



# Memorandum

**TO:** COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** March 16, 2023

Approved

Date

3/20/23

**SUBJECT: CITY INITIATIVES ROADMAP - HOUSING STABILIZATION:  
COMMUNITY OPPORTUNITY TO PURCHASE PROGRAM STATUS  
REPORT**

## **RECOMMENDATION**

- (a) Accept the status report on the draft Community Opportunity to Purchase (COPA) Program proposal that would provide Qualified Nonprofits (QNP) a right to make a first and final purchase offer on properties up for sale, and would require notification to residents, QNPs, and the City of residential property sales covered by the program
- (b) Provide feedback to staff on the draft program

## **EXECUTIVE SUMMARY**

The draft COPA program proposal would alter the existing property sales process for properties covered under the program. COPA would give the right to make a first and final purchase offer to nonprofit housing providers qualified by the City (QNP) to participate in the program. These QNPs would have experience in acquiring, rehabilitating, owning, and operating restricted affordable properties. If they are based outside of San José, the QNPs would need to partner with existing community-based organizations that would help to communicate with existing residents. They would agree to acquire residential properties in San José, rehabilitate to improve residents' living conditions and offer new affordable homes that are restricted ongoing.

The main objective of COPA, when teamed with funding, is to help stabilize existing lower-income renters by increasing the number of rental buildings owned by experienced affordable housing nonprofits that will work with the City to keep homes affordable in perpetuity.

The draft COPA program proposal would address three major existing challenges in the San José housing market:

- **Level the playing field:** Nonprofit affordable housing providers must seek both commercial loans and subsidized loans from the City and other public agencies. This is a different and more complicated business model than for-profit real estate corporations. It is very difficult for nonprofits to make competitive, reliable, and fair offers to buy properties without a few additional days at the start of the sales process to assess the likelihood of their ability to assemble sources of affordable housing financing.
  - To give some additional time and enable nonprofits to be competitive in the San José market, staff's COPA proposal would give QNPs 15 days after owners notify them of a sale to indicate they want to make an offer on the property. During this time, owners could not market openly to other buyers but could be getting the property ready for listing. These upfront additional days would give QNPs time to assess if a property meets their requirements and estimate the amount of private and public financing they could obtain.
- **Increase market transparency:** There is no single listing service for properties with five or more units, and many buildings sell off-market without being listed. This lack of transparency to all properties for sale is a challenge to the City's intention to stabilize communities at high risk of displacement by funding strategic nonprofit property acquisitions in key locations.
  - The **draft** COPA program proposal would require that owners of properties covered by the program notify QNPs when their properties are being sold. This enables QNPs to identify particular buildings that could meet all of their organizations' criteria and be eligible for public subsidies. It also allows the City to strategically offer companion subsidies that would more effectively achieve its goals through the acquisition of key buildings in locations across the City, repair of condition problems, and stabilization of lower-income renters.
- **Educate tenants and lessen their stress:** Lower-income community members, who already pay high housing costs relative to their income, report to City staff that they have high levels of stress when their properties are being sold. They fear that new owners usually increase rents, which greatly increases their housing instability and the likelihood of needing to move. They often do not learn about sales until late in the process, which also increases their stress if they need to search for a new rental.
  - The **draft** COPA program proposal would require that owners inform renters when a property goes up for sale. As it would be early in the process, the notice would give them more time to plan. The proposal would also require QNPs and/or their local partners to make an effort to contact existing residents to

introduce themselves, inform renters about their organization, and clarify how restricted affordable housing would differ from their current tenancy rules.

- **Right-size rents and improve the physical condition:** Properties purchased by QNPs through the COPA process would seek the City's and other public subsidies to help finance physical improvements. COPA could help to improve residents' living conditions and potentially improve buildings' energy efficiency.

The draft COPA program proposal would be the first significant program in the City's emerging preservation program area, which is needed to complement affordable housing production and tenant protection programs already in place. It has several features to help to empower lower-income renters with more information and involvement. It could help improve the quality of lower-income renters' lives and increase the likelihood that they can remain in San José.

## **BACKGROUND**

The draft COPA program proposal (**Attachment A – COPA Program Description**) is a product of several years of Council-directed research on solutions to address residential displacement. This history is summarized below and is described in greater detail in **Attachment B – Additional Background on COPA**.

COPA programs give an opportunity to qualified nonprofit housing organizations to make a first offer to purchase properties up for sale that is covered under the program. The change in the sales process is to increase the number of rental buildings owned by experienced affordable housing nonprofits that will work with the City to keep homes affordable in perpetuity. COPA's core objective is to help stabilize existing lower-income renters and keep them in their homes when teamed with City funding.

City Council's direction to work on anti-displacement measures began with its approval of the 2014-2023 Housing Element in January 2015. City Council then prioritized work on residential displacement in its June 2018 approval of the Housing Crisis Response Workplan, Item #9: Develop Anti-Displacement Strategies.

In November 2018, a public/nonprofit San José team sponsored by former Councilmember Magdalena Carrasco applied for and was chosen to participate in the PolicyLink Anti-Displacement Policy Network (ADPN), a 14-month learning cohort of 10 U.S. cities working to address urban displacement. The San José ADPN team conducted multiple listening sessions with community members impacted by displacement and co-wrote a community report on ways to fight displacement. The report included COPA as a strategy that the City should develop.

On September 22, 2020, City Council approved<sup>1</sup> the Citywide Residential Anti-Displacement Strategy (Anti-Displacement Strategy) and approved its 10 recommendations. City Council directed staff to work on the top three recommendations, including Recommendation #3, the Development of a COPA Policy.<sup>2</sup> City Council's direction was to develop a draft COPA program proposal with parameters for applicability by property type.

Staff presented an update on COPA to the Community and Economic Development (CED) Committee on October 25, 2021.<sup>3</sup> Committee members directed staff to conduct additional public outreach regarding the proposal and asked substantive and process questions. In total, staff has presented 13 status updates on the draft COPA program proposal development to City Council committees between March 2021 and September 2022.

To co-design the COPA proposal, staff and consultants facilitated 15 formal meetings of two different advisory committees throughout 2021. Since staff updated the CED Committee in October 2021, it conducted 12 meetings for the general public (10 online and two in person) with an additional 582 total attendees (308 individuals). Total public participation in designing the draft COPA program proposal since spring 2021 has been extensive, with 1,072 meeting attendees (approximately 480 individuals).

### **City Plans and Reports Aligned with the Draft COPA Program Proposal**

Multiple City plans and initiatives have called for the City to pursue or adopt a COPA program proposal. These include:

- The San José ADPN public/nonprofit team's "Ending Displacement in San José: Community Strategy Report" in January 2020, co-authored by community organizations and City staff.<sup>4</sup>
- The City's Charter Review Commission final report, approved on April 11, 2022, recommended that San José pursue a COPA program.<sup>5</sup>

---

<sup>1</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8772026&GUID=C6ADD217-83DD-4F7E-B480-056B228DCAF1>

<sup>2</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8772030&GUID=CABC65D7-A63C-4E4B-9010-6A2ED1D7E3BC>

<https://sanjose.legistar.com/View.ashx?M=F&ID=8772030&GUID=CABC65D7-A63C-4E4B-9010-6A2ED1D7E3BC>

[442-752CDC3FB8FD](https://sanjose.legistar.com/View.ashx?M=F&ID=8772030&GUID=CABC65D7-A63C-4E4B-9010-6A2ED1D7E3BC)

<sup>4</sup> Community Report posted at: <https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/housing-policy-plans-and-reports/citywide-anti-displacement-strategy/copa>

<sup>5</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=10710023&GUID=B384951D-1D2C-4BA0-AD64-DFF86C472568>

- The COVID Recovery Task Force report, approved by the City Council in December 2022, recommends that the City adopt a draft COPA program proposal and adequately fund affordable housing preservation as part of the City's homeownership strategy.<sup>6</sup>

In addition, the Draft 2023-2031 Housing Element<sup>7</sup> also includes the implementation of COPA, if approved by City Council, as a strategy for preserving housing and helping to stabilize lower-income rental neighborhoods.<sup>8</sup>

As part of the most recent update on anti-displacement work on September 26, 2022, the CED Committee requested staff to return to the CED Committee before bringing a COPA proposal to the full City Council.

