



## EAST PALO ALTO CITY COUNCIL STAFF REPORT

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**DATE:** December 22, 2021

**TO:** Honorable Mayor and Members of the City Council

**VIA:** Jaime M. Fontes, City Manager *Jaime M. Fontes*

**BY:** Rachel Horst, Housing Project Manager  
Victor Ramirez, Rent Stabilization Program Administrator  
Karen Camacho, Partnership for the Bay's Future Fellow

**SUBJECT:** Introduction of an East Palo Alto Opportunity to Purchase Act ("EPA OPA") Ordinance

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### **Recommendation**

1. Waive the first reading and introduce an Ordinance titled "East Palo Alto Opportunity to Purchase Act" ("EPA OPA"), adding Chapter 14.26 to the East Palo Alto Municipal Code.
2. Find that the adoption by the City Council of the amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.

### **Alignment with City Council Strategic Plan**

This recommendation is primarily aligned with:

Priority No. 6: Create a Healthy and Safe Community

### **Staff Update**

At a public hearing held on November 16, 2021, staff presented on an East Palo Alto Opportunity to Purchase Act Ordinance ("EPA OPA," or "Ordinance") for City Council consideration. City Council directed staff to 1.) hold a community meeting to inform the public about the EPA OPA and obtain feedback and 2.) to make the following changes to the Ordinance:

- Appraisal provision, as it applies to single-family dwellings
- Addition of a confidentiality provision

The full November 16, 2021 staff report is provided in Attachment 5. The recording of the November 16, 2021 meeting can be found on the City's website.<sup>1</sup>

### December 1, 2021 Community Meeting

Staff held a virtual community meeting on December 1, 2021 at 6:00 p.m. on Zoom. The recording of the December 1, 2021 meeting can be also found on the City's website under the Housing page.<sup>2</sup>

The meeting included:

- A presentation by staff on the Ordinance;
- A 30-minute question-and-answer period, during which time attendees could pose questions on the operational aspects of the Ordinance, with responses from staff; and
- A public comment period, during which time attendees could comment or ask any other questions for one minute at a time. During this time, staff did not respond to the comments or questions, but they are also part of the record for Council consideration.

On December 3<sup>rd</sup> and December 6<sup>th</sup>, staff hosted virtual office hours to provide stakeholders with an additional opportunity to ask questions or express concerns regarding the EPA OPA. Staff will provide a verbal update on these offerings during the December 7, 2021 City Council meeting.

Additional information on the EPA OPA, including background, past staff reports (including the October 5 and November 16 City Council meeting reports), a recording of the public meetings, and all email comments received from November 17 to December 3 pertaining to the Ordinance can be found on the City's website under Housing. The email comments are also provided in Attachment 3. A list of public comments received on December 1, 2021 can be found in Attachment 4.

Staff will present a verbal update at the December 7, 2021 City Council meeting if any additional comments are received after publication of this staff report. This update will include any letters received in the mail, which will be provided as a PDF on the City's website.

### Recommended Changes to Ordinance:

Based on extensive public feedback received at the City Council meeting, community meeting, and via email, City staff performed the following amendments to the Ordinance:

- a. Exempt owner-occupied properties of three or fewer units, including:
  - i. Owner-occupied single-family dwellings when the Owner has occupied the single-family dwelling as the Owner's principal residence for more than a year.
  - ii. Owner-occupied condominiums when the Owner has occupied the condominium as the Owner's principal residence for more than a year.
  - iii. Any owner-occupied single-family dwelling with any accessory

<sup>1</sup> Please see: [2021/11/16 07:30 PM City Council Regular Meeting - Web Outline - City of East Palo Alto \(igm2.com\)](https://www.cityofeastpalalto.org/2021/11/16/07:30-PM-City-Council-Regular-Meeting-Web-Outline-City-of-East-Palo-Alto-igm2.com)

<sup>2</sup> Please see: [East Palo Alto Opportunity to Purchase Act \(EPA OPA\) | City of East Palo Alto \(cityofepa.org\)](https://www.cityofeastpalalto.org/2021/11/16/07:30-PM-City-Council-Regular-Meeting-Web-Outline-City-of-East-Palo-Alto-igm2.com)

- Dwelling Unit(s) (inclusive of any junior Accessory Dwelling Unit) located on the same parcel when the Owner has occupied any dwelling unit on the property as the Owner's principal residence for more than a year.
- iv. Any owner-occupied duplex with or without any accessory Dwelling Unit(s) (inclusive of any junior Accessory Dwelling Unit) located on the same parcel when the Owner has occupied any dwelling unit on the property as the Owner's principal residence for more than a year.
  - v. Any owner-occupied triplex with or without any accessory Dwelling Unit(s) (inclusive of any junior Accessory Dwelling Unit) located on the same parcel when the Owner has occupied any dwelling unit on the property as the Owner's principal residence for more than a year.
- b. Eliminate the Appraisal Section altogether, not just for single-family dwellings.
  - c. Clarify that receipt of an unsolicited offer prompts a Notice of Intent to Sell if the owner intends to accept it or takes some action with the intent to sell the property.
  - d. Clarify that Potential Eligible Purchasers must timely submit a letter of interest to then have the right to submit an offer. They also must submit a timely offer to then have the right to match any third-party offers.
  - e. Create a 15% Margin Rule for a Potential Eligible Purchaser to have the Right of First Refusal.
  - f. City Council will certify and re-certify the Qualified Nonprofits, not the City Manager. The criteria for determining nonprofit eligibility will be codified in the future administrative guidelines and must be approved by the City Council.
  - g. Increase the contract purchase deposit amount from 1% to 3%.
  - h. Clarify that owners can also pursue legal actions to enforce the Ordinance.
  - i. The City Council shall approve the inaugural version of the Administrative Guidelines. Staff would seek City Council approval of the Administrative Guidelines prior to June 30, 2022.

The Ordinance can be found in Attachment 1.

### **Next Steps**

If directed, staff will return for the second reading of the Ordinance at the December 21, 2021 City Council meeting.

### **Fiscal Impact**

There is no fiscal impact associated with this staff report.

### **Public Notice**

The public was provided notice via publication in the Palo Alto Daily News on October 5, 2021, and by making the agenda and report available on the City's website and at the San Mateo Co. Library located at 2415 University Avenue, East Palo Alto.

**Environmental**

The action being considered does not constitute a “Project” within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect changes in the environment.

**Attachments****Attachments**

1. Ordinance
2. Frequently Asked Questions
3. Email Comments Received
4. Public Comments Submitted at the December 1, 2021 Public Meeting
5. November 16, 2021 Staff Report to Council re EPA OPA

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF EAST PALO ALTO**

**ADDING CHAPTER 14.26 OF THE EAST PALO ALTO MUNICIPAL CODE  
AUTHORIZING THE EAST PALO ALTO OPPORTUNITY TO PURCHASE  
ACT**

**WHEREAS**, the City Council finds that East Palo Alto is experiencing a shortage of affordable housing, especially for extremely low-income, very low-income, low-income and moderate-income residents, and a displacement crisis; and

**WHEREAS**, rapid displacement is evidenced in East Palo Alto by high rates of eviction, increasing rents, and increasing home values; and

**WHEREAS**, there is a disproportionate impact of displacement, homelessness, and unmet affordable housing and homeownership needs in East Palo Alto borne by African American, Latinx, and Pacific Islander communities of color; and

**WHEREAS**, sixty percent of East Palo Alto’s population are renters, and over half of these renters are cost-burdened, meaning they spend over thirty percent of their monthly income on rent; and

**WHEREAS**, according to the Bay Area Equity Atlas and the Urban Displacement Project, seventy-two percent of low-income households in East Palo Alto live in gentrifying neighborhoods; and

**WHEREAS**, due to state law, tenants living in single-family homes and tenants living in buildings built after 1988 are not protected by rent stabilization (although the Just Cause for Eviction provision still applies); tenants in rent-stabilized units are not protected from displacement by owner-move in; and when a tenant moves out, the rent for that unit can be raised to market value; and

**WHEREAS**, according to the American Community Survey (2015-2019) and San Mateo County Income Limits, the median household income in East Palo Alto of \$67,087 is less than half the county’s median household income, and most East Palo Alto households fall into the “extremely low-income” to “very low-income” category, or 30-50% AMI, making residents highly susceptible to dramatic shifts in the housing market; and

**WHEREAS**, according to the Center for Responsible Lending, during the foreclosure crisis from 2004-2008, African Americans and Latinxs in California were more than twice as likely as non-Hispanic Whites to lose their homes to foreclosure; and

**WHEREAS**, Tenant and Community Opportunity to Purchase Act programs have been adopted in a number of jurisdictions including Washington DC and San Francisco to protect residents’ ability to stay in a neighborhood in a cost effective manner; and

**WHEREAS**, the City Council desires to prevent further displacement of East Palo Alto households, to supply a variety of affordable rental and ownership housing options, and to protect the health, safety and general welfare of the public through an opportunity to purchase program;

**WHEREAS**, this action is exempt from the California Environmental Quality Act ("CEQA") under the following, each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions). Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning.)

