13%**	**45%**	**30%**	**21%**	**34%**	**27%**

[1] "People of Color" are defined as all who self-report their ethnicity as Hispanic/Latinx and/or their race as being something other than white. Note that racial/ethnic groups in this chart are not mutually exclusive.
[2] Vietnamese are also accounted for in the "Asian Non-Hispanic" group.
[3] Refers to census tracts where only very low income households (those earnings < 50% of Area Median Income) are being displaced
[4] Refers to census tracts where low income households (those earning between 50-80% of Area Median Income) as well as very low income households are being displaced.
Source: Staff analysis of 2019 5-Year ACS Estimates, using Urban Displacement Project California Displacement Risk Model data, 2022.

II. Current racial disparities in displacement risk can be traced in part to the City of San José's historically discrimination against communities of color

This sub-section provides additional historical context for data showing that people of color are at higher risk of displacement in San José.

The historical actions of both the federal government and local San José city government were explicitly racist and denied homeownership and wealth-building opportunities to communities of color in San José, creating a moral imperative for the city to address these past harms.

COPA explicitly seeks to stabilize historically disinvested communities, especially communities of color, in light of historical government actions against these communities. Prior to the federal Fair Housing Act of 1968, various racially discriminatory practices in the real estate industry were promoted and/or enabled by government actors. For example, assessors for the Home Owners' Loan Corporation, a federal agency, worked with City of San José staff in the 1930s to develop maps with four categories of investment risk based on the racial composition of each neighborhood. These maps directly and indirectly shaped public and private investment in neighborhoods in the ensuing decades. Additionally, in San José, the period between World War II and 1968 coincided with a massive expansion in the City's housing stock and in its physical geography. However, this expansion in the housing stock occurred overwhelmingly in areas that the City annexed and zoned for single-family homes, at a time when homeowners of color were either explicitly excluded from government-backed lending programs for single-family homes or were unable to afford the cost of this housing type. For more information on the history of housing discrimination in San José, see the City's Assessment of Fair Housing.[8]

Past city actions have disproportionately favored white communities in San José and further exacerbated racial disparities in household wealth in the city.

In the 1960s and 1970s, federally-funded highway projects bulldozed through primarily Latinx neighborhoods in San José in order to provide access to new residential subdivisions that were primarily financially attainable for white households. These infrastructure investments significantly improved access between newer suburban neighborhoods and employment centers, thereby increasing their desirability and value. In contrast, neighborhoods through which major highway projects passed experienced many negative outcomes, including residents' physical displacement from their existing neighborhoods as homes were demolished to make way for highways,[9] as well as ongoing pollution from additional vehicle traffic for residents living near the new highways. Furthermore, residents who were displaced in the course of these projects were promised they would be offered replacement housing, but this obligation was never fulfilled.

The legacy of historical government-backed discriminatory practices is a persistent wealth and income gap between white and non-white households, especially Black, Latinx, and Indigenous households.

White households that were able to purchase homes through New Deal programs and especially during the post-World War II period were able to pass down these assets and/or intergenerational

[8] https://www.sanjoseca.gov/home/showpublisheddocument/88089/637941041956670000

[9] https://historysanjose.org/exhibits-activities/online-exhibits/welcome-to-eastside-art-history/

wealth to their children and grandchildren. However, both locally and nationally, households of color were explicitly or implicitly excluded from much of this wealth-building, resulting in disparate access to homeownership opportunities for households to this day for their descendants. Given that homeownership has been one of the primary vehicles for wealth building in the U.S. since World War II, racial exclusion during this period was a major contributor to a significant wealth gap between white households and non-white households, especially Black, Latinx, and Indigenous households.[10]

Because Black, Latinx, Indigenous, and Asian households were restricted from specific neighborhoods in the post-war period by law, or in later decades, by price, this also locked in other specific advantages for mostly white households. Many of the neighborhood features associated with upward mobility were primarily located in the highest resource neighborhoods where non-white households were largely unable to purchase homes. For example, district-based school systems in which well-resourced schools have higher graduation rates and which provide greater opportunities for students to attend college are, and historically have been, located in these neighborhoods. With better educational opportunities, children growing up in well-resourced neighborhoods tend to be better positioned to access white-collar and professional jobs into the present day.

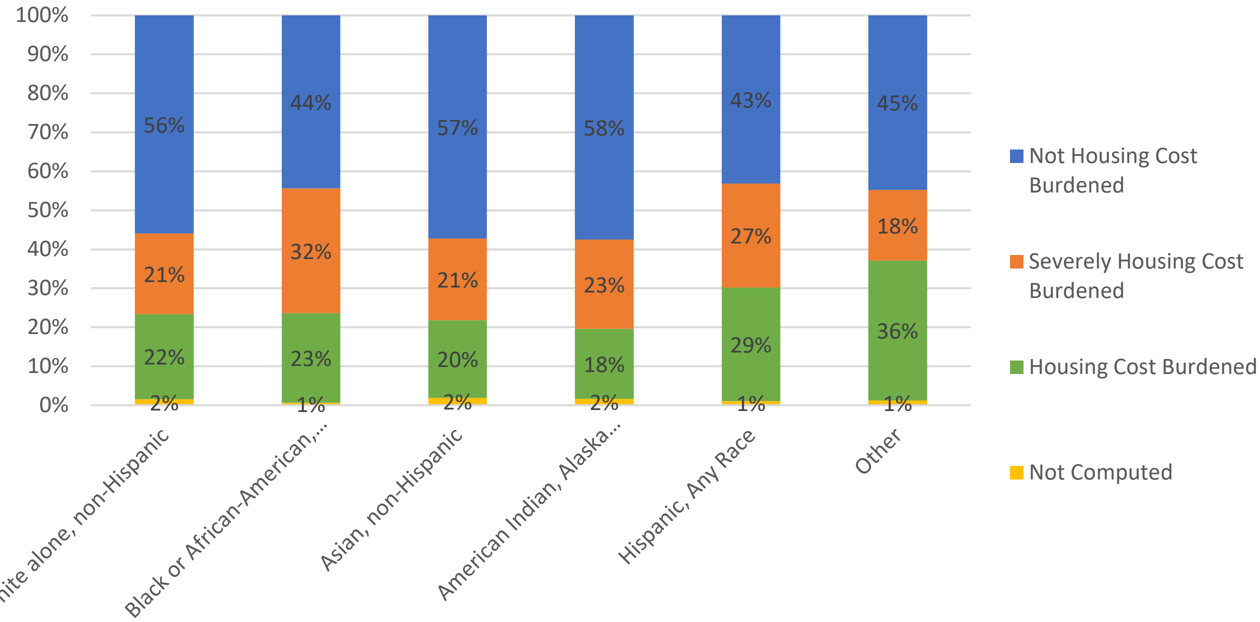
III. Racial disparities in displacement risk and other metrics are related to historical and contemporary disparities in homeownership rates

This section shows how COPA's goals of preventing the displacement of lower-income renters will disproportionately benefit those who were most harmed by the legacy of government-endorsed and/or government-abetted discrimination, and who are today most at risk of displacement. It reviews data on racial and ethnic disparities on two variables which are highly related to displacement: household income and homeownership.

Displacement risk is higher for lower-income renters since their housing costs are more unstable than those of homeowners and because lower-income households are more likely to be housing cost-burdened. Within the context of historical race-based discrimination in housing markets and the snowballing impacts of this for current San José residents, high housing costs relative to incomes fall the hardest on people of color. Figure 2 shows that 56% of Latinx households and 55% of Black households are housing cost burdened or severely housing cost burdened in San José, as compared with 43% of non-Hispanic white households. This means that a higher share of households of color have a displacement risk factor than is true for non-Hispanic white households.

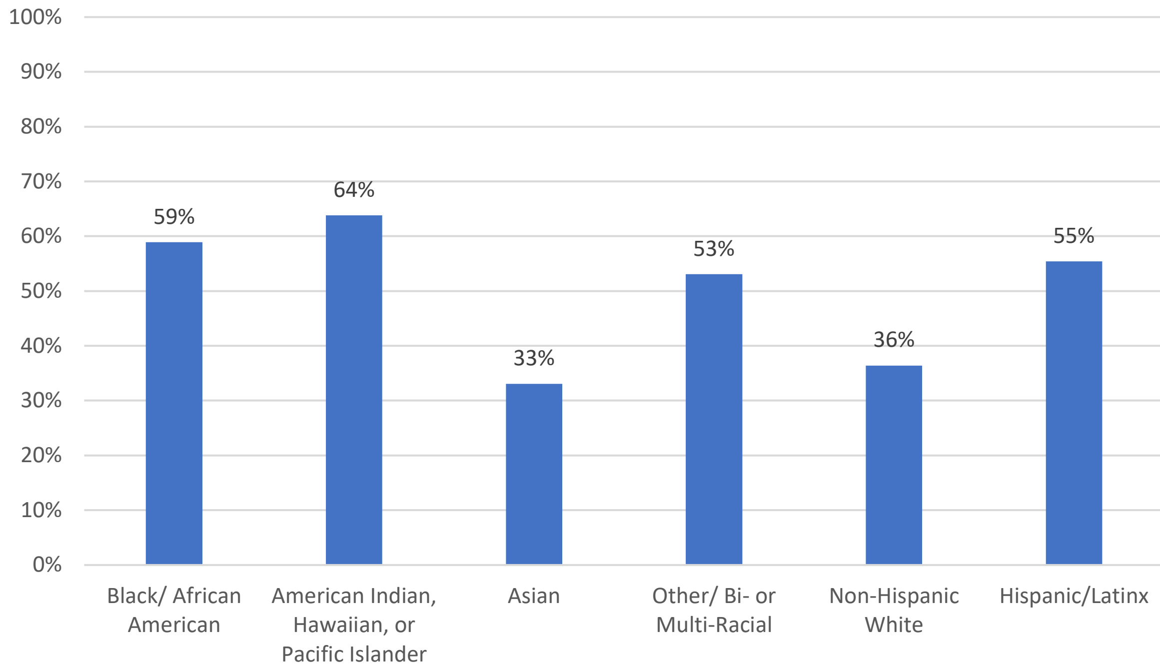
[10] https://www.forbes.com/sites/brendarichardson/2020/06/11/redlinings-legacy-of-inequality-low-homeownership-rates-less-equity-for-black-households/?sh=5bcb6f552a7c

Figure 2: Share of Housing Cost Burden by Race and Ethnicity, 2019



The higher incidence of housing cost burdens for Latino/a/x, Black, and other people of color is related to the fact that these groups tend to have lower incomes than non-Hispanic whites. Figure 3 below shows that a significantly larger share of households of color in San José have incomes under $100,000 today. Hispanic/Latino/a/x households and African American households are roughly 1.5 times as likely to be earning incomes under $100,000 than non-Hispanic white households.

Figure 3: Share of Households Earning Below $100,000 Annually by Race/Ethnicity of Householder, 2021



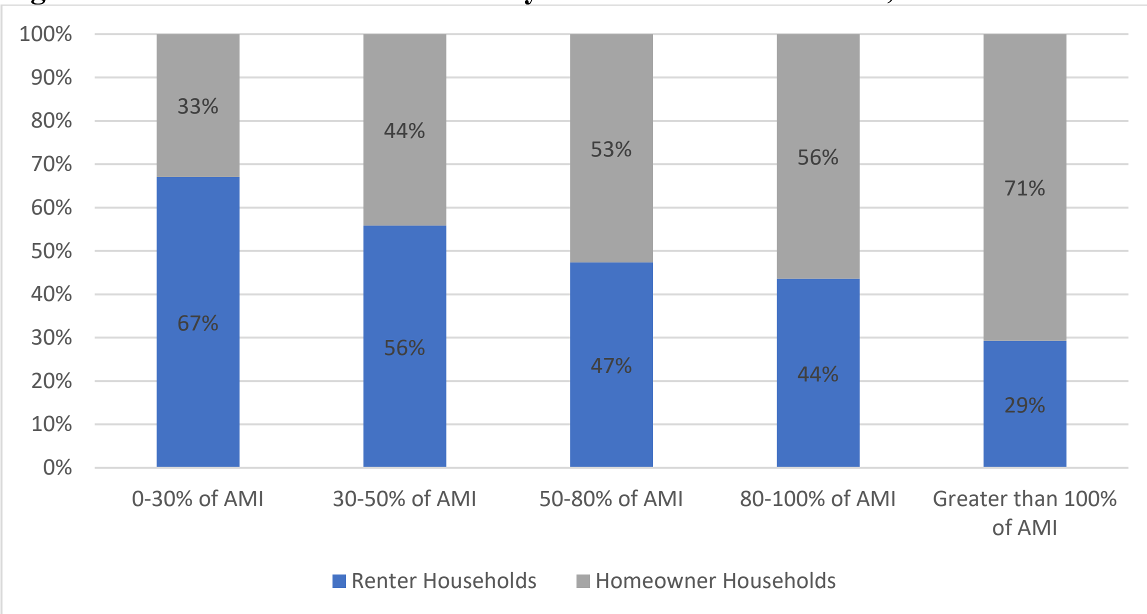
Note: Data for households identifying as races other than non-Hispanic white may also include those self-identifying as Hispanic/Latinx.
Source: American Community Survey, 2021.

<u>The rate of homeownership decreases as a function of income, meaning lower income households – who are disproportionately households of color – are less likely to be homeowners.</u>

Only 33% of households in San José earning between 0 and 30% of Area Median Income own their homes, whereas 71% of households earning more than the Area Median Income own their homes (Figure 4).[11] The high sales prices of homes, condos, and townhomes means that many lower income households are unable to access homeownership in San José and are likely to continue to be renters.

[11] The Area Median Income was $102,500 for a household of one in 2019. 30% of Area Median Income was therefore $30,750.

Figure 4: Renter/Homeowner Status by Household Income Level, 2019



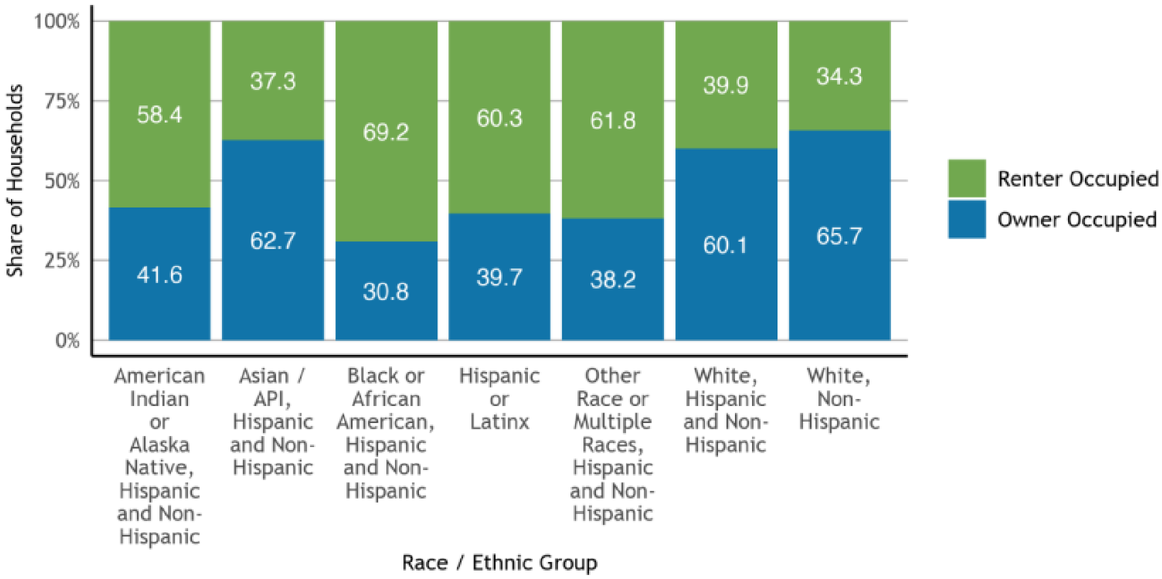
Source: Comprehensive Housing Affordability Strategy, 2015-2019

The rate of homeownership in San José is lower among households of color than it is of white households, contributing to higher displacement risk for people of color.

For the reasons discussed in the Section II of Attachment B, households who amassed wealth through their properties in the 1950's, 60's, and 70's were far more likely to be non-Hispanic white. As a result, families of color were less likely to be able to pass on intergenerational wealth to their family members or heirs than white households.[12] Many households today afford down payments with the assistance of intergenerational wealth. It is in this context that the homeownership rate is significantly higher for non-Hispanic white households (66%) in San José than it is for Black, Latinx, and Indigenous, and other non-white groups (Figure 5).

[12] https://www.forbes.com/sites/brendarichardson/2020/06/11/redlinings-legacy-of-inequality-low-homeownership-rates-less-equity-for-black-households/?sh=5bcb6f552a7c

Figure 5: Housing Tenure by Race of Householder



<u>Cost burden and severe housing cost burden are acute among lower-income renters</u>

Housing cost burdens are most acute for lower income renters in San José. Housing is unaffordable to 82 percent of very low-income households and 84 percent of extremely low income renter households in San José, as shown in Figure 6 below.[13, 14]

[13] "Very low income" households are defined by federal and state housing agencies as those with household incomes below 50 percent of the area median income (AMI), while "extremely low income" households are defined as those with incomes below 30 percent of AMI. AMI is the median income of all households in each county and is adjusted for the number of people living in each household. AMI in Santa Clara County was $125,200 for a family of four in 2018, so the maximum income for a household considered "very low income" at this time was $62,600 and the maximum income for a 4-person "extremely low income" household was $37,560. These household income are significantly higher than what most people colloquially consider to be "very" or "extremely low income." However, city staff are utilizing these official definitions for the purpose of this memo and in designing the proposed COPA policy because various government-administered housing finance programs utilize these income designations for program eligibility, including those that might eventually partially subsidize property acquisition in a city COPA program.

[14] The U.S. Department of Housing and Urban Development defines housing to be affordable when renter households are paying no more than 30 percent of their incomes towards housing costs. Households are considered "housing cost burdened" if they pay more than 30 percent of their income towards rent and "severely housing cost burdened" if they pay more than 50 percent of their income towards rent.

Figure 6: Share of Renters who are Housing Cost Burdened by Income Level, 2014-2018

	Extremely Low Income (<= 30% of AMI [1])	**Very Low Income (<= 50% of AMI)**	**Low Income (<= 80% of AMI)**	**Total, All Lower Income [2]**
Percent Cost Burdened (paying more than 30% of income towards housing costs)	84%	82%	58%	76%
Percent Severely Cost Burdened (paying more than 50% of income towards housing costs)	64%	37%	14%	43%

[1] AMI = Area Median Income.
[2] For the purposes of this memo, "lower income" refers to all households earning up to 80% of Area Median Income.
Source: CHAS, 2014-2018.