## **ANALYSIS**

Housing Department staff completed its analysis of a draft COPA program proposal addressing City Council's September 2020 direction. This analysis is presented in the following sections:

- A. Summary of the draft COPA Program Proposal
- B. Draft COPA Program Proposal
- C. Impact of the Draft COPA Program Proposal
- D. Advantages and Disadvantages of the draft COPA Program Proposal
- E. Implementation
- F. Lessons Learned from Other Cities and Extensive Stakeholder Engagement Process
- G. Policy Alternatives
- H. Racial Equity Impact Analysis
- I. Climate Smart San José

### ***A. Summary of the Draft COPA Program Proposal***

COPA gives QNP buyers the right to make a first offer on a residential property covered by the program that is up for sale. The purpose of COPA is to enable more properties to become affordable, to the extent that City subsidies are available, to prevent the displacement of existing renter families. COPA's goals are to:

- Prevent displacement of lower-income renters and promote renter housing stability

---

<sup>6</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=11494873&GUID=7AD5D0AA-CB21-4074-848D-4E50E5AEB9A9>

<sup>7</sup> <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/citywide-planning/housing-element/2023-2031-draft-housing-element>

<sup>8</sup> Draft Housing Element, Ch. 3, Table 3-2, Strategy R-4, <https://www.sanjoseca.gov/home/showpublisheddocument/89585/637989408846500000>

- Increase the number of permanently affordable homes
- Empower renter families
- Provide a tool to support ownership opportunities and other asset-building opportunities

**What COPA Would Do?**

<b>What would the draft COPA program proposal change?</b>	Property owners of buildings subject to the program would be required to notify City-qualified QNPs about their intention to sell before listing their properties on the open market.  If the owner receives an initial offer from a QNP buyer, they would need to ask that nonprofit if they were interested in submitting a final counteroffer before selling to a third party.  When a property is listed for sale, the program would require requires the owner to give notice to the tenants as well.
<b>What property sales would be applicable?</b>	COPA applies citywide to 2+ unit rental properties built at least 15 years ago unless the property qualifies for one of several exemptions.
<b>Who would make offers on these properties?</b>	QNPs vetted by the City are experienced in acquiring, rehabilitating, and managing restricted affordable housing.
<b>Who would have the final say on whom a property owner sells to?</b>	The property owner retains complete control over whom they sell – including price and all other terms and conditions of the sale.

How COPA Would Support Nonprofit Housing Providers in Addressing Residential Displacement

Nonprofit housing organizations in San José are able to acquire existing properties and make them affordable to the renter families who live there and who are otherwise at risk of displacement. However, they currently face key barriers that COPA would address.

<b>Current barrier for nonprofit housing providers</b>	<b>How COPA would address the barrier</b>
Mismatch between market timelines and the slower timelines of nonprofit housing provider’s need to assemble financing sources	COPA would proscribe timelines for property owners to notify nonprofit housing providers, allow them to make an offer (if desired), and close on the property.
Lack of complete information regarding suitable properties they could acquire	COPA would provide QNPs with access to information about which properties are up for sale

Residential Displacement Affects Communities of Color the Most

Residential displacement disproportionately affects communities of color, who were historically denied wealth-building opportunities through equal access to homeownership. See 3 in

the Racial Equity Impact Analysis section for a graphic of communities of color who are most vulnerable to displacement in San José. As a result, anti-displacement policies like COPA represent an opportunity to advance the City of San José’s duty to Affirmatively Further Fair Housing and ensure that all racial and ethnic groups can continue residing and working in San José.

### ***B. Draft COPA Program Proposal***

The draft COPA program proposal was developed by staff based on extensive stakeholder and resident feedback, as described in detail in **Attachment C – Public Outreach and Stakeholder Engagement Summary**. The program proposal in this section reflects a variety of compromises between the major groups involved in these stakeholder processes, which broadly consist of affordable housing organizations, tenant advocates, and real estate professionals.

This section reviews the proposed key draft COPA program proposal elements, including:

- 1) COPA Timelines
- 2) Applicability and Exemptions
- 3) QNP Criteria
- 4) Affordability
- 5) Tenant Engagement
- 6) Effective Date of Ordinance
- 7) Enforcement, and
- 8) Incentives

For each element section below, the program proposal is followed by rationales. Summaries of stakeholder comments on each element can be found in the “Stakeholder Positions on COPA Program Elements” subsection of **Attachment A**.

#### **1) Draft COPA Program Proposal Timelines**

##### **Staff Recommendation for COPA Timelines**

*Letter of Intent:* Gives QNP up to **15 days** from the owner’s notice of sale

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

### **Rationale for Staff Recommendation on Timelines**

Based on extensive staff research, time periods shorter than what staff have recommended would compromise the efficacy of a COPA policy by not providing sufficient time for QNPs to perform these essential activities.

During the Letter of the Intent period, the following would occur:

- QNPs would consider the property for sale

During the upfront period for QNPs to assess whether to make an offer, activities include:

- QNPs / contractors estimate high-level property rehabilitation needs
- QNPs would confer and agree on one QNP that wants to make an offer
- The one QNP that wants to make an offer would submit a Letter of Intent to make an offer to the property owner or representative.

During the offer period, QNPs would need to:

- Determine if the project would qualify for multiple financing sources
- QNPs assess property rehabilitation needs with contractors
- Meet with a real estate professional to draft an offer
- Submit the request to their volunteer board of directors
- Conduct negotiations

The closing period activities include:

- QNPs obtain construction bids to finalize the budget
- QNPs enter into a construction contract
- QNPs / Community Partners meet with renters and educate them about transitioning to deed-restricted affordable housing
- QNPs / Community Partners gather information on tenant incomes
- QNPs and their lenders obtain third-party reports including physical needs and appraisal
- Lenders conduct property-level underwriting, which assesses a greater number of details and the risks associated with assembling other financing for the project
- QNP and lenders do detailed analysis that balances required restricted rents with needed property rehabilitation needs
- QNP may involve renters in transition planning during the closing period, especially if they intend to convert the rental property into some alternative ownership model.

Additional detailed information about the actions that QNPs would take during each stage of the timeline can be found in **Attachment D – Detailed Breakdown of QNP Activities**.

## **2) Draft COPA Program Proposal Applicability and Exemptions**

### **Staff Recommendation for Applicability and Exemptions**

All rental properties with **two or more units**, unless the property is covered by one of the following exemptions:

- Transactions where control of the property is not transferred or remains with a related party of the seller
- Owner-occupied properties of up to four units
- Properties built within the last 15 years (updated annually on a rolling basis)
- Family transactions (e.g., transfers for property to direct family members)
- Properties subject to specified disposition processes (e.g., foreclosure or bankruptcy)

### **Rationale for Staff Recommendation on Applicability and Exemptions**

- Staff recommend **excluding partial property transfers** because QNPs are unlikely to be interested in purchasing non-controlling shares in a property since this would present challenges for converting the properties to deed-restricted affordable housing.
- Staff recommend **including two-to-four-unit properties** as properties with two units are not covered under the City's Apartment Rent Ordinance. Thus, lower-income renter families living in these property types can experience rent increases of over 5% per year, placing them at a higher risk of displacement than lower-income renters living in properties with three or more units. Also, households living in two-to-four-unit properties in San José are disproportionately people of color. Including these properties under COPA would therefore advance goals of promoting racial equity by preventing the displacement of lower-income renter families in these properties.
- However, staff recommend **excluding 2- to 4-unit properties, if they are owner-occupied** to ensure that they retain full control over the sale of what is their primary residence and what may be their only property and largest financial asset.
- Staff recommend **excluding single-family homes** from the program because, on a per-unit basis, single-family homes are significantly more expensive to acquire than multifamily apartments. This means that fewer units of this property type could be preserved with the limited public resources for preservation. Single-family homes also have faster transaction timelines than multifamily properties, meaning that the COPA process would create more significant delays for single-family properties relative to market timelines than for other property types.
- Staff recommend **including larger properties** (those with 50 or more units) because nonprofit housing providers that use low-income housing tax credits (housing tax credits) are most interested in acquiring properties in this size category. Housing tax credits are an important source of affordable housing finance, but they are rarely used for single properties with fewer than 40 to 50 units due to the higher cost per unit of seeking and then selling the housing tax credits. Also, significant regional and state funding for affordable housing could be sought for larger properties. Finally, larger apartment properties tend to

### **Rationale for Staff Recommendation on Applicability and Exemptions**

have smaller per-unit acquisition and rehabilitation costs than smaller properties due to economies of scale, which would improve the efficient use of public funds.