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:**

**SECTION 1. RECITALS**

The above recitals are true and correct and incorporated herein by reference.

**SECTION 2. AMENDMENT TO THE EAST PALO ALTO MUNICIPAL CODE**

The City Council hereby adds Chapter 14.26 (“East Palo Alto Opportunity to Purchasing Act”) to the East Palo Alto Municipal Code in Title 14 (“Housing”) to read as follows:

**Chapter 14.26  
East Palo Alto Opportunity to Purchase Act**

**14.26.010 Title and Purpose**

A. This Chapter shall be referred to as the “East Palo Alto Opportunity to Purchase Act” or “EPA OPA” program.

B. The purpose of this Chapter is to confer upon Tenants, Qualified Nonprofits, and the City of East Palo Alto (“Potential Eligible Purchasers”) a right of first offer and a right of first refusal upon the transfer or sale of Residential Property as defined herein to

Attachment: Ordinance (2046 : East Palo Alto Opportunity to Purchase Act (Continued))

prevent displacement of lower-income tenants, to facilitate ownership for residents, and to create more affordable housing opportunities in East Palo Alto.

#### 14.26.020 Definitions

“**Absentee Owner(s)**” means an owner or owners of a residential property who do not occupy the residential property as the owner’s or owners’ principal residence.

“**Accessory Dwelling Unit (ADU)**” means a separate dwelling unit providing complete independent living facilities for one or more persons containing living, sleeping, kitchen and sanitation facilities which are defined as a full bathroom (tub/shower, sink and, a toilet) located on the same lot as the main dwelling unit. An existing single-family residence may be converted to accessory dwelling unit(s) in conjunction with the development of a new main dwelling unit on the site and in conformity with the development standards for a new accessory unit as set forth in Chapter 18.96. Subject to the restrictions contained in Chapter 18.96, an accessory dwelling unit may be either attached to, or detached from or incorporated into the main dwelling unit. An Accessory Dwelling Unit also includes an efficiency unit, as defined in Health and Safety Code Section 17958.1 or a manufactured home, as defined in Health and Safety Code Section 18007, located on the same lot as the main dwelling.

“**Administrative Guidelines**” means any requirements for implementation and administration of this Chapter adopted by the City Manager or designee in accordance with Section 14.26.170.A of this Chapter.

“**50% AMI Income Household**” means households whose income does not exceed fifty (50) percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.

“**Appraised value**” means the value of the property subject to this Chapter, as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.

“**Bona Fide Offer to Purchase**” means an offer to purchase a property subject to this Chapter, or the interest in the property that is either:

For a price and other material terms that are at least as favorable as those accepted by a purchaser in an arm’s length third-party contract; or,

In the absence of an arm’s length third-party contract, an Offer to Purchase with a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the property, or the appraised value.

“**The City**” means the City of East Palo Alto, including any departments within the City that are assigned any responsibilities under this Chapter.

“**Condominium**” means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential structure located on the real property in compliance with Civil Code Section 783. A condominium may include, in addition, a separate interest in other portions of the real property.

“**Days or Days**” means calendar days unless otherwise stated.

“**Dwelling Unit**” means a structure or the part of a structure that is used as a residence that provides complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

“**Duplex**” means a single building that contains two dwelling units or two dwelling unit on a single parcel. This use is distinguished from accessory dwelling units and junior accessory dwelling units, which are accessory residential units.

“**Junior Accessory Dwelling Unit (JADU)**” means a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence.

“**Low-Income Households**” are those households whose income does not exceed 60 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto

“**Listing or Marketing**” means adding the property on Multiple Listing Service (MLS) or any other private or public online database, or adding or disseminating information about the property on paper or digitally, with the intent of informing prospective Third-Party Purchasers or their representatives about the opportunity to purchase, promoting the property, or receiving communications from prospective buyers.

“**Median-Income Households**” are those households whose income does not exceed 80 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.

“**Moderate-Income Households**” are those households whose income does not exceed 120 percent of the area median income, adjusted for family size and as published annually by the City of East Palo Alto.

“**Multi-Family Dwelling**” means any property in East Palo Alto with two or more dwelling units.



“**Owner**” means any natural person, corporation, association, partnership, joint venture, limited liability company, trustee, business entity and its respective agents, or any other entity, who is the owner of record of a residential property.

“**Owner-Occupied Single-Family Dwelling**” means a single-family dwelling that is occupied by the owner(s) as the owner’s or owners’ principal residence.

“**Owner-Occupied Duplex**” means a duplex that is occupied by the owner(s) as the owner’s or owners’ principal residence.

“**Owner-Occupied Triplex**” means a triplex that is occupied by the owner(s) as the owner’s or owners’ principal residence.

“**Potential Eligible Purchaser**” means the qualified entity (Tenants, Qualified Nonprofits, or the City) purchasing a property under this Chapter.

“**Principal Residence**” means a residential dwelling that is occupied and is the usual place of return of a natural person. A dwelling will qualify as a primary residence when: (1) the person has lived in the dwelling for more than fifty percent (50%) of the time in the year prior to the proposed sale; and (2) the person acknowledges the dwelling as the person’s primary residence by voter registration, address on tax returns, homeowners exemption, and/or mailing address.

“**Purchaser(s)**” means subsidized Tenants, Qualified Nonprofits, or the City who are purchasing a Residential Property under this Chapter.

“**Qualified Nonprofit**” means an organization that is exempt from federal income tax under 26 USC Section 50J(c)(3), or a California cooperative corporation that has the capacity to acquire, provide and manage affordable housing for low, very low, and extremely low income households, has a commitment to prevent displacement, has a demonstrated commitment to community engagement, and is certified by the City Council or designee pursuant to Section 14.26.050 of this Chapter via an application process as set forth in the Administrative Guidelines.

“**Rent**” means the consideration, including security deposit, cleaning deposit and any other deposits, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Rent includes monies and the fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

“**Residential Property**” means any property containing one or more dwelling units and located in the City of East Palo Alto.

“**Single-Family Dwelling**” means a property, building, structure or dwelling unit, or portion of a property, building, structure, or dwelling unit principally designed for the

residential habitation of one household, identified by one parcel number, and having only one kitchen and one set of common areas, or, where there are two or more kitchens, with all secure entrances leading to the same set of interior common areas.

“**Subsidized Purchaser**” is any Tenant, Qualified Nonprofit, or City receiving public or private subsidy to support a purchase made pursuant to this Chapter.

“**Tenant**” means a renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

“**Third-Party Purchaser**” means any person or entity that has entered into a bona fide contract of sale for a Residential Property prior to an Owner giving the Potential Eligible Purchaser(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase.

“**Triplex**” means a single building that contains three dwelling units or three dwelling unit on a single parcel. This use is distinguished from accessory dwelling units and junior accessory dwelling units, which are accessory residential units.

#### 14.26.030 Applicability

This Chapter shall apply to the sale or transfer of all Residential Property in the City of East Palo Alto unless otherwise exempted herein.

#### 14.26.040 Exemptions

A. Exempt Residential Property. The following types of Residential Property are not subject to the requirements of this Chapter:

1. Owner-occupied single-family dwellings, including those with an accessory Dwelling Unit(s) (inclusive of any junior Accessory Dwelling Unit) located on the same parcel, when the Owner has occupied the single-family dwelling or the ADU as the Owner’s principal residence for more than a year.
2. Owner-occupied condominiums when the Owner has occupied the condominium as the Owner’s principal residence for more than a year.
3. Any owner-occupied duplex with or without any accessory Dwelling Unit(s) (inclusive of any junior Accessory Dwelling Unit) located on the same parcel when the Owner has occupied any dwelling unit on the property as the Owner’s principal residence for more than a year
4. Any owner-occupied triplex with or without any accessory Dwelling Unit(s) (inclusive of any junior Accessory Dwelling Unit) located on the

- same parcel when the Owner has occupied any dwelling unit on the property as the Owner's principal residence for more than a year
5. Residential Property owned by the local, state, or federal government.
  6. Residential Property subject to resale price control under Chapter 18.37 of East Palo Alto's Municipal Code.
  7. Residential Property owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

B. Exempt Transfers. The following transfers of Residential Property are not subject to the requirements of this Chapter:

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.
2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.
3. A transfer of legal title or an interest in an entity holding legal title to a Residential Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Potential Eligible Purchasers under the California Civil Code Sections 2924(f)-(h), 2924(m)-(n), or 2929.3.
4. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.
5. A transfer by devise, descent, or operation of the law upon the death of a natural person.
6. A transfer pursuant to court order or court-approved settlement.
7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. Any transfer of a fractional interest in a Residential Property that is less than fifty percent (50%) of an undivided interest in the Residential Property.
9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.
10. A transfer of a Residential Property having no more than four units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Residential Property. For purposes of this subsection only, "Owner" shall be limited to a natural person having an undivided interest in the Residential Property of at least fifty percent (50%).

