Stable Homes and Resident Empowerment

Implementing Effective Tenant and Community Opportunity to Purchase Programs

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COVER PHOTO:
2676 Folsom Street in San Francisco, acquired by Mission Economic Development Agency in 2021 using San Francisco's Community Opportunity to Purchase Act (COPA) and financing from the San Francisco Housing Accelerator Fund and the San Francisco Mayor's Office of Housing and Community Development.

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Executive summary

Tenant Opportunity to Purchase Act (TOPA) and Community Opportunity to Purchase Act (COPA) laws and policies are being proposed around the country, with potentially substantial impacts on housing affordability, community stability and power, and tenant quality of life. These policies give tenants or qualified nonprofit housing organizations the first chance to buy multifamily rental buildings when the owner decides to sell, and the opportunity to match a third-party offer. While many Opportunity to Purchase bills have been proposed recently or are the subject of local study, TOPA has a 40-year history of being implemented in Washington, DC, in ways that have contributed to affordability and community stability in one of the fastest-gentrifying cities in the country. Eight other jurisdictions in the United States have similar right-of-first-offer and -refusal policies in place for unsubsidized multifamily properties or manufactured homes, including San Francisco, which unanimously passed COPA in 2019.

Based on a review of existing research and interviews with nonprofit housing organizations, advocates, local government program staff, lenders, and technical assistance providers involved in COPA and TOPA implementation, and building on an earlier LISC Community Research and Impact brief,[1] this report 1) describes how these policies work and their outcomes in DC and San Francisco, as well as some shared opportunities and challenges, 2) offers implementation lessons about organizing, technical assistance, and financing needs; and 3) provides evidence about the impact of C/TOPA-like policies, based on preliminary LISC analyses of housing market dynamics in New York City.

Key Findings

- TOPA and COPA are workable and impactful policies that can be implemented even in hot-market locations to strengthen housing preservation programs. In DC, since 2006, TOPA and funding for tenant organizing has enabled the formation of at least 425 tenant associations that registered for TOPA rights. Tenant associations successfully negotiated a rental or ownership outcome in 19,170 units during that period, and overwhelmingly prioritized affordability and building improvements in their negotiations, with roughly 85% of units preserved as affordable and 80% of units receiving repairs or renovations.[2] DC's TOPA, combined with preservation funding, has developed or preserved 16,224 units of affordable housing since 2006.[3] 2,100 of these units were preserved with financing from DC's Affordable Housing Preservation Fund, launched in 2018.[4] In addition to affordable rental homes, TOPA has helped create most of the District's nearly 4,400 limited-equity cooperative units since 1980,[5] including 771 cooperative apartments since 2006.[6] In San Francisco, where local preservation financing focuses on small buildings most at risk of displacement and rent deregulation, COPA and its accompanying partial transfer-tax exemption have preserved 230 units since 2019, out of over 1,000 units preserved citywide since 2013.[7]
- To realize impact, TOPA and COPA policies must have workable timeframes for tenant or community acquisition, paired with resources for tenant organizing and legal

assistance; grants and affordable financing to acquire and rehabilitate properties in ways that ensure their affordability and good maintenance; and long-term support for building management and sustainability.

- Successful TOPA and COPA implementation can help strengthen the local housing ecosystem, connecting government, community development financial institutions (CDFIs), and other mission-driven lenders, tenants, and community groups. While critical for effective implementation, such collaborations and systems can be strengthened *independently* of C/TOPA legislation and help facilitate their passage: in the case of San Francisco's COPA, the Small Sites acquisition-rehabilitation program helped pave the way for the later adoption of the policy.
- Preliminary research by LISC modeling the effect of fast and flexible affordable housing preservation subsidies suggests the potential benefits of COPA and TOPA on tenant quality of life. In New York, maintenance violations appear to decrease threefold in properties after being sold and then supported by affordable subsidy, compared to similar properties that were merely sold to another owner.

In DC, since 2006, tenant associations successfully negotiated a rental or ownership outcome in 19,170 units and overwhelmingly prioritized affordability and building improvements in their negotiations, with roughly 85% of units preserved as affordable and 80% of units receiving repairs or renovations.

