# FREQUENTLY ASKED QUESTIONS

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

1. **Why is COPA needed?**

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

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

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

2. **What would COPA do to prevent displacement that San José's Apartment Rent Ordinance (ARO) does not already do?**

   COPA would enable more nonprofit housing providers to acquire and rehabilitate properties, turning them into restricted affordable housing through public subsidies. These acquisitions will reduce renter displacement more effectively than the ARO program can.

   While the ARO reduces the risk of displacement by limiting rent increases to no more than 5% per year for covered properties, many families living in market-rate properties are currently paying excessive shares of their incomes towards rents. This means that they may not be able to afford 5% rent increases, especially if a property owner raises rents 5% multiple years in a row.

   In contrast, when nonprofit housing providers acquire properties, they start out by "right-sizing" rents to fit within renter families' budgets. In other words, households that were paying more than 30% or 50% of their income towards rent could see their rents go down when the property is first acquired by the nonprofit. This virtually eliminates displacement risk for the renter families living in the building.

   Additionally, the ARO only limits rent increases for as long as the same renter family continuously occupies an apartment. When a family moves out, rents can be raised up to whatever the market will bear. This makes it harder for another lower-income family to afford the vacant rental unit. In contrast, restricted affordable rents that nonprofits put in place continue at the same level when one family moves out and another moves in, as the rules are different than for ARO.

   Helping nonprofits to acquire buildings helps provide affordability for multiple families for up to 99 years on each property.

3. **What is affordable housing preservation, and how does COPA fit into a preservation strategy?**

Affordable housing preservation is an anti-displacement strategy in which housing professionals acquire and rehabilitate lower-cost housing – "unsubsidized affordable housing" which happens to be affordable to lower-income households – and convert it to restricted affordable housing. Restricted affordable homes require that rents are set to a profile family's income so that housing costs are generally reasonable in the long-term. When nonprofit housing providers acquire properties, they structure rents per the incomes of current renter families to avoid their displacement.

San José, and the Bay Area more broadly, have been losing "unsubsidized affordable housing" at an alarming rate. For example, between 2012 and 2017, the Bay Area lost approximately 168,000 unsubsidized affordable units according to a report from Enterprise Community Partners.[1]

San José and the region are losing these unsubsidized affordable units because housing costs are rising significantly faster than wages for many working class job categories. Between 2010 and 2020, the share of families who were housing cost burdened[2] in San José rose from 17% to 51% for those earning between $75,000 and $100,000, and from 39% to 75% for households earning between $50,000 and $75,000. Households that are housing cost burdened are at higher risk for residential displacement. Affordable housing preservation prevents displacement by addressing the growing structural mismatch between incomes and rents.

There are three elements of a strong affordable housing preservation ecosystem:

1. Local nonprofit housing organizations' capacity for acquiring properties and operating them as permanently affordable homes

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

[2] Households are considered "housing cost burdened" if they pay more than 30% of their income towards rent.

2. Public funding to support nonprofit property acquisitions
3. A policy environment that supports nonprofit housing acquisitions of market-rate properties, often achieved through a COPA (or Tenant Opportunity to Purchase – TOPA) policy

COPA would support affordable housing preservation by creating more opportunities for nonprofit organizations to purchase and rehabilitate unsubsidized affordable housing.

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

People of color – especially Latino/a/x and Black families – are disproportionately at risk of displacement from San José due to the long legacy of housing discrimination perpetrated by the government and private sector actors. By consequence, 47 percent of Latino/a/x households and 45 percent of Black households in San José lived in areas experiencing ongoing displacement or at-risk of displacement, according to data from the Urban Displacement Project. [3]

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

**5. What would COPA change?**

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

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[3] Urban Displacement Project Typologies Race Data, Race by Census Tract, June 2020

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

COPA would create defined time windows for mission-driven housing organizations to make offers and, if an offer is accepted, to complete the purchase. This is needed because unlike traditional buyers, mission-driven housing organizations need to carefully determine on a case-by-case basis what funding a property qualifies for from a combination of governmental, private, and philanthropic sources, while guaranteeing that the units will remain permanently affordable to existing tenants.