- Staff recommend **excluding properties that were built within the last 15 years** because newer properties tend to have the highest rents in the market and are therefore unlikely to house the lower-income families most at risk of displacement from San José.
- Staff recommend **excluding properties transferred between direct family members** based on feedback that subjecting these properties to COPA would reduce a wealth-building opportunity for families of color.
- Staff recommend **excluding properties in foreclosure processes or bankruptcies** due to logistical challenges associated with layering two differing proscribed processes.
- Staff recommend **excluding two-to-four-unit properties if the property owner must sell due to a documented need to pay for medical treatment** for themselves or an immediate family member, based on feedback that smaller property owners may not have alternate assets to liquidate in the event of a medical emergency and the timelines under COPA may therefore represent an unusual burden.

### **3) Draft COPA Program Proposal QNP Criteria**

#### **Staff Recommendation for QNP Criteria**

Staff intends to further refine criteria for QNPs in accompanying COPA regulations and in a Notice of Funding Availability for affordable housing acquisition and rehabilitation, which would ensure that staff can periodically revisit nonprofit lenders' underwriting criteria and ensure that city QNP criteria align with those of likely acquisition lenders.

However, based on the current lending environment, the likely required characteristics for potential QNPs would be for the accompanying COPA regulations are below:

- 501(c)(3) designation
- Demonstrated track record with the purchase, rehabilitation, management, and operation of restricted affordable housing including at least one housing project of a similar type

In addition to the required characteristics, QNPs must meet the following desired characteristics or fulfill them by partnering with a local community-based organization (community partner):

- Demonstrated track record of positive tenant engagement, local community engagement, and housing policy advocacy
- Based in San José with the specific mission of serving communities in San José, as documented in the organization's bylaws or articles of incorporation

Organizations that are not yet qualified as QNPs and seek to be certified as a QNP can partner with approved QNPs on projects and programs.

#### Rationale for Staff Recommendation on QNP Criteria

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

#### 4) Draft COPA Program Proposal Affordability

##### Staff Recommendation for Affordability

COPA would focus on very low- and low-income renter households per the following:

- *Portfolio goal:* Staff recommends that the Housing Department set an overall portfolio affordability goal of an average of 50% of AMI across all COPA projects supported by City funding.
- *Individual properties:* The target range of resident incomes for rental properties would be 31-80% AMI, and for homeownership, properties would be 61-120% AMI. These ranges would apply regardless of the property’s initial tenure.
  - Rental target: Per 2022 income limits, a one-person household in this range would earn \$35,371 to \$94,320, and a four-person household would earn \$50,551 to \$134,800.

### **Staff Recommendation for Affordability**

- **Homeownership target:** Per 2022 income limits, a one-person household in this range would earn \$70,741 to \$141,480, and a four-person household would earn \$101,101 to \$202,200. To serve households earning less than 60% to 120% AMI, only certain alternative homeownership strategies would likely be possible.<sup>9</sup>

COPA transactions would not result in the displacement of current renters for reasons of income eligibility.

- If an existing tenant makes less income than the applicable affordability restrictions, their rent would be their current lease rent or the rent adjusted to the targeted affordability for their apartment, whichever is lower.
- If an existing tenant is over-income for the target program affordability range, the QNP would have the option to keep the over-income tenant's rents at their current lease rates or set rents at 30% of the household's monthly income (net a reasonable utility allowance), whichever is higher.

**Annual rent increases:** Except as described for over-income renters per above, annual rent increases would not be allowed to exceed the City's Apartment Rent Ordinance's limit (currently 5%), or the restricted affordable rents as required by any applicable affordable housing funders, whichever is lower.

### **Rationale for Staff Recommendation on Affordability**

Studies indicate that displacement is most damaging to lower-income renter households and that lower-income renter households are also at higher risk of residential displacement (as discussed in the Analysis section). For consistency with the Citywide Residential Anti-Displacement Strategy approved by City Council on September 20, 2020, staff recommends that COPA focuses its benefits on very low- and low-income renters, especially those who live in neighborhoods that are experiencing or at risk of displacement.

Staff recommends a portfolio target income that is no lower than 50% AMI because a lower target income may result in challenges for the financial feasibility of properties acquired through COPA.

## **5) Draft COPA Program Proposal Tenant Engagement**

### **Staff Recommendation on Tenant Engagement**

To increase tenant participation in the program, staff propose to include renters during every part of the acquisition process:

---

<sup>9</sup> Staff is currently scoping future work on an Equitable Homeownership Strategy for the City Council's consideration.

### **Staff Recommendation on Tenant Engagement**

- **Pre-acquisition period:** Property owners must notify renters, in addition to notifying QNPs, that they intend to sell their property. Additionally, QNPs and/or their Community Partners would be required to reach out to renters to get to know the property, garner support, and help with things like income verification and outreach.
- **Transaction period:** QNPs and/or their Community Partners would be required to have ongoing communication with residents, especially about any major changes anticipated for the property or property management policies, like significant rehabilitation plans and the need to submit income information each year.
- **Post-acquisition:** QNPs and/or their Community Partners would be expected to have ongoing communication with residents about the property operations, tenant lease provisions, and any other issues on which renters need information. Renters would receive support and capacity for property for resident organizing, the formation of tenant associations, and future conversions to homeownership or limited equity cooperatives if proposed and approved in advance by the City.

### **Rationale for Staff Recommendation on Tenant Engagement**

- In addition to preventing residential displacement, a goal of COPA is to increase tenant empowerment.
- Staff recommend **that property owners notify renters at the same time as QNPs** to ensure that renters are more aware of their rights after a transition of ownership, either to a QNP or to another private owner. Interviews with staff in San Francisco (which passed a COPA policy in 2019) revealed that tenant interest can be a motivating factor for QNPs there to consider acquiring a specific property.
- **Staff do not recommend that renters approve QNPs' plans for the property** due to the QNPs need to make time-sensitive decisions informed by property financials.
- However, **staff support ongoing QNP engagement with renters** to ensure that renters have sufficient information to make informed requests from the QNPs during the acquisition process.

## **6) Draft COPA Program Proposal Effective Date of Ordinance**

### **Staff Recommendation for Effective Date**

Staff proposes a generous period after the ordinance passes until it becomes effective to ensure the program details are completed and the program's benefits can be realized right away. The effective date would be the greater of 12 months, or when:

1. Regulations are completed
2. QNPs are qualified
3. Funding is identified, and

4. City's online portal is created.

Staff will post periodic updates on its website on progress towards meeting these requirements. When all four elements are completed, staff will issue a written notice to the public that the Ordinance will take effect on an identified date 60 days after the notice.

**Rationale for Staff Recommendation on Effective Date**

The City's web interface would help property owners and QNPs to effectively communicate, reduce administrative burden for property owners, and eliminate fears of user errors and inadvertent non-compliance. It would also allow the City to track the effectiveness of COPA over time by allowing staff to identify properties that were listed for sale in case of complaint, and to measure the number of properties acquired through COPA relative to the total number of COPA notifications.

**7) Draft COPA Program Proposal Enforcement**

**Staff Recommendation on Enforcement**

Staff would work with interested parties and residents to ensure they understand how to comply with the draft COPA program proposal. Staff envisions a complaint-based process for enforcement that would proceed with the following enforcement steps:

- First Offense: Written letter of warning to the seller
- Second Offense: Fine imposed on the seller
- Third Offense and more: Scaled increase of fine imposed on the seller

Private rights of action would also be possible if a property owner displayed repeated, knowing violations of the COPA law after being educated.

**Rationale for Staff recommendation on Enforcement**

- Enforcement is necessary, but the program's goals would only be achieved through education that results in property owners following the correct process, and residents that understand the process and can take advantage of the program's benefits.
- With minimal program staffing, resources are most efficiently spent on targeted education, not on staff tracking details of hundreds of property listings a year to find process errors.
- Staff views property owners, their representatives, and residents as partners in COPA transactions and would focus on education and issuing guidance before escalating to stronger enforcement methods.
- Administrative enforcement would mirror other City programs and fee schedules.
- Staff do not recommend additional enforcement mechanisms due to limited staff capacity to conduct enforcement. However, an ongoing challenge for COPA enforcement would be

**Rationale for Staff recommendation on Enforcement**

that, by definition, property sales are singular events and owners may only sell one property.