Recommendations

- **Invest in fast, flexible preservation financing with guaranteed permanent financing.** Both speed of financing (in both San Francisco and DC) and the guarantee of permanent financing (in San Francisco) were seen as critical elements of success. Such investments should include funding for lenders to hire staff to provide one-on-one support and technical assistance to tenant and nonprofit buyers, while underwriting quickly enough to compete with market buyers. In cases where local housing agencies are still building their own preservation capacity, jumpstarting rapid acquisition funding through a CDFI or similar mission-driven lender may be a useful strategy, along with increasing public investments in preservation or establishing new programs where they do not already exist. In both DC and San Francisco, the combination of local government preservation funds and CDFI-managed rapid acquisition funds have made it possible for COPA and TOPA buyers to make competitive offers.
- **Invest in ongoing organizing, capacity building, and technical assistance, including peer learning and collaboration.** As seen in both DC and San Francisco, strong networks of preservation purchasers, tenant organizers, housing counselors, legal assistance providers, brokers, and lenders have been extremely important for the successful purchase and stewardship of tenant cooperatives and nonprofit rental housing over the long term. In many communities, this infrastructure exists and should be strengthened, as established and emerging community land trusts, cooperatives, and similar community ownership and organizing efforts have been

In San Francisco, where local preservation financing focuses on small buildings most at risk of displacement and rent deregulation, COPA and its accompanying partial transfer-tax exemption have preserved 230 units since 2019, out of over 1,000 units preserved citywide since 2013.

driving Opportunity to Purchase policy, program design, and implementation. As these organizations deepen their housing preservation capacity and expand their portfolios, providing ongoing operating grants, funding to support collaboration, and ongoing peer exchanges is critical to sustaining both the preservation ecosystem and the potential infrastructure to successfully implement COPA and TOPA.

- **Ensure a collaborative process, from policy and program design through implementation and evaluation.** The deep involvement of community development corporations, community land trusts, tenant organizers, housing advocates, and community leaders in shaping preservation programs and COPA and TOPA policies in both DC and San Francisco has been essential to their meaningful implementation, and to identifying areas for improvement to bring the programs into closer alignment with their stated goals. For example, San Francisco's experience creating and expanding its Small Sites preservation funding helped pave the way for COPA, as local housing organizations involved in preservation programs simultaneously worked on developing COPA policies that leveraged existing housing programs, all while building power to win COPA passage.
- **In the policy development process, address affordability measures and the specific forms of tenant or community ownership permitted over time.** COPA and TOPA both create mechanisms to intervene on behalf of tenants at the critical and potentially harmful moment of their building's sale, and to provide alternatives to speculative ownership. Because of these similarities, they are better understood as variations on a theme than as wholly distinct policies, especially because TOPA gives tenants the right to designate qualified nonprofits as their representatives. At the same time, in both the enabling legislation and accompanying programs, policymakers should consider the degree to which it is a local goal to create permanently affordable units, nonprofit-owned rental housing, cooperatives without affordability restrictions, limited-equity cooperatives, or some combination of these underlying strategies. For example, the tenant organizing necessary to prepare residents to affirm a nonprofit's exercise of COPA is of a different nature and intensity than organizing geared toward creating a self-managing cooperative, and the goal of creating permanently affordable units requires deeper subsidy and appropriate financing terms. Even if permitted forms of ownership may change over time—for example, one qualified nonprofit in San Francisco is working with tenants to transform a nonprofit-owned development into a limited-equity cooperative—these considerations are important for developing subsidy programs, financing guidelines, and tenant organizing programs. Given rising housing costs and limited public subsidy, permanent affordability that preserves public investment over the long term, as seen in San Francisco's COPA, is an especially important policy goal in both hot and cool markets.

- **Establish systems for monitoring impact.** Despite steps to improve the sales notification process and track outcomes in both San Francisco and DC, some gaps remain in available data that may lead to understatement of program impact. To give a fuller picture of the impact and identify areas for improvement to ensure policies are meeting intended goals, it is important to understand not only the number of homes preserved through COPA and TOPA policies but also the experiences and outcomes for residents and community partners. It is further important to include sales in which tenants or community groups exercise their rights but do not avail themselves of public funding. Requiring direct sales notification of tenants, qualified nonprofits, and local housing agencies at the same moment and posting COPA and TOPA notifications to a central platform that tenants, organizers, and qualified nonprofits can access would also help facilitate coordination and transparency across the many partners involved in a successful transaction.

