

## Leveraging the **Housing Element** to Advance **Tenant & Community Opportunity to Purchase Policies**

Bay Area renters, low-income residents, and predominantly communities of color are being displaced at an alarming rate because of high housing costs and a lack of adequate affordable housing opportunities. Gentrifying areas have fast real estate transaction timelines with all-cash offers that make it nearly impossible for tenants, community land trusts, and nonprofits to purchase property. A key piece of any preservation strategy is creating opportunities for community or tenant ownership of housing. This toolkit covers high-impact preservation policies that community members may want to advance through the Housing Element — Tenant Opportunity to Purchase Act (TOPA) or Community Opportunity to Purchase Act (COPA). All jurisdictions should consider committing to adopt a local TOPA/COPA policy in their Housing Element in order to prevent displacement, stabilize current residents and existing communities, and preserve affordable housing for the long term.

## What is a Tenant Opportunity to Purchase Act (TOPA) or Community Opportunity to Purchase Act (COPA) Policy?

TOPA/COPA policies give tenants and/or qualified organizations (QOs) advance notice that the landlord intends to sell the building, along with specified timelines to exercise the “**right of first offer**” and “**right of first refusal**.” Through the right of first offer, tenants and/or QOs have the right to submit an offer before the building goes on the market, which the landlord can accept or reject. If the landlord rejects the initial offer and subsequently receives a third-party offer on the market, tenants and/or QOs have time to match that third-party offer, invoking the right of first refusal. If the tenants and/or QOs can match the third-party offer, the landlord must sell the property to them. Under TOPA, tenants are empowered to exercise these rights or assign their rights to another entity, while under COPA, these rights are given to a list of QOs.

Properties purchased through TOPA/COPA may be subject to **permanent affordability restrictions**, increasing the jurisdiction’s affordable housing stock and permanently removing property from the speculative market. In essence, TOPA/COPA policies provide tenants, community land trusts, and nonprofits with a pathway to organize and utilize preservation dollars<sup>1</sup> to rehabilitate and purchase housing, keeping it affordable for future generations.

[A couple TOPA/COPA policies are in effect throughout the country, and several local campaigns are currently building momentum.](#)

Jurisdictions throughout the Bay Area have identified TOPA/COPA as key preservation tools to combat displacement. San Francisco has a COPA policy, and there are currently active campaigns in Berkeley, East Palo Alto, Oakland, and San Jose. As the cost of living continues to rise while many naturally affordable housing options, such as rent controlled units, are at risk of being lost due to development, TOPA/COPA is a crucial strategy to combat displacement, empower tenants, and help jurisdictions meet their Housing Element obligations.

## TOPA/COPA Policies Address Unmet Needs of Low-Income Households

The Housing Element is grounded in an assessment of the community’s current and projected housing needs.<sup>2</sup> Everything else in the Housing Element — including the goals, objectives, and programs — flows from this needs assessment. The assessment must separately examine the housing needs of all economic segments of the community, including extremely low-income households, as well as the needs of vulnerable residents, such as people with disabilities, farm-workers, female-headed households, and those currently unhoused.<sup>3</sup> The analysis should include issues such as the amount people are paying for housing compared to their ability to pay, overcrowding, and substandard living conditions or disrepair.<sup>4</sup>

Community members can leverage the housing needs assessment to bring to light a realistic and nuanced view of the housing needs of lower income households, renters, and other key constituencies instead of merely a recitation of Census data. A legally adequate assessment of housing needs should identify that lower-income people, as well as many vulnerable populations, are disproportionately likely to rent rather than own their homes — and it should dig deeply into what causes those patterns and the specific needs of renters. For example, a legally adequate assessment of housing needs should examine how the dramatic increase in rents over the past ten years, combined with stagnating wages for lower-paid workers has increased overpayment for housing, led to overcrowding, driven displacement, and made it more difficult for low-income people to find homes in the community. The analysis should also consider “[jobs-housing fit](#)” — the number of low-wage jobs in the jurisdiction compared to the number of homes affordable to low-wage earners, which is woefully inadequate almost everywhere in the Bay Area.

Because Housing Element Law requires jurisdictions to develop a plan to address these needs, it is important for advocates to press their

city or county to do a thorough housing needs analysis — including a focus on the particular issues facing renters. Ensuring an adequate needs assessment is a way to ground advocacy for a strong Housing Element action plan that includes passing a TOPA or COPA policy and identifying consistent funding sources dedicated to preservation, so that more homes can be kept affordable and tenants and community-based organizations can actively engage in housing solutions.

### **TOPA/COPA Policies Preserve the Affordability of Existing Affordable Housing**

Housing Elements must contain a program that addresses the conservation of existing affordable housing stock in the community.<sup>5</sup> Cases interpret this requirement in Housing Element Law to include action programs that preserve all housing that is already affordable to lower and moderate income households, not just subsidized or rent controlled housing. Preservation policies such as TOPA/COPA are critical tools to meet that objective. TOPA/COPA policies remove property from the speculative market and preserve those properties as permanently affordable. Advocates and organizers can advocate for jurisdictions to commit to passing TOPA/COPA policies in the program of actions in order to meet the requirement to preserve existing affordable housing stock and maintain its affordability.