**8) Draft COPA Program Proposal Incentives**

**Staff Recommendation on Incentives**

- Staff recommends inclusion of specific language on QNPs’ collaboration with property owners to incentivize them to facilitate 1031 Exchanges or other tax-advantaged transfer structuring and timelines.
- Staff is exploring potential incentives to make transactions more economically feasible and to incent owners selling to QNPs, such as reductions in certain City fees or taxes.
- By its definition, COPA would facilitate introductions of property owners with potential purchasers that may not have been in the San José market without the program.
- The possibility of City subsidies for properties acquired under COPA would encourage potential offers even during market downturns.
- Owners that value keeping their long-time residents in place would find like-minded buyers through the program.

**Rationale for Staff Recommendation for Incentives**

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

***C. Impact of the Draft COPA Program Proposal***

The table below highlights the key impacts of the draft COPA program proposal.

<b>Impacts of the Draft COPA Program Proposal</b>	
<b>COPA addresses residential displacement and complements existing strategies by preserving existing homes and converting them into affordable housing</b>	<ul style="list-style-type: none"> <li>• COPA would counter displacement by allowing lower-income renter families to remain housed, right-sizing their rents, and keeping housing costs permanently affordable</li> <li>• Renter families would not have to relocate to find an affordable home</li> <li>• Renter families tend to be working class, lower-income, and non-White, so COPA would affirmatively further fair housing and promote racial equity</li> <li>• COPA would compliment forthcoming preservation subsidies and City’s efforts to increase local nonprofits’ capacity</li> <li>• When residential property owners sell homes to investors in strong markets like San José, it increases the likelihood of renters’ displacement</li> </ul>

<b>Impacts of the Draft COPA Program Proposal</b>	
<b>Preservation is a faster, efficient way to stabilize residents</b>	<ul style="list-style-type: none"> <li>• COPA would be City’s first affordable housing preservation program</li> <li>• Preservation complements affordable housing production and protection policies (3Ps)</li> <li>• Best practices in fighting displacement require cities to work on all 3Ps</li> <li>• Preserving existing properties and making them permanently affordable allows San José to address displacement on a significantly faster timeline (one to two years) than building a new affordable housing development from the ground up (four to six years)</li> <li>• Preservation efforts ensure that lower-income families can stay in neighborhoods where they already live, work, study, and/or have community ties</li> </ul>
<b>COPA would apply at the time of a property sale, which is a time when renter families’ displacement risk can increase</b>	<ul style="list-style-type: none"> <li>• Process begins once owners of covered rental properties decide to sell property</li> <li>• Property owners can earn fair sales price when selling properties</li> </ul>
<b>Nonprofit housing providers are critical to anti-displacement efforts but have difficulty acquiring properties in the current environment</b>	<ul style="list-style-type: none"> <li>• COPA would enables more mission-oriented nonprofits to acquire properties and keep them restricted and affordable in perpetuity, aligned with City’s goals</li> <li>• Mission-driven housing developers are best equipped to acquire and rehabilitate multifamily properties and make them permanently affordable</li> <li>• COPA proposal gives nonprofit housing providers slightly more time and opportunity to assemble affordable housing financing</li> <li>• Without COPA, mission-driven housing organizations do not receive consistent notifications when properties are up for sale, and therefore miss out on the opportunity to purchase key properties that meet their criteria and are housing renters at-risk of displacement</li> <li>• Industry estimates are that 50% or more of multifamily properties with five or more units transact off-market without advertisement</li> </ul>
<b>COPA can support tenant education and engagement efforts</b>	<ul style="list-style-type: none"> <li>• COPA’s proposed timelines allow mission-driven housing organizations or their partners to educate renters about the future of their properties</li> <li>• COPA would provide opportunities for tenant education and engagement throughout the acquisition process, affording renters greater agency over the future of their homes</li> <li>• COPA would require owners to give early notice to tenants when property is up for sale</li> </ul>

<b>Impacts of the Draft COPA Program Proposal</b>	
<b>COPA is compatible with alternative homeownership models</b>	<ul style="list-style-type: none"> <li>• QNPs would have option to convert rental property to limited equity housing cooperative or other alternative ownership structure</li> <li>• QNPs that acquire properties through COPA and that eventually decide to sell would be required to first offer the property to current tenants before offering to other buyers</li> <li>• Tenant ownership is possible if the City provides support for converting rental properties to limited equity housing cooperatives</li> <li>• Staff could explore using future Notices of Funding Availability to support transitions to ownership models for properties acquired through COPA</li> <li>• Additional analysis of homeownership possibilities is found in <b>Attachment E – COPA’s Homeownership Compatibility</b></li> </ul>
<b>Properties across the City could become stabilized</b>	<ul style="list-style-type: none"> <li>• All San José properties that meet the Applicability definition would need to follow a defined process when listed for sale</li> <li>• Staff estimates up to 240 homes per year could be converted to deed-restricted affordable through COPA and available funding</li> <li>• Locations of COPA-purchased properties could be incented through City targeting of resources to high-displacement areas or could be citywide</li> <li>• Actual number would depend on funding availability from local, state, and regional funding sources; see <b>Attachment F – Committed and Proposed Local, Regional, and State Funding Sources for Affordable Housing Preservation.</b></li> </ul>

***D. Advantages and Disadvantages of the Draft COPA Proposal***

Staff’s proposal is a compromise among many different stakeholders’ views. It has both positives and negatives. However, staff believes the resulting draft proposal is a strong one that could make a difference to renters and create a net benefit to the community.

Overall, the positive impact of adopting a draft COPA program proposal includes that dozens of renter families in the short-term, and potentially thousands in the long-term, would gain access to stable, affordable housing. In addition, adopting a COPA policy would help to lay the groundwork for an affordable housing preservation practice in San José in the long term.

On the other hand, multifamily property owners would be impacted in that they would have to plan further in advance for the sale of their property if they are highly concerned with timing the sale of their property with the market, and they would be required to notify QNPs and observe COPA timelines before accepting any off-market offers. It is more for them to do and to get right.

Property Owners Would Retain the Right to Sell to Whomever They Choose

There is no requirement that the property owner sells to a QNP under COPA. If no QNPs are interested in a property, a property owner would only be required to wait 15 days at the start of the sales process. A property owner that does not want to accept a QNP’s offer would not have to wait more than 40 days total to list their property on the open market.

Property Owners Would Retain Their Right to Sell at Whatever Price and Conditions They Choose

As long as owners follow the COPA listing process, they retain complete control over the terms and conditions of their sale. Even if a QNP’s final offer matches what the owner obtained in the open market, the owner could choose which offer to accept.

Overall, some advantages and disadvantages of staff’s COPA proposal are as follows:

**Advantages of Draft COPA Program Proposal**

Advantages	Explanation
<p><b>Levels the playing field for nonprofits to better compete in the market and develop preservation business</b></p>	<ul style="list-style-type: none"> <li>• Creates opportunity for QNP to meet owners and explain their experience, process, and value they could bring to property</li> <li>• Allows sufficient time for QNPs to assess ability to obtain layered affordable housing financing</li> <li>• Provides nonprofit housing providers greater predictability and potential for developing preservation business line in San José</li> <li>• Creates local preservation system that could use future local, regional, and state funding (see <b>Attachment F</b>) and takes advantage of these resources to benefit the City’s families</li> </ul>
<p><b>Increases market transparency of all buildings for sale</b></p>	<ul style="list-style-type: none"> <li>• Enables QNPs to better identify buildings that could meet all criteria for their organizations and funding availability</li> <li>• Improves City’s ability to achieve its goals more effectively by strategically targeting future subsidies to help acquire and ensure repair of key buildings in high-displacement areas across the City</li> <li>• Improves City’s ability to be strategic in advance of future major transit improvements (such as BART Phase II) before prices escalate further and ensure that long-time residents of San José will benefit from these transit improvements</li> </ul>

Advantages	Explanation
	<ul style="list-style-type: none"> <li>• Transparency would most help properties of 5+ units, as off-market offers<sup>10</sup> may be significantly more common for larger properties than for smaller, with estimates on the number of larger properties that transact off-market as high as 50 to 75%<sup>11,12</sup></li> </ul>
<p><b>Helps support fair purchase offers for property owners</b></p>	<ul style="list-style-type: none"> <li>• Expands number of property purchasers in San José market</li> <li>• Owners could get QNP offers even during down markets</li> <li>• There is no indication that Opportunity to Purchase programs in Washington, D.C. (since 1980) and San Francisco (since 2019) have depressed property values, even though D.C.’s program has far longer timelines (see case studies in <b>Attachment G – Opportunity to Purchase Act (OPA) Case Studies</b>)</li> <li>• QNP offers would be fair, based on likely appraised values</li> <li>• QNPs would have experience in buying buildings and closing deals</li> <li>• QNPs that made offers but were unable to close transactions would not be renewed for the program</li> </ul>
<p><b>Focuses on existing renters’ needs</b></p>	<ul style="list-style-type: none"> <li>• Renters would get notification early in property sales process, allowing them to better understand their rights and plan their futures, regardless of buyer</li> <li>• QNP would need to reach out to existing renters to inform them and allay concerns</li> <li>• Community-based partners would team with non-local QNPs to do outreach, and could expand their tenant-based outreach practice through this work</li> <li>• Existing tenants could not be evicted based on their income</li> <li>• QNPs could right-size tenant rents and reduce cost burdens</li> <li>• When residents opt to vacate their units, preserved homes would maintain affordable rents, as opposed to unrestricted and unregulated homes which can raise rents to market</li> </ul>

<sup>10</sup> “Off-market offers” include offers made on properties that are not listed on any listing service and offers made on properties that are not already for sale.