C. Transfer Exemption Procedures. The Owner shall submit a Certificate of Exemption signed under penalty of perjury to the City after deciding to sell and before marketing the property self-certifying one of the exemptions described in 14.26.040.B. A Certificate of Exemption must be accompanied by supporting documents as set forth in the Administrative Guidelines. The City shall make the template Certificate of Exemption accessible on the City website. This section shall not be construed to or used in a manner that unreasonably delays an Owner's valid and lawful transfer of a real property interest under Transfers Exempted.

#### **14.26.050 Qualified Nonprofits**

A. Certification, Term, and Renewal. To effectuate the purpose of this Chapter, the City Council shall certify and recertify Qualified Nonprofits via an application process as set forth in the Administrative Guidelines. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for five (5) years. The City Manager or designee shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website.

B. Disqualification of Qualified Nonprofits. The City Manager or designee shall promptly investigate any complaint alleging that a Qualified Nonprofit has failed to comply with this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to respond, the City Manager or designee determines that an organization listed as a Qualified Nonprofit has failed to comply with the requirements of this Chapter, the City Manager or designee shall bring a recommendation to City Council to limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

#### **14.26.060 Assignment of Rights**

- A. A Tenant living in a Single-Family Dwelling with Absentee Owner(s) may assign rights under this Chapter to a Qualified Nonprofit.
- B. A Qualified Nonprofit assignee according to Paragraph A of this Section shall sign and submit a “Statement of Rights and Obligations” to the Tenant. The content of the statement shall be set forth in the Administrative Guidelines.
- C. The assignment of rights described in Paragraph A of this Section may occur at any time in the process, but must occur during the process provided in Sections 14.16.080 and 14.26.090.
- D. Qualified Nonprofit assignees or the assignor shall not accept any payment or reward in exchange for the assignment of rights under this section. Continuing to rent the Single-Family Dwelling at an affordable rate shall not be considered payment or reward for purposes of this section.

#### **14.26.070 Tenant, Qualified Nonprofit and City Opportunity to Purchase**

- A. Before the Owner of a Residential Property may list or market that property for sale to any purchaser, the Owner shall give the Potential Eligible Purchaser(s) specified in Paragraphs B, C, and D of this Section an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase.
1. The Owner is not required to give the Potential Eligible Purchaser(s) specified in Paragraphs B, C, and D of this Section an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase when the Owner has received an unsolicited offer unless the Owner takes any action to accept the unsolicited offer.
- B. Process for Tenant-Occupied Single-Family Dwellings with Absentee Owner(s):
1. Potential Eligible Purchasers. Potential Eligible Purchasers for a Tenant-Occupied Single-Family Dwelling with Absentee Owner(s) includes Tenants, Qualified Nonprofits, and the City. Rights and priorities are given the order of (1) Tenants, (2) Qualified Nonprofits, and (3) the City, as described in Paragraphs B(4) and B(5).
  2. Notice of Intent to Sell. The Absentee Owner of a Tenant-Occupied Single-Family Dwelling must provide all Potential Eligible Purchasers as specified in Paragraph B(1) with a Notice of Intent to Sell. The City shall make the template Notice of Intent to Sell accessible on the City website.

3. Statement of Interest. All Potential Eligible Purchasers as specified in Paragraph B(1) are allowed to submit a Statement of Interest to Purchase. The City shall make the template Statement of Interest accessible on the City website.
  
4. Right of First Offer.
  - a. In the event that a Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, said statement shall be given priority over any Statement of Interest submitted by a Qualified Nonprofit or the City. Nothing prohibits the Tenant(s) from assigning their Right of First Offer or Right of First Refusal to a Qualified Nonprofit after submitting a Statement of Interest.
  
  - b. In the event that Qualified Nonprofit(s) and no Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, said statement(s) shall be given priority over any statement submitted by the City.
  
  - c. In the event that no Tenant or Qualified Nonprofit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered.
  
5. Right of First Refusal.
  - a. In the event that the Owner rejects all Offer(s) submitted by Potential Eligible Purchasers and receives a Third-Party Purchaser Offer to Purchase, the Owner must notify all the Potential Eligible Purchasers who timely submitted a Statement of Interest and an Offer, and provide the Potential Eligible Purchasers an opportunity to submit a matching offer, giving priority in the order described in Paragraph B(1).
  
  - b. A Qualified Nonprofit can be conferred a Right of First Offer and Right of First Refusal for a Tenant-Occupied Single-Family Dwelling with Absentee Owner(s) if a Tenant (1) assigns in writing the Tenants' right of first refusal to the Qualified Nonprofit, or (2) executes a written waiver of the Tenants' right of first refusal; or (3) no Tenant submits a Statement of Interest pursuant to Section 14.26.080.
  
  - c. The City can be conferred a Right of First Offer and a Right of First Refusal for a Tenant-Occupied Single-Family Dwelling with Absentee Owner(s) if a Tenant (1) executes a written waiver of the Tenants' right

of first refusal; or (2) no Tenant or Qualified Nonprofit submits a Statement of Interest pursuant to Section 14.26.080.

- C. Process for Single-Family Dwellings, Condominiums, Duplexes, and Triplexes without Tenants and with Absentee Owner(s):
1. Potential Eligible Purchasers. Potential Eligible Purchasers for Single-Family Dwellings, Condominiums, Duplexes and Triplexes without Tenants and with Absentee Owner(s) include Qualified Nonprofits and the City. Rights and priorities are given the order of (1) Qualified Nonprofits and (2) the City, as described in Paragraphs C(4) and C(5).
  2. Notice of Intent to Sell. The Absentee Owner(s) of a Single-Family Dwelling, Condominium, Duplex or Triplex without Tenants is required to provide all Potential Eligible Purchasers with a Notice of Intent to Sell.
  3. Statement of Interest. All Potential Eligible Purchasers specified in Paragraph C(1) are allowed to submit a Statement of Interest to Purchase.
  4. Right of First Offer.
    - a. In the event that any Qualified Nonprofit submits a Statement of Interest in response to the Notice of Intent to Sell, said statement(s) shall be given priority over any statement submitted by the City.
    - b. In the event that no Qualified Nonprofit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered, and the City may proceed to the Right of First Offer process.
  5. Right of First Refusal.
    - a. In the event that the Owner rejects all Offer(s) submitted by Potential Eligible Purchasers and receives a Third-Party Purchaser Offer to Purchase, the Owner must notify all the Potential Eligible Purchasers who timely submitted a statement of interest and an offer, as specified in Paragraph C(1) and give priority in the order described in Paragraph C(1).
    - b. In the event that no Qualified Nonprofit submits a match to the Offer to Purchase, the City's match will stand.
- D. Process for Non-Exempt Multi-Family Dwellings with or without Tenants

1. Potential Eligible Purchasers. Potential Eligible Purchasers for Non-Exempt Multi-Family Dwellings without Tenants includes Qualified Nonprofits and the City. Rights and priorities are given the order of (1) Qualified Nonprofits and (2) the City, as described in Paragraphs D(4) and D(5).
2. Notice of Intent to Sell. The Owner of a Non-Exempt Multi-Family Dwelling with or without Tenants is required to provide all Potential Eligible Purchasers with a Notice of Intent to Sell.
3. Statement of Interest. All Potential Eligible Purchasers as specified in Paragraph D(1) are allowed to submit a Statement of Interest.
4. Right of First Offer.
  - a. In the event that any Qualified Nonprofit submits a Statement of Interest in response to the Notice of Intent to Sell, said statement(s) shall be given priority over any statement submitted by the City.
  - b. In the event that no Qualified Nonprofit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered, and the City may proceed to the Right of First Offer process.
5. Right of First Refusal.
  - a. In the event that the Owner rejects the Offer submitted by all Potential Eligible Purchasers and receives a Third-Party Purchaser Offer to Purchase, the Owner must notify all the Potential Eligible Purchasers, who timely submitted a Statement of Interest and an offer, as defined herein in Paragraph (D)(1) and give priority in the order described.
  - b. In the event that the Qualified Nonprofits do not submit a match to the Offer to Purchase, the City's match will stand.

#### **14.26.080 Notice of Intent to Sell; Statement of Interest**

A. Notice of Intent to Sell. An Owner of a Non-Exempt Residential Property shall provide all Potential Eligible Purchasers notice of their intent to sell prior to listing or marketing a Residential Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least thirty (30) days before listing or marketing the Residential Property ("Notice Period"). The Notice of Intent to Sell shall be sent to each Potential Eligible Purchaser as set forth in the Administrative Guidelines, and shall include the following:



1. A statement that the Owner intends to sell the Residential Property.
2. A statement describing the rights of Potential Eligible Purchasers under this Chapter and stating the deadlines for exercising those rights.
3. Instructions for submitting a Statement of Interest pursuant to Paragraph B of this Section.