<u>Most lower-income renters today are unable to achieve housing cost stability via homeownership because they are priced out of the sales market.</u>

Historically, many families in San José and throughout the U.S. have been able to lock in relatively stable housing costs and dramatically reduce their risk of displacement by becoming homeowners. However, as home prices have increased dramatically in San José over recent decades, homeownership has become out of reach for a growing share of renters in San José. As of September of 2022, the median price for a home in San José was $1.45 million, and the estimated household income needed to afford a median priced home in San José is about $160 per hour, or $333,494 annually, while the minimum wage in San José is only $17 as of 2023, or $34,000 annually. As a result, only one in eight families can afford a median-priced single-family home in San José as of Q1 2023.[15] Additionally, saving for a down payment has become more challenging as a higher share of renter families are paying higher shares of their incomes towards rent. These data points highlight the reality that many lower income renter families and even moderate-income families will very likely be forced to continue renting indefinitely if they continue living in San José because they are priced out of the sales market.

<u>In addition to lower-income renters, undocumented individuals are at high risk of displacement both due to their higher likelihood of working in informal arrangements and due to their precarious status within the United States.</u>

Data on undocumented households is notoriously difficult to come by due to the risks associated with disclosing ones' undocumented status and, by consequence, undocumented individuals' reluctance to participate in surveys and censuses. However, it is well-understood that there are many undocumented families in San José, and that many are very low income and working low-paying jobs due to their limited opportunities to work in formal arrangements.

[15] https://www.sanjoseca.gov/home/showpublisheddocument/92214/638047084728700000

Federal inaction on immigration has meant that many undocumented residents of San José are actually long-time residents. Business owners in San José include undocumented people, underscoring how undocumented people are important to the fabric of the community and their displacement risk affects the larger collective.

Undocumented households are at a particularly high risk of displacement not only because they are highly likely to be lower-income renter households, because many are unwilling to report landlords who attempt to evict them or increase their rent illegally out of fear of involving local authorities. Additionally, many may not understand their rights due to lack of familiarity with the City's policies or with English-language resources that can help them understand their rights.

IV. Lower income renters live throughout San José, and renters at risk of displacement therefore live through the City

This section displays data on the neighborhoods with renters who would be most likely to benefit from COPA. There are lower-income renter households living in every Council District, but Council Districts 3, 5, and 7 have the highest shares of lower-income renters.

Citywide, about 30% of renter households have annual incomes below $50,000 and 44% of renter households have incomes below $75,000. Council districts 3, 5, and 7 have a significantly higher share of renter households with incomes below $50,000 than the citywide average. Figure 7 below shows that there are especially high numbers of households earning below $50,000 per year in Council Districts 3 (56%), 5 (56%), and 7 (66%).

When considered along with the data in Figure 15 (Section V) indicating that 84% of all San José households earning below $50,000 annually and 75% of all households earning between $50,000 and $75,000 annually are housing cost-burdened, this data strongly suggests that lower income residents who are housing cost-burdened and at risk of displacement live throughout San José.

Figure 7: Lower-Income Renter Households by San José City Council District

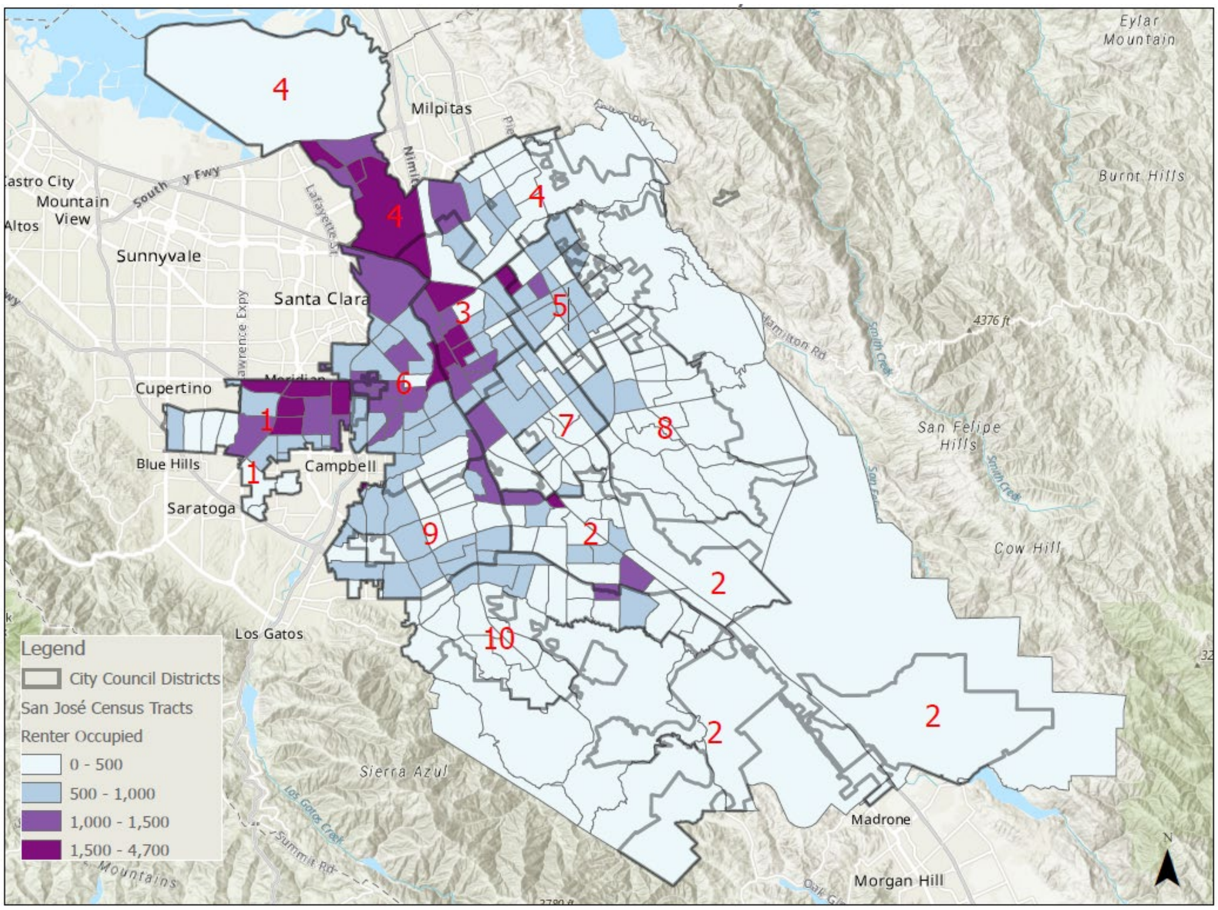
	Total Number of Renters	Total Renters Earning Under $50,000	Total Renters Earning Under $75,000
District 1	20,735	4,811	7,837
District 2	12,214	3,062	5,049
District 3	22,860	9,687	12,855
District 4	20,164	3,467	4,753
District 5	11,551	4,598	6,518
District 6	25,421	7,986	11,696
District 7	12,086	5,757	7,977
District 8	5,219	1,577	1,946
District 9	15,024	3,473	5,370
District 10	9,323	2,359	3,622

Source: American Community Survey, 2016-2020.

<u>Renter households of any income are distributed throughout the city, with the largest concentrations generally living in the northern half of the City.</u>

Figure 8 below shows that in numerical terms, very large numbers of renter households live in Districts 1, 3, 4, and 6. While many of these households may be above the income targets established by COPA, it is important to note that the presence of many renters in these areas indicates that there is significant rental housing stock in these areas. As newer buildings age and eventually become affordable to lower-income households, the rental housing stock in these neighborhoods may gradually become appropriate for COPA acquisitions.

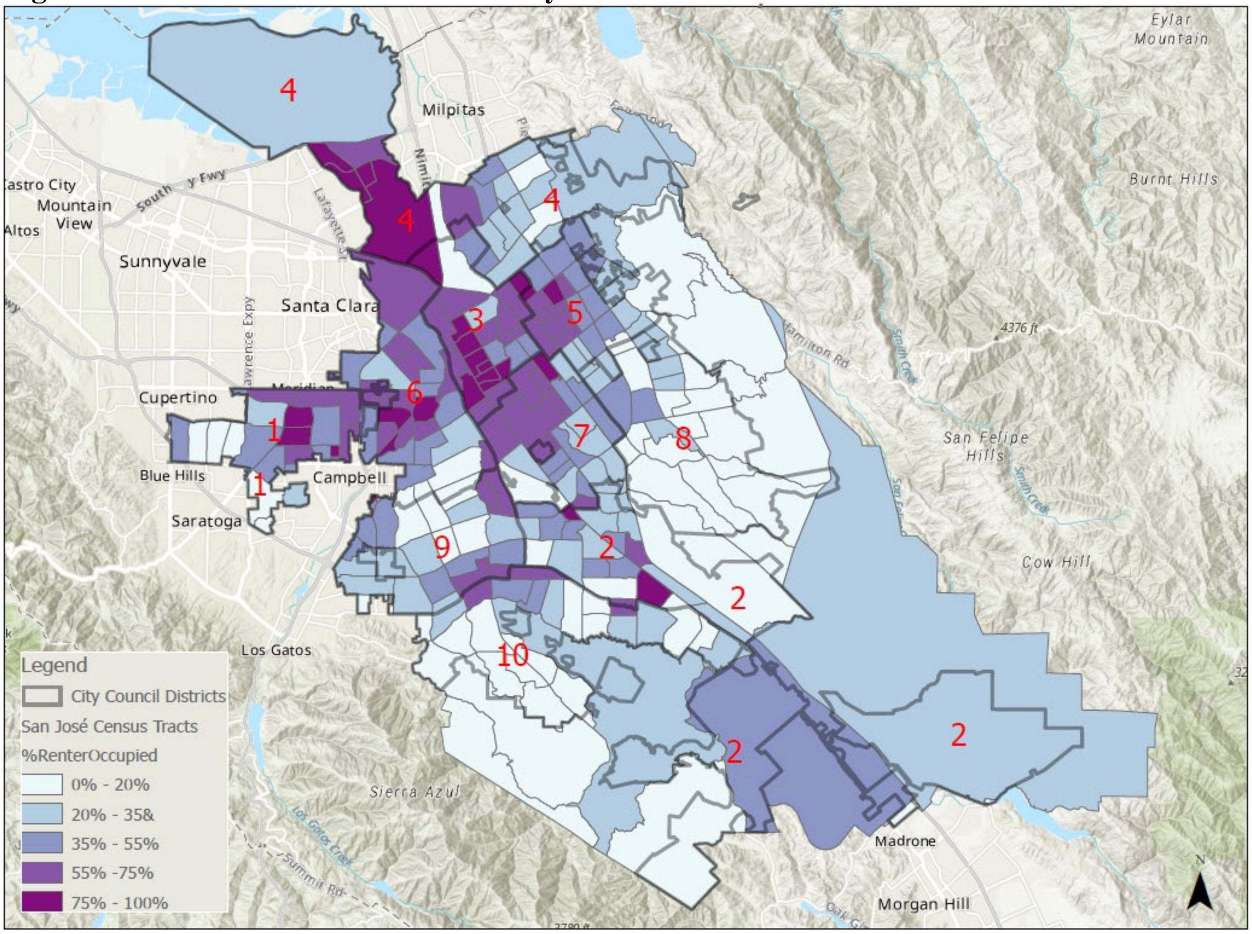
Figure 7: Number of renter-occupied households by census tract



Source: American Community Survey, 2016-2020

Data on the *share* of renters living in each neighborhood tells a somewhat different story. The neighborhoods with the highest shares of renters (Figure 9) fall within Council Districts 1, 3, 4, 5, 6, and 7, and certain pockets of District 4. These neighborhoods include some in Downtown San José; in East San José from the border of Downtown to Alum Rock; in the Rincon and Golden Triangle areas of North San José; and in the Winchester, Paseo de Saratoga, and Stevens Creek neighborhoods of West San José.

Figure 8: Share of Renter Households by Census Tract

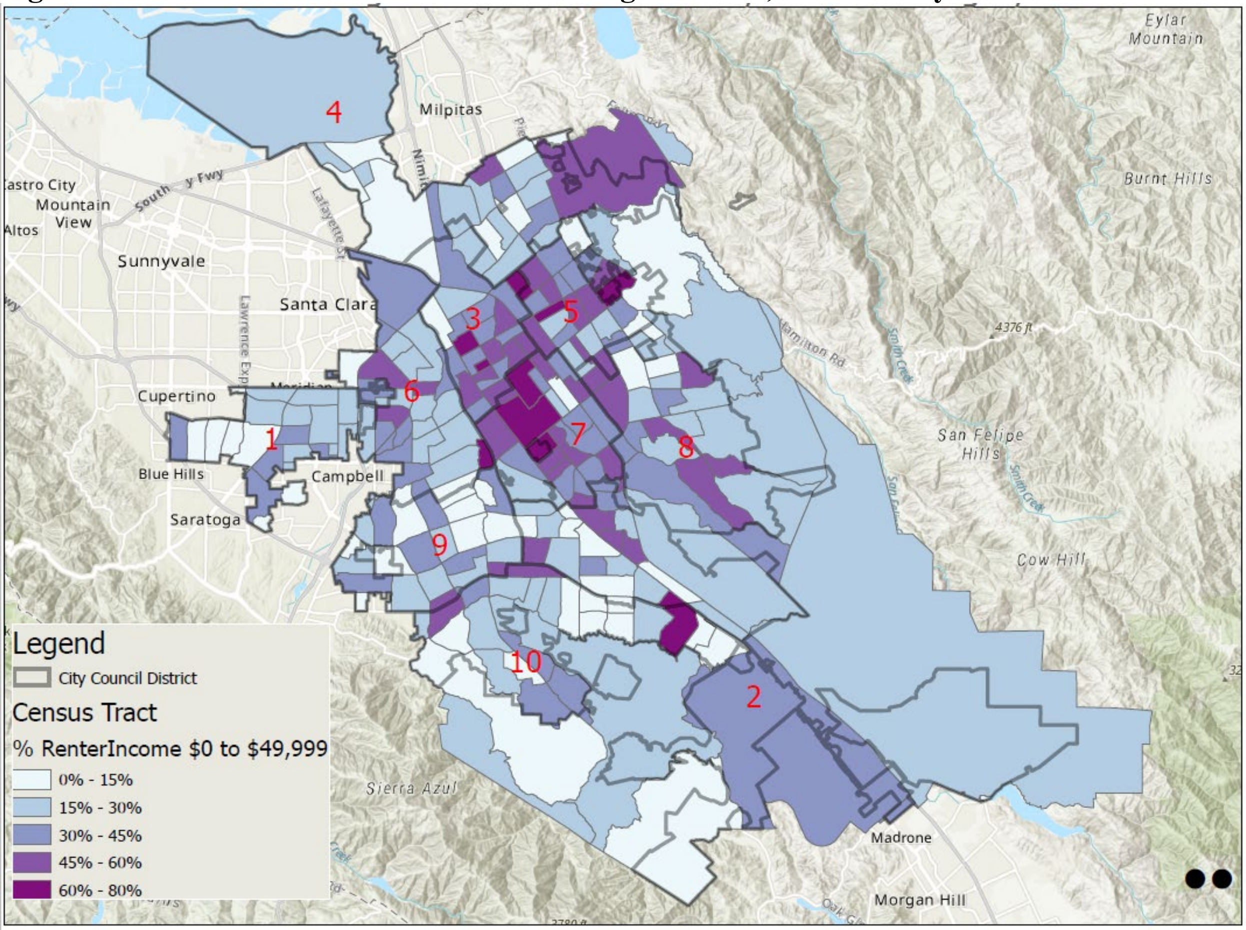


Source: American Community Survey, 2016-2020

<u>Displacement risk is highest for the lowest income renter households, who currently tend to be concentrated in neighborhoods within Districts 3, 5, and 7.</u>

Of the census tracts with high shares of renter households, some tracts have much higher shares of households that are earning below $50,000 per year – and therefore at higher risk of displacement -- than others (Figure 10).

Figure 9: Share of Renter Households Earning $0 to $49,999 annually

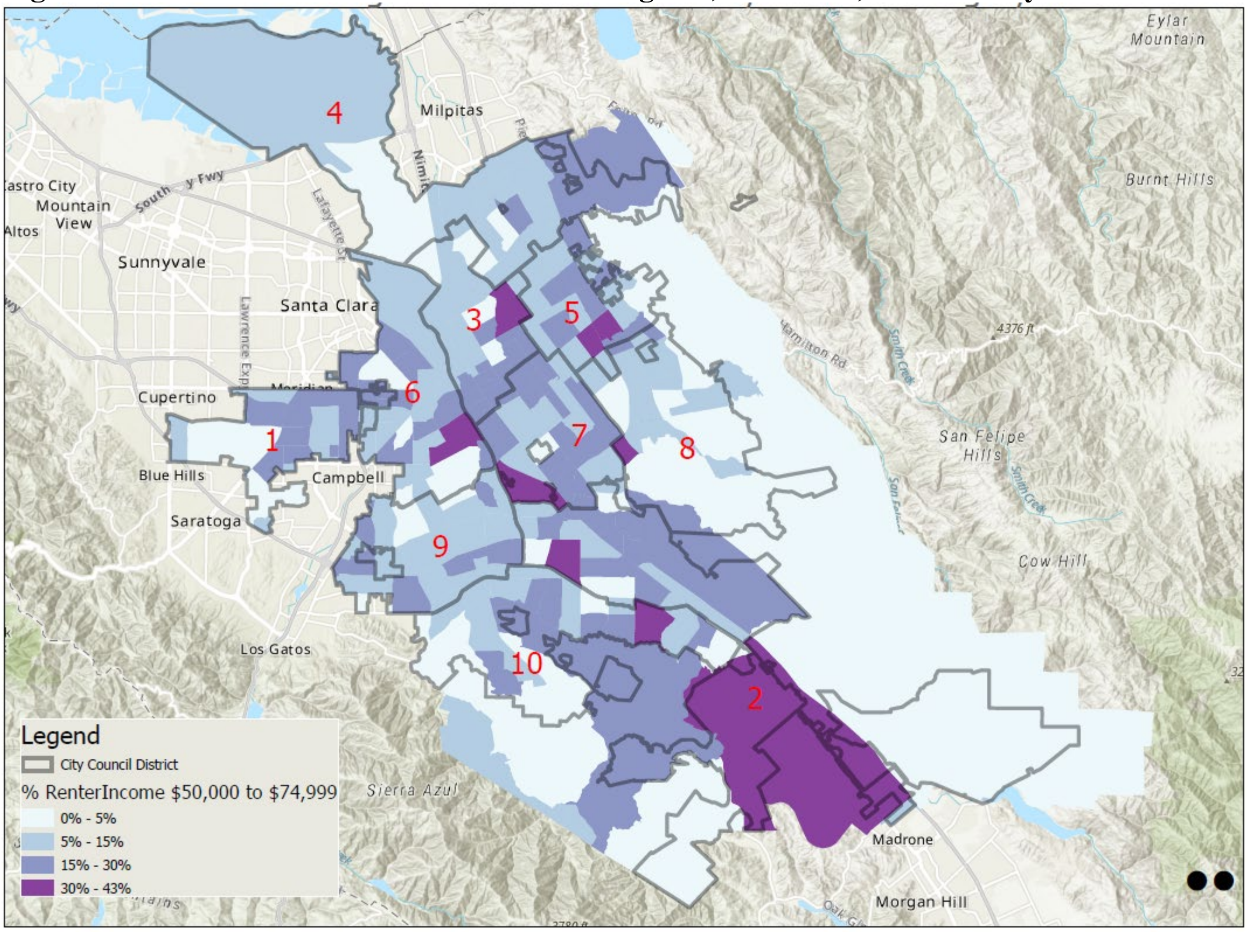


CSJ Housing - August 2022
Source ACS 2020 5 Year Table B25118

<u>A moderate share of renter households in many areas of the City are earning between $50,000 and $75,000 per year.</u>

Figure 11 below shows the share of renter households earning between $50,000 and $75,000. A renter household of one person with an income within this range is still considered low income; larger households who are earning incomes in this range could be considered either very low income or extremely low income depending on the number of people in the household.