<sup>11</sup> See <https://www.wealthmanagement.com/multifamily/market-sales-gain-traction-cre-owners-and-buyers> and <https://www.globest.com/2022/05/03/two-out-of-three-private-apartment-deals-are-done-off-market/>

<sup>12</sup> Transparency is less needed for the smallest properties, as recent national research indicates that ‘pocket listings’ that occur without a public listing account for less than 5% of all 2- to 4- unit properties.<sup>12</sup> The Multiple Listing Service is the single service for listing 1- to 4-unit properties.

**Disadvantages of Draft COPA Program Proposal**

Disadvantages	Explanation
<b>All subject properties would need to wait up to 15 days before marketing to non-QNP buyers</b>	<ul style="list-style-type: none"> <li>• Delaying open marketing could cause an individual buyer seeking a quick purchase to lose interest and buy a different property</li> <li>• Waiting 15 days to market the property risks interest rate increases that could decrease sales price</li> </ul>
<b>Some owners would need to wait an additional 25 days if receiving a QNP Letter of Intent to make an offer</b>	<ul style="list-style-type: none"> <li>• Owners waiting 40 days total to openly market properties risks interest rate increases and market shifts that could lower sales price</li> <li>• Owners waiting 40 days total before open marketing adds to the importance of a robust QNP offer</li> <li>• Delaying open marketing could cause an individual buyer seeking a quick purchase to lose interest and buy a different property</li> </ul>
<b>COPA creates a program for City to administer</b>	<ul style="list-style-type: none"> <li>• Program would require staffing of one full-time Development Officer position to manage the program</li> <li>• Program creates new work for the Housing Department to undertake</li> </ul>

Responses to these disadvantages are as follows:

- **Waiting time – start early:** To minimize the time involved with the COPA timeline, owners could plan ahead and notify QNPs while still getting their properties ready for open marketing. Most owners prepare for the sale of their property by painting, doing minor repairs, replacing worn fixtures, staging the property, and taking photographs. Owners could notify QNPs of their intent to sell at the same time as doing many of these activities, but they would need to remember to notify QNPs early.
- **Waiting time – first 15 days decreased by City website tool:** Property owners could receive responses from QNPs in fewer than 15 days if the City’s website interface helps QNPs respond that they are not interested in making offers on COPA-eligible properties.
- **Waiting time – first 15 days is relatively short:** Keeping the time relatively short for the first step in the process minimizes sellers’ interest rate risk. It would be unlikely that market prices for multifamily properties would fundamentally shift in two weeks.
- **Waiting time – rates could go up or down:** It is true that interest rates could increase while owners wait to openly market their properties but depending on interest rate changes and the overall interest rate environment, rates could also decrease during that time. Keeping the time relatively short likely minimizes the amount of rate movement.

- **Waiting time – second 25 days results in a purchase offer:** A likely small proportion of properties would receive a QNP Letter of Intent to make an offer and need to wait at total of up to 40 days to receive that offer. San Francisco staff reported that approximately 10% of properties received QNP letters. However, in return for waiting, owners would receive a legitimate offer that could be helpful, even if they choose not sell to the QNP.
- **Loss of specific buyer – altered timeline could provide different buyer:** While one buyer may not be able to wait for a particular property before making an offer, it is also possible that a new buyer with a similar short timeline, or a normal timeline, would follow after the COPA 15 days had ended. Staff does not expect the program to net reduce the number of buyers, but interest in a given property might shift to different buyers as the sales timeline is shifted.
- **Loss of specific buyer – COPA will not weaken San José’s market:** As a majority of rental properties in San José would be subject to the program, buyers would know what to expect if they want to buy property in San José. San José is a large market with strong market fundamentals and there is no indication that a draft COPA program proposal would weaken the residential market. Case studies of San Francisco and Washington, D.C. support this conclusion.

## ***E. Implementation***

### **Education and Outreach**

Staff proposes a generous period of 12 to 18 months after the ordinance were to pass and before the program would become effective to do focused outreach to the community (see effective date, above). During this time, staff will also create draft regulations and seeking public feedback on details before finalizing them. Staff would create an outreach plan and emphasize collaboration with industry organizations and community groups to disseminate information about the program, target the most likely users, and seek ideas for implementation. Ample time for education and outreach after the passage of a COPA policy would allow for extensive outreach and education prior to any potential enforcement, and the prequalification of a pool of QNPs.

### **Quantitative Metrics of Program Success**

Some benefits of a draft COPA program proposal cannot be quantified. These include stress reductions for renter families who have a guarantee of permanent stable housing, the ability to remain in place near support networks, and the value of quality-of-life improvements for these renter families. However, there are a number of benefits that could be quantifiably measured to determine the success of COPA, listed below:

- Total number of units made affordable to lower-income renter families
- Total number of units made affordable to lower-income renter families relative to total neighborhood multifamily housing stock in neighborhoods undergoing displacement
- Number of years of affordability established for units acquired via COPA
- Amount of funding leveraged from external sources (applicable only if external funding programs are approved)
- Value of property rehabilitation and improvements to existing housing stock
- Dollar amount of increased discretionary income of renter families living in units acquired by nonprofits after rents are acquired by QNPs and right-sized

### Number of Properties and Units Potentially Subject to COPA in San José

If COPA took effect today, staff estimates that a maximum of 8,085 total properties would be subject to COPA at their time of sale (**Table 1**). This is the absolute maximum number because a portion of these properties would qualify for one of the exemptions described in Analysis Section C and their property would thus not go through a COPA notification process.

**Table 1: Estimated Maximum Number of Properties Subject to COPA by Property Type, Assuming None Qualify for Exemptions**

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

Note: These figures represent overestimates of the number of properties that would be eligible under COPA because an unknown number of property owners would qualify for exemptions. This data includes the full universe of 2+ unit properties estimated to have been constructed prior to 2008. If COPA were in effect today, properties built between 2008 and 2022 would not be eligible for COPA under the proposed policy because they were built in the last 15 years.

Sources: San José Multiple Housing Roster, 2022; American Community Survey, 2021

A more relevant measure to program operations is the number of properties that sell each year that would go through the COPA process. Based on sales trends over the last several years, staff estimates that roughly 250 properties transact in San José each year. However, the number of properties that would need to follow a COPA process each year would be lower than this number because some of these properties would likely qualify for an exemption under COPA.

### Number of Residents Stabilized Through COPA

COPA could prevent the displacement of thousands of renter households over time. In the first few years in which a COPA policy is adopted, about 10 families per year might be served based on current projected funding. However, this would likely increase to about 240 families per year over time as regional/state funding is made available. **Attachment F** provides a list of all the funding sources that were referenced to generate these estimates. Preventing the displacement of these families would help to stabilize communities, schools, and local businesses.

### ***F. Lessons Learned from Other Cities***

The draft COPA program proposal reflects lessons learned from a close examination of other cities' Opportunity to Purchase Acts. These types of programs have been effectively implemented in two major cities, Washington, D.C., and San Francisco, preserving thousands of units since 2015. Washington, D.C. adopted a Tenant Opportunity to Purchase Program (TOPA) in 1980, and San Francisco adopted a COPA in 2019.<sup>13</sup> TOPA programs are similar to COPA programs except that they provide the right of first offer and/or right of first refusal to renters or tenant associations, and generally involve significantly longer timelines.