B. **Statement of Interest.** Prior to the expiration of the Notice Period set forth in Paragraph A of this Section, any Potential Eligible Purchaser defined in Section 14.26.70 may deliver a statement of interest to the Owner of the Residential Property (“Statement of Interest”). The Statement of Interest shall notify the Owner of the Potential Eligible Purchaser’s interest in exercising the Right of First Offer and/or Right of First Refusal under this Chapter.

C. **Disclosure Package.** Within five (5) days of receiving a Statement of Interest, the Owner must provide a disclosure package that includes documents and information set forth in the Administrative Guidelines, and at minimum, an itemized list of annual income and expenses, including but not limited to rent and other income collected, and costs of management, insurance, utilities, maintenance, and repairs.

C. **Effect of Statement of Interest.** Receipt of a timely Statement of Interest and disclosure package shall extend the Notice Period by thirty (30) days for Single Family Dwellings; sixty (60) days for two or three (2-3) unit Multi-Family Dwellings; and ninety (90) days for four or more (4+) unit Multi-Family Dwellings. During this extended Notice Period, Potential Eligible Purchasers may submit an offer to purchase the property pursuant to Section 14.26.090.

D. **Prohibition on Listing or Marketing Property During Notice Period.** The Owner of a Residential Property shall be prohibited from listing or marketing the Residential Property for sale prior to the expiration of the Notice Period.

#### **14.26.090 Right of First Offer**

A. **Right of First Offer.** A Potential Eligible Purchaser that submits a Statement of Interest shall have the right to make an offer to purchase a Residential Property prior to the listing or marketing of the Residential Property (“Right of First Offer”). The Potential Eligible Purchaser may deliver to the Owner of the Residential Property an offer to purchase the property at any time prior to the expiration of the Notice Period set forth in Section 14.26.080.D. The Owner may accept or reject any offer to purchase received from a Potential Eligible Purchaser following the steps set forth in Section 14.26.070.

B. Acceptance of Offer of Purchase. Upon acceptance of an offer to purchase a Residential Property made pursuant to Paragraph A of this Section, the Potential Eligible Purchaser shall make reasonable and good faith efforts to close the transaction. A Tenant shall have forty (40) days to close the transaction for the sale of a Single-Family Dwelling. A Qualified Nonprofit and/or the City shall have ninety (90) days to close the transaction for the sale of a Single-Family Dwelling or a two to three (2-3) unit Multi-Family Dwelling; and one hundred and twenty (120) days to close the transaction for the sale of a four or more (4+) unit Multi-Family Dwelling. Nothing in this Paragraph shall prevent the Owner and the Potential Eligible Purchaser from agreeing to further extend the deadline to close the transaction.

C. Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the Notice Period, (2) the expiration of the Notice Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B of this Section, the Owner may list and market for sale the Residential Property and may solicit and conditionally accept offers from a Third-Party Purchaser, subject to the requirements of Section 14.26.100.

#### **14.26.100 Right of First Refusal**

A. Disclosure of Offer to Purchase. An Owner that takes any action to accept an Offer from a Third-Party Purchaser shall disclose that Offer to any Potential Eligible Purchaser that has submitted a Statement of Interest and an Offer within 15% of the offer received by the Owner from the Third Party Purchaser, and shall provide said Potential Eligible Purchaser a right of first refusal pursuant to the requirements of this Chapter (“Right of First Refusal”). Within two (2) days of receipt of a Third-Party Purchaser Offer to Purchase, the Owner shall disclose to each Potential Eligible Purchaser that submits a Statement of Interest and an offer all material terms of any Offer to Purchase of the Residential Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Potential Eligible Purchasers who have submitted a Statement of Interest and an offer; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph shall be redacted from such offers.

B. Right of First Refusal. Any Potential Eligible Purchaser that submits a Statement of Interest and an offer may exercise a Right of First Refusal and accept the Offer to Purchase of the Residential Property within the time period set forth in Paragraph C of this Section. To exercise its Right of First Refusal, the Potential Eligible Purchaser must accept all material terms of the Offer to Purchase except for

the time to close as described in paragraph D of this Section and the deposit amount as described in Section 14.26.120.E; provided, however, the financing of the Potential Eligible Purchaser's purchase shall not be considered a material term of the Offer to Purchase so long as it does not affect the net value of the Sale to the Owner.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Potential Eligible Purchaser that submits a Statement of Interest and an offer at least ten (10) days to accept the Offer to Purchase for a Single-Family Dwelling, or at least thirty (30) days to accept the Offer to Purchase of a two or more (2+) unit Multi-Family Dwelling. The acceptance of an Offer to Purchase by any Potential Eligible Purchaser extinguishes any Right of First Refusal of other Potential Eligible Purchasers.

D. Time to Close. Upon acceptance of the Offer to Purchase, the Potential Eligible Purchaser shall have at least forty (40) days to close the transaction for the sale of a Single-Family Dwelling, or a total of ninety (90) days if the Potential Eligible Purchaser is a Qualified Nonprofit and/or the City; at least ninety (90) days to close the transaction for the sale of a two or three (2-3) unit Multi-Family Dwelling; and one hundred and twenty (120) days to close the transaction for the sale of a four or more (4+) unit Multi-Family Dwelling. Nothing in this Paragraph shall prevent the Owner and the Potential Eligible Purchaser from agreeing to further extend the deadline to close the transaction.

E. Rejection of Offer or Failure to Close. If each Potential Eligible Purchaser entitled to receive an Offer to Purchase rejects or fails to accept such Offer to Purchase within the time set forth in Paragraph C of this Section or if a Potential Eligible Purchaser that accepts an Offer to Purchase fails to close the transaction within the time set forth in Paragraph D of this Section, the Owner may immediately proceed with the sale or transfer of the Residential Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Potential Eligible Purchaser exercises a Right of First Refusal conferred by this Chapter.

#### **14.26.110 Contract Negotiation**

A. Bargaining in Good Faith. The Potential Eligible Purchaser and Owner shall bargain in good faith. The following constitute prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer the Potential Eligible Purchaser a price or term at least as favorable as that offered to a third party, without a reasonable justification for so doing;
2. The failure of an Owner to make a contract with the Potential Eligible Purchaser which substantially conforms with the price and terms of a third-party contract within the time periods specified in this Chapter, without a reasonable justification for so doing; or
3. The intentional failure of a Potential Eligible Purchaser or an Owner to comply with the provisions of this Chapter.

B. **Reduced Price.** If the Owner sells or contracts to sell the Residential Property to a Third-Party Purchaser for a price more than ten percent (15%) less than the price offered to the Potential Eligible Purchaser or for other terms which would constitute bargaining without good faith, the sale or contract is void and the Owner shall comply anew with all requirements of this Chapter as applicable.

C. **Financial Assurances.** The Owner may not require the Potential Eligible Purchaser to prove financial ability to perform as a prerequisite to entering into a contract. The Owner may not require the Potential Eligible Purchaser to pay the purchase price in installments unless the Owner provides deferred purchase money financing on terms reasonably acceptable to the Potential Eligible Purchaser. The Owner may require the Potential Eligible Purchaser to prove that the Potential Eligible Purchaser, either alone or in conjunction with a third party, has comparable financial ability to the Third-Party Purchaser before the Owner will be required to grant deferred purchase money financing to the Potential Eligible Purchaser on the same terms and conditions agreed between the Owner and the Third-Party Purchaser. If the Potential Eligible Purchase can prove comparable financial ability alone, the Owner may not require the Potential Eligible Purchaser to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the Owner granting deferred purchase money financing at settlement.

D. **Transfers of Interest in a Partnership or Corporation and Master Leases.** In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale but which does not involve a transfer of record title to the real property, the Owner shall be bargaining in good faith if the Owner offers the Potential Eligible Purchaser the opportunity to acquire record title to the real property or offers the Potential Eligible Purchaser the opportunity to match the type of transfer or agreement entered into with the third party. With respect to either type of offer, all provisions of this Chapter apply.

E. Deposit. The Owner shall not require the Potential Eligible Purchaser to pay a deposit of more than one percent (3%) of the contract sales price to make a contract. The deposit is refundable in the event of a good faith failure of the Potential Eligible Purchaser to perform under the contract.

#### **14.26.120 Long-Term Affordability and Tenant Relocation Assistance in Properties Purchased Under this Chapter**

A. For Qualified Nonprofits, City, and Subsidized Purchaser(s)

1. All Residential Properties purchased under this Chapter, except for Single-Family Dwellings purchased with no subsidy, shall be subject to rental affordability restrictions and restrictions on the resale value of a given property as defined in this subsection.
2. In exchange for the rights conferred under this Chapter, Subsidized Purchasers shall sign and submit an initial Statement of Rights and Obligations, available on the City website, agreeing to maintain the Residential Property as permanently affordable and be bound to this effect. This Statement of Rights and Obligations shall be submitted at the same time as the Statement of Interest as specified in subsection 14.26.80.B.