With affordability at crisis levels and with housing instability exacerbated by the pandemic, many jurisdictions are exploring new housing production strategies, under the theory that supply shortages and a deficit of low-cost units are contributing to the emergency. These production strategies are clearly necessary, but even if implemented will take years to realize impact and do not help tenants who are currently facing rent increases and evictions to remain in their homes. In contrast, current market conditions are especially ripe for preservation strategies; that is, high interest rates and rising costs for multifamily landlords, many of whom own overleveraged properties in need of refinancing,[8] provide a relatively cost-efficient opportunity to invest in and preserve needed affordable housing by supporting fast and flexible financing, creating organizing and technical assistance programs, and implementing complementary tools like Opportunity to Purchase policies. In this context, Opportunity to Purchase policies can be seen as a “multiplier” for preservation programs and a substantial boost for community and tenant preservation purchasers, as owners may now be much more willing to work with these kinds of buyers than they were prior to the pandemic. In these ways, this combination of preservation strategies may contribute to desperately needed affordable housing around the country.

Introduction

As housing costs remain elevated from pre-pandemic levels and evictions and homelessness worsen nationwide,[9] Tenant Opportunity to Purchase Act (TOPA) and Community Opportunity to Purchase Act (COPA) processes and similar policies have gained attention as tools to combat escalating investor acquisitions of housing, prevent displacement, and promote resident and community decision-making over the future of their buildings. Though they differ on specifics, these policies give tenants (in the case of TOPA) or qualified housing nonprofits (in the case of COPA) the first chance to buy a multifamily building when the owner decides to sell, and the opportunity to match a third-party offer. They typically establish a sale notification process requiring owners to alert current tenants and qualified nonprofits, as well as clear timelines and conditions for tenants or nonprofits to deliver an official statement of interest to purchase, negotiate an offer with the building owner, and secure financing to acquire and rehabilitate their building. In Washington, DC, where TOPA has a 40-year history rooted in organizing for racial justice, community reinvestment, and self-determination, TOPA in combination with a new Affordable Housing Preservation Fund has preserved over 2,100 units of affordable housing just since 2018,[10] out of more than 16,200 total units of affordable housing preserved or developed through TOPA since 2006.[11] In San Francisco, years of community organizing and advocacy won groundbreaking investments in housing-preservation finance and capacity building that paved the way for the 2019 passage of COPA. COPA has already helped preserve 230 units, out of over 1,000 units preserved in San Francisco since 2013, despite the policy's early implementation coinciding with the worst years of the pandemic.[12]

> In Washington, DC, where TOPA has a 40-year history rooted in organizing for racial justice, community reinvestment, and self-determination, TOPA in combination with a new Affordable Housing Preservation Fund has preserved over 2,100 units of affordable housing just since 2018, in addition to thousands of homes preserved in prior decades.

Although DC's TOPA and San Francisco's COPA policies are the best-known, at least seven other jurisdictions have similar laws in place for unsubsidized rental housing. For example, there are right-of-first-refusal laws for single-family rental homes in Baltimore, MD, and multifamily buildings of varying sizes in Maryland's Montgomery County, Prince Georges County, and Takoma Park; statewide right-of-first-refusal laws for manufactured home parks in New Hampshire and Minnesota; and a pilot TOPA program for multifamily buildings in the Woodlawn neighborhood of Chicago, IL. COPA and TOPA bills are pending in Berkeley, East Palo Alto, and Oakland, CA,[13] while Los Angeles County, CA, and Minneapolis, MN, are studying the feasibility of TOPA policies.[14] Others still are expanding funding for existing programs: Prince Georges County, MD, recently allocated $15 million of its American Rescue Plan Act (ARPA) dollars to support gap financing for its multifamily Right of First Refusal program.[15] Many more jurisdictions and the federal Low-Income Housing Tax Credit (LIHTC) program already have right-of-first-refusal policies in place for *subsidized* rental properties reaching the end of their affordability period,[16] and others have taken steps to strengthen these policies as thousands of affordable homes face expiring subsidies in the coming years. Philadelphia, for example, recently passed the People's Preservation Package to expand right-of-first-offer and right-of-first-refusal provisions for government-subsidized affordable rental housing.[17]

This interest in Opportunity to Purchase policies is reflected across the LISC network, where national programs and local offices in the Bay Area, Boston, Kansas City, Los Angeles, New York, and the Twin Cities have attempted to advance COPA and TOPA policies as a critical preservation strategy. These efforts are in part modeled on LISC DC's 35 years of success providing financial and technical assistance to over 50 tenant associations to exercise their TOPA rights and buy their buildings, and preserving 931 homes through TOPA over the last five years.[18] LISC DC's experience reinforces that COPA and TOPA policies are most impactful when paired with resources for tenant organizing and legal assistance, grants and affordable financing to help tenants acquire and rehab their properties in ways that keep them affordable, and long-term support for building management and sustainability.