A more detailed explanation of the Washington, D.C. TOPA program and the San Francisco COPA program are found in **Attachment G**. The key takeaways from the case studies of this Opportunity to Purchase Acts are the following:

- The impact of Opportunity to Purchase Act programs scales with the amount of funding allocated to housing preservation
- There has been no evidence in either of these major cities that Opportunity to Purchase Act programs decrease property values
- Subsidies are required to ensure that nonprofit buyers can acquire properties and stabilize and/or right-size renters' rents
- Opportunity to Purchase Acts can be used to support the conversion of rental properties to Limited Equity Cooperatives
- Statement of intent periods should be longer than what was proscribed under San Francisco's COPA to increase program effectiveness.

In addition to researching the Washington, D.C., and San Francisco programs, the staff communicated with other Bay Area jurisdictions currently exploring similar programs. These include Berkeley, Oakland, and East Palo Alto. Other cities are also considering or working on

---

<sup>13</sup> For a list of other jurisdictions with Opportunity to Purchase Act programs, see this 2021 report from the Coalition for Nonprofit Housing and Economic Development: <https://cnhed.org/wp-content/uploads/2021/01/Opportunity-to-Purchase-Policy-Options-for-the-City-of-Minneapolis.pdf>

program proposals, including Mountain View, Minneapolis, Cambridge, and Somerville in Massachusetts.

***G. Policy Alternatives***

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

<b><i>Alternative #1: Exempt properties with between two and four units from COPA</i></b>	
<b>Pros</b>	<ul style="list-style-type: none"> <li>• Properties with between two and four units have higher per-unit acquisition costs than larger properties, so limited public subsidy would not serve as many families.</li> <li>• Two-to-four-unit properties sell faster than larger properties, so COPA’s timeline would create more significant delays than for 5+ unit properties.</li> <li>• Two-to-four-unit properties are already required to be listed on the Multiple Listing Service, so there is better transparency in this segment of the market than for properties with five or more units.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Duplexes are not covered under the City’s Apartment Rent Ordinance, so lower-income renter families can experience rent increases higher than 5% per year, placing them at higher risk of displacement than if they lived in a larger property.</li> <li>• Households living in two-to-four-unit properties in San José are disproportionately people of color, so including these properties under COPA would advance goals of promoting racial equity by stabilizing these residents.</li> <li>• It is often difficult for existing owners of the smallest properties to afford to make repairs and upgrades, so COPA used with City subsidies could improve habitability conditions for lower-income renters living in these types of properties.</li> </ul>
<b>Reason for not recommending</b>	Including two-to-four-unit properties in COPA advances racial equity goals and prevents displacement for particularly vulnerable groups.

<b><i>Alternative #2: Exempt properties larger than 250 units from COPA</i></b>	
<b>Pros</b>	<ul style="list-style-type: none"> <li>• Properties with more than 250 units would require a total public subsidy that is large relative to the City’s potential early budget for preservation, so those properties would be less likely to be purchased by QNPs.</li> </ul>
<b>Cons</b>	<ul style="list-style-type: none"> <li>• Large properties are cost-efficient on a per-unit basis, so funding a large property would make efficient use of City subsidy.</li> </ul>

<i>Alternative #2: Exempt properties larger than 250 units from COPA</i>	
	<ul style="list-style-type: none"> <li>• The opportunity to purchase a large property could help to stabilize a high number of renters in a given neighborhood.</li> <li>• City staff time spent in underwriting loans for large properties would be very similar as spent in underwriting loans for small properties, so large properties are efficient for staff time.</li> <li>• It is hard to estimate future total resources for preservation, so sufficient funds could be available for large properties in the coming years.</li> </ul>
<b>Reason for not recommending</b>	Omitting an upper unit cap for COPA properties allows the possibility of an impactful property acquisition, which could quickly stabilize a significant number of renters in a particular area.

***H. Racial Equity Impact Analysis***

Significant sections of this memorandum are dedicated to identifying the racialized impact of displacement (see Analysis Section B) and discussing the historical reasons why households of color in San José are more likely to be renters and are more likely to earn lower incomes (see **Attachment H – Additional Data and Analysis**). The racial equity implications of COPA will therefore only briefly be discussed in this section.

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

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

Staff’s Public Outreach Process Promoted Racial Equity by Centering Deep Collaboration with Community-Based Groups

The draft COPA program proposal development process has featured significant involvement of community groups representing those most impacted by displacement. COPA was identified as early as 2019 as a policy priority among organizations that represent San José residents directly impacted by displacement. These nonprofits include SOMOS Mayfair, SV@Home, Working

Partnerships USA, and Sacred Heart. These groups have advocated for COPA due to its potential for stabilizing the homes of lower-income renters who are disproportionately people of color in San José. The City of San José formally partnered with SOMOS Mayfair through the Partnership for the Bay's Future grant program to work on elements of the City's Anti-Displacement Strategy, including COPA. Through this partnership, staff has ongoing worked closely with community members to ensure that the draft COPA program proposal would adequately serve lower-income San José renters at high risk of displacement. Housing Department staff will continue to partner with SOMOS Mayfair through at least the remainder of the Partnership for the Bay's Future grant period in May 2024. Activities for both organizations will include any further program development. If City Council approves the program, staff will seek feedback from SOMOS Mayfair on the development of program regulations and will coordinate in planning community outreach efforts. Please see **Attachment C** and **Attachment I – Consultant Summary of COPA Working Group** for further details about public outreach for this item.

#### Residential Displacement is Harming San José Residents, Especially People of Color

COPA is an anti-displacement policy that promotes racial equity and fair housing. This section highlights research and key data confirming that residential displacement is occurring and disproportionately impacts families, large communities, and protected classes. A fuller explanation of this research is found in **Attachment H**.

#### Residential Displacement of Lower-Income Households is Widespread in San José

The University of California at Berkeley's Urban Displacement Project analyzes demographic trends and regularly publishes spatial data on the displacement of lower-income households across the Bay Area and other U.S. cities. These maps demonstrate the following:

- **Lower-income renter households have been displaced and/or are at risk of displacement in neighborhoods across nine of San José's ten City Council districts (Figure 1).**<sup>14</sup> However, the areas most impacted by displacement include San José's Downtown and east-side neighborhoods, located in Council Districts 3, 5, and 7.
- **Residential displacement is impacting families that until recently would have been considered "middle class," in addition to affecting the City's lowest income households.** According to the Urban Displacement Project data, households earning 50 to 80% of Area Median Income (AMI) in San José are being displaced in addition to households who are 0 to 50% AMI in almost all the neighborhoods where displacement