Figure 10: Share of Renter Households Earning $50,000 to $74,999 annually



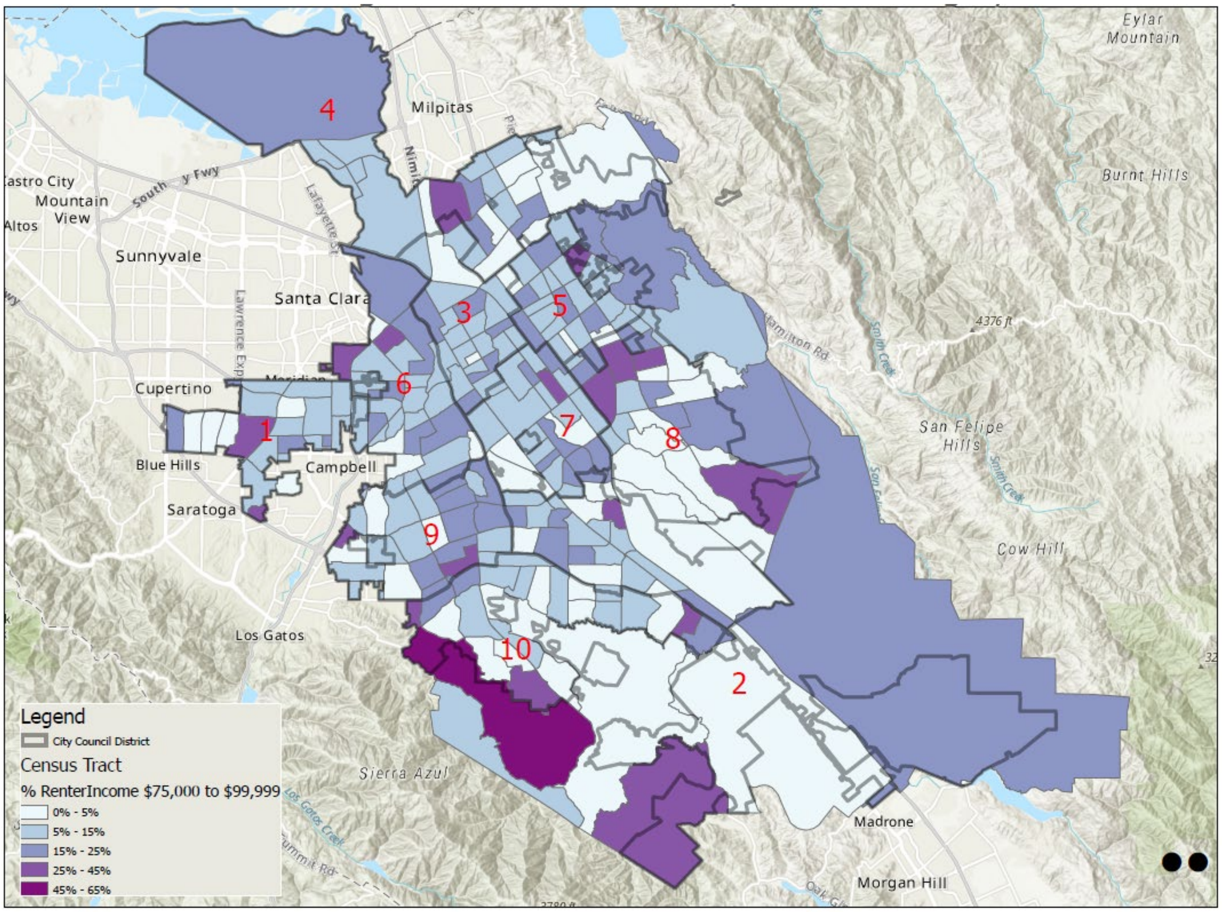
CSJ Housing - August 2022
Source ACS 2020 5 Year Table B25118

<u>Households earning between $75,000 and $99,999 annually are relatively evenly distributed throughout the City.</u>

While households who earn between $75,000 and $99,000 are not commonly thought of as being at risk of displacement, households in this income category are considered low income or very low income (depending on household size) according to official definitions. Additionally, the data presented in Figure 15 (Section V) indicates that around half of households in this income category are housing cost burdened. Some households in this income category could potentially be served by COPA if their household income (adjusted for household size) is below 80% of AMI.

Figure 12 shows between 5 and 25% of renter households in many neighborhoods throughout the city have incomes between $75,000 and $100,000.

Figure 11: Share of Renter Households Earning $75,000 to $99,999 annually



CSJ Housing - August 2022
Source ACS 2020 5 Year Table B25118

V. Housing costs have grown faster than incomes for lower income households in San José, exacerbating displacement risk.

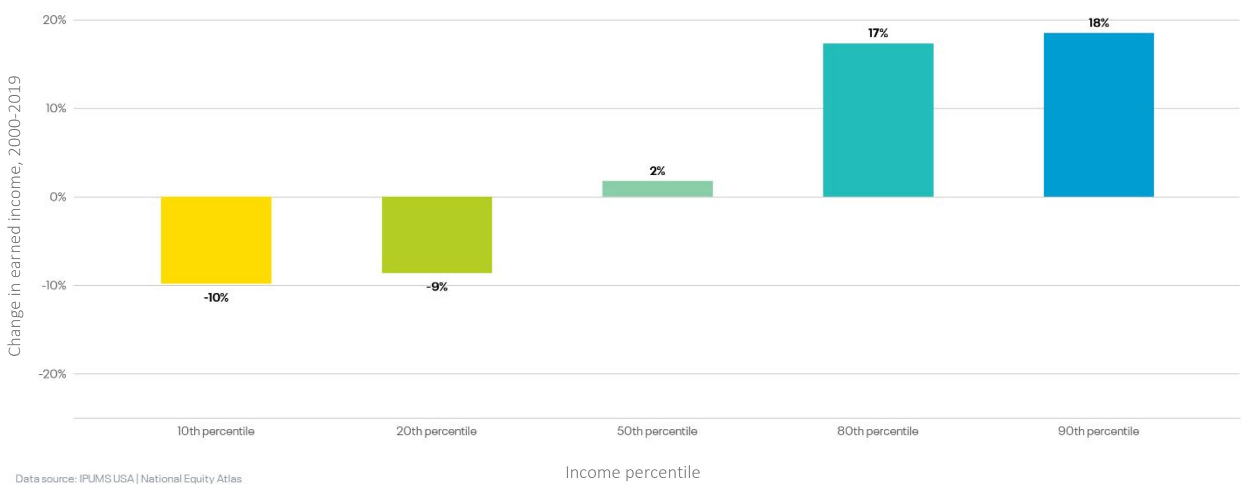
Housing costs have grown significantly over the last 20 years across the region and are now among the highest in the nation,[16] with significant negative implications for lower-income households whose wages have stagnated. Silicon Valley witnessed a tremendous amount of growth within the tech industry within the last two decades as tech firms added thousands of high paying jobs. As new workers arrived in the region, demand for housing increased. While new construction of market-rate housing has addressed some of this new demand, a share of these higher-income workers compete for housing with moderate- and lower-income households in what were historically "naturally occurring affordable housing" options. In summary, rents have increased even in older properties.

The increase in housing costs has not been accompanied by a commensurate increase in wages for lower- and middle-income San Joséans. While the median income in San José increased over

[16] https://www.apartmentlist.com/research/national-rent-data

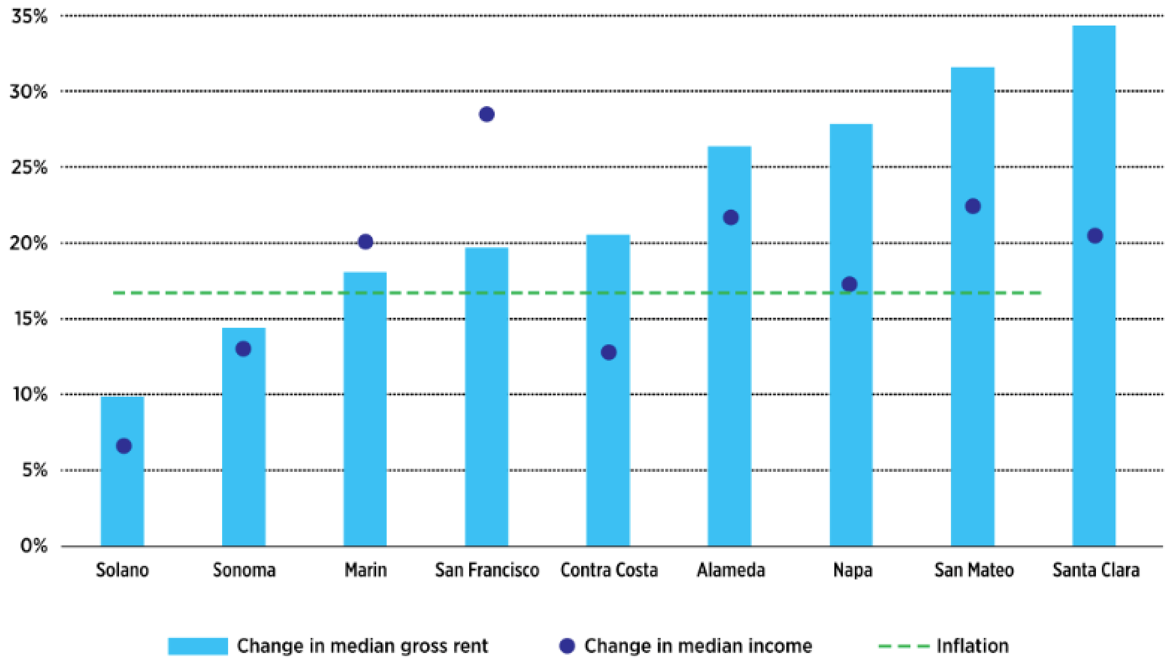
the last 20 years and is much higher than in other parts of the country, the local median income increase occurred only because of income growth for the highest income earners in the area. Wages for households earning below the median income actually decreased between 2000 and 2019 after adjusting for inflation, as shown in Figure 13. In contrast, incomes for higher income earners increased significantly for the City's highest income earners since 2000. As a result, higher income households are much more likely to continue being able to afford housing in San José, whereas lower- and middle- income households face difficult decisions about the financial sacrifices they must make to continue living in the area.

Figure 12: Change in Earned Income for Full-Time Wage and Salary Workers in San José, 2000-2019



While the growing gap between incomes and housing costs is a crisis that the entire Bay Area faces, the problem is most acute in the Santa Clara County. Rent growth in Santa Clara County outpaced income growth at a rate faster than in any other Bay Area county between 2010 and 2015, shown in Figure 14 below. San Mateo County had the second highest growth in housing costs relative to median incomes, corroborating the relationship between fast employment growth across Silicon Valley and steep housing cost increases in the area.

Figure 13: Change in median gross rent compared to change in median incomes in nine-county Bay Area, 2010-2015



Source: SPUR, 2017. "Room for More"

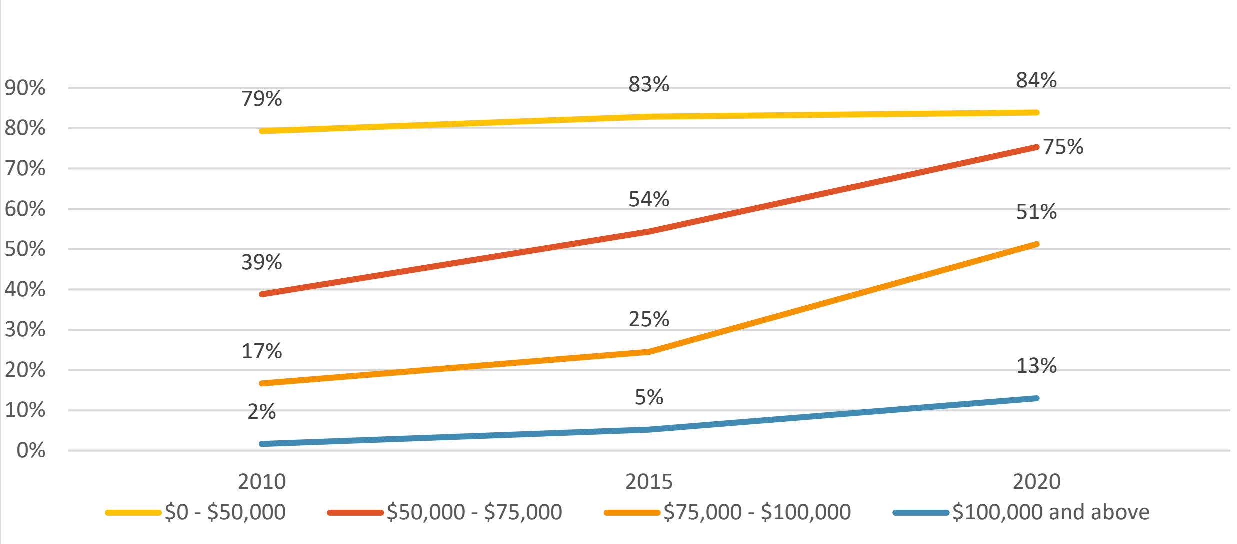
While San José has been successful in producing a significant number of new deed-restricted affordable housing with below-market rate rents, these units have also been deeply insufficient to meet the growing demand for below-market rate housing options that serve the city's lower-income residents.

<u>As housing costs have increased, lower income households are significantly more likely to be housing cost burdened than they were ten or even five years ago.</u>

In the context of rising housing costs and declining incomes for lower income groups in real terms, lower income renter households in San José are much more likely to be housing cost-burdened than they were ten or even five years ago, as shown in Figure 15. The share of renter households earning between $50,000 and $75,000 annually who were housing cost burdened nearly doubled between 2010 and 2020. Similarly, the share of renter households earning between $75,000 and $100,000 who were cost burdened nearly tripled during this time period. Households in these income categories may have shrinking discretionary incomes, which can result in less opportunities to save money for things like a down payment on a house.

It is important to observe that rates of housing cost burden are consistently highest for the lowest income households (those earning between $0 and $50,000 annually). This is particularly concerning because extremely low-income families who pay high shares of their income towards housing costs often have to forgo other necessities, such as building emergency savings or even paying for medical care or food.

Figure 14: Share of Cost Burdened Renter Households by Income Range, 2010-2020



Note: Income categories not adjusted for inflation.
Source: American Community Survey, 2010-2020.

It is in this context that 48% of renter families overall in San José are housing cost burdened, meaning they pay more of their monthly income towards housing costs than is considered advisable by the U.S. Department of Housing and Urban Development (HUD). Figure 6 in Section III shows similar data with the rates of housing cost burden and severe housing cost burden for the HUD-defined income groups (e.g. "low income," "very low income," and "extremely low income.")

<u>Property turnover can lead to displacement for households that are already housing cost burdened.</u>

A landlord's decision to sell their property can create a housing emergency for renter families. This is because investment-motivated buyers may have strong incentives to take actions that increase their return on investment, including by levying rent increases that renter families cannot afford. There are numerous blogs, guidance articles and industry magazine articles on multifamily 'repositioning' and 'value-add' financings that all focus on rent increases as a core strategy.[17] Anecdotally, there is evidence that investors are buying properties in San José above fair market value under the assumption that they will raise rents to the extent allowable by law. High purchase prices are backed by large amounts of debt that require higher rents to pay the debt. Property owners who purchase above market value therefore understand that they will need to raise rents or, as tenants move out, re-rent their units at higher rental rates in order to service the debt on the property.

While the City's Apartment Rent Ordinance (ARO) regulates how much rent can increase and protects renter families from dramatic rent spikes, families living in properties owned by return-

[17] 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/.

driven investors can gradually be displaced by price increases even in ARO properties. For example, a family earning $50,000 per year initially paying $1,500 per month in a rent stabilized building that experiences legally allowable rent increases of 5% for five consecutive years would pay an additional $414 per month towards rent after five years. In other words, the amount of money this household pays towards rent would have increased from 36% of their annual income to 46% of their annual income.