Over the last few years, housing advocates have sounded the alarm about mounting physical and financial distress in multifamily buildings stemming from low rent collections, rising maintenance costs, and higher interest rates. To counter these issues, they have also articulated the need for preservation financing and policies to prevent further harm to tenants from corporate landlords and private equity consolidating ownership of housing stock.[19] As multifamily markets continue to slow across the country, now is a critical opportunity to invest in acquisition-rehab financing, organizing, and technical assistance, and complementary policies like COPA and TOPA to combat speculation and level the playing field for community preservation purchasers, as owners may be much more willing to work with these kinds of buyers than they were prior to the pandemic.

Established through DC's TOPA in 2007, the Pleasant Park Cooperative continues to invest in material improvements to the building it owns and manages. A $550,000 loan from LISC DC is helping Pleasant Park Cooperative complete renovations and incorporate green design to the 60-unit townhouse complex that they own.

PHOTO CREDIT: LISC

Strengthening tenant voice and choice: DC's TOPA

DC's TOPA and the limited-equity cooperatives it has helped create emerged from decades of tenant and community organizing led by Black communities in resistance to urban renewal, discrimination, poor housing conditions, and high housing costs.[20] Passed in 1980 during a time of racialized disinvestment and population decline, DC's TOPA has three goals: prevent displacement of low-income renters, preserve affordable housing, and build tenant power by encouraging the formation of tenant associations.[21] Under DC's TOPA, multifamily building owners must notify tenants when they put their buildings up for sale or enter a sales contract with a third-party buyer. Tenants can request relevant information, and then have 45 days to organize a tenant association and register their intent to purchase. After registration, tenants have 120 days to negotiate a contract with the landlord matching the terms of the third-party offer and put down an earnest-money deposit, and then another 120 days to secure acquisition financing, which can be extended in specific circumstances. TOPA therefore strengthens tenant power at the time of sale, a potentially destabilizing moment when tenants typically have little control,[22] and puts them in the driver's seat throughout the process, as they can decide whether to purchase the building themselves by forming a cooperative or condominium; assign their rights to a third party, such as a nonprofit developer; negotiate a buyout with another potential buyer; or not to exercise their rights. In addition to TOPA, DC passed the District Opportunity to Purchase Act (DOPA) in 2008 to allow the District to buy buildings directly if tenants choose not to exercise their rights, and then sell them to qualified developers for preservation as permanently affordable housing. Though implementation regulations were passed in 2018 and updated in 2021, no buildings have yet been preserved through DOPA.

In addition to creating affordable rental homes, TOPA has created most of the 4,400 limited-equity cooperative homes across 99 buildings in the District; 771 cooperative units were preserved through TOPA from 2006-2010.[23] The expansion of limited-equity cooperatives through TOPA reflects a long legacy of cooperation in DC, with housing, food, and worker cooperatives emerging as popular tools to meet community needs, promote community well-being, and build community power prior to the adoption of Home Rule in 1973,[24] particularly among Black communities excluded from political power, ownership, and access to capital.[25] Limited-equity cooperatives remain a critical part of DC's affordable housing stock and offer a stable form of homeownership that helps low- and moderate-income residents stay in

TOPA Timeline for 5+ unit buildings

1. The landlord notifies the tenants of the offer of sale. Tenants can request pertinent information from the landlord, which the landlord must provide within 7 days.
2. Tenants must organize into a tenant association, and register their intent to purchase (typically within 45 days of the offer of sale from the landlord). • 45 DAYS •
3. After registration, tenants have 120 days to negotiate a contract with the landlord and put down an earnest money deposit. • 120 DAYS •
4. Tenant groups then have another 120 days to secure financing for acquisition (though this may be extended, in certain circumstances). • 120–240 DAYS •

Under DC's TOPA, multifamily building owners must notify tenants when they put their buildings up for sale or enter a sales contract with a third-party buyer.

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their communities even as prices rise: more than half of DC's limited-equity cooperatives are located in low-poverty neighborhoods, and many are located in gentrifying neighborhoods.[26] Studies of DC cooperatives have found that median monthly housing costs were significantly lower than in other forms of housing—just half of the typical rent in the District.[27] Additionally, because most cooperatives are financed with some form of public subsidy, most are affordable to residents earning 80% of area median income (AMI) or below, and are often more deeply affordable to people earning less.[28] In research studies, DC cooperative residents describe the stability created through low, predictable monthly housing costs, as well as the benefits of self-determination, community-building, and broader community engagement stemming from TOPA.[29]

LISC DC provided the Wesley Housing Development Corporation with a $6.77 million acquisition loan, which will help to finance the purchase and revitalization of the Hampshire Apartment complex, acting as a development partner chosen by the Tenant's Association through DC's TOPA. The rehabilitation plan includes the addition of three new units, modernization of existing units, creation of a community room, and various green updates.