B. Rental Units. If the average rental rate of the units, which shall be based on the existing tenancies of the non-purchasing Tenants in the properties upon purchase, exceeds a rent affordable to 50% AMI households, the new Owner shall rent each vacant unit to 50% AMI income households until the 50% AMI rental rate average is achieved. Future rental rates of any vacant units shall not exceed a rent affordable to Low-Income Households.

C. Ownership Units. The sales price shall be calculated based on Chapter 18.37 of the East Palo Alto Municipal Code and the inclusionary housing guidelines. The sales price for any vacant units shall be set at an affordable price to Median Income Households and to Moderate Income Households, with the first vacant unit restricted to Median Income Households. The resale or transfer of ownership units shall be subject to long-term affordability covenants consistent with Chapter 18.37.100 of the East Palo Alto Municipal Code.

D. Permanent affordability standards shall remain in force for 99 years and are renewed at year 100. This shall be evidenced by one of the following:

1. A restrictive covenant placed on the deed to the Residential Property that runs with the land and is enforceable by the City against the purchasers and their successors;

2. A Community Land Trust lease, which is a 99-year renewable land lease with affordability and Owner-occupancy restrictions; or
3. Affordability covenants in land leases or other recorded documents not specifically listed in this subsection, which run with the land and are enforceable.

E. The sale of a Residential Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 14.04 of the East Palo Alto Municipal Code or any other applicable state law or local ordinance. Further, any Tenant who resides in any unit at the time of the sale of a Residential Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section.

F. All covenants created in accordance with this section shall be recorded with the San Mateo County's Recorders Office.

G. Required Filing to Certify Compliance with Affordability Restrictions. In the case that permanent affordability restrictions materialize as a covenant enforceable by the City, the Owner(s) of the Residential Property shall file a document every three (3) years with the City in which the Owner(s) affirmatively state the rents for each unit in the Residential Property.

#### **14.26.130 Prohibited Conduct**

A. The sale or transfer of any Residential Property subject to this Chapter and not exempt pursuant to Section 14.26.040 is prohibited unless the Owner complies with Section 14.26.040.C. Any change of Ownership of real property as defined in Revenue & Taxation Code § 64(c) shall be considered a sale or transfer of Real Property for purposes of this Chapter.

B. A Tenant or Potential Eligible Purchaser shall not sell any right afforded to them under this Chapter or sell a waiver of any such right.

C. An Owner shall not (1) coerce a Potential Eligible Purchaser to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter is prohibited. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

#### 14.26.140 Confidentiality

Any information exchanged between an Owner(s) and Potential Eligible Purchasers under this Chapter that is intended to facilitate the sale of property including, but not limited to, disclosures, any intent to sell, and terms and conditions of an offer of sale, shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of East Palo Alto or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

#### 14.26.150 Enforcement

A. **Owner Certification.** By no later than thirty (30) days after any Sale, the Owner(s) shall record with the San Mateo County's Recorder's Office, through the escrow company that facilitates the sale of the property, a signed declaration, under penalty of perjury, affirming that the Sale of that Property substantially complied with the requirements of this Chapter and will also instruct the escrow company to file a copy of the Owner Certification with the City. The City will publish all such addresses on its website.

B. The City Attorney, any non-exempt Owner subject to the provisions of this Chapter, and/or any Potential Eligible Purchaser may bring a civil action to enforce this Chapter and shall be entitled to the remedies set forth in this section to the greatest extent permitted by law.

C. A prevailing party in any action to enforce this Chapter shall be entitled to civil damages and damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may enforce the affordability requirements of this Chapter, when applicable. Any court of competent jurisdiction may enjoin a transfer or sale of Property, or rescind a sale of Property, where the Owner failed to comply with requirements of this Chapter, and may order that an Owner comply with the requirements of this Chapter. Civil damages may include:

1. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed \$1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each unit on a Property.
2. If the Owner's violation was knowing or willful, mandatory civil penalties equal to ten percent (10%) of the sale price for a first violation; twenty percent (20%) for the second, and thirty percent (30%) for each thereafter.

D. Suspension or Disqualification of Qualified Nonprofits. The City shall promptly investigate any complaint alleging that a Qualified Nonprofit has failed to comply with Section 14.26.150 of this Chapter. If, after providing the Qualified Nonprofit with notice and opportunity to be heard, the City determines that a Qualified Nonprofit has failed to comply with this Chapter, the City may suspend or revoke a Qualified Nonprofit's certification.

#### **14.26.160 Financial Assistance**

A. The City Manager or designee shall develop guidelines for providing financial assistance to allow for the acquisition of Residential Property pursuant to this Chapter. Financial assistance may be provided to Potential Eligible Purchasers. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Residential Property under this Chapter.

B. The provision of financial assistance under Paragraph A of this Section to any Tenant who acquires an interest in a Residential Property pursuant to this Chapter must be conditioned on the Tenant's agreement to reside at the Residential Property for at least three years. The City Manager or designee is authorized to impose a lien on said Residential Property to enforce the requirements of this Section.

#### **14.26.170 Implementation**

A. The City Council shall adopt Administrative Guidelines necessary to implement the requirements of this Chapter and may adopt additional rules and guidelines for purposes of administering this Chapter. The provision of Sections 14.26.010 through 14.26.060 shall take effect ninety (90) days after the City Council adopts Administrative Guidelines. Thereafter, the City Council may delegate to the City Manager the authority to amend the Administrative Guidelines as needed.

B. The City shall annually post and update the City's website with information on the East Palo Alto Opportunity to Purchase Act process, including information about sales and rights under this Chapter.

C. The City Manager or designee shall develop all online and printed forms and databases Qualified Nonprofit list and registry, and other administrative services to ensure efficient management of the program.

### **SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT**



This Ordinance is not subject to CEQA because it is not a “project” which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning).

**SECTION 4. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect and be in full force thirty (30) days after the date of its adoption. However, the requirements of this Ordinance shall not be enforced until July 1, 2022.

**SECTION 6. PUBLICATION.**

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the \_\_\_\_\_ meeting of the City Council of the City of East Palo Alto.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attachment: Ordinance (2046 : East Palo Alto Opportunity to Purchase Act (Continued))

\_\_\_\_\_  
Carlos Romero, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Rafael E. Alvarado Jr., City Attorney

Attachment: Ordinance (2046 : East Palo Alto Opportunity to Purchase Act (Continued))

## Frequently Asked Questions

***Please note that these Frequently Asked Questions were uploaded to the City website on Friday, December 3 and were based on public questions and comments received at the December 1, 2021 community meeting and via email during the period from November 16, 2021 to December 3, 2021. The responses are based on the November 16, 2021 draft Ordinance in the staff report. Any additional questions received after this document was uploaded will be documented by staff and shared with the City Council. Any updates made to this document will be noted at the top.***

### General

#### **What is the objective of this Ordinance?**

The main objectives of the East Palo Alto Opportunity to Purchase Act (EPA OPA) are anti-displacement and creation of affordable homeownership and rental opportunities.

#### **Why does EPA need an East Palo Alto OPA?**

An EPA OPA is a tool for tenants to stay in place and get a chance to purchase themselves, rent, or become homeowners with or without nonprofit assistance; for there to be permanent affordability for current and future generations of East Palo Alto residents; and to provide first-time homeownership opportunities for low-income families, which has been a City Council priority for many years.

#### **What is the EPA OPA process?**

- Owner decides to sell their residential property and EPA OPA applies (see the Applicability & Exemptions section).
- Owner notifies Potential Eligible Purchasers of their intent to sell.
- Potential Eligible Purchasers submit a statement expressing interest in purchasing or waive their rights by not submitting a statement within the specified timeframe. If Potential Eligible Purchasers waive their rights, then the owner may proceed with listing and marketing their residential property.
- Potential Eligible Purchasers who submitted a statement expressing interest get additional time to submit an initial offer.
- Owner accepts or rejects initial offer(s). If the owner accepts, the parties proceed to closing.
- If the owner rejects, they may then list and market their residential property and enter into a conditional contract with a third party. The Potential Eligible Purchasers who submitted an initial offer may have a chance to match a third-party offer. If they do not match, the owner may proceed with selling to the third party.
- The parties sign paperwork and close.

## Applicability & Exemptions

### To what and whom does the Ordinance apply?

The Ordinance applies to certain sales of residential properties in East Palo Alto. When an owner to whom the Ordinance applies chooses to sell their property, they must provide notice to the Potential Eligible Purchasers. The Potential Eligible Purchaser could be a tenant and/or Qualified Nonprofits and the City, depending on the housing and occupancy type. The Ordinance gives the Potential Eligible Purchaser the opportunity to make an offer within a specified timeframe (the “Right of First Offer”) and, if applicable, to later match any third-party offers that the owner wishes to accept (the “Right of First Refusal”).

- In a non-owner-occupied single-family dwelling with a tenant, the Potential Eligible Purchaser is the tenant. The tenant may assign their rights to a Qualified Nonprofit. A Qualified Nonprofit is a nonprofit organization that has been certified through a City process that will be detailed in the Administrative Guidelines to the Ordinance (please also see the “Qualified Nonprofits” section).
- In a non-owner-occupied single-family dwelling without a tenant, the Potential Eligible Purchasers are Qualified Nonprofits and the City.
- In non-tenant occupied single-family dwellings, the Potential Eligible Purchasers are Qualified Nonprofits and the City.