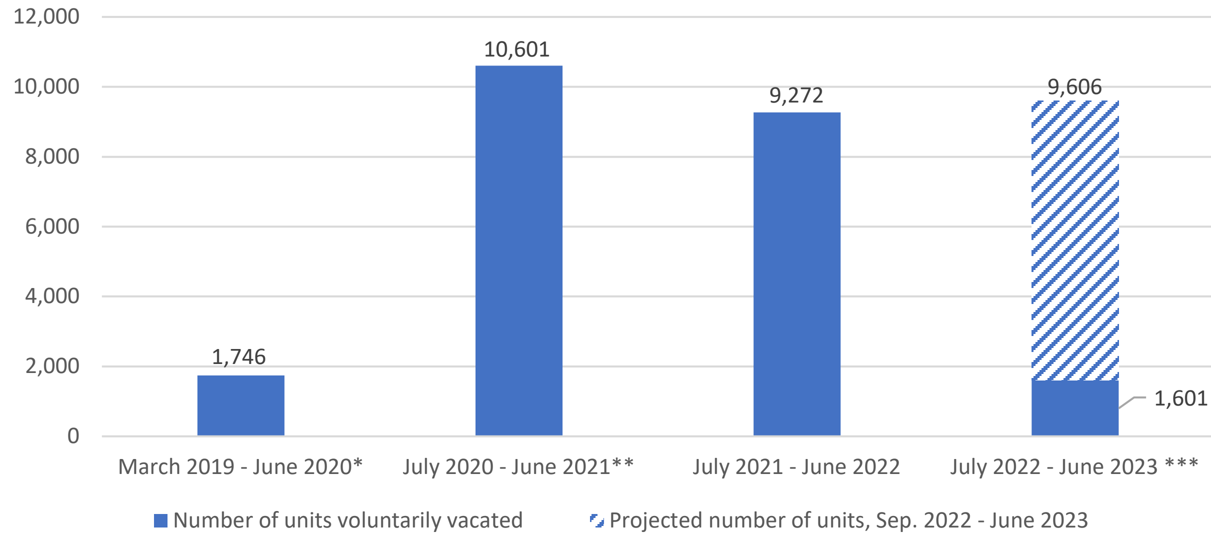
Additionally, ARO excludes certain properties, including duplexes and single-family homes and all rental units first occupied after 1979. Families living in some ARO-exempt properties are only protected by AB 1482, a state law that limits annual rent increases to no more than 10 percent or the equivalent of CPI plus inflation, whichever is lower.[18] However, for the many families who are already housing cost burdened, renter families may not be able to afford an additional rent increase near 10 percent and can therefore be displaced by price increases.

Although relatively uncommon, existing residents can also be displaced by no-fault evictions under the Ellis Act or when apartment buildings owners decide to redevelop properties. Even a single Ellis Act eviction or property redevelopment can impact many families. For example, in 2017 a multifamily apartment building known as The Reserve was approved for redevelopment into new apartment buildings. As a result, over 200 families (and a total of over 600 residents) of the building were displaced.[19]

When San José's lower income families are forced to look for new housing options, they may find few or no options that fit in their budgets. Existing city policies stabilize rents in specific types of properties for as long as the families continuously occupy their units, but the rent can be reset at market rate when that household leaves the property in a process known as "vacancy decontrol." Over time and as market-rate rents increase, vacancy decontrol contributes to a landscape where a shrinking share of rental units are affordable to lower-income residents. For example, between March of 2019 and August of 2022, tenants vacated over 20,000 units out of about 100,000 rental units in San José (Figure 16). In other words, in a span of roughly three years, about one-fifth of the City's rental units became eligible to have their rents reset at market rate.[20]

[18] Renter households living in single-family homes are not protected under AB 1482 unless the home is investor-owned.
[19] https://sf.curbed.com/2016/7/7/12120678/eviction-san-jose-reserve-apartments-silicon-valley
[20] Source : City of San José Rent Registry and Multiple Housing Roster.

Figure 15: Number of voluntarily vacated housing units, March 2019 - August 2022 (with projections through June 2023)



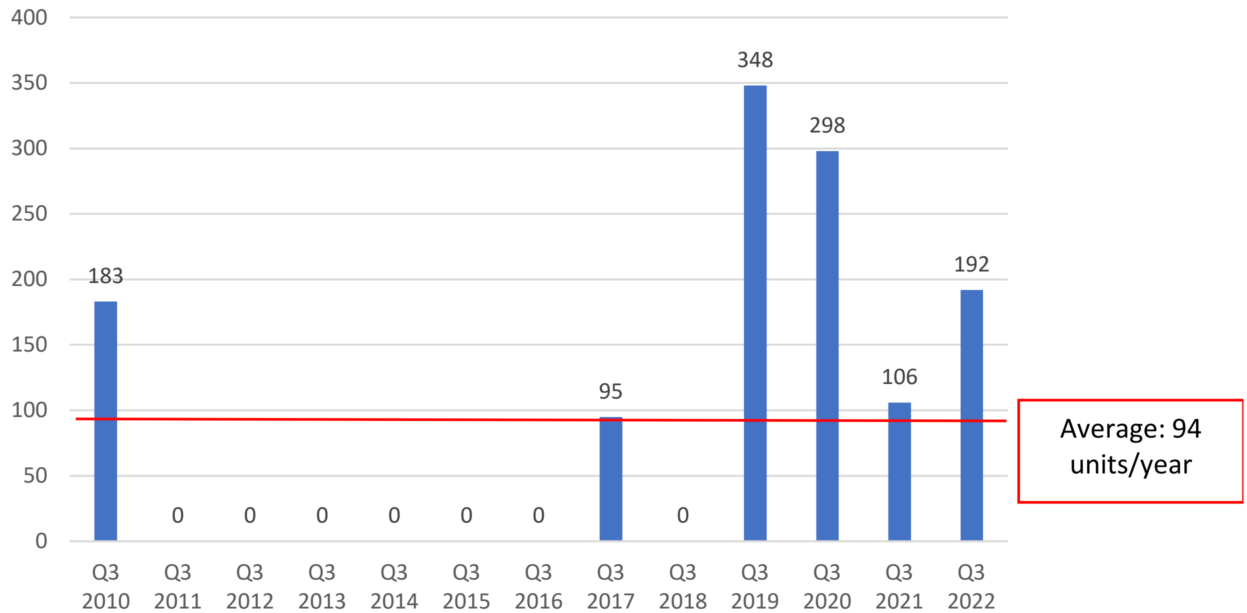
*Data from this period reflects the initial status of a unit at the time that property owners first registered their property with the City's rent registry. Units may have been vacated prior to these dates.
** Data from this period may reflect a higher-than-typical number of voluntary vacancies due to the COVID-19 Pandemic, which caused many people to move residences due to job losses and the widespread adoption of work-from-home policies.
*** 1,601 units were voluntarily vacated between July and August of 2022. Projections through June 2023 assume that units will be vacated at the same rate between September 2022 and June 2023 as were vacated in the first two months of the fiscal year.
Source: City of San José Rent Registry, 2022.

Property turnover can therefore result in both a household-level impact in that renter families may be priced out of their homes, as well as a broader city-level impact as vacated units gradually become unaffordable to lower-income households via vacancy decontrol. These findings highlight the need for policies that intervene during the moment when property owner decides to sell their building.

<u>San José will not be able to build enough new affordable units to address the urgency and scale of affordable housing need, and additional affordability solutions are therefore needed.</u>

As the previous sections have described, thousands of households in San José are housing cost burdened and thousands of rent stabilized units turn over each year, meaning that their rents are eligible to be re-set at market rate. At the same time, Figure 17 shows that an average of only about 100 new affordable units are built every year in San José due to a relative scarcity of affordable housing production funding. While the average number of new units was higher in the last four years (236 units/year), the number of units built during this period still falls short of what would be needed to address San José's affordability needs. This data highlights the need for as many solutions as possible to improve affordability citywide.

Figure 16: Affordable Housing Production Totals During Previous Four Quarters, 2010-2022



Source: San José Housing Market Update, 2022 Q3

VI. Impacts of displacement: Displacement is a key factor in declining primary school enrollment in our City

Figure 18 below shows that enrollment has declined in almost all San José elementary school districts, but at different rates, and with the highest rates of enrollment decline in school districts with catchment areas that include neighborhoods with high displacement risk.

Note that there are several factors contributing to declining school enrollment, including declining birth rates. Additionally, it has been suggested that as children are graduating from local schools, fewer families are moving to other areas or downsizing than was historically true, meaning that fewer homes are available to younger families with children.

Figure 17: San José Elementary School District Enrollment, 2014-2022

Changes in Elementary School Enrollment in San Jose Schools: Summary Table									
District	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	Cumulative 7-Year Change in San Jose Schools by District
Alum Rock Union Elementary	7250	7019	6775	6550	6240	5930	5712	5385	**-26%**
Berryessa Union Elementary	5044	4803	4717	4631	4600	4497	4297	3989	**-21%**
Cambrian	665	644	967	1035	1013	950	841	942	**42%**
Cupertino Union	2772	2800	2731	2681	2649	2551	2351	2150	**-22%**
Evergreen Elementary	8932	8391	7985	7733	7294	7062	7361	6884	**-23%**
Franklin-McKinley Elementary	6809	6675	6265	6015	5800	5556	5230	4962	**-27%**
Moreland	3793	3809	3805	3819	3750	3666	3438	3204	**-16%**
Morgan Hill Unified	586	595	521	526	501	512	505	456	**-22%**
Mount Pleasant Elementary	1282	1247	1181	1141	1061	991	924	793	**-38%**
Oak Grove Elementary	7463	7180	6964	6975	7637	7541	7275	6662	**-11%**
San Jose Unified	15568	15009	14411	13857	13526	12941	12131	10995	**-29%**
Union Elementary	2992	3034	3089	3179	3183	3131	3030	2956	**-1%**
Total Enrollment	63156	61206	59411	58142	57254	55328	53095	49378	
Annual Change		-3%	-3%	-2%	-2%	-3%	-4%	-7%	
Citywide Cumulative 7-Year Change		**-3%**	**-6%**	**-8%**	**-9%**	**-12%**	**-16%**	**-22%**	

Source: SV@Home Analysis of California Department of Education Public Schools and Districts and Enrollment Multi-Year Summary by Grade, 2022.

ATTACHMENT C – Opportunity to Purchase Act (OPAs) Case Studies

This section reviews two of the most well-known opportunity to purchase acts in the United States: the Tenant Opportunity to Purchase Act adopted by Washington D.C. in 1980,[21] and the Community Opportunity to Purchase Act adopted by San Francisco in 2019. The proposed COPA program in San José is most similar to San Francisco's adopted COPA program, although the proposed program incorporates some significant changes based off of lessons learned from San Francisco.

Key takeaways from Washington D.C. and San Francisco:

- The scale and overall impact of the number of units preserved via Opportunity to Purchase programs hinges on the amount of funding allocated for affordable housing preservation
- In San Francisco, neighborhood-focused affordable housing providers are the most active QNPs to have utilized COPA to date
- The initial letter of interest period in San Francisco (which is only five days long) is considered to be too short for many QNPs to effectively utilize COPA

Note that several other jurisdictions in the Bay Area, including Berkeley, Oakland, East Palo Alto, and Mountain View, have either proposed Opportunity to Purchase Acts or are actively exploring such policies.

Washington D.C.

Adopted in 1980, Washington D.C.'s TOPA prevents the loss of the City's affordable housing stock. In the three years before its passage, the City lost 8,000 units and had 6,000 units pending conversion.[22] The alarming rate in which the city was losing its affordable units meant that thousands were at risk for rent hikes and evictions. TOPA was enacted to give tenants the first rights to purchase their buildings to stabilize the city's neighborhoods and prevent displacement of long term residents. The policy provides right of first refusal to tenants and qualified nonprofits and provides right of first purchase only to tenants. TOPA applies to all property types and provide extensive timelines for tenants to register interest (15-45 days), negotiate and place an offer (90-135 days), and close on the property (90-240 days).[23] These long timelines reflect the fact that the policy is targeted towards tenant acquisition opportunities, given that tenants require ample time to execute purchases because they are non-professionals in the property acquisition and property management fields.

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[21] Tenant Opportunity to Purchase Acts function similar to Community Opportunity to Purchase Acts except

[22] https://code.dccouncil.us/us/dc/council/laws/docs/3-86.pdf

[23] https://cnhed.org/wp-content/uploads/2021/01/Opportunity-to-Purchase-Policy-Options-for-the-City-of-Minneapolis.pdf

As of 2019, Washington D.C. preserved 4,400 through TOPA, with 80 percent of those units preserved after 2002.[24] The improved efficacy of the program over the last two decades is due in large part to the City's increased investment in housing preservation efforts. For example, D.C's Housing Production Trust Fund (HPTF), a fund to help preserve and produce affordable housing was established in 2002, and in 2004 the City began allocating Community Development Block Grant (CDBG) funding to nonprofits to provide organizing and technical assistance to tenants receiving TOPA notices. Most recently, the City has committed a record $400 million to HPTF for the 2022 fiscal year.[25] D.C. also continues to explore public and private partnership to fund building acquisition through the Housing Preservation Fund.[26]

Between 2015 and June of 2021, over 2,000 units were purchased through Department of Housing and Community Development (DHCD) TOPA acquisition funding across 26 projects.[27]In Fiscal Year 2014, one-third of all multi-family transactions happened through TOPA.[28]

San Francisco

San Francisco adopted a COPA policy in June 2019 that gives qualified nonprofit organizations the right of first offer and the right of first refusal to purchase multifamily residential buildings with three or more units. The City's policy provides five days for qualified nonprofits to register interest, 25 days to make an offer, and an additional 60 days for due diligence.

The evidence from San Francisco confirms that it is faster and less expensive to preserve affordable units where families are already living through COPA rather than build new affordable housing developments. The Mayor's Office of Housing and Community Development (MOHCD) reported that as of December 2022, 234 residential units have been preserved through COPA. At time of acquisition, the average city loan for these projects was valued at $334,000 per unit.[29] For comparison, the total cost per unit in affordable housing projects built between 2018 and 2020 in San Francisco was more than double, at about $675,000.[30]

Funding for projects acquired through COPA is generally provided in two phases. To ensure that QNPs can close quickly on their offers, QNPs typically receive an initial acquisition loan from the San Francisco Housing Accelerator Fund, an independent nonprofit that functions as a public-private partnership, although some acquisition loans have been provided directly by the Mayor's Office of Housing and Community Development. This acquisition loan is subsequently "taken out" by permanent financing one to three years after the initial acquisition occurs, which typically includes a bank loan and a long-term loan issued by a public agency.

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24 https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf

25 https://mayor.dc.gov/release/mayor-bowser-unveils-unprecedented-400m-investment-housing-production-trust-fund

26 https://content.govdelivery.com/accounts/DCWASH/bulletins/28ee155

27 https://dccouncil.us/wp-content/uploads/2022/02/dhcdatt.pdf

28 https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf

29 Data source: San Francisco Mayor's Office of Housing and Community Development.

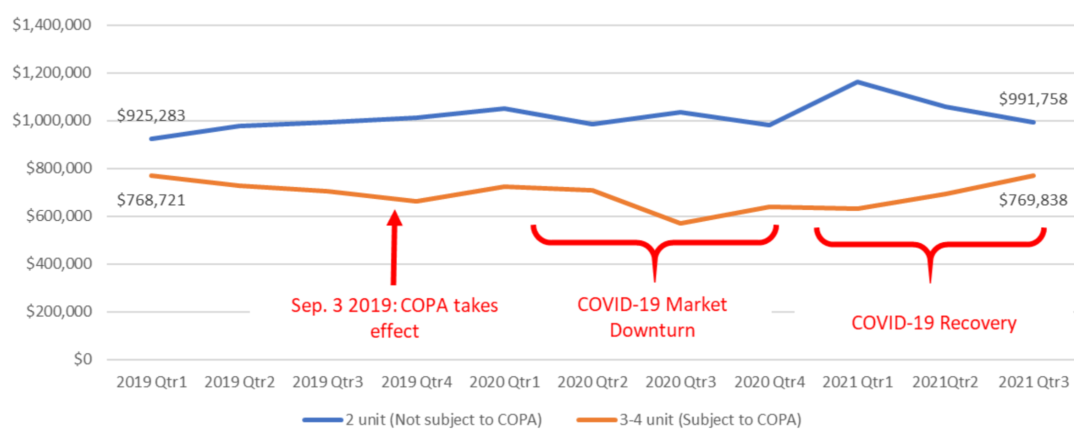
30 https://www.spur.org/sites/default/files/Low-Income_and_Moderate_Income_Funding_Gap_Memo.pdf

Program efficacy (in terms of number of units preserved) has been limited for several reasons. San Francisco's COPA program went into effect six months before the onset of the COVID-19 Pandemic, which resulted in a major disruption to the multifamily residential market and a slowdown in transactions. Additionally, under San Francisco's COPA policy, qualified nonprofits only have five days to express interest in a property once a seller has issued a Notice of Sale. If no qualified nonprofit responds within five days, the seller may immediately advertise and offer the building to other purchasers. While this timeframe is intended to limit the disruption of real estate transaction timelines, housing specialists have reported that the short timeline reduces COPA's effectiveness.

Despite these challenges, five qualified nonprofits have acquired 16 properties via COPA since the policy went into effect in September 2019. Nine of the sixteen properties were acquired by one organization, the Mission Economic Development Agency, highlighting the importance of locally-based organizations with a deep commitment to preserving or improving the affordability of housing for their community members.

The available data from San Francisco does not suggest any relationship between COPA being adopted and any changes in property values. Figure 19 below shows the average sales prices per unit for 2-unit properties in San Francisco (which were **not** subject to COPA) versus 3- and 4-unit properties (which were subject to COPA). If adopting COPA in San Francisco had led to decreases in property values, the data would presumably show a decline in property values for 3- and 4-unit properties relative to the value of 2-unit properties. The data shows that property values per unit were already trending downward for 3- and 4-unit prior to COPA being approved, but shortly after COPA went into effect this trend reversed and property values per unit for 3- and 4-unit properties actually increased in line with 2-unit properties. The COVID-19 Pandemic resulted in greater fluctuations in average sales price for 3- and 4-unit properties, but by Q3 of 2021 the average price per unit for these properties had returned to the values seen in the beginning of 2021.

Figure 18: Average sales price per unit for properties subject to COPA (3- and 4-plexes) versus properties not subject to COPA (duplexes) in San Francisco, 2019 Q1 – 2021 Q3



Source: Multiple Listing Service, 2019-2021

ATTACHMENT D – Public Outreach and Stakeholder Engagement Summary

The proposed COPA program was developed by Housing Department staff with extensive stakeholder and resident feedback in multiple phases between the spring 2021 and winter of 2023. In the first phase, the Housing Department formed two Anti-Displacement Working Groups, a Technical Advisory Committee and a Stakeholder Advisory Committee, which provided input into the initial draft of the proposed COPA program. In the second phase, the Housing Department held a round of public meetings and held open a public review period to gather feedback on the proposed COPA program. Housing Department staff also met with stakeholders individually, often multiple times, to hear their insights on key aspects of program design and further refine the program. After a hiatus on COPA due to staff capacity limitations and the need to work on the state-mandated housing element, Staff resumed stakeholder engagement in a third phase of general public outreach.

Phase I: Working Groups

The Citywide Anti-Displacement Strategy provided direction in developing its recommendations by use of an Anti-Displacement Working Group. To form an Anti-Displacement Working Group meant to develop a COPA program proposal, City staff released a Request for Proposal and hired a consultant, Baird + Driskell Community Planning. Baird + Driskell Community Planning facilitated the first phase of community engagement to develop a draft COPA program proposal, consisting of 16 working group meetings. A copy of their report that describes the working group community engagement process can be found in Appendix E.