Data will likely show that there is a significant number of affordable housing units at risk of conversion in the jurisdiction. During a time when there are ongoing efforts to increase the region's affordable housing supply, existing sources of housing that are affordable due to either deed restriction or rent stabilization are at risk of being lost due to demolition or other causes.<sup>6</sup> The Bay Area lost **32,000** unsubsidized affordable homes — housing with rents at affordable rates without public subsidy — annually between 2012–2017. Preservation policies such as TOPA/COPA have gained traction as strategies to curb displacement and safeguard affordability for the long term so that renters, many of whom are people of color, single parents, people with disabilities,

and senior citizens, can stay in their homes and preserve their building as permanently affordable housing.

### **TOPA/COPA Policies Affirmatively Further Fair Housing**

The 6<sup>th</sup> Cycle Housing Element requires local jurisdictions to put forth a set of strategies that Affirmatively Further Fair Housing (AFFH).<sup>7</sup> Committing to anti-displacement strategies, including housing preservation policies like TOPA/COPA will help cities and counties meet their AFFH obligations. Preservation policies are crucial to ensure that homes maintain affordability and accessibility for residents of protected classes. In order to meet new AFFH requirements, local jurisdictions must conduct their own Assessments of Fair Housing (AFH). The AFH must analyze the housing needs of members of protected groups and housing inequality, and identify and prioritize concrete actions to remedy these injustices. As communities of color continue to be the primary demographic affected by displacement, jurisdictions should identify and prioritize anti-displacement strategies such as TOPA/COPA to address these fair housing issues.

### **Cities Must Engage Renters and Low-Income People in the Housing Element Process**

Local jurisdictions must actively work on broad public engagement throughout the Housing Element process through various community meetings and requests for input, providing opportunities for all economic segments of the community to voice their concerns and advocate for housing solutions. For jurisdictions to meaningfully engage with all economic segments of the community, cities and counties must make robust efforts to solicit and incorporate input from low-income residents, including renters and protected classes who are at the greatest risk of displacement. TOPA/COPA campaigns in the Bay Area are deeply rooted in the needs of the community, as these policies aim to support tenants, facilitate tenant organizing and power-building, stabilize gentrifying neighborhoods, and take property off the speculative market and place it under community control.

Community members can use these requirements to advocate for meaningful engagement of renters and low-income people at risk of displacement in the Housing Element process. Integrating their voices, perspectives, and priorities is both a legal requirement and an important pathway to ensuring the jurisdiction commits to enacting a strong TOPA/COPA policy that gives tenants choice and voice in their own housing.

## Resource List for Tenant and Community Opportunity to Purchase Advocacy

- [Template Letter to Advocate for Tenant and Community Opportunity to Purchase Commitment in the Housing Element](#)
- [Messaging Guide for Tenant and Community Opportunity to Purchase Policies](#)
- [Key Considerations for Designing Tenant and Community Opportunity to Purchase Policies](#)
- PolicyLink, [All-In Cities Policy Toolkit: Tenant/community opportunity to purchase](#)
- [Berkeley TOPA Campaign “Resources” website](#)

## Credits

This toolkit reflects the work of a Bay Area Housing Element advocacy working group that includes (in alphabetical order): East Bay Housing Organizations, Enterprise Community Partners, GENESIS, Greenbelt Alliance, The Housing Leadership Council of San Mateo County, The Law Foundation of Silicon Valley, The Nonprofit Housing Association of Northern California, Public Advocates, Public Interest Law Project, RichmondLAND, Urban Habitat, and Working Partnerships USA.

## Endnotes

- 1 Cities and counties should dedicate funding to support all aspects of a TOPA/COPA program to ensure the program is effective. In addition to establishing a fund to assist in financing tenant or community purchases (such as a housing trust fund), jurisdictions should also dedicate funding for tenant outreach, education, technical assistance, and enforcement.
- 2 Gov. Code § 65583(a).
- 3 Gov. Code §§ 65583(a)(1), (7).
- 4 Gov. Code § 65583(a)(2).
- 5 Gov. Code § 65583(c)(4).
- 6 In California, Costa-Hawkins Law allows landlords to establish the initial rent for a rental unit whenever there is a vacancy, which means that even in jurisdictions with rent stabilization, rent controlled units convert back to market rate every time the unit is vacated.
- 7 AFFH is a legal requirement that government bodies take active steps to remedy disparities in housing need, access to opportunity, and segregation based on protected characteristics. Gov. Code §§ 65583(c)(5), 8899.50(a)(1). Protected characteristics under California law include race, immigration status, disability, and many other identities.