### Are there any exemptions to this Ordinance?

The Ordinance includes multiple exemptions based on occupancy type and transfer type.

- Owner-occupied single-family dwellings are exempt from the Ordinance. A single-family dwelling is “owner-occupied” if it is occupied by the owner as their principal residence for at least one year prior to the sale.
- Transfers between family members -- spouses, domestic partners, parents and children, siblings, and/or grandparents – and transfers through inheritance are exempt from the Ordinance.
- Sales of properties up to 4 units in emergency health situations (of an owner) are exempt from the Ordinance.

The full list of exempt transfers is provided in Section 14.26.040 of the draft Ordinance.

### What do I need to do if my property is exempt or if I am making an exempt transfer?

If the property is exempt (i.e., an owner-occupied single-family home), the owner does not need to file any additional paperwork prior to or during the sale of their property. After the sale of the property, the owner must submit a document and sign under penalty of perjury that the exemption applied. This template will be provided by the City and posted on the City's website.

For an exempt transfer, the only action an owner must take is to sign a document under penalty of perjury self-certifying one of the exemptions and submit supporting document(s) to the City. This template will be made available on the City's website. The City will keep records of the exemption claim but will **not** make a determination on whether the property is exempt.

**What about ADUs and JADUs? Does having one on my single-family lot subject my property to the Ordinance?**

Staff indicated at the November 16, 2021 meeting that the City Council may wish to consider exempting ADUs in the Ordinance. Staff has received many comments and concerns about ADUs and JADUs and will raise this at the December 7 meeting.

**Can I transfer my residential property to a family member under EPA OPA?**

Yes – EPA OPA exempts transfers between immediate family members, including spouses, domestic partners, parent and child, siblings, grandparent and grandchild.

**Can my residential property still go to my heirs under EPA OPA?**

Yes – EPA OPA exempts transfers to heirs upon the death of the owner.

**Can my residential property be exempt if I have a health emergency?**

Yes – EPA OPA exempts small property owners who need to sell their residential property quickly due to a health emergency.

**I'm living in my home and am thinking of selling. What if I need to move out to stage the house prior to selling it?**

If an owner has lived in their single-family home during the year prior to marketing the home for sale, their property remains exempt from the Ordinance. The owner may proceed to list and market the house.

**What if I move away temporarily, but I ultimately have to sell my single-family home?**

If the owner has not lived in the house for one year prior and the transfer is not exempt, then the property would be subject to the Ordinance as a non-owner-occupied single-family dwelling.

## Sales

### **If EPA OPA applies to my residential property and I decide to sell, what will be the sales price of my residential property?**

The sales price under EPA OPA can be market value. Owners have a right to accept or reject initial offers from Potential Eligible Purchasers (tenants, Qualified Nonprofits, and the City). If the owner rejects the initial offer(s) and subsequently receives a third-party offer they want to accept, or have conditionally accepted, the Potential Eligible Purchaser(s) who made the initial offer then have ten days to match the third-party offer for a single-family dwelling, or at least thirty days for a (2+) unit property. If they do not, the owner can proceed with the sale to the third party.

### **If the Potential Eligible Purchaser matches the third-party offer, do I have to accept?**

Yes – if the Potential Eligible Purchaser(s) who submitted an initial offer match(es) the third-party offer, the owner must then proceed with closing on the Potential Eligible Purchaser's offer. Note that a Potential Eligible Purchaser only has a right to match a third party offer if they had submitted an initial offer.

### **What is the purpose of the appraisal process and how does it work?**

City Council directed staff to remove the appraisal provision for single family homes.

In an OPA policy, the sales price is governed by the market because Potential Eligible Purchasers have the right to match the offers made by third parties. The purpose of an appraisal process is to further ensure that tenants are protected from displacement by preventing arbitrary and exorbitant offers of sale that effectively prohibit a Potential Eligible Purchaser from purchasing the units. In Washington, DC, TOPA policymakers drafted language to prevent cases like the Museum Square case, where the property owner informed Section 8 tenants that they would have to pay \$250 million (more than \$800,000 per apartment) to purchase the property, or they would be forced to leave. The property's assessed value of \$36 million did not come near the \$250 million the owner offered.

### **How does the Ordinance enable tenants, Qualified Nonprofits, or the City to purchase?**

The proposed Ordinance provides Potential Eligible Purchasers with timelines, adequate notice, and assignment of rights.

### **How does the Ordinance harmonize with the typical offer and contract process when the owner seeks third-party offers on the open market?**

If the Potential Eligible Purchaser has the right of first refusal because they timely submitted a statement of interest letter and a timely offer, then the owner is obliged to disclose to the Potential Eligible Purchaser(s) any third-party offers that the owner intends to accept or has conditionally accepted, and the Potential Eligible Purchaser can match the offer within 10 days (or 30 days for a 2+ unit building). The conditional agreement between the Potential Eligible Purchaser and the third party may contain a contingency that no Potential Eligible Purchaser exercises their right of first refusal within this time period.

The Ordinance sets forth timeframes for the right of first refusal and closing period and places a limit on the deposit amount that the owner may require from the Potential Eligible Purchaser to enter into contract.

It is important to note that the Ordinance would not take effect for six months after adoption. This six-month implementation period provides time to make clarifications and adjustments and bring the practices of the real estate transaction into alignment with the Ordinance's requirements.

### **Will this Ordinance affect my home value?**

No – when the owner decides to sell a property that is subject to the Ordinance, the owner can accept or reject any offer submitted by a Potential Eligible Purchaser. If the owner rejects the offer, the owner can then seek any third party offers. If the owner does intend to accept or conditionally accept a third-party offer, the owner then gives those Potential Eligible Purchaser(s), who timely submitted a letter of interest and timely submitted an offer, a limited time to match it. If neither the Potential Eligible Purchaser nor the third party makes an offer that satisfies the owner, the owner is not under any obligation to sell the property. By giving the Potential Eligible Purchaser the opportunity to match a third-party offer, the owner has more reassurances that the owner will be accepting an offer that closely reflects the market value of the property.

As an example of home values, Washington, DC real estate values have continued to rise each year. Per a [2018 DC Policy Center Housing report](#), from 1995, homes increased in value by 4.5 times, compared to 2.6-fold increases in the greater Washington Metro area. DC is the only jurisdiction in the area that has a comprehensive TOPA. A [2020 study](#) found that DC rental properties that received TOPA notices between 2013-2019 (meaning the owners notified tenants that the property they lived in was going up for sale and what their rights are under TOPA, as required by law) have seen consistent increases in land prices and cost per unit. The cost per unit in 2013 for these properties was just above \$100,000 and in 2019 was over \$250,000.

## How does the Ordinance handle off-market sales or unsolicited offers?

For a non-exempt property, owners who intend to accept or conditionally accept an unsolicited offer will be legally required to state their interest to sell the property and give the opportunity to Potential Eligible Purchasers to timely submit a letter of interest and then a matching offer. If no Potential Eligible Purchaser submits a letter of interest and an offer, the owner can move forward with the sale to the third party who made the unsolicited offer if the owner wishes to do so.

## Timelines

### What is the purpose of the different timelines?

There are specific timelines for each stage of the process, to ensure the tenants, Qualified Nonprofits, or the City have reasonable time to organize, express interest, submit an offer, secure funding, and close, while also balancing the residential property owner's need to sell. The policy adds time to the process, but it does not control the sales price. The EPA OPA timelines are tailored to achieve the objectives of the Ordinance: to prevent the displacement of the residents and to create more affordable homeownership and affordable rental opportunities.

### What is the purpose of the longer timelines?

The purpose of the longer timelines is to provide tenants with an opportunity to stay in place with either an opportunity to first make an offer and purchase, or to get a nonprofit landlord who is committed to providing affordable rents and not displacing residents. Timelines differ depending on property type and reflect how long it may take for the Potential Eligible Purchasers to organize, express interest, submit an offer, secure funding, and close, while also balancing the residential property owner's need to sell.

### What are the different timelines, and how do they work?

- The EPA OPA policy has timelines for the different stages of the process, including the Statement of Interest period, the Right of First Offer period, the Right of First Refusal period, and the Closing.
- The Statement of Interest period is the time for Potential Eligible Purchasers to submit a statement indicating interest in purchasing.
- The Right of First Offer period is the initial offer period for Potential Eligible Purchasers to submit an offer to purchase.
- The Right of First Refusal period is the time for the Potential Eligible Purchasers who submitted an initial offer to match the third party's offer.
- The Closing period is the time for the Potential Eligible Purchaser and Owner to close on a purchase.