Preparation for the Anti-Displacement Working Group began in the spring of 2021. At that time, restrictions on group gatherings and precautions due to COVID were in effect at both the City and County level. In lieu of meeting in person, meetings were planned to be held monthly, online via zoom. The Anti-Displacement Working Group consisted of two parts, the SAC and the TAC.

The Technical Advisory Committee (TAC)
The TAC was intended to be a small group of subject matter experts representing relevant stakeholders. It dove in deeply into the details necessary for designing the program. Group members were invited based on the depth and diversity of their experiences and the constituencies they represented. included roughly 25 regular members who typically met twice each month from April to October 2021. Members were encouraged to attend every meeting but were not required to. TAC members were invited and encouraged to attend SAC meetings and a dedicated group did so. Housing Department staff invited stakeholders to join based on their subject matter expertise in an effort to convene a group with well-balanced interests. Housing Department staff decided the TAC would be by invitation only in order to develop trust among members and encourage collaboration and honest feedback. In order to build and maintain institutional understanding of the topic, new members were not accepted once the process started.

The TAC had members representing private industry interests who regularly voiced concerns about the policy itself. Housing Department staff attempted to address the apprehension by continuing conversations in outside meetings and seeking legal opinions to share with the group.

Many policy decisions attempted to address these concerns, but some members of the TAC nonetheless remained doubtful of the utility of the program and advised against its adoption. On the other hand, some members of the TAC committee representing policy, tenant, and community organizations supported the overall goals of the program. Many of those members continued to offer feedback and concerns about whether the program would be inclusive to lowest-income residents and whether the program would be adequately funded. Overall, TAC discussions were polite and productive.

Originally, the TAC was intended to develop policy recommendations to then present to the SAC for additional feedback. It became clear early on that the group was unlikely to reach consensus, so the facilitators sought to gather the range of opinions and understand the interests of all parties.

TAC Meeting Topics

Meeting	Date	Topic
TAC #1	4/22/2021	COPA Landscape Analysis and Best Practices
TAC #2	5/12/2021	Process and Timeline
TAC #3	5/27/2021	Applicability
TAC #4	6/25/2021	Qualified Nonprofits
TAC #5	7/22/2021	Affordability and Financing
TAC #6	9/10/2021	Tenant Engagement and Ownership
TAC #7	9/30/2021	Education/Outreach and Enforcement
TAC #8	10/8/2021	Draft Framework, Implementation

Stakeholder Advisory Committee (SAC)

The SAC was intended to be a broad and diverse group, open to the public, that would include stakeholders from the public as well as those with expertise in housing policy and real estate. SAC meetings were held monthly in the evenings between April and October 2021 and attendance ranged between 20-70 people per meeting. Housing Department staff invited over 400 individuals who were signed up for the Anti-Displacement Policy Distribution list serve. Outreach also targeted community organizations, including groups with relevant culture competencies and organizations representing tenants and property owners (a full list of organizations can be found in Appendix E). SAC meetings were open to public, and outreach for the meetings was conducted in English, Spanish, and Vietnamese.

Beyond interpretation of the presentation, all SAC meeting activities to gather participant input on the program were designed so Spanish and Vietnamese speakers could share their thoughts in their native or preferred language. This included having language-specific breakout rooms for small group discussion and having bilingual facilitation during interactive activities. Additionally, post-meeting feedback surveys were offered in all three languages. While there were Spanish speakers who used the interpretation, there were no Vietnamese speakers who needed the service.

SAC Meeting Topics

Meeting	Date	Topic
SAC #1	4/29/2021	COPA Landscape Analysis and Best Practices
SAC #2	5/20/2021	Process and Timeline
SAC #3	6/17/2021	Qualified Nonprofits
SAC #4	8/19/2021	Affordability and Financing
SAC #5	9/23/2021	Tenant Engagement, Ownership and Enforcement
SAC #6	10/14/2021	Draft Framework, Implementation – Education/Outreach, Enforcement
SAC en Español (Spanish language meeting)	10/28/2021	Tenant Engagement, Ownership and Enforcement, Draft framework

Key Takeaways

Generally, building owners or their representatives wanted to make sure that the program did not adversely affect the private housing market and caused as little burden as possible. Landlords helped Housing Department staff understand the complexity of the market, including its fast pace. One of their biggest concerns was that a slow timeline would prevent owners from selling quickly, while the market is hot. They also wanted as much certainty in the process as possible, articulating a concern about nonprofits expressing interest but not being able to complete the purchase and the potential for tenants disrupting the transaction process. Real estate industry representatives were apprehensive about including small properties in the program (e.g., 1-4 units). They pointed out small buildings sell quickly and are more likely to be owned by landlords with fewer properties. Small-time landlords often do not know the rules in as much detail as larger landlords and there are fewer avenues to educate them. Overall, while many real estate representatives may still have opposed the program, they also voiced support for home ownership opportunities through the program and some saw the Community Opportunity to Purchase Act (COPA) as a way for interested owners to sell their properties and work with their tenants to protect affordability in the long run.

Representatives of low-income renters were generally positive about the program and excited about its potential impact. They felt it gave their communities hope for stability and possible homeownership. They have suffered from housing insecurity and displacement and want the program to apply to as many homes as possible. They prefer to include investor-owned single-family homes as well as duplexes, in addition to larger buildings. Tenants and their advocates felt it was important that income targets are set low enough to better reflect the varying incomes in the City, which would benefit as many at-risk residents as possible. Tenant advocates wanted to ensure that nonprofits were responsive to the community and that the program supported tenant organizing and empowerment. They also advocated for appropriate organizational and capacity-building support for community partners to eventually become qualified nonprofits. Nonprofit developers talked about the need for funding to make the program a possibility. They also asked for clear policies and procedures to align the program with their missions and business models. Generally, developers discussed the need for a timeline that allowed them to do their due diligence and present to their Boards of Directors before making an offer. Nonprofit developers wanted as much clarity as possible between different roles (Qualified Nonprofits who act as the developers, Community Partners who do the outreach, and the City). Additionally, they sought a clear pathway for new developers to participate in COPA and smaller nonprofits wanted technical assistance so they could build capacity to participate.

Side/Stakeholder Meetings

In addition to TAC and SAC meetings, all participants were invited to contact Housing Department staff to discuss any additional feedback or questions or share proposals to the program. Housing Department staff also sought out meetings with certain stakeholders for deeper discussions of program details, sometime in preparation for, or in response to feedback received at a TAC or SAC meeting. Stakeholders with whom staff have met included industry professionals and representatives: realtors, brokers, small apartment building owners, small apartment building property managers, for-profit developers, lenders, community-based organizations, affordable housing developers, tenant advocates, community advocates, policy organizations, and leaders.

Response to Key Concerns

Housing Department staff presented and sought feedback on draft programmatic elements at each Anti-Displacement Working Group meeting. Questions and concerns raised guided the design and development of the draft COPA program proposal. A summary of changes or program design made in response to some of the key concerns raised:

Key Concern	Programmatic Element
Proposed timelines will create undue delay, and potentially cost sellers lost profits.	Staff underscore that most properties will only experience a 15-day delay because most properties will not receive a letter of intent, and the total delay for property owners that do receive a letter of intent will be a maximum of 40 days.
Owners will be forced to sell their properties for less than market value.	Process allows for QNP to express interest, submit an offer and match a subsequent offer. At their complete and absolute discretion, an owner can decline any offer and will be able to sell their property on the open market.
COPA could interfere with 1031 exchange timelines, thereby denying buyer/seller tax benefits.	Inclusion of strong language on QNPs collaboration with property owners in order to facilitate 1031 exchanges or other tax-advantaged transfer structuring and timelines
There are a lack of local tenant organizations to facilitate tenant and buyer ongoing relationship and operation.	Partnership model of acquisition and operation amongst QNP and community partner to provide local knowledge and support.

COPA transactions would result in displacement of current tenants due to income eligibility.	Existing residents would not be evicted from their units based on income if their income is outside of the program's target affordability restrictions.
COPA would not result in homeownership because of the large per family subsidies needed to make homeownership affordable to very low-income homebuyers.	Higher income range for COPA properties that are converted to homeownership opportunities - 60% to 120% of Area Median Income.
The program lacks sufficient protocols around tenant engagement and outreach to tenants regarding sale/purchase of their home.	Tenant involvement in transaction period and post-acquisition.

Housing Department staff hoped to strike a balance amongst stakeholders to develop a COPA program that eased concerns and offered solutions to displacement. Unfortunately, not all concerns were addressed, and many stakeholders were unable to negotiate their interests. Housing Department staff acknowledged that many were left unsatisfied with the proposal and continued the community engagement process, in the form of public meetings and a public review period, to draw out concerns and further refine the proposed program.

Phase II: Public Outreach (Summer 2021 - Spring 2022)

65 meetings were held, over 500 people participated, and 50 different organizations were represented.

Housing Department staff also made a concerted effort to reach residents that represent the demographics of the City of San José, including Vietnamese and Spanish speaking residents. In September of 2021, Housing Department staff tabled at a Moon Festival event held at Yerba Buena High School in San José. Approximately 60 people visited the booth. Visitors asked questions about the program and were provided information on how to track the COPA policy development progress. The Housing Department partnered with the organization Viet Unity to host a meeting on February 2, 2022, in Vietnamese, to present the draft COPA program and receive feedback.

Once the draft COPA program description was released on November 30, 2021, the Housing Department held open a public review period so that residents could provide feedback on the proposed program. The public review period ran from November 30, 2021 to February 1, 2022. The Housing Department notified 9,154 email recipients of the public comment period and public meetings. These recipients were subscribers to City email list servs including those for anti-displacement, general interest, rent registry landlords, affordable housing advocates and COPA interest lists. Email notifications were also sent to neighborhood leaders and prior meeting participants. Social media was also used to provide notification of the public comment period and public meetings.

During the public review period, a series of 7 public meetings were held to present the draft COPA program description and gather feedback. These meetings were similar in content and included an overview of the draft COPA program followed by time for questions and answers. Meeting presentations and recordings were posted the COPA webpage. Over 300 people attended a meeting, 192 of which had not attended a prior meeting. Meeting participants provided 228 questions or comments. Here is a summary of public meetings:

Meeting	Date	Topic
Public Meeting #1	12/08/2021	Draft COPA Program Overview and Q&A
Public Meeting #2	12/15/2021	Draft COPA Program Overview and Q&A
Public Meeting #3	1/7/2022	Draft COPA Program Overview and Q&A
Public Meeting #4	1/12/2022	Draft COPA Program Overview and Q&A
Public Meeting #5	1/24/2022	Draft COPA Program Overview and Q&A
Public Meeting #6	1/26/2022	Draft COPA Program Overview and Q&A
Public Meeting #7 in Vietnamese	2/9/2022	Draft COPA Program Overview and Q&A

Key Takeaways

- Concerns regarding the oversight of QNPs including failure to operate properties adequately or default on loans.
- Concern that there will not be enough QNPs with capacity to purchase properties. Questions about alternate paths to qualification or alternative ownership models to increase likelihood more residents would be able to benefit from program.
- Concerns regarding the lack of clarity of institutional funding availability for property purchases and program operation.
- Concerns that emphasis on potential financial loss on property sales overshadows real world impacts of displacement on individuals, families and communities.
- Support for a program that preserves housing as cost effective compared to costs of building new housing.
- Support for a program that offers tenants at risk of displacement, the ability to stay in their homes, and the opportunity to own their home.

Phase III: Public Outreach (Spring 2022 – Spring 2023)

Following a hiatus in 2022 while staff were needed to work on the state-mandated Housing Element, the Housing Department updated the COPA website and FAQs in the fall of 2022. The Housing Department also resumed public outreach on COPA in November of 2022. Staff held five public meetings between November of 2022 and February of 2023 to present the revised draft program and solicit feedback. These meetings were attended by 270 people. During this period, 8 people emailed the department, 132 questions/comments were received during meetings, and 1 comment letter was received. Email notices were sent to 5,274 recipients.

The chart below summarizes key concerns that Staff heard during Phases II and III of public outreach and revisions to the draft COPA program that were made in response.

Key Concern	Programmatic Element
Proposed letter of intent and offer timelines will create undue delay and burden on property owners.	City will create a web interface for property owners to notify QNPs; the same interface will allow QNPs to specify which property types that they're interested in and will automatically notify property owners if there are no QNPs interested in their property type, potentially reducing the letter of intent period to fewer than 15 days for some property owners.
Qualified nonprofits, which must use structured financing to close deals, need more than 60 days to close escrow.	Closing period revised from 60 to 120 days for 2- to 4- unit properties, and from 100-120 properties for all other properties.
Property owners who are unlikely to ever get an offer from a qualified nonprofit are going to be unnecessarily required to observe COPA waiting periods.	Applicability revised to exclude properties which have been built in the last 15 years, which are likely to be more expensive and therefore less attractive to qualified nonprofits
There are contingencies under which a property owner may need to sell their property very quickly if they need cash immediately.	Applicability revised to exclude properties with 2- to 4- units if the property owner has a medical need with documented expenses that require them to sell the property
Tenants may not know that their property is about to be purchased by a qualified nonprofit housing provider, limiting their involvement and knowledge of the acquisition process.	Property owners required to notify tenants of their intent to sell at the same time as they notify qualified nonprofits. Tenants also to be informed of their rights in the event of a change of ownership, both to nonprofit or for-profit buyer.

ATTACHMENT E – CONSULTANT SUMMARY OF COPA WORKING GROUP

This attachment contains the executive summary of a consultant report on the two Anti-Displacement Working Groups. The full consultant report can be found on the Housing Department's COPA Webpage.[31]

SUMMARY
Community Opportunity to Purchase Advisory Committees Meetings
1/25/2022

1. Executive Summary

In 2020, San José's City Council charged the Housing Department with developing a Community Opportunity to Purchase proposal that would give qualified nonprofit organizations the right to make an initial offer and the right of final offer to purchase certain residential properties that come up for sale in the city. The goal of the proposal is to prevent tenant displacement and promote the creation and preservation of affordable rental housing.

In response, city staff applied to the Partnership for the Bay's Future to have a fellow, Mr. Aboubacar "Asn" Ndiaye, help develop the program. The city also released a Request for Proposals and hired Baird + Driskell Community Planning to facilitate the community engagement process.

The city formed an Anti-Displacement Working Group to gather feedback from stakeholders and residents. The Anti-Displacement Working Group consisted of two subgroups, both of which met monthly via Zoom. The groups were:

1. Stakeholder Advisory Committee (SAC) – 7 meetings. The SAC is a broad and diverse group, open to all, that includes stakeholders from the public as well as those with expertise in housing policy and real estate. Most SAC invitees had expressed interest in the city's Anti-Displacement work or had attended previous outreach events. All SAC meetings offered interpretation in Spanish and Vietnamese.

2. Technical Advisory Committee (TAC) – 9 meetings. The TAC is a smaller group of subject matter experts representing relevant stakeholders, and dove more deeply into the details necessary for designing the program. Group members were invited based on the depth and diversity of their experiences and the constituencies they represented.

At each meeting, staff presented components or parts of the policy, provided examples of sample practices from other cities, and offered San José-specific data to ground it in the local context. After the presentation, participants offered input.

[31] https://www.sanjoseca.gov/home/showpublisheddocument/91743/638031643187570000

Almost 170 people participated in the meetings and attendance was diverse. The Working Group included community members and leaders from all council districts across the city and included voices of those who will be directly impacted by the policy: apartment owners, tenants, housing providers, developers, realtors, and housing advocates. Attendees were approximately evenly split between owners and renters and evenly distributed in age ranges. City staff tracked who attended the meetings and also who commented, ensuring participation by all interest groups.

Originally, the TAC was intended to develop policy recommendations to then present to the SAC for additional feedback. It became clear early on that the group was unlikely to reach consensus, so the facilitators sought to gather the range of opinions and understand the interests of all parties.

Key Takeaways

Generally, building owners or their representatives wanted to make sure that the program did not adversely affect the private housing market and caused as little burden as possible. Landlords helped city staff understand the complexity of the market, including its fast pace. One of their biggest concerns was that a slow timeline would prevent owners from selling quickly, while the market is hot. They also wanted as much certainty in the process as possible, articulating a concern about nonprofits expressing interest but not being able to complete the purchase and the potential for tenants disrupting the transaction process. Real estate industry representatives were apprehensive about including small properties in the program (e.g., 1-4 units). They pointed out small buildings sell quickly and are more likely to be owned by landlords with fewer properties. Small-time landlords often do not know the rules in as much detail as larger landlords and there are fewer avenues to educate them. Overall, while many real estate representatives may still have opposed the program, they also voiced support for home ownership opportunities through the program and some saw the Community Opportunity to Purchase Act (COPA) as a way for interested owners to sell their properties and work with their tenants to protect affordability in the long run.

Representatives of low-income renters were generally positive about the program and excited about its potential impact. They felt it gave their communities hope for stability and possible homeownership. They have suffered from housing insecurity and displacement and want the program to apply to as many homes as possible. They prefer to include investor-owned single-family homes as well as duplexes, in addition to larger buildings. Tenants and their advocates felt it was important that income targets are set low enough to better reflect the varying incomes in the city, which would benefit as many at-risk residents as possible. Tenant advocates wanted to ensure that nonprofits were responsive to the community and that the program supported tenant organizing and empowerment. They also advocated for appropriate organizational and capacity-building support for community partners to eventually become qualified nonprofits.

Nonprofit developers talked about the need for funding to make the program a possibility. They also asked for clear policies and procedures to align the program with their missions and business models. Generally, developers discussed the need for a timeline that allowed them to do their due diligence and present to their Boards of Directors before making an offer. Nonprofit developers wanted as much clarity as possible between different roles (Qualified Nonprofits who act as the developers, Community Partners who do the outreach, and the City). Additionally, they sought a clear pathway for new developers to participate in COPA and smaller nonprofits wanted technical assistance so they could build capacity to participate.
Links to meeting summaries are provided in the appendix.

ATTACHMENT F – Detailed Breakdown of QNP Activities by Phase in COPA Timeline

The table below presents a list of all activities that a QNP must conduct in order to successfully acquire a property and indicates during which phase of the COPA timeline each of these activities would be completed. Staff recommendations for each phase of the timeline have been made based on the understanding of the typical number of days that a QNP would need to complete each of these activities, weighing also how longer timelines could represent a more significant burden for property owners.