COPA would additionally help mission-driven housing organizations learn about properties that are going up for sale. Many multifamily properties are not even listed publicly somewhere before they sell. Estimates are that 50% or more of sales occur 'off listing.'[4] COPA would give a better chance for teams of experienced mission-driven housing organizations and local community partners to buy buildings, keep tenants in place, and turn those homes into permanently affordable housing.

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

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

**COPA would not apply when a property owner seeks to transfer their property to a direct relative. COPA would also not apply when an owner sells their owner-occupied property of 4 units or**

[4] https://www.wealthmanagement.com/multifamily/market-sales-gain-traction-cre-owners-and-buyers

**fewer, or when selling only a partial ownership share in a property.**

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

   COPA would require property owners to give City-approved mission-driven housing organizations (called “Qualified Nonprofits") the right to make a first offer on a property and, if the seller is negotiating with another party, the right for the Qualified Nonprofit to make a final counter-offer. Sellers need to observe a prescribed process for allowing Qualified Nonprofits to make an offer, including by (1) notifying the City and QNPs that they are ready to sell their property, (2) waiting for a Letter of Interest to Make an Offer from a Qualified Nonprofit (and if applicable, waiting for the offer), and (3) if also negotiating with a third-party seller, giving time for a final counter-offer. For more information on the applicable COPA timelines and process, please see the process flowchart provided on the City of San José’s COPA website.

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

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

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

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

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

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

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

For offers to be made through COPA, Qualified Nonprofits must be able to access affordable housing subsidies to make reliable offers to owners. Access to funding from public sources and nonprofit or for-profit lenders is essential to all affordable housing preservation efforts, including COPA. Similar to the City's programs that currently fund new construction of affordable housing, the City of San José could use existing funding sources to fund the acquisition and rehabilitation of buildings housing under COPA. The City could also propose the creation of new local funding sources. Local sources with flexible rules on residents' incomes served (such as Commercial Linkage Fee) are the most appropriate for preservation programs but could also be layered with more restrictive funds (such as former redevelopment repaid loan proceeds). These same sources would also pay for program administration. The City plans to issue its first acquisition/rehabilitation Notice of Funding Availability in 2023.

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

**11. How would creating a new COPA program compare with creating a new local rental voucher program?**

In the long run, rental vouchers would be far more expensive to fund than loans for funding permanent acquisitions by affordable housing providers. While funding the acquisition and rehabilitation of properties requires a larger **initial** public investment than funding housing vouchers, after 30 years the total cost of funding vouchers annually is four times as expensive as funding the acquisition and rehabilitation of a property, and **after 75 years the total cost of funding vouchers annually is 61 times as expensive as funding the acquisition and rehabilitation of a property**.[5] Furthermore, most acquisitions by nonprofit housing providers produce income for government lenders with receipts from rent, further decreasing the total cost to the public sector. Additionally, the staff costs required to administer a voucher program are estimated to be considerably higher than the staff costs required to administer a COPA program.

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

COPA would have no impact on property owners looking to use a 1031 exchange strategy while selling a property subject to COPA. In

[5] Outcomes will vary depending on the condition of the property and the incomes of renter households. These calculations assume that 15 households are earning 40% of the Area Median Income, and accounts for typical escalations in the value of the Fair Market Rents and in household incomes.

a 1031 exchange, property owners have 45 days to "swap" their property for another property to receive a deferral of capital gains tax. However, this 45-day period only begins when the sale of the original property has been *completed*. The timelines regulated under COPA prior to closing will therefore not impact the property owner's ability to complete a 1031 exchange, whether selling to a Qualified Nonprofit or to another party.

COPA would also not have a significant impact on "reverse 1031 exchanges" in which third-party buyers seek to acquire properties in San José that are subject to a COPA process. **Real estate industry specialists in San Francisco, which adopted a COPA program in 2019, have reported that COPA has not resulted in complications for reverse 1031 exchanges for property owners or buyers.**[6] This is because properties can only be advertised to third-party buyers following the Letter of Intent period (and offer period, if an owner receives a Letter of Intent). This means that third-party buyers, including those seeking reverse 1031 transfers, discover properties for sale at a different part of the listing process. By that time, Qualified Nonprofits would either have passed up on an opportunity to make an offer – freeing up the property for another offer – or they would have made an initial offer by the time that a third-party buyer seeking a reverse 1031 transfer were to learn about the property in question.

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

[6] Interview with San Francisco broker, July 2022.