The timelines in these different stages of the process differ by housing type: 1) Non-Owner Occupied 1-3 Unit Dwellings with Tenants, 2) Non-Owner Occupied 1-3 Dwellings without Tenants, and 3) Non-Exempt Multi-Family Dwellings (4+ Units). For an overview of staff's recommended timelines, please see the December 7 staff report available at [cityofepa.org/housing](http://cityofepa.org/housing).

For any Potential Eligible Purchaser to be able to submit an offer, they are required to timely submit a letter of interest.

For any Potential Eligible Purchaser to be able to submit a matching offer to a third-party offer, they are required to timely submit an offer.

### **Is there a way to expedite these timelines?**

If Potential Eligible Purchasers waive their rights by not submitting a letter of interest (and therefore no offer) within the specified timeframe, then the owner can proceed to market and sell the property and no further provisions of the Ordinance apply. This would shorten the timeframe to a total of 30 days, which is the length of the Notice Period.

The Ordinance otherwise requires a minimum specified timeframe for each phase of the process.

### **What happens if the tenant in a non-owner-occupied single-family dwelling does not wish to express interest or make an offer?**

The tenant has 30 days to submit a letter of interest expressing interest in purchasing. If the tenant wishes to waive their right by not submitting a letter of interest within the specified timeframe, the other Potential Eligible Purchasers (Qualified Nonprofits and the City) still have the 30 days to submit their own letter of interest. If by the end of the 30 days, no Potential Eligible Purchaser submits a letter of interest, the owner can proceed to market and sell the property and no further provisions of the Ordinance apply.

### **What if I receive a third-party offer with a shorter timeline?**

The property will still be subject to the Ordinance timeline for the Right of First Refusal, if there was a Potential Eligible Purchaser offer timely submitted.

### **What about a 1031 Exchange?**

Nothing in EPA OPA prohibits a seller from pursuing a 1031 Exchange. A "1031 Exchange" allows for the deferment of capital gains tax when an investor sells one property and acquires another of "like kind," in addition to meeting other requirements, within a certain timeframe. A 1031 Exchange is a specific transaction type that is

outside the scope of the Ordinance. Since a 1031 Exchange requires coordination of the timing of the close of sale on the sold property with the purchase of the replacement property, a third-party purchaser or an owner pursuing that transaction would factor in the OPA timelines when deciding to sell or make an offer.

## Affordability

### What is the purpose of the long-term affordability provision?

The purpose of the long-term affordability provision in the Ordinance is to ensure that any units purchased by a Qualified Nonprofit or the City remain affordable to current and future tenants and, if the units are sold, that they are sold at a price affordable to low- and moderate-income households. Placing affordability restrictions on units purchased through the EPA OPA aligns with the overall purpose of the Ordinance, which is to prevent displacement of tenants and to provide affordable homeownership opportunities. Please note that any tenants who receive government subsidy or assistance to purchase a single-family dwelling under the Ordinance would also be subject to the long-term affordability provision.

### When does an affordability restriction apply, and what is it?

If a Qualified Nonprofit or the City acquires a rental property and continues to rent out the units, the rents must remain affordable to the current tenants (when the property is purchased), and the average rental rate of all the units on the property cannot exceed 50% of the Area Median Income (AMI). If the average rental rate exceeds 50% AMI, the rent for any vacant units must be affordable to 50% AMI households or below.

Alternative models, such as a community land trust, whereby the CLT owns the land and leases it at an affordable price with tenant collective ownership of the structure, are also possible. In those cases, the same rental affordability provision in the Ordinance would apply.

If a Qualified Nonprofit or the City acquires a (non-owner-occupied) single-family dwelling with no tenant or a two-unit property and intends to make the units available for purchase, the sales price will be calculated using the method prescribed in the City's Inclusionary Housing Ordinance (Chapter 18.37 of the Municipal Code) and made affordable to households at 80% AMI and 120% AMI.

If a Qualified Nonprofit or the City acquires a multifamily rental property of 3 or more units and intends to make the units available for purchase, they must go through a condominium conversion process to sell the units to the current tenants (when the property is purchased), in addition to any vacant units, with the additional requirement that they sell the units at an affordable price. The same for-sale affordability provision in the Ordinance would apply.

These affordability restrictions will remain in place in perpetuity.

### **Will tenants be disqualified from their units for being over-income?**

No – if the tenant does not qualify for the unit, the tenant still has the protections given by the Rent Stabilization Ordinance. Any tenant who resides in any unit at the time of the sale of a Residential Property under this Ordinance cannot be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Ordinance.

### **How will the City ensure compliance?**

The affordability restrictions, which may take the form of a deed restriction enforceable by the City or a land lease with an affordability covenant, will be recorded against the residential property.

## **Right of First Refusal**

### **Under what circumstances do I have to disclose third-party offers, and to whom?**

When the owner decides to sell a property that is subject to the Ordinance, the owner can accept or reject any offer submitted by a Potential Eligible Purchaser. If the owner rejects the offer, the owner can then seek third party offers. If the owner does intend to accept or conditionally accept a third-party offer, the owner then gives those Potential Eligible Purchasers who timely submitted a letter of interest and timely submitted an offer, a limited time to match it. If neither the Potential Eligible Purchaser nor the third party makes an offer that satisfies the owner, the owner is not under any obligation to sell the property.

### **If I am an owner and I am required to disclose third-party offers, do I have to disclose every third-party offer I receive to the Potential Eligible Purchaser?**

No – you only have to disclose those offers that you intend to accept or that you have conditionally accepted.

### **How can I accept a third-party offer but then allow a Potential Eligible Purchaser to match the offer?**

You conditionally accept the third-party offer subject to the Potential Eligible Purchaser's failure to timely match it.

### **How will confidentiality be maintained in the disclosure of a third-party offer to a Potential Eligible Purchaser(s)?**

The Ordinance will have a confidentiality provision.

**If the owner later ends up selling the property for less than 10% of the price offered by the Potential Eligible Purchaser, is the contract with the third party voided?**

If the Owner sells or contracts to sell the property to a third-party purchaser for a price more than ten percent (10%) less than the price offered to the Potential Eligible Purchaser or for other terms which would constitute bargaining without good faith, the sale or contract is void and the Owner shall comply anew with all requirements of the Ordinance. However, if the owner is acting in good faith, and the sales price ends up being 10% less than what the Potential Eligible Purchaser offered because of circumstances later discovered such as an inspection report showing severe foundation damage, the owner can still proceed with the third-party sale.

## Enforcement

### Who will enforce this Ordinance?

Property owners, Potential Eligible Purchasers, and the City will enforce the Ordinance by complying with the Ordinance requirements and holding the other parties accountable through the multiple enforcement mechanisms established by the Ordinance. The main enforcement mechanisms that the Ordinance establishes are below (please note that changes to this section are being recommended to City Council on December 7):

1. By no later than thirty (30) days after any Sale, the Owner(s) must record with the San Mateo County's Recorder's Office a signed declaration, under penalty of perjury, affirming that the Sale of that Property substantially complied with the requirements of the Ordinance.
2. The City Attorney, any property owner non-exempted from this Ordinance, and/or any Potential Eligible Purchaser may bring a civil action to enforce the Ordinance.
3. A prevailing party in any action to enforce this Ordinance is entitled to civil damages and damages according to proof and reasonable attorneys' fees and costs. Also, a court may order that any transfer or sale of property made without complying with the requirements of the Ordinance be rescinded. Civil damages include:
  1. Any violation of the requirements of this Ordinance can be subject to a civil penalty not to exceed \$1,000 per day of violation.
  2. If the Owner's violation was knowing or willful, mandatory civil penalties equal to ten percent (10%) of the sale price for a first violation; twenty percent (20%) for the second, and thirty percent (30%) for each thereafter.
4. Suspension or Disqualification of Qualified Nonprofits. The City must investigate any complaint alleging that a Qualified Nonprofit has failed to comply with Section 14.26.150 of this Ordinance. If, after providing the Qualified Nonprofit with notice and

opportunity to be heard, the City determines that a Qualified Nonprofit has failed to comply with this Chapter, the City can suspend or revoke a Qualified Nonprofit's certification.

If the Potential Eligible Purchaser does not comply with the Ordinance, the owner can sell the home on the open market and can pursue civil penalties. If a contract has been already signed, the owner and the Potential Eligible Purchaser can pursue any contractual remedies for the breach of the contract as in any other contracts.

## Qualified Nonprofits

### How will the qualified nonprofit certification process work?

A 501(c)(3) organization or cooperative association may apply to become a certified qualified nonprofit if it fulfills the criteria outlined in the Ordinance and the Administrative Guidelines. The QNP's certification will be valid for (5) years. The City may solicit new applications each year. The list of QNPs will be published on the City's website.