Phase	# of Days	QNP Activities

Statement of Interest Period
REQUIRED FOR ALL PROPERTIES COVERED UNDER COPA
	15	Assess interest in property
		• Initial assessment of property from address/listing including the following:
		    o Where is the property located? Is it in an area of interest/related to mission/vision of org? Relative location to other properties owned by QNP?
		    o QNP talks to their broker
		    o Look at comparable sales, publicly available information about site and neighborhood
		    o Windshield survey of site and neighborhood
		    o Talk to potential community partners about interest in property
		    o Talk to any known community stakeholders
		    o Who lives in the property/neighborhood? Are these populations in alignment with the organization's target service populations?
		• Run initial financial feasibility (multiple scenarios, phased through acquisition, holding, and permanent)
		• Internal decision with organizational leadership about whether to pursue the property and whether staff have the bandwidth and organizational resources to take it on
		
		If interested in property
		• Initiate conversations with potential acquisition lenders, assess availability of funds, timeline for application process
		• Initiate conversation with City, other potential perm funders about timing and availability of funds
		• Contact potential vendors for due diligence, ask for bids/estimates, line up availability
		• Initiate Board of Directors approval process to submit offer
		• Draft and submit *letter of interest*

<u>Offer Period</u> **Required ONLY IF a QNP submits *Letter of Interest***	25	<u>Submitting an offer</u> • Get Board of Directors approval to submit offer • QNP's broker to draft offer • Negotiations and counteroffers as appropriate <u>Due diligence</u> • Select vendors for due diligence, confirm availability and have everything ready to go if offer accepted • Community partner to initiate outreach to tenants <u>Apply for acquisition funding</u> • Select acquisition lender, reconfirm their interest, keep them updated, make sure that they are ready to go if offer is accepted • Begin preparing loan application
<u>Closing Period</u> Applies ONLY IF Seller agrees to sell the property to the QNP	120	<u>Due diligence</u> • Site access for due diligence vendors, including environmental assessment (Phase 1, LBP and asbestos) and physical needs assessment • Request any available rent rolls and property financial information • Walk site with contractor • Community partner meets with tenants, as available; inform tenants and collect tenant information, as appropriate • Vendors complete all reports • Update financial feasibility based upon updated property and tenant information <u>Apply for acquisition funding</u> • Submit loan application • Acquisition lender commissions appraisal • Lender completes internal review process, including underwriting of proposed project scenarios Note: 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.

ATTACHMENT G – CONSULTANT MEMORANDUM ON HOMEOWNERSHIP OPPORTUNITIES AND OPPORTUNITY TO PURCHASE ACTS

To: Kristen Clements and Josh Ishimatsu, City of San José
From: Rick Jacobus, Street Level Advisors
RE: COPA Ownership Strategies
Date: January 19, 2023

Executive Summary

Right to purchase policies are preservation strategies that promote the transfer of property ownership into the hands of tenants and/or affordable housing developers by enabling tenants to exercise a first right of purchase. One key question for right to purchase policies is the form of ownership that will result from the transfer. This memo outlines a number of potential legal and financial strategies for structuring tenant ownership/tenant control of existing buildings. The memo outlines concerns and considerations related to each model and recommends that San José plan to support a range of models under different circumstances as no one model is appropriate for every case. The following table provides a high level summary of the models considered.

Ownership Model	Description	Advantages	Concerns/Challenges
COPA Rentals	City-approved nonprofit agencies purchase and manage buildings as permanently affordable rental housing.	Faster transactions, no need to create new resident ownership structure, ability to leverage outside housing funding.	Lack of tenant asset building and resident control over management, difficulty finding nonprofits willing to own small buildings, high cost of buildings and need for significant renovations.
Limited Equity Housing Cooperatives (LEHC)	Tenants form a democratically controlled cooperative corporation that owns the building.	Homeownership opportunities for low-income families and individuals, resident control over housing quality and conditions, ability to build equity.	Need for leadership development and ongoing oversight of coops, lack of access to Low-income Housing Tax Credit Financing. Co-op formation can take 2-5 years even when residents have professional support.

Below Market Rate (BMR) Condos	Tenants buy their own unit individually as condominiums.	Providing a familiar form of homeownership, resident control over housing quality and conditions, opportunity to build equity through mortgage paydown and appreciation.	Need for lengthy regulatory approval through the California Department of Real Estate, need for individual residents to qualify for a mortgage, required building inspections can trigger unexpected costly repairs.
Tenants in Common (TIC)	Residents share ownership of the whole building and share responsibility for joint mortgage.	Ability to be set up quickly with no new corporation or subdivision map, security of housing and housing costs over the long term, resident control over housing quality and conditions, opportunity to build equity.	Difficulty for residents to qualify for TIC mortgage, residents responsible for each other's mortgage payments, won't work with LIHTC or most other affordable housing funding programs.
Community Land Trust (CLT)	A nonprofit organization holds ownership of buildings on behalf of tenants with some degree of resident involvement in management.	Ability to retain affordability of housing over time, some degree of resident control over housing quality and conditions.	Residents don't have legal ownership or generally build equity. Many residents are not interested in participating in management.
Permanent Real Estate Cooperative (PREC)	Multi-building corporation formed to provide homeownership like experience but with access to Direct Public Offering financing.	Providing a sense of ownership, resident control over housing quality and conditions, opportunity to build equity through ownership of shares in PREC	Very new model, relatively untested Requires creation of new PREC corporation. Complex securities regulation for Direct Public Offering to investors.

COPA Rentals

This approach involves city-approved nonprofit housing agencies purchasing buildings and managing them as permanently affordable rental housing. Some advantages of this option include faster transactions, no need to create a new resident ownership structure, and the ability to leverage outside housing funding. However, some limitations include the lack of tenant asset building and resident control over management, as well as the difficulty of finding nonprofits willing to own small buildings. These structures are typically financed through a combination of bank loans and public subsidies, but the high cost of buildings in California and the need for significant renovations can make it challenging for nonprofits to purchase buildings without significant public subsidy.

Limited Equity Housing Cooperatives (LEHC)

Cooperatives offer another option for tenant ownership of buildings purchased with City funding. In this structure, tenants form a democratically controlled cooperative corporation that owns the building. Advantages of this option include homeownership opportunities for low-income families and individuals, resident control over housing quality and conditions, and the ability to build equity through mortgage paydown and appreciation. However, disadvantages include the need for leadership development and ongoing oversight of coops. The building is financed through bank loans and public affordable housing subsidies, and in practice, LEHCs often require more subsidy from local sources in order to serve lower income residents, due to the lack of access to federal Low-income Housing Tax Credits.

Below Market Rate (BMR) Condos
In this structure, tenants each buy their own unit individually. Advantages of this option include providing a familiar form of homeownership, resident control over housing quality and conditions, and the opportunity to build equity through mortgage paydown and appreciation. However, disadvantages include the need for lengthy regulatory approval through the California Department of Real Estate, the need for individual residents to qualify for an individual mortgage, and that required building inspections can trigger unexpected costly repairs. In this model, the building is financed through individual mortgages and the city can restrict equity/preserve affordability through deed restrictions if appropriate.

Tenants in Common (TIC)
Under a Tenants in Common (TIC) structure, residents share ownership of the whole building and share responsibility for joint mortgage. Advantages of this option include the ability to be set up quickly with no new corporation or subdivision map, security of housing and housing costs over the long term, resident control over housing quality and conditions, and the opportunity to build equity through mortgage paydown and appreciation. However, disadvantages include difficulty for residents to qualify for TIC mortgage, residents responsible for each other's mortgage payments, and it won't work with LIHTC or most other affordable housing funding programs. The city can restrict equity/preserve affordability through deed restrictions if appropriate. TICs have been popular in San Francisco and Berkeley where local regulations limit the number of buildings that can convert to condominium ownership, but TICs lack some of the features that provide protection to residents and to their lenders, and buyers pay higher mortgage rates.

Hybrid Models

Two newer models offer residents an enhanced 'sense of ownership' under structures that are legally still rental housing.

A **Community Land Trust (CLT)** is a nonprofit organization that holds land for long-term community use, including affordable housing. CLTs often own land under single-family homes but many CLTs also own and manage rental properties. These rentals can look and feel like any other nonprofit rental, or they can be set up to provide some of the feel of ownership. The San Francisco Community Land Trust is one of the 8 community organizations that have been certified by the City of San Francisco to participate in COPA purchases. The new South Bay Community Land Trust may be able to play a similar role in San José. The CLT is a membership organization with reserved seats on its board of directors for tenants, which provides some power to tenants who otherwise have no formal legal ownership rights. Residents in these buildings earn no equity.

A **Permanent Real Estate Cooperative (PREC)** is a new model that was created to provide an alternative to the Limited Equity Housing Cooperative. The model was designed to "simulate homeownership as closely as possible" while still offering a more centralized and easily financeable organizational structure. A PREC is incorporated as a consumer cooperative (like REI) but not as a LEHC under California law. This difference allows a PREC to include investor members who are not residents. The East Bay PREC sells shares for $1, which gives the investor a vote in the cooperative but no right to occupy a unit. The EB PREC also issue bonds to finance the purchase and rehabilitation of the property, and the bonds are backed by the rental income. The model is relatively untested and requires ongoing support for resident governance.

Recommendations

The report recommends building local capacity to support COPA transactions using several of the models explored. Depending on the building size and the tenant's financial capacity different approaches may be appropriate. The following table summarizes these recommendations.

Building Type	Approach	Description	Considerations
20+ Unit Buildings	Nonprofit rental with resident option to purchase.	City approved nonprofit developer purchases building and operates it as rental housing. Residents retain an option to purchase later as a LEHC under certain conditions for a specified period of time (ex. 5 years).	Allows for quick action to preserve affordable buildings; gives residents time to consider ownership options and organize a cooperative if they want; successfully preserves affordability whether or not residents later pursue ownership. Some potential nonprofit owners may choose to offer hybrid models that provide a greater sense of ownership.
20+ Unit Buildings	Limited Equity Housing Cooperative	Tenants form a co-op corporation and purchase the building. In rare circumstances with patient sellers, direct purchase by co-op may be possible but interim ownership by an approved nonprofit developer may be more common.	Residents can earn modest equity gains over time; residents can directly control building management, maintenance and monthly costs. City can ensure quality management by requiring a Land Trust or other nonprofit to play a permanent support/stewardship role and requiring use of an experienced property management firm.
4-19 unit buildings with low income (<60% AMI) tenants at high risk of displacement	Hybrid rental (CLT, PREC)	Nonprofit buys buildings and holds them for the benefit of the tenants, structures a program to offer many of the benefits of ownership under an otherwise rental arrangement.	Many experienced nonprofit sponsors are unwilling to own small rental properties because they may never pencil out financially. If an organization were to take this role on, some level of start-up or operating support would be necessary. Many of the low-income tenants at greatest risk of displacement are living in buildings of this type.

4-19 unit buildings – most tenants have strong credit and middle income (80-120% AMI)	Condo Conversion	While condo conversion will take longer than a typical market sale of a rental building, some sellers may be willing to wait in exchange for a higher price. The city could support these transactions by offering shared equity second loans to buyers with the amount based on their income.	For tenants who are in a position to obtain individual mortgages, condo conversion provides a path to traditional ownership and wealth building. City second loans could preserve affordability by recapturing a share of appreciation. For tenants that were unable to qualify/afford to purchase their building, relocation support would be necessary. Relocating more than a few tenants would be impractical due to the expense.
1-3 unit buildings – all tenants have strong credit and middle incomes (80-120% AMI)	Tenants-in-common with plan to convert to Condo.	Tenants would quickly form a TIC to purchase the property. After the initial purchase, residents would work with a lawyer to complete a condo conversion.	Provides an immediate path to ownership for the somewhat rare building where the residents would all meet lending criteria. Allows eventual conversion to more traditional (and appropriate) form of ownership.

Additional Recommendations – Capacity building and financing

Developing a COPA policy alone will not be sufficient to support building conversions. The City will need to provide targeted capacity building grants as well as project financing for properties that preserve affordable housing. The following table summarizes these recommendations.

Recommendations	Description
Preservation Project Predevelopment Funding	Issue an RFP to select one or more local nonprofits to receive multi-year contracts for staffing the conversion process and conducting predevelopment activities. This includes hiring experienced real estate developers for evaluating the feasibility of purchasing eligible properties and providing tenant outreach, education and organizing support.
Tenant Support and Organizing	Any of the ownership models will require significant time engaging with tenants individually and in groups prior to purchase. To build adequate capacity, the City will need to enter into a multi-year contract with one or more community-based nonprofits.
Small Project Stewardship Support	Develop alternative mechanisms to provide supplemental funding for property and asset management, tenant support, and ongoing monitoring of smaller buildings. This includes budgeting for stewardship, providing a fixed per-unit conversion fee for successful conversions, and setting aside funding for direct operating grants for qualifying nonprofits.

Opportunity To Purchase Policies

Right to purchase policies are preservation strategies that promote the transfer of property ownership into the hands of tenants and/or affordable housing developers by enabling tenants to exercise a first right of purchase. The process is generally as follows: landlords intending to sell multifamily housing are required to give prescribed notice to tenants, and then allow a specified amount of time for tenants to express interest, make an offer, and secure funding.

One key question for right to purchase policies is the form of ownership that will result from the transfer. Washington DC's Tenant Opportunity to Purchase (TOPA) policy was adopted in 1980 and provides multiple paths to homeownership for building residents. The majority of TOPA purchases have involved conversion of buildings into Limited Equity Housing Cooperatives, but other DC tenants have purchased their buildings as condominiums either with or without affordability restrictions. DC's program also allows tenants to vote to designate a nonprofit or for-profit developer to purchase their building and continue to operate it as rental housing.

The process of creating cooperatives or condominium ownership structures adds significant time and risk to the process of purchasing multi-family properties (which would be challenging enough in any event). As a result, when San Francisco adopted its Community Opportunity to Purchase (COPA) legislation in 2019, they focused on direct purchase by approved community-based nonprofit organizations. Under COPA, a set of pre-qualified nonprofits (with or without the support of building tenants) are given the option to make a first offer on multi-family buildings before they are sold on the market. San Francisco has provided critical operating support for staffing at several nonprofit organizations and has created financing tools to enable these organizations to undertake quick transactions. As a result, nonprofits have used COPA to acquire dozens of buildings, but none have been tenant led and none, so far, are likely to result in homeownership for residents.

As San José explores development of a COPA policy, it would like to plan a pathway to homeownership for at least some properties. This memo outlines several alternative ownership models which could be implemented as part of COPA. This report is not intended to serve as a feasibility study. Each of the models described below involve significant financial and legal constraints which will limit their applicability. This memo provides a high level summary of some of those constraints but, if the city decides to pursue any of these paths to ownership, it would make sense to develop more detailed financial feasibility projections and to work with lenders and other stakeholders to outline, in more detail, the likely financing gaps.

COPA Rental Structures

First, it is worth noting some of the benefits and limitations of the rental options for comparison.

A. Non-profit rental

City approved nonprofit housing agencies purchase buildings and manage them as permanently affordable rental housing.

Advantages:	**Disadvantages/challenges:**
• Relies on existing nonprofit capacity • generally faster transactions • relies on existing financing programs • Does not require creating new resident ownership structure • Ability to leverage outside housing funding (eventually) • Reliable asset management and capital needs planning	• No tenant asset building • No resident control over management • Hard to find nonprofits willing to own small buildings

Who owns the buildings?
Under San Francisco's COPA, the City, through a public application process, designated 8 community-based nonprofit organizations which may receive notices from property owners and have the opportunity to negotiate purchases prior to market sales of multi-family buildings. These buildings, like nonprofit owned buildings acquired under DC's TOPA program, are generally purchased by an LLC created and controlled by a 501(c)3 sponsor. The sponsor will typically be a locally controlled nonprofit led by a racially diverse board of directors including representatives from low-income communities.

How are they financed?
In each building, existing tenant rents will be used to support a bank loan. The amount of money that can be borrowed is dependent on the level of the rents. The higher the rents, the more money is available each month for loan payments which enables the building owner to borrow a larger loan. Because this is true for any buyer of an apartment building, the sales price for a building will generally correspond to the level of rents. It might be possible (and there appear to have been examples in DC) for a nonprofit to purchase a building without any public subsidy, relying almost exclusively on rents to support a private mortgage large enough to finance the whole purchase.

However, in practice, this is unlikely for three reasons. First, multi-family buildings in California are typically selling for prices well in excess of what would be suggested by the current rents. When a private buyer pays more than today's rents can support, this is because they expect that they will be able to either significantly increase rents on the current tenants or successfully evict those tenants. This 'eviction premium' can be very significant in gentrifying communities. A nonprofit purchasing a building with no intention to raise rents or evict tenants generally can't pay the market price without significant public subsidy. Second, the current rents may be unsustainably high for some vulnerable tenants and a nonprofit purchaser may find it necessary to lower some rents to reduce rent burdens. Third, lower rent apartment buildings often suffer from very significant deferred maintenance. Many buyers will plan to fully renovate a building after purchase. For a speculative buyer, a big renovation only helps with increasing rents and turning over tenants. But for a nonprofit attempting to stabilize existing tenants, paying for renovations can be a major challenge.

As a result, nonprofit TOPA/COPA purchases typically require several sources of public subsidy in addition to a bank mortgage. In San Francisco, this funding has come almost exclusively from the city's Small Sites Program. In DC it comes from the City's Housing Trust Fund. San Francisco has been investing in excess of $300,000 per unit preserved. In DC, the costs are lower but still generally higher than the amount that DC invests into new construction of affordable housing units.

For larger buildings, nonprofit ownership creates an opportunity to access Low-income Housing Tax Credits (LIHTC). This is the most significant federal affordable housing subsidy program and, for eligible projects, can provide more than half of the cost of a project. Using tax credits, significantly reduces the amount of funding needed from local government – allowing a city to support more units. However, the LIHTC program is complex and generally competitive and it is very hard to use in preservation projects and only possible to use in larger properties. Even for projects where LIHTC would be appropriate, tax credits can't be secured quickly enough for TOPA/COPA transactions. In DC, however, a number of TOPA projects have been initially financed with entirely local funds and then refinanced several years later with LIHTC financing. Often TOPA buildings require significant renovation, and this strategy often involves a nonprofit buying the building and operating it without renovation while pursuing tax credit refinancing to repay some of the initial city funding and pay for renovations. For larger properties, this is the most efficient strategy for managing limited city subsidy funds. But it does not offer tenants any ownership opportunity.

How do tenants benefit?

For tenants, the primary benefits are stable housing and limited rent increases. Tenants generally have little say in management of nonprofit housing. Tenants generally have no equity or asset building opportunities in these buildings but it is worth noting that living in stable housing with below market rents often provides tenants with the opportunity to build assets through other means including by saving money that would have otherwise gone to rent.

How are properties managed?

Nonprofit buildings are generally managed by third party property management firms. Generally, each building requires an on-site resident manager who lives in one of the building units.