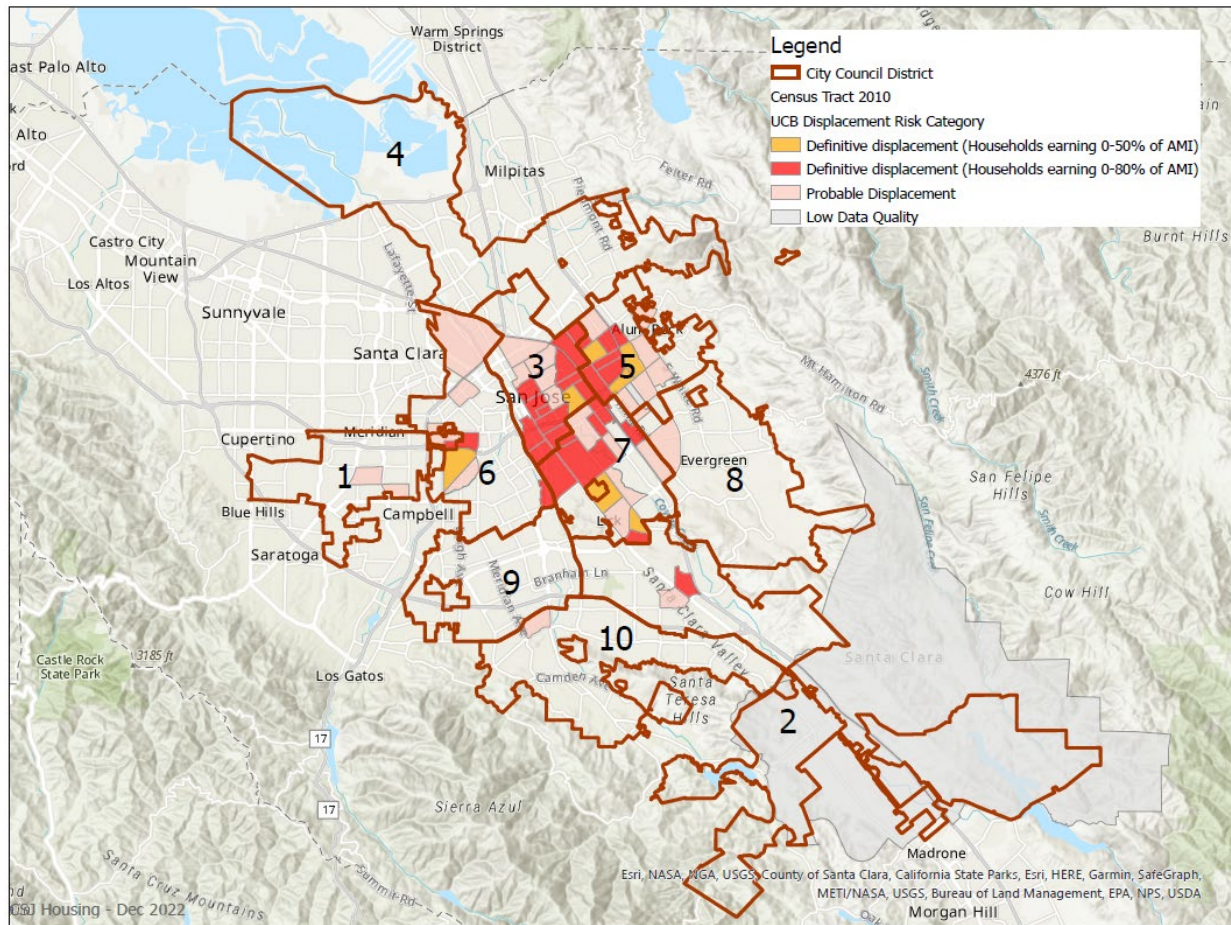
---

<sup>14</sup> The model from research center's methodology reflects 2019 data and is considered by the researchers to be a conservative estimate of displacement. For more information, see the Urban Displacement Project website at <https://www.urbandisplacement.org/maps/california-estimated-displacement-risk-model/>

is occurring Figure 1 ).<sup>15</sup> This suggests that anti-displacement programs should be available to households at these income levels.

- **About half of the City’s lower-income households live in areas with “definitive” or “probable” displacement in San José.** According to staff analysis of Urban Displacement Project data, there are over 42,500 households earning under 80% of AMI living in these areas, out of approximately 89,000 lower-income households that live in San José.
- **In about half of San José’s neighborhoods, half or more of all renter households are in the lower-income category.** Figure 2 shows renter households who are considered lower-income as a share of all renter households in each census tract.

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

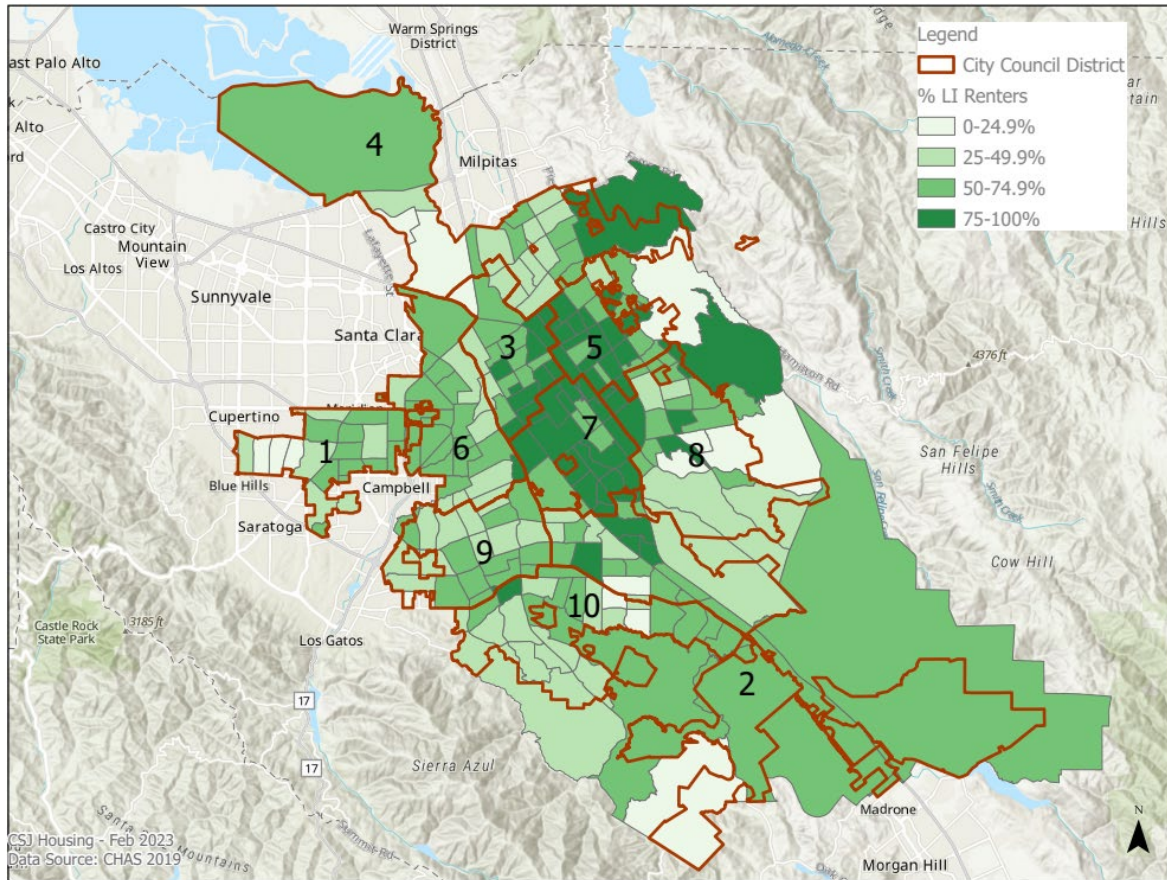


<sup>15</sup> Out of the 33 census tracts where displacement is definitively occurring, displacement of both income categories is happening simultaneously in all but five of these census tracts.

Note: For a household of 1 person in 2019, 0-50% AMI refers to those with annual incomes between \$0 and \$59,000. For a household of 1 person in 2022, 0-80% of AMI refers to those with annual incomes between \$0 and roughly \$94,000.

Source: Housing Department staff analysis of Urban Displacement Project data, 2019

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



Source: Comprehensive Housing Annual Survey, 2019.

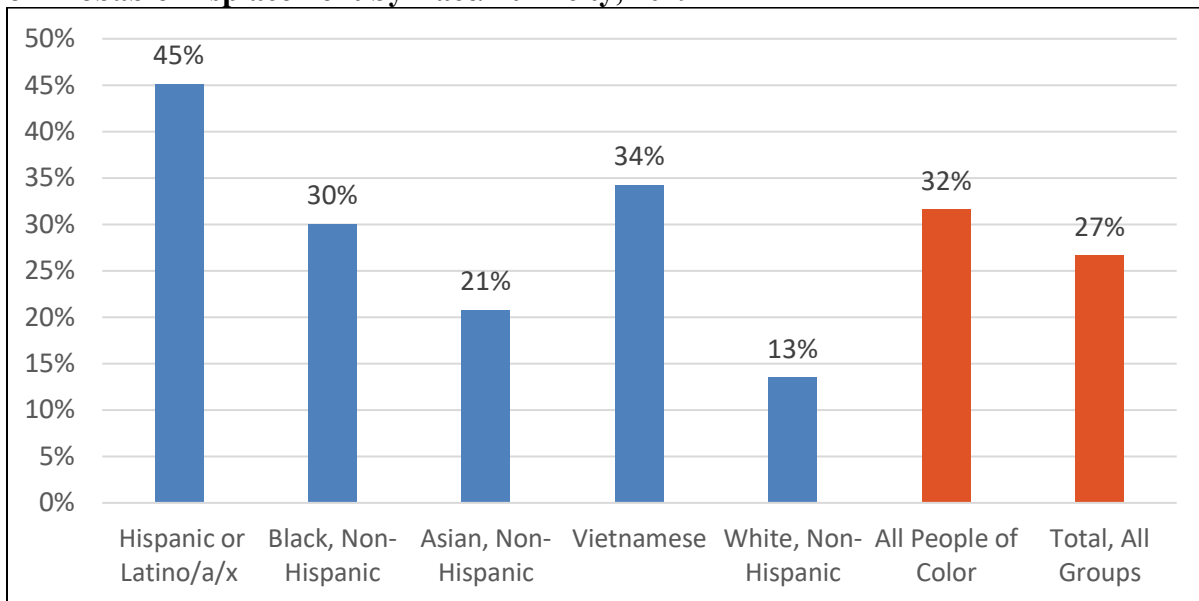
Residential Displacement Disproportionately Impacts San José’s Communities of Color