### What are the criteria to become a Qualified Nonprofit?

As a baseline, a Qualified Nonprofits is a 501(c)(3) organization or cooperative association that applies to become a certified qualified nonprofit and fulfills the criteria that will be outlined in the Administrative Guidelines. So far, staff has received the following input from City Council:

- That the QNP have the ability and capacity to acquire, rehabilitate and manage affordable housing.
- That the QNP have a commitment to furthering affordable housing preservation and anti-displacement.
- That the QNP have experience and history serving East Palo Alto residents, and if not, to partner with other local nonprofits to meet the baseline criteria

The Administrative Guidelines will further elaborate upon the qualification process. The public is invited to be involved in that process of developing these guidelines in the six months prior to the enactment of the policy.

### How can we ensure Qualified Nonprofits have good practices in East Palo Alto?

In order to become a Qualified Nonprofits, nonprofits must meet baseline criteria outlined in the Ordinance and expressed in further detail in the Administrative Guidelines, including that the Qualified Nonprofit must have a commitment to affordable housing preservation and anti-displacement, have the ability and capacity to acquire, rehabilitate, and manage affordable housing, and have experience and history serving East Palo Alto residents—and, if not, partnering with local nonprofits.

If a Qualified Nonprofit does not abide by the affordability requirements set forth in the Ordinance, any court of competent jurisdiction may enforce the affordability requirements of the Ordinance.

As a prevailing parties, an Owner or the City may take action to enforce the Ordinance. Please see Enforcement for more details.

## Other

### **How does this Ordinance compare to other cities' Ordinances?**

The EPA OPA is tailored to the community's needs and takes lessons learned from Washington DC's Tenant Opportunity to Purchase Act (TOPA) passed in 1980 and San Francisco's Community Opportunity to Purchase Act (COPA) passed in 2019. EPA OPA does not allow tenants to sell their rights, requires that qualified nonprofits have a commitment to anti-displacement and meet specific criteria, and seeks to give more time for the Statement of Interest period than San Francisco. Staff interviewed practitioners in San Francisco and learned that the short Statement of Interest period in San Francisco does not provide qualified nonprofits with enough time to state interest on a property. Staff also conducted outreach to tenants to understand how much time tenants in East Palo Alto would need in the different phases of the Ordinance. This includes time to gather financial information to pre-approve for a loan, to reach out to the different Qualified Nonprofits if they wish to assign their right and submit a joint Statement of Interest, and to close a deal in a competitive market. Staff also conducted outreach to residential property owners and real estate agents to understand where to streamline the Ordinance for the seller's needs. The EPA OPA policy does not provide any timeline extensions, unlike San Francisco and Washington, DC's policies, in order to provide more predictable and streamlined timelines for residential property owners and real estate agents supporting their clients.

In addition, San Francisco allows Qualified Nonprofits to match third party offers even when they have not submitted an initial offer. EPA OPA only allows Potential Eligible Purchasers to match an offer during the Right of First Refusal if they had already submitted a timely initial offer during the Right of First Offer period.

### **What have the outcomes of TOPA been in Washington DC?**

Washington DC adopted a Tenant Opportunity to Purchase Act or "TOPA" in 1980. A DC Fiscal Policy Institute [study](#) on DC multi-family sales between 2014-2015 demonstrates that one-third of all multi-family transactions happened through TOPA. A 2018 [report](#) reveals that between 2015-2018, over 1,400 units were purchased through DC's Department of Housing and Community Development TOPA acquisition funds.

### **How does EPA OPA help address the affordability problem?**

An EPA OPA policy aims to create pathways for tenants to become first-time homeowners and facilitate permanently affordable rental opportunities while enabling the seller to obtain a market price for their property. An OPA policy on its own cannot correct for all the shortcomings of existing housing policy and the housing market. However, some of its key features directly address the City's housing challenges and their disproportionate impact on lower-income residents, and especially low-income residents of color, in East Palo Alto.

If adopted, an OPA Ordinance would work alongside the many other housing policies and initiatives that the City has in place, including the Inclusionary Housing and Rent Stabilization programs, supporting the production of new affordable housing, supporting the production of ADUs, and others.

**If the major objective is to provide affordable housing, how can an OPA purchase not be different than a purchase on the open market?**

When the property is purchased under EPA OPA, it is expected that the purchaser (Potential Eligible Purchaser or third-party purchaser) pays, and the owner receives, market value. It is only after the purchase of the property that a Qualified Nonprofit or the City makes the units in the property available at below market-rate rents or sales prices. In the case where a tenant purchases a single-family dwelling with their own financial resources, a deed-restricted affordable unit is not created, but the tenant has become a homeowner in part through the benefit of longer lead time that the Ordinance affords.

## Economic Analysis

**What have real estate values been in Washington, DC? Have they slowed or increased?**

Washington, DC real estate values have continued to rise each year. A DC Fiscal Policy Institute [report](#) demonstrates that between 2002-2018, at least 3,500 units were preserved through DC TOPA. A 2018 DC Policy Center [report](#) on the district's housing stock found that housing prices rapidly increased in the District of Columbia between 1995-2018; those who purchased a house before 1995 saw a 4.5-fold increase in their investments, which outperformed the 2.6-fold increase in the greater Washington Metro area.

**What is the potential economic impact of an EPA OPA on the City's budget?**

Please see the October 5th and November 16th staff reports for an analysis. City Council and the community have expressed strong support for affordable homeownership opportunities. Properties purchased by Qualified Nonprofits for the purpose of providing affordable homeownership opportunities will not receive any property welfare tax exemption. The City's budget could also see a positive impact by

reducing the cost of displacement and homelessness in the community by this and other affordable housing policies that the City Council has adopted.

### **Does the City need a third-party economic study in order to pass an EPA OPA?**

Third-party studies are not required to pass an Ordinance.

Staff consulted a variety of practitioners and professionals and conducted research before the introduction of EPA OPA. For an overview of staff analysis, see the October 5 and November 16 staff reports (with citations) and presentations.

### **Will this policy create disincentives to purchase a home in East Palo Alto or to build new housing in East Palo Alto?**

The same concerns have been historically raised against rent stabilization protections and other resident anti-displacement policies already adopted by Council. However, the demand for housing and unsolicited purchase offers continues to increase in the City. These policies that intend to protect residents and benefit the entire community have not stopped the interest of developers in the City. In fact, the City is currently reviewing a development proposal for 605 residential units and other major residential proposals. For more information about the current residential and other development proposals being considered, please go to: <https://www.ci.east-palo-alto.ca.us/projects>.

East Palo Alto's location in San Mateo County—where, for every six low-wage jobs (\$20 an hour), there is one home affordable to the person working that job (monthly rent of \$1,500)—situates it in a region where job and population growth continue to drive up demand for housing. Since 2009, county-wide, home values have more than doubled, and rents have risen 41%. Regional housing demand has and will continue to influence the demand for new housing in East Palo Alto.

As noted elsewhere, the proposed Ordinance does not prevent the property owner from seeking offers on the open market and selling their property at market value.

## **Outreach**

### **What has the process been to develop this Ordinance?**

City Council has been discussing a potential housing preservation policy since 2018. This policy went through an ordinary public Ordinance process, which includes: City Council expressing interest and directing staff to study the policy (in 2018, 2019 and 2020); staff returning with a framework for City Council and community input and discussion (October 5, 2021); an introduction and public hearing of the draft Ordinance (November 16 and continued onto December 7); and a second and final public hearing of the Ordinance (date to be determined).

### **What outreach has been conducted for this Ordinance?**



In order to arrive at the draft Ordinance staff proposed on November 16<sup>th</sup>, staff conducted outreach to nine affinity group meetings and two focus groups that held a diverse group of tenants, homeowners, and mom and pop landlords. Staff also consulted real estate professionals and expert practitioners in East Palo Alto and the region. Staff has continued to gather public comments at the October 5th and November 16th City Council meetings, at the December 1st community meeting, and via emails and office hours. The next City Council meeting is on December 7, 2021. If you have questions or comments about the Ordinance, please email [housing@cityofepa.org](mailto:housing@cityofepa.org).

**Were real estate professionals consulted in constructing this Ordinance?**

Yes – staff has been consulting with real estate professionals for the drafting of this Ordinance.

**Why was the outreach done for this Ordinance different from the RBD Specific Plan Update?**

A specific plan is a long-range planning exercise that envisions future development in a specified geographic area of the city and that requires full environmental review, updating of the City’s zoning ordinance, and parallel multi-year transportation and infrastructure planning. The current RBD Specific Plan Update is a process based on the potential addition of over four million square feet of office/R&D space (3 million more square feet than under the current planned capacity) and 440 housing units to the area.

A key difference between the EPA OPA and the specific plan update is that EPA OPA is a proposed ordinance. This Ordinance would affect residential property transactions in the City, with certain exemptions.

**What outreach has the City continued to conduct to ensure that East Palo Alto residents are informed about the Ordinance?**

On December 1st, City staff held a community meeting with the purpose of providing more information on EPA OPA, answering questions on the operational aspects of EPA OPA, soliciting feedback from stakeholders, and considering feedback and comments leading up to the City Council meeting on December 7th. Staff is posting and forwarding all emails received to City Council, holding office hours, and continuing to gather comments and questions sent to [housing@cityofepa.org](mailto:housing@cityofepa.org).