Nonprofits have struggled to adapt this management structure for small buildings. Scattered smaller buildings are more difficult and more expensive to manage. Many of California's most experienced housing nonprofits started out developing small rental properties but have stopped pursuing smaller properties because of the management issues. A small building may require as much management as a larger building but provide only a fraction of the revenue to pay for management. San Francisco's Small Sites Program has been led by community-based nonprofits with only limited property management experience. The larger nonprofits that manage the great majority of the City's affordable housing have, so far, declined to participate in Small Sites development.

What about For Profit rentals?
DC's TOPA policy also allows tenants to vote to designate a for-profit buyer to complete the purchase on their behalf. DC tenant advocates point out that this provision has been used by real estate investors seeking an advantage in purchasing buildings for speculative ownership. Private purchasers have paid tenants for their votes, purchased buildings and in some cases, later evicted the tenants or dramatically raised their rents. In some cases, tenants may have been misled but in others, tenants have clearly understood that they were being paid to 'buy out' their rights in their buildings. A 2012 report states that most tenants have received payments of around $20,000 but some have received as much as $100,000. While this outcome is clearly contrary to the intent of TOPA, it is worth noting that, for some tenants, this may be a very desirable outcome. While it offers no long-term benefit for future tenants, the policy treats current tenants as if they were, in some sense, owners already, allowing them to reap some of the immediate profits from development.

Ownership Structures

B. Limited Equity Cooperative

Tenants form a democratically controlled cooperative corporation which owns the building.

Advantages:	Disadvantages/challenges:
• Homeownership opportunities to families and individuals with incomes far below the cut off for other homeownership programs • Does not require owners to qualify for individual mortgages • Security of housing and housing costs over the long term • Resident control over housing quality and conditions • Opportunity to build equity through mortgage paydown and (limited) appreciation	• Incorporation and resident leadership development take months or years • Requires new local capacity for leadership development and ongoing oversight of coops • Coops have sometimes struggled with long term asset management and capital needs planning • No access to Low-income Housing Tax Credit Financing

A Limited Equity Housing Cooperative (LEHC) provides a legal mechanism through which tenants can share ownership of a multi-family apartment building without each resident individually obtaining a mortgage. Instead, the tenants buy shares in a cooperative corporation and the corporation buys and finances the building. Resident owners can sell their co-op shares when they move and earn limited appreciation. In addition, co-op residents who itemize their tax returns can deduct their share of property taxes and insurance.

Perhaps the primary financial benefit for co-op residents comes in the form of control over rents. Co-op residents are often able to benefit from fixed mortgage costs to ensure that rents don't rise with inflation and sometimes actually decline. For example, Dos Pinos is a 60-unit co-op built in 1985 in Davis. The co-op was developed without affordable housing subsidies and, when it opened, monthly costs in the co-op were similar to and even higher than comparable rents for nearby apartments. The Dos Pinos Board of Directors (all residents) has prioritized keeping the monthly carrying charges as low as practical while still maintaining the property. As a result, Dos Pinos residents today pay less than half of what nearby apartments cost. Shares in Dos Pinos cost around $33,000 but because the monthly costs are so low, the co-op manages to provide housing for many Very Low-Income residents.

How would a building be financed?

Limited Equity Housing Co-ops are generally able to obtain bank loans like other owners of apartment buildings. However, a co-op targeting low-income tenants would have limited monthly cash flow which would limit the size of any mortgage. LEHCs can generally access most sources of public affordable housing subsidy, however, because a Co-op is owned by its residents and not investors, it is not able to benefit from Low-income Housing Tax Credit financing. This means that a LEHC will generally require more subsidy from local sources in order to serve lower income residents.

HUD offers a mortgage guarantee program specifically for cooperatives (Section 213) but in the current environment the program may not be cost effective.

Washington DC has supported the creation of more than 4,400 LEHC units in 99 buildings.[32] but coop advocates point out that the TOPA legislation alone could not have generated this result. It was not until DC established its Housing Production Trust Fund about 10 years after adoption of TOPA that coop development became practical. DC's trust fund has provided the level of local subsidy necessary to make co-ops feasible without access to federal Low-income Housing Tax Credits. DC has been investing roughly $10 to 25 million per year in Trust Fund resources for TOPA projects. In recent years, however, as housing costs have risen and competition for scarce trust fund resources has increased, the city has been financing fewer coop projects in part because they can serve more low-income residents by investing in LIHTC funded projects. And in fact, as prior TOPA Cooperatives have been undergoing refinancing, quite a few have converted to nonprofit rentals specifically in order to access Low-income Housing Tax Credits to fund renovations without increasing tenant rents.[33]

How would a building be managed?

Most co-ops are professionally managed by a private property management company like any other apartment building. If the City were to provide public subsidy, they could require professional management as a loan condition.

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[32] https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf

[33] https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf

How would the co-op be governed?
Cooperatives are democratically governed by a Board of Directors directly elected by residents. Having final say over the key decisions that affect your housing is clearly a benefit of cooperative ownership and every cooperative must invest in building and sustaining resident leadership in order to support governance of the co-op. Some co-ops put a lot of energy into this effort in hopes that residents will participate in all day-to-day decisions or even self-management. But not all tenants have a strong interest in spending time participating in the details of operations – particularly when things are going well. For larger buildings with professional property management companies, co-op properties end up operating very much like other rental properties. A 2002 study by the California Coalition for Rural Housing found that residents in California farmworker housing placed a high value on co-op ownership even though many reported that they did not feel that they had direct control over decisions. Participation in management is important, but shouldn't be seen as the primary benefit of cooperative ownership.

Who would provide start up support and long-term oversight?
To ensure long-term success in resident governance, it is critical that the Co-op have access to initial and ongoing training and board support. There have been a number of co-ops that have run into serious ongoing management or governance problems. Some co-ops have failed to undertake necessary long term building maintenance. Others have struggled with internal conflict between residents. Some degree of ongoing support can help avoid these challenges. Some property management companies can provide governance support to co-op boards. Other communities have contracted with affordable housing nonprofits or Community Land Trusts to support local cooperatives.

Washington D.C. funds the equivalent of 8 FTE staff to provide direct outreach and resident organizing support under TOPA. This level of staffing support provides assistance for 30 transactions per year.[34] In addition, DC provides operating support grants to several nonprofit organizations that provide tenant support and legal assistance for both start up and ongoing operations of co-ops.

Across the country, many Communities Land Trusts (CLTs) have taken on support and oversight of Limited Equity Cooperatives. The CLTs are generally nonprofit organizations operating multiple housing programs with a neighborhood, citywide or even regional footprint. The CLT retains ownership of the land under the cooperative as a means to protecting the long-term community interest and securing long term affordability but sells or leases the building to the cooperative. The co-op manages the building independently, but the CLT plays a long-term support and oversight role so that co-op residents are not entirely on their own.

What about tenants that don't want to buy?

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[34] Staff report for Berkeley TOPA Proposal. https://www.berkeleyside.org/wp-content/uploads/2020/03/2020-03-05-Agenda-Packet-Land-Use.pdf

If share prices are set too high, some tenants may be unable to afford their share purchase. State law requires that the majority of tenants in a building purchase shares in the coop at the time of conversion but allows for some units to be occupied by renters who are not members of the cooperative.

How much equity could residents earn?
California's Limited Equity Housing Cooperative law limits the rate of share price appreciation to no more than 10% annually and initial share prices cannot exceed 3% of the value of a unit. This limitation means that if share prices are set at very low rates initially, then the equity building that is available to residents will also be fairly low.

Some older cooperatives were organized with resale prices tied to the gradual repayment of the cooperatives mortgage. The resale prices in these projects escalated very rapidly especially during the later years of mortgage repayment and often rose beyond the means of low-income residents.

How would share purchases be financed?
Low-income tenants will find it difficult to come up with the funds to purchase a share in the co-op. Many co-ops have addressed this by offering loans to help members buy their shares. But these loans increase the monthly costs that those tenants face.

For example, if share prices were set at $20,000 and buyers were expected to invest $500 and borrow the rest from a credit union or similar institution at 5% interest over 5 years, the monthly share loan payment would be almost $370. Lowering the initial share price can make the co-op more accessible. At $3,000 per share the payment would be $47 per month. However, it may be difficult to find a lender willing to manage loans this small. And, importantly, the lower the initial share, the less share price appreciation will accrue to owners. If shares increase at 2% annually, a $3,000 share would increase to only $3,650 after 10 years.

One strategy for partially overcoming this barrier is a 'matched savings' grant program. For example, the Federal Home Loan Bank's WISH and IDEA programs provide 4 to 1 matching grants to low-income first-time homebuyers who save money for homeownership. Generally, the owners save money and receive the match before they buy a house. But the programs can also be used to underwrite the purchase of LEHC shares by tenants who have already moved into a co-op. Grants can be up to $22,000 per family and, at that level, would require $5,500 in savings from the tenant. A co-op could require a low initial investment (say $500) and then a monthly contribution to a share account (say $40 per month) over and above the co-op carrying charges (rent). At this rate, the tenant would pay off their portion of the share price over 10 years and would receive the matching grant. **If the share price were to appreciate at a rate of 2%, then at the end of 10 years, the tenant would own an asset valued at $33,500.** This kind of program could be developed with more flexible rules with grant support from a corporate or philanthropic sponsor. However, the program requires ongoing access to this grant funding for each new buyer or else the share prices will be prohibitively expensive for lower income buyers.

Is it possible to transition later to co-op ownership?
It is possible for buildings to be purchased initially by a nonprofit partner and held for the benefit of the tenants with the option for a later transition to legal tenant ownership. Vermont enacted a Tenant Right to Purchase law for Mobile Home Parks in the 1980s and a number of parks were purchased by nonprofits and held for several years while residents organized cooperatives and arranged financing needed to purchase the parks directly. Several Community Land Trusts in the Bay Area have pursued this approach to cooperative development with the CLT buying the building and allowing the residents to play a role in management as if they were owners while working toward the possibility of eventual sale to a Limited Equity Housing Cooperative. However, very few of these properties have ultimately converted to LEHC. The challenges of conversion are significant and the incentives to convert after the immediate threat of displacement has been removed are limited. One could see this lack of conversion as a failure, but it could also be seen as a success. As long as the CLTs provide adequate management and limit rent increases, tenants may lack motivation to convert to full ownership and lenders and public partners may be reluctant to prioritize these projects. The potential for future conversion provides a measure of resident accountability to the CLTs as nonprofit landlords without all of the expense and risk associated with a full conversion.

It would be possible to structure a COPA program to rely on immediate purchase by nonprofits that are prepared to hold the properties for the long term while providing tenants with an additional measure of power and control by enabling them to vote to convert to co-op at some point in the future. It would be common for a co-op conversion to take 2-5 years for residents to complete with adequate support. This would require some degree of additional oversight from the City but would require far less infrastructure than would be necessary if the buildings were set up as co-ops initially.

C. Below Market Rate (BMR) Condo

Tenants each buy their own unit individually.

Advantages:	Disadvantages/challenges:
• Provides a familiar form of homeownership • Security of housing and housing costs over the long term • Resident control over housing quality and conditions • Opportunity to build equity through mortgage paydown and appreciation • City can restrict equity/preserve affordability through deed restrictions if appropriate	• Requires lengthy regulatory approval through CA Dept. of Real Estate • Creation of Home Owners Association can take months • Each resident must qualify for an individual mortgage • Required building inspection can trigger unexpected costly repairs • Condos have sometimes struggled with long term asset management and capital needs planning • No access to Low-income Housing Tax Credit Financing • Few other affordable housing programs will fund condos

Condominiums are the most common form of shared ownership for multi-family housing. When an apartment building is converted to condominium ownership, the owner must file a subdivision map and associated legal documents with the California Department of Real estate. Once approved, the individual apartments in the building become separate pieces of real estate which can be bought and sold and financed individually. In a condo conversion, each tenant would find their own lender. If one tenant failed to pay their mortgage, their lender could foreclose on just their unit without impacting the financing of other tenants.

As with LEHC, forming a condominium can take months (or longer). Forming a condo to purchase a building under COPA will require considerable patience on the part of the seller. Nonetheless, this has happened several times in DC. Some sellers may be willing to wait for condo formation in exchange for a potentially higher price.

What about building conditions/Fire standards?
San José's Condo conversion regulations require potential upgrades to sound proofing and compliance with the building code and fire regulations that were in effect at the time the building was constructed (not at the time of conversion). State law also requires that buildings comply with fire codes but doesn't require buildings to be upgraded the most recent code. However, it is not uncommon for major renovations conducted at the time of conversion to trigger a need for fire code updates which can sometimes be prohibitively expensive. The City does require sound insulation and separate electrical meters at the time of conversion for most buildings.

And even compliance with the building code in effect at the time a building was erected can pose a significant barrier to condo conversion for some buildings. Section 20.170.310 of the city's condo conversion ordinance requires a building inspection and correction of any identified deficiencies prior to proceeding with conversion. It is not uncommon for this kind of inspection to identify significant life safety concerns due to maintenance issues or work that has been performed without a building permit over the years. A key issue relates to the timing of this building inspection. It is often possible to sell a rental property that suffers from significant building code compliance issues. Ideally potential purchasers would conduct their own inspection and identify potential deficiencies, but, in practice, many times these buyer inspections result in reductions to the price but not in work being performed to correct the deficiencies. Since there is no city inspection, there is no mechanism for enforcing code compliance. Because inspection is required for a condo conversion, the inspection creates a public record which generally creates a need to make repairs whether or not the condo conversion moves forward. This makes pursuing conversion risky for property owners. One response is to conduct a private inspection in order to evaluate potential compliance issues before deciding whether to pursue condo conversion and only initiating the City inspection once a clear path to conversion (including financing for any likely repairs) has been identified. But this results in a much slower sale process.

What about tenants who can't or won't buy?
It is likely that many small buildings would include some tenants who could qualify for mortgages and others who could not. In a market rate conversion, tenants with less strong credit might end up being evicted or relocated but that is not a positive outcome for a TOPA conversion. Even if the city provides subsidy to bring the loan amounts down to an affordable level, each tenant must have a relatively strong credit history, personal savings and have only a limited amount of other debt including credit cards and car loans. The lower the tenant's income the greater the likelihood that they would face financing challenges.

Condo conversion will work best if all existing tenants want to buy their units and are able to qualify for financing. California law allows creation of a condo unit with a tenant in place who continues to rent but, in the context of a COPA conversion, some third party would need to own and finance any unit that was not sold to the tenant. Theoretically, a local nonprofit could step into this role and, particularly with public subsidy, they might be able to finance a condo that was rented, but managing scattered individual rental condos would be challenging and there may be no local nonprofit willing to take this on. The presence of more than a very small number of rented condo units can also make it difficult or impossible to finance other units in a building due to lender rules. FHA, for example requires that at least 50% of units in any converted building be owner-occupied at the time of conversion.

This financing limitation may mean that condo conversion would only be feasible for a small subset of potential COPA properties. Smaller buildings and buildings occupied by higher income tenants would be more likely to qualify. If a local nonprofit was willing to manage scattered individual rental units, it would likely be possible to finance mixed ownership/rental buildings provided that the majority of units were owner-occupied. This strategy would greatly expand the number of possible condo conversion properties.

Allowing some residents to buy their units while others continue to rent could be beneficial (particularly if the tenants retained the option to purchase their units later). Mixed tenure would require a nonstandard (and presumably more costly) loan product for the nonprofit to finance the rented units. The City might be able to help build an organization's capacity to play this role and could help ensure access to an appropriate loan product.

How would buildings be managed?
Every condominium must have a Home Owners Association (HOA) which is governed by a board elected by owners. Most HOAs contract with property management firms to oversee building maintenance and other tasks. Some HOAs, particularly in small buildings, elect to self manage in order to save money. If the City were to provide public subsidy, they could require professional management as a loan condition.

Could long term affordability be preserved?
In DC, the TOPA program does not require any long-term affordability restrictions and several buildings have converted to market rate condominiums. However, when residents have required city subsidy to afford condo purchases, the city has recorded long term deed

restrictions which require that units remain owner occupied and that they resell at a below market price only to an income eligible buyer. While less effective in preserving long-term affordability, some cities use shared equity second mortgages to preserve affordability. One advantage of shared equity loans in this context would be that loans could be 'sized' based on each resident's financial need. In this way some residents in a building may be able to purchase with little or no public subsidy and retain most of the equity in their unit while others, who receive very deep levels of subsidy would be required to pass that public investment along to other lower income buyers when the sell – while still earning significant equity.

Who would provide start up support and long term oversight?
If San José were to provide subsidy to support below market rate (BMR) condos under COPA, the City could contract with a local nonprofit or legal services organization to provide assistance with the subdivision process. The City would need to develop educational material and possibly a training program for homeowners to ensure that they understand the process and any affordability restrictions. City staff would need to perform some level of ongoing monitoring to ensure ongoing affordability. As with the LEHC model, a Community Land Trust could be used as an intermediary to provide an additional level of ongoing support and oversight to 'steward' the long term affordability of BMR condos.

D. Tenants in Common

Residents share ownership of the whole building and share responsibility for joint mortgage

Advantages:	Disadvantages/challenges:
• Can be set up quickly. No new corporation or subdivision map • Security of housing and housing costs over the long term • Resident control over housing quality and conditions • Opportunity to build equity through mortgage paydown and appreciation • City can restrict equity/preserve affordability through deed restrictions if appropriate	• Difficult for residents to qualify for TIC mortgage • Residents responsible for each other's mortgage payments • Won't work with LIHTC or most other affordable housing funding programs

Tenants in Common (TIC) offers a different legal structure for groups of residents to co-own a building. TIC residents share full ownership of their building just like a couple might share ownership of a house. They each own part of the whole and neither can sell without the other's consent. TIC residents generally sign an agreement giving each resident exclusive access to one unit or another but, in fact, they each own a part of every unit. For very small properties (2-4 units?) TICs may offer an alternative to Condo conversion. They avoid many of the bureaucratic issues associated with Condo formation and don't require an ongoing Homeowners Association

(HOA). TICs have been popular in San Francisco and Berkeley where local regulations limit the number of buildings that can convert to condominium ownership.

However, condominium laws and regulations exist for good reason and TICs lack some of the features that provide protection to residents and to their lenders. The CA Department of Real Estate carefully regulates Condos to, among other things, ensure that HOAs set aside reserves for future maintenance expense. TIC owners are on their own and can find it difficult to force their co-owners to pay for needed capital improvements. Lenders treat TIC owners just like they would treat a couple sharing ownership of a single-family home. Each resident is fully liable for the whole loan which can create serious problems. When one resident is unable to pay their share of the mortgage, all residents face foreclosure. The key advantage of a condo structure is that each unit is legally separated, and each owner can pledge their individual unit as collateral for their individual mortgage. This makes the loans safer both for the bank and for the residents. As a result, TICs typically sell for 10-20% less than comparable condos and buyers pay higher mortgage rates. It can also be difficult for homebuyers to find banks willing to provide TIC mortgages for unrelated individuals sharing ownership of a multi-family building. The larger the number of unrelated co-owners, the greater these risks which has generally limited TICs to duplexes or triplexes.

