



**Cecilia Lunaparra**  
Councilmember District 7  
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## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** September 30, 2024

**Item Number:** 1

**Item Description:** **Adopt Berkeley Municipal Code Chapter 13.89:  
Community/Tenant Opportunity to Purchase Act**

**Submitted by:** **Councilmember Lunaparra and Councilmember Tregub**

The intention of this supplemental 2 material is to ensure there is up to date and accurate information regarding the administrative and operational costs associated with the Community/Tenant Opportunity to Purchase Act (COPA/TOPA). This is purely procedural and does not amend nor introduce new material to the content of the policy. The current version of COPA/TOPA was submitted in November 2023, and since then, several factors have evolved, changing the requirements for successful implementation of the policy. In the absence of an author, our offices have developed a referral to the City manager to analyze the operational and administrative impact of implementing this policy.



Cecilia Lunaparra  
Councilmember, District 7  
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Councilmember, District 4

CONSENT CALENDAR  
September 30, 2024

To: Honorable Members of the City Council

From: Councilmember Lunaparra and Councilmember Tregub  
(Co-Authors)

Subject: Referring the Community/Tenant Opportunity to Purchase Act to the City Manager to Conduct an Analysis of the Fiscal, Operational, and Administrative Impact of the Policy

RECOMMENDATION

Refer the Community/Tenant Opportunity to Purchase Act (COPA/TOPA) to the City Manager to conduct an analysis of the fiscal, operational, and administrative impact of the policy.

CURRENT SITUATION AND ITS EFFECTS

Berkeley's standard process for non-consent items grants the item's author additional privileges with extra time to introduce and present the policy.<sup>1</sup> However, in the absence of an author, there is currently no process for reassigning ownership of the item. As a result, there is no designated councilmember to present on the policy or answer questions from council. Given that this policy has been in development for years with substantial public input and community engagement, it is essential for the information typically provided by an author to be otherwise available.

The most recent version of the Community/Tenant Opportunity to Purchase Act (COPA/TOPA) was submitted in November 2023, nearly a year ago. Since then, there have been significant changes, including shifts in available funding, staff vacancy rates, and implementation data from neighboring city's COPA/TOPA policies. Our offices seek

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<sup>1</sup><https://berkeleyca.gov/sites/default/files/documents/City%20Council%20Rules%20of%20Procedure%20-%20July%2011%202023%20-%20FINAL.pdf>

to take the lead as primary authors of this item to ensure continuity and uniformity of process for all council items. However, to assume authorship would require a policy to facilitate the transfer. In the meantime, the best course of action would be to refer this item to the City Manager to conduct an analysis of the fiscal, operational, and administrative cost associated with the item.

The intention of this item is not to promote the passage of a policy without the essential resources for staff; in fact, it aims to do the opposite. Staff has informed our office that the current figures do not accurately reflect the situation. We are committed to ensuring that staff have the time and capacity needed to implement policies effectively. However, this cannot be achieved if there are inaccurate projections based on outdated information. With input from the City Attorney's Office and the Health, Housing, and Community Services Department, our office believes that more time to understand the updated implications of the policy would be responsible ahead of a vote.

### BACKGROUND

Former Councilmember Harrison submitted the current version of TOPA/COPA in November of 2023 taking it up after Mayor Arreguin first introduced it in 2020. During Mayor Arreguin's authorship, the policy went to a worksession to further clarify the impact of the policy. The COVID-19 crisis ultimately led the policy to be indefinitely postponed. With the collaboration and support from East Bay Community Law Center, The Bay Area Community Land Trust, and Urban Habitat, former Councilmember Harrison met with a number of stakeholders over the course of six months to ensure the policy reflected the needs of those most impacted and addressed main concerns from the worksession including shortening selling timelines, exempting owner-occupied dwellings up to four units, and engaging in equitable outreach. As a result, the current iteration of the policy was developed and submitted.

A budget referral was attached, documenting the projected funding requirements associated with the policy. The budget referral was an amended version of a referral submitted in April 2023, which ultimately was deferred and then rejected. The budget referral information was directly derived from the April 2023 referral, meaning it was written well before the current version of the ordinance was developed. The outdated budget request does not account for the new information regarding implementation nor does it account for the change in the City's fiscal and staff capacity. What follows is a brief analysis of what has shifted since the development of the Harrison COPA/TOPA ordinance and why our offices believe the Council and public need more information about the impact of the policy.

### FUNDING DETAILS

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## City Attorney's Office

In conversations with the City Attorney's Office (CAO), it was clear that the current budget projection is inaccurate. The following table outlines the delineation of responsibilities in the CAO's office from the budget referral submitted in April 2023. Although the most recent version of the policy no longer includes the following table, the budget estimates were based on the same figures.

<b>Deputy City Attorney II***</b>		
<b>Task</b>	<b>% FTE</b>	<b>Ordinance Reference</b>
Adjudicate policy exemptions, such as definition of principal residence, family in family transfer, and medical hardship waivers	5%	13.89.050
Adjudicate non-compliance with ROFR (verifies bona fide offers when dispute reported)	5%	13.89.100
Landlord/tenant mediation	5%	13.89.170
Legal Analysis of potential violations	5%	13.89.170
Remedies/Civil Action for violations	10%	13.89.170
Support advising of tenants and QOs	5%	
	<b>35%</b>	

The City Attorney's Office has indicated that due to the relatively novel nature of the policy, their office would need to take on a larger role in the first few years of implementation. However, their involvement is expected to become less significant as the policy becomes more established. Some of the line items in this table reference old language from former versions of the ordinance. It would be useful to gain a better understanding of the distinct responsibilities of the CAO and their expectations for enforcement and support, especially in light of the rollout data from San Francisco.

## Health, Housing, and Community Services

In the budget referral, there is a request for 1 FTE in HHCS to fulfill the necessary work associated with COPA/TOPA. In conversation with HHCS, between .25 and .5 Community Development Project Coordinator FTE has been reported to be sufficient in implementing the policy and coordinating the acquisition of properties in connection with COPA/TOPA. They indicated that a number of the responsibilities highlighted in the original transmittal would no longer be under their purview, such as developing outreach materials, coordinating educational workshops and training, and liaison duties between stakeholders and City management. We are interested to know why this has shifted since the beginning development stages of the policy. Additionally, it is critical to better understand how the small sites funding allocated in June 2024 has affected staff capacity and if there is a way to disaggregate the funding between the two projects as it was initially combined in the April 2023 budget referral.

## Capacity Building for Nonprofits

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The Bay Area Community Land Trust no longer requires additional funding because they have already been awarded a capacity building grant through the June 2024 budget process.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts associated with this supplemental material.

CONTACT PERSON

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