- **Hispanic/Latinx, Vietnamese, and Black residents are living in areas with displacement pressures at double or triple the rate as non-Hispanic white households in San José.** Analysis based on The Urban Displacement Project maps indicates that while only 13% of non-Hispanic white residents were living in neighborhoods classified as “definitively” or “probably” undergoing displacement in 2019, the same was true for nearly half (45%) of the City’s Hispanic/Latino/a/x

population, 34% of the City’s Vietnamese population, and 30% of the City’s Black population (Figure 3).<sup>16</sup>

- People of color in San José are more likely to have risk factors for displacement, a byproduct of historical housing discrimination and disinvestment in communities of color which limited families’ capacity to pass down intergenerational wealth accrued through homeownership.** As discussed in greater detail in Attachment H, and as previously reported in the Housing Department’s 2020 Anti-Displacement memo,<sup>17</sup> people of color in San José are disproportionately renters and are disproportionately housing cost-burdened. According to the Urban Displacement Project, these are two key risk factors for higher displacement risk.<sup>18</sup>

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



[1] “People of Color” are defined as all who self-report their ethnicity as Hispanic/Latinx and/or their race as being something other than white. Note that racial/ethnic groups in this chart are not mutually exclusive.

[2] Vietnamese are also included in the “Asian Non-Hispanic” group.

Source: Staff analysis of 2019 5-Year ACS Estimates, using Urban Displacement Project California Displacement Risk Model data, 2022.

<sup>16</sup> See Figure 1 in Attachment H for detailed data on the share of each racial/ethnic group living in each of the Urban Displacement Project’s neighborhood typologies.

<sup>17</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8772026&GUID=C6ADD217-83DD-4F7E-B480-056B228DCAF1>

<sup>18</sup> In response to recognition of these historical injustices, both state and federal law requires the City of San José to rectify racial and ethnic disparities in access to housing, including by addressing displacement. In legal terms, the City has a duty to affirmatively further fair housing. <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Fact-Sheet.pdf>

Residential Displacement has Significant Negative Consequences for Renter Families and for our Broader Community, Including That Displacement Can Lead to Homelessness

An estimated one-quarter of families in our area who are displaced become homeless, and many others are forced to leave their communities altogether. A 2018 Urban Displacement Project longitudinal study that tracked outcomes for low- and moderate-income residents who experienced displacement in Santa Clara County found that displaced households rarely continue living in the same neighborhoods and that they may even lose housing altogether. Only ten percent of displaced households in the study found a new home in the same neighborhood in which their original home was located. Alarming, twenty-five percent of the households in the study became homeless, underscoring the significant and sometimes tragic consequences associated with involuntary displacement.<sup>19</sup>

In addition, renters who undergo displacement experience negative health and educational outcomes. Numerous studies have found that residential displacement, and the mere constant worry over housing instability, significantly hurt residents' health and educational outcomes. The emotional toll of displacement and living with the threat of displacement is significant and affects mental well-being, sense of belonging, and community cohesion.<sup>20</sup> People experiencing housing insecurity are almost three times more likely to be in frequent mental distress than those who have secure housing.<sup>21</sup> Evictions are very detrimental to mental health, as mothers who experienced an eviction were more likely to report depression even two years after the eviction.<sup>22</sup> Displacement also has been found to increase respiratory and other health issues as families move to more polluted, lower air-quality areas.<sup>23</sup>

Displacement also results in significant negative outcomes for:

---

<sup>19</sup> 5% of respondents in this study reported living in a shelter, vehicle, on the street, or otherwise reported that they were homeless, while another 20% of respondents were considered "marginally housed," defined as living in a motel/hotel, garage, or living with family friends in a "doubled-up" situation, such as sleeping in a living room. While the City of San José Homelessness Response Team does not define these "marginally housed" individuals as homeless, the federal McKinney-Vento definition of homelessness for children and youth defines all of these conditions as homelessness (<https://nche.ed.gov/mckinney-vento-definition/>). Urban Displacement Project data can be found at <https://www.urbandisplacement.org/blog/disruption-in-silicon-valley-the-impacts-of-displacement-on-residents-lives/>

<sup>20</sup> 10 Bay Area Regional Health Inequities Initiative (BARHII) and the Federal Reserve Bank of San Francisco, "Housing Stability and Family Health: An Issue Brief," Sep. 2018. [https://bd74492d-1deb-4c41-8765-52b2e1753891.filesusr.com/ugd/43f9bc\\_0f5129be91c84eca86dd52e408b2821b.pdf](https://bd74492d-1deb-4c41-8765-52b2e1753891.filesusr.com/ugd/43f9bc_0f5129be91c84eca86dd52e408b2821b.pdf)

<sup>21</sup> Liu, Y., Njai, R. S., Greenlund, K. J., Chapman, D. P., & Croft, J. B. (2014). Relationships Between Housing and Food Insecurity, Frequent Mental Distress, and Insufficient Sleep Among Adults in 12 US States, 2009. Preventing Chronic Disease, 11, E37. doi:10.5888/pcd11.130334 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3958143/>

<sup>22</sup> Matthew Desmond and Rachel Tolbert Kimbro, Harvard University and Rice University, "Eviction's Fallout: Housing, Hardship, and Health," Feb. 2015, [http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015\\_2.pdf](http://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf)

<sup>23</sup> [http://www.rajchetty.com/chettyfiles/movers\\_paper1.pdf](http://www.rajchetty.com/chettyfiles/movers_paper1.pdf)

March 16, 2023

**Subject: City Initiatives Roadmap - Housing Stabilization: Community Opportunity to Purchase Program Status Report**

Page 31

- **The environment**, when workers who can no longer afford to live in San José must move to more distant locations and commute back to the South Bay for their jobs, to attend church, and visit friends and family
- **Local businesses**, when their workforce can no longer afford to live near job sites
- **Local schools**, as families with school-aged children are forced to move and, as a result, school enrollment declines
- **Children in families that undergo displacement**, for whom research has documented notable declines in school performance and graduation rates
- **Regional racial re-segregation**, because displacement disproportionately affects communities of color and is associated with the increasing racial segregation of the Bay Area

More information about the many detrimental consequences of displacement can be found in **Attachment H**.

*I. Climate Smart San José*

COPA could help to reduce vehicle miles traveled by reducing the number of displaced renters who would commute back to San José from new locations as far as the Central Valley to go to job sites, attend church, and visit family and friends.

COPA also supports a more sustainable approach to increasing the stock of permanently affordable housing in San José than the traditional approach of building new housing. Rehabilitating existing buildings requires less building material than constructing new buildings from the ground up, and therefore consumes fewer natural resources. In addition, City subsidies paired with the use of the draft COPA program proposal would fund building rehabilitation, which could include energy-efficient upgrades.

**COORDINATION**

This memorandum and the draft COPA Program Proposal were developed in coordination with the City Attorney's Office and the City Manager's Budget Office.

/s/

JACKY MORALES-FERRAND  
Director, Housing Department

March 16, 2023

**Subject: City Initiatives Roadmap - Housing Stabilization: Community Opportunity to Purchase Program Status Report**

Page 32

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

**ATTACHMENTS:**

**Attachment A:** COPA Program Description and Stakeholder Positions

**Attachment B:** Additional Background on COPA

**Attachment C:** Public Outreach and Stakeholder Engagement Summary

**Attachment D:** Detailed Breakdown of QNP Activities by Phase in COPA Timeline

**Attachment E:** COPA's Homeownership Compatibility

**Attachment F:** Committed and Proposed Local, Regional, and State Funding Sources for Affordable Housing Preservation

**Attachment G:** Opportunity to Purchase Act Case Studies

**Attachment H:** Additional Data and Analysis

**Attachment I:** Consultant Summary of COPA Working Group

**Attachment J:** Frequently Asked Questions About COPA