There appears to be no experience with TIC conversions under a TOPA/COPA policy but it seems possible that, for very small buildings it would be possible to structure TIC purchases with the expectation that the building would convert to Condo ownership within a relatively short timeframe. In particular, if building financing were provided by a public agency or if a public agency were to provide a loan guarantee, temporary TIC ownership might make some conversions possible where condo conversion would be impractical given the timeframe for purchase and where nonprofit ownership could be impractical due to the property management challenges for very small buildings.

E. Hybrid Models: Ownership Like Experience

Community Land Trust Rental

Nonprofit CLT owns and finances building but develops structure for tenant governance

Advantages:	Disadvantages/challenges:
• Can be set up quickly. No new corporation or subdivision map • Security of housing and housing costs over the long term • Some degree of resident control over housing quality and conditions • Resident participation in governance of CLT provides additional 'sense of ownership'	• No resident opportunity to build equity • Requires ongoing support for resident governance • Challenging for CLT to staff property management of small buildings

A Community Land Trust (CLT) is a community-based nonprofit formed specifically for the purpose of holding land for long term community use including affordable housing. CLTs often own land under single family homes, selling the home to lower income residents and entering into 99-year ground leases which restrict the home resale price to maintain affordability. But CLTs also commonly play a similar stewardship role in multi-family buildings. In some cases, CLT hold land and then sell the buildings to their residents either as co-ops or BMR condos. In other cases, CLTs own and manage rental properties. CLT rentals can look and feel like any other nonprofit rental or they can be set up to provide some of the feel of ownership.

The San Francisco Community Land Trust is one of the 8 community organizations that have been certified by the City of San Francisco to participate in COPA purchases but to date they have not purchased any COPA properties. Prior to COPA, they did purchase several buildings through the City's Small Sites program. The Land Trust refers to these small properties as "co-ops" though none have formally been incorporated as cooperatives. The Land Trust owns the buildings as any other nonprofit owner would and enters into traditional leases with individual building tenants. The CLT is a membership organization with reserved seats on its board of directors for tenants. This direct democratic governance provides some power to tenants who otherwise have no formal legal ownership rights. Residents in these buildings earn no equity. However, the program is designed to feel like ownership by giving the informal association of tenants broad discretion to make the key decisions that impact their building and relying on them to perform limited self-management. Some of these properties are engaged in a process of preparing for eventual LEHC conversion while others have no plans for conversion. The new South Bay Community Land Trust may be able to play a similar role in San José.

Permanent Real Estate Cooperative

Multi-building corporation formed to provide homeownership like experience but with access to Direct Public Offering financing.

Advantages:	Disadvantages/challenges:
• Can be set up quickly. No new corporation or subdivision map • Security of housing and housing costs over the long term • Some equity gain over time • Possibly declining rents over time • Some degree of resident control over housing quality and conditions • Resident participation in governance of PREC provides additional 'sense of ownership'	• Very new model, relatively untested • Requires creation of new PREC corporation, new board, etc. • Complex securities regulation for Direct Public Offering to investors • Requires ongoing support for resident governance • Challenging for PREC to staff property management of small buildings

The Permanent Real Estate Cooperative (PREC) model was created by the Sustainable Economies Law Center and pioneered in practice by the East Bay Permanent Real Estate

Cooperative in West Oakland to provide an alternative to the Limited Equity Housing Cooperative. The model was designed to "simulate homeownership as closely as possible" while still offering a more centralized and easily financeable organizational structure. A PREC is incorporated as a consumer cooperative (like REI) but not as a LEHC under California law. This difference allows a PREC to include investor members who are not residents. EB PREC sells shares for $1,000 to individual investors through a Direct Public Offering (DPO) and provides very limited annual returns (less than 5%) to investors.

They use the money raised in this way to finance the purchase of housing and community real estate. Their first project was a 4 unit apartment building purchased with $100,000 of investor funds (along with other traditional public and private financing). The residents in PREC property are just members of the coop in the same way as other investor/members but they have special rights over management of their building. And just like purchases at REI qualify members for a patronage refund each year, PREC tenants earn a refund each year based on their rent payments (assuming that the building is profitable). These refunds are held in an account for residents and can be paid out when a resident moves out – providing a form of limited asset building – possibly comparable to the returns from a LEHC.

But possibly more importantly for tenants, the PREC model proposes a new kind of lease which they call a "diminishing rent lease" which, they claim, will reduce rents over time as a building's mortgage is paid off. This declining rent is one of the biggest financial differences between LEHC and nonprofit rental properties. In most nonprofit buildings, rents generally rise with inflation, even when mortgages are paid down. Any extra income is generally used to fund building reserves, or to fund organizational sustainability for the sponsoring nonprofit – which ultimately helps provide affordable housing to other tenants. But in most co-ops resident boards do everything in their power to keep monthly charges low so that initially below market rents often get much lower over time. It remains to be seen whether the PREC model will deliver on this promise. The board of a PREC that owns multiple buildings may be reluctant to lower already low rents in one building even as they face unexpected expenses in another. But, the model shows that the elements of homeownership can be pulled apart and it is possible to offer many of the benefits without all of the organizational overhead of a LEHC.

Recommendations:

Larger buildings:

For buildings with 20 or more units, conversion to LEHC seems like the best way to offer homeownership. These buildings will also be the most attractive to non-profit rental operators. The city should plan for two potential paths:

> **Direct to Coop:** Because of the uncertainties and challenges with later conversion, it would be simpler to create cooperatives at the time of initial purchase. However, it typically takes many months to a year or more for residents to organize an effective association, negotiate purchase, arrange financing and form a legal cooperative

corporation. Most sellers would presumably not be willing to wait for a co-op conversion process but there are likely some sellers who would agree to a longer time frame either because they are socially motivated to support resident ownership or because they believe that they will be able to get a better price for their building from a cooperative purchase. In these special cases, a nonprofit sponsor might negotiate a longer purchase timeline with the seller in order to complete the co-op conversion process directly.

Nonprofit rental with option to convert: More commonly, the sponsor would purchase the building and manage it as an affordable rental while the conversion to co-op was explored. The City could develop a standard attachment to its Affordability Restrictions which provides tenants with an enforceable option to purchase a building as a cooperative. This document would spell out conditions including the level of tenant participation and necessary steps tenants would need to take before any sale but would ensure that tenants could form a co-op at any time and purchase the building at a fixed price based on the nonprofit owner's costs.

Smaller buildings:

Because of the challenging governance and financing issues, it is less likely that buildings with fewer than 20 units could successfully convert to formal LEHC ownership.

For the (somewhat rare) small properties where the current tenants are all able to qualify for (and afford) a mortgage, condo conversion could offer an appropriate option. However, the time required to complete condo conversion may create a need for a temporary ownership strategy. For very small properties (2-3 units) where tenants are able to qualify for loans, Tenants in Common (TIC) ownership may be the best interim ownership option while condo conversion is completed. For buildings with more than 2-3 units, TIC ownership seems impractical. If sellers of these buildings are not willing to wait many months for condo conversion, a nonprofit could serve as the interim owner. However, the nonprofits most likely to be willing to undertake small sites development may be less interested in investing their limited staff capacity in buildings with tenants that have the financial resources necessary to complete condo purchases.

Mixed ownership/rental provides another option which should be explored. If it were possible it could expand the number of potential buildings and allow the program to meet the needs for more vulnerable tenants, while still offering ownership to some residents.

Even if mixed ownership is possible, most small properties would likely not be appropriate for condo ownership. These properties would need to be financed as affordable rentals. While traditional nonprofit rental should meet most tenant's needs, in cases where tenants strongly prefer ownership and are willing to play a more active role, the two hybrid models (Community Land Trust and Permanent Real Estate Cooperative) can offer a 'sense of ownership' to residents in buildings that are more traditionally financed. The City could engage with a nonprofit sponsor to adopt one or the other of these models to the San José context.

The current COPA proposal would exempt single family properties but, if the ordinance is applied to **single family** properties, fee-simple ownership would be the only appropriate ownership model. It might be possible for a nonprofit to own single family units, rent them temporarily and eventually sell them to homeowners (either the current tenants or others whenever tenants vacate). However, because of the strong demand for single family homes, it may be difficult for nonprofits to finance market rate purchases without increasing rents on current tenants which may make nonprofit ownership impractical.

Summary:
Table 3: Recommended approach for different building types

Building Type	Tenant Mix	Recommended Approach
20+ Unit Buildings	Most tenants Low-income (<80% AM)	Nonprofit rental with resident option to purchase.
20+ Unit Buildings	Most tenants low to moderate income (60-120% of AMI)	Limited Equity Housing Cooperative
4-19 Unit buildings	Low-income (<60% AMI)	Hybrid rental
4-19 unit buildings in relatively good condition	Most tenants middle income (80-120% of AMI) with strong credit	Condo Conversion
1-3 unit buildings –	All tenants middle income (80-120% of AMI) with strong credit	Tenants-in-common with plan to convert to Condo.

Building capacity for TOPA conversions:

1. **Preservation Project Capacity Building Funding**

The city could issue an RFP and select one or more local nonprofits to receive multi-year contracts staff the conversion process. Two roles are key and they could be performed by the same organization or two different nonprofits:

Preservation Sites Pre-development: The city will need one or more experienced real estate developers to undertake the time consuming task of evaluating the feasibility of purchasing many small properties. While some of this pre-development cost can be recovered through a developer fee at the time of purchase, the timelines and complexity of TOPA are likely to mean that a potential nonprofit sponsor will evaluate many buildings for each one that they successfully purchase and it is unlikely that developer fees will be large enough to compensate for the level of upfront work. San Francisco set aside $3.5 million to fund 3 year direct operating grants to qualifying nonprofits pursuing Small Sites acquisitions. These grants enabled the selected organizations to hire permanent staff dedicated to small sites acquisitions and to pay for other soft costs.

Tenant Support and Organizing: In addition to the usual real estate development tasks, a TOPA conversion also requires some level of tenant outreach, education and organizing support. While purchases for permanent nonprofit rental ownership may require less staffing in this area, any of the ownership models will require significant time engaging with tenants individually and in groups prior to purchase, even if the plan calls for a period of nonprofit ownership before conversion to resident ownership. As above, the organization leading this work will invest in many buildings that are not successfully purchased for each one that is acquired.

2. Preservation Project Stewardship Support

Regardless of the model that is implemented, TOPA conversions for smaller buildings will require extra expenses for property and asset management, tenant support and ongoing monitoring – over and above the typical per unit share of rents allocated for management expenses. The lack of economies of scale have been the major barrier to non-profit or tenant ownership of the kind of smaller buildings which make up much of San José's housing stock. To address this barrier, the City could develop alternative mechanisms to provide supplemental funding for this work including:

Budgeting for Stewardship: Operating budgets for COPA properties should be designed to incorporate an additional line item for COPA stewardship. This annual cost would initially compensate nonprofit sponsors for higher than average staffing needs of COPA buildings (including supporting leadership development and tenant involvement in management and preparing for possible later conversion). Once a building converts to tenant ownership, this line item would be used to compensate the nonprofit sponsor (or third party) for ongoing support and monitoring of the Cooperative or HOA. Including these expenses in annual operating budgets will generally require a larger initial investment of subsidy per unit than would otherwise be needed.

Conversion Costs: If the city pursues a policy which relies on initial nonprofit ownership with possible future conversion to tenant ownership, it would make sense to put in place a mechanism to compensate and even incentivize the nonprofit sponsors to complete conversions. One way to do this would be to set aside funding to provide a fixed per unit conversion fee for each unit that is successfully converted to resident ownership. This fee would function like a developer fee, compensating the nonprofit sponsors for the costs of supporting a conversion. The fee can be capitalized into the development budget at the time of initial purchase and held in a reserve until conversion expenses are incurred. Some portion of the funds should be accessible in advance of conversion to pay for costs like legal assistance and some withheld until successful conversion.

ATTACHMENT H – COMMITTED AND PROPOSED LOCAL, REGIONAL, AND STATE FUNDING SOURCES FOR AFFORDABLE HOUSING PRESERVATION

Committed Preservation Funding Sources	Dollar amount	Allocated exclusively to San José?	Status
City of San José – unspent funding allocated for preservation (TBD)	$22 million, **One-time**	Yes	2023
City of San José – initial housing preservation funding commitment	$5 million, **annual**	Yes	2023
Foreclosure Intervention Housing Preservation Program	$820,000-$20.5 million, **one-time**	No	**Available 2023**

Planned/Proposed Preservation Funding Sources	Dollar amount	Allocated exclusively to San José?	Status
City			
Google Community Stabilization and Opportunity Pathways Fund	TBD	Yes	Early deliberation
City of San José – advocates' goal for annual funding	$25-50 million, **annual**	Yes	Early deliberation
Regional			
Bay Area Housing Finance Authority, REAP 2.0 Grants	$3 million, **one time**	No	**Available Summer 2023**
Bay Area Housing Finance Authority, General Obligation bonds, San José housing preservation set-aside	At least $10-20 million, **annual**	Yes	Ballot measure in 2024
State			
California Anti-Displacement and Preservation Program	$15.5- $31 million, **one-time**	No	Introduced as SB 225 (2023)

Annual totals (All existing and potential future funding sources)	**Low est.: $5 million** **High est.: $75 million**		

ATTACHMENT I – COPA PROGRAM DESCRIPTION

San José Community Opportunity to Purchase (COPA) Proposed Program Framework

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

Program Element	**Proposal Summary**
Applicability (What properties are included under this program?)	Properties that would be subject to COPA Residential properties with two (2) or more units that were built 15 or more years ago (updated annually on a rolling basis). Exemptions *(clarifying definitions to be provided in draft Ordinance and regulations):* A. Owner-occupied properties with up to four (4) units B. Close family transactions / inheritances C. Properties already subject to specified disposition processes, like bankruptcy D. Partial property transfers in which, in effect, control of the property does not change **E. Single family home with one (1) Accessory Dwelling Unit on the property** **F. 2- to 4- unit properties if the property owner must sell due to a documented need to pay for medical treatment for self or immediate family member**
Timeline (What is the process for this program and how long does it take?)	The proposed timeline under COPA *(most sellers would only experience step A below):* A. *Letter of Intent:* Gives a QNP **15 days** from owner's notice of sale to indicate they want to make an offer B. *Offer Period:* Gives that same QNP **25 days** to submit an offer *C. Time to Close:* **If the seller accepts that QNP's offer**, gives the QNP **120 days** to secure financing and close the transaction (or longer timeline otherwise agreed to by both parties) D. *Time to Counter-Offer:* 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 make a counter-offer before the owner sells.

Program Element	Proposal Summary
Buyers/Qualified Nonprofits (QNPs) (Who will be purchasing these properties and what kind of requirements should they have?)	<u>Required characteristics for potential QNPs</u> • 501(c)(3) designation • Demonstrated track record with the successful purchase, development, and operation of restricted affordable housing with **at least one (1)** completed housing project of similar size and scope of work Note that the City's forthcoming Notice of Funding Availability and preservation lending guidelines may have additional experience requirements for potential buyers. <u>Desired characteristics for potential QNPs:</u> • 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 • Demonstrated track record of positive tenant engagement, local community engagement, housing policy advocacy <u>QNPs can partner to fulfill desired characteristics</u> If QNPs have the required characteristics but lack the desired characteristics, a QNP may satisfy the requirements for tenant engagement and specific commitment to San José by partnering with a local community-based organization (Community Partner). <u>QNP recertification</u> City staff will re-certify QNPs on a regular 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.

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<td>Affordability
(What residents will benefit from this program?)</td>
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<u>Rental properties – program designed to help very low- and low-income renters:</u>

Target incomes for households served: 31-80% of AMI

For a one-person household in 2022, this translates to an annual income of $35,371 to $94,320
For a four-person household in 2022, this translates to annual incomes of $50,551 to $134,800

Portfolio goal: The Housing Department would set an overall portfolio goal of an average 50% AMI income targeting across all COPA-purchased projects supported by City funding
Annual Rent Increases:

Rent increases for very low- and low-income renters in properties purchased via COPA would be capped at 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
Over-income existing households would be allowed to stay in their apartments with gradual rent increases for up to 3 years until their rents (including a reasonable utility cost) reach the target of 30% of their household income

<u>Homeownership:</u>

Some properties may be suitable for converting from rental to homeownership, potentially under an alternative homeownership structure such as a limited equity cooperative
Target incomes for households served: 60-120% of AMI

For a one-person household in 2022, this translates to an annual income of $70,741 to $141,480
For a four-person household in 2022, this translates to annual incomes of $101,101 to $202,200

If a QNP acquires a property via COPA and later wants to sell the property, it would be required to first offer to sell the property to tenants prior to offering the property to third parties.
City funding and underwriting guidelines would identify details needed for QNP proposals to convert properties to homeownership structures after initial purchase via COPA

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Program Element	Proposal Summary
	All properties: **COPA transactions should not result in the displacement of current tenants for reasons of income eligibility.**

Tenant Engagement
 	
(How are residents going to be engaged during the acquisition process and afterwards?)
	Tenant engagement proposal
	• *Pre-acquisition period:*
	  ○ Property owners must notify tenants, in addition to notifying QNPs, that they intend to sell their property
	  ○ QNPs and/or their Community Partners would be required to reach out to tenants to introduce the QNP, get to know the property, garner support, start renter income verification, and education renters on basic rules under affordable housing.
	• *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, such as significant rehabilitation plans and the need to submit income information each year.
	• *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.

<table>
<tr><th>Program Element</th><th>Proposal Summary</th></tr>
<tr><td>Education, Enforcement, and Incentives

(How will COPA be administered and regulated? How does the City encourage participation in this program?)</td><td><u>Outreach and education plan</u>

COPA would go into effect one year after the ordinance passes, or when QNPs are qualified, whichever is later.
This timing would allow for extensive outreach and education prior to any potential enforcement, the completion of program regulations, and the prequalification of a pool of QNPs.

<u>Enforcement with an emphasis on education</u>

Due to limited staff capacity, staff will focus on educating interested parties and residents to spread knowledge about how to comply 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.

<u>Incentives</u>

Staff recommends inclusion of strong language on QNPs collaboration with property owners to incentivize them 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.
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<tr><td>Implementation</td><td>
Property owners must notify the San José Housing Department, in addition to notifying QNPs and tenants, that they intend to sell their property.
The City’s website should be able to be programmed with an interface to help property sellers to easily notify the City and QNPs, and for program notices to be sent.
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