PHOTO CREDIT: LISC

TOPA in action: La Union Buena Vista Cooperative

La Union Buena Vista Cooperative, located in the rapidly gentrifying DC neighborhood of Columbia Heights, provides a powerful recent example of how tenant organizing, TOPA, acquisition financing, and technical assistance combine to help tenants remain in their homes and improve their living conditions. For years, its residents—mostly low-income, Central American immigrants, many of whom had lived in their apartments for decades—endured bedbugs, cockroaches, broken appliances, mold, and holes in their walls. To make matters worse, their landlord increased rents early in the pandemic, even as he also collected Paycheck Protection Program (PPP) loans and emergency pandemic rental assistance. In response, tenants organized with their neighbors across different cultures and languages and declared a rent strike in May 2020 to try to win needed repairs.[30] But the landlord let conditions deteriorate to a point where the DC Office of Regulatory and Consumer Affairs condemned the building in February 2021. Despite this disrepair, an outside buyer made a $5 million offer on the building shortly after, triggering the TOPA process.[31]

BELOW: After years of organizing against poor conditions in their building, which was owned by a predatory landlord, residents of La Union Buena Vista Apartments in DC exercised their TOPA rights in 2022 to purchase their building and form a limited equity cooperative owned and operated by residents. LISC DC provided $6.66 million in acquisition financing.

PHOTO CREDIT: LISC

Already organized, when Buena Vista tenants received the sale notice from their landlord, within 45 days they submitted their letter of interest and secured their right to match the offer. During the negotiation and financing period, tenants unanimously voted to form a limited-equity cooperative to buy their building together, resisting the third party's buyout attempts offering $50,000 to each tenant to leave and give up their rights. With a $6.66 million loan for acquisition and critical repairs from LISC DC,[32] a crowdfunding campaign for a feasibility study, and assistance from the tenant organizing collective Stomp Out Slumlords, a development consultant, and Legal Aid attorneys, La Union Buena Vista Tenants Association closed on their building in 2022, preserving 34 units altogether through this process. Several months after closing, Buena Vista's organizing efforts helped secure a major legal victory: in March 2023, the DC Office of the Attorney General ordered Buena Vista's former landlord to pay the newly created cooperative $105,000 to address unsafe housing conditions.[33] Resident efforts to develop democratic building governance and secure permanent financing to ensure the cooperative's long-term financial health is ongoing, and in October 2023, the cooperative will apply for a loan from the DC Housing Production Trust Fund to finance the gut rehabilitation their building needs. (As described later, permanent financing is not guaranteed for all projects acquired through the Preservation Fund.) "We fought for this housing, for our community," said La Union Buena Vista president Victoria Miranda. "And now that it will be owned and operated by residents, it will be for a long time."

Organizing and technical assistance considerations

Ongoing organizing and technical assistance before, during, and after building acquisition are essential for meaningful TOPA implementation. DC funds 10 community-based organizations, primarily with Community Development Block Grant dollars, to provide TOPA information, technical assistance, and tenant organizing. At its core, this work entails supporting tenants in understanding their rights, feeling equipped and empowered to make decisions about their building's future, and breaking up an often long, complicated process into manageable steps. This work begins even before buildings go up for sale, as despite TOPA's long history, many tenants are unaware of their rights. The website of DC's Department of Housing and Community Development (DHCD) has limited information about the policy, although the sample TOPA notification that DHCD provides for landlords to use with tenants contains some information about the process and contact information for the DHCD-funded community-based organizations. Building sellers are required to submit a copy of the sales notice to DHCD at the same time as they notify tenants, and DHCD compiles a weekly summary of TOPA notices it receives and posts them on its website. Community-based organizations often use these reports to inform outreach to buildings and schedule TOPA educational meetings, often focusing on neighborhoods with higher sales volume, in addition to their broader tenant organizing and education.

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7,000

Number of tenants the 10 DHCD-funded groups provide TOPA information and technical assistance to annually

57%

Proportion of the 454 five+ unit buildings that issued TOPA notices received TOPA outreach and technical assistance from community groups from 2015-2019

This proactive building outreach plays a critical role in preparing tenants to exercise their rights when the opportunity arises. Together, the 10 DHCD-funded groups provide TOPA information and technical assistance to 7,000 tenants annually in properties ranging from one to hundreds of units, in addition to educating 3,000 tenants about other tenant protections and resources in the District. From 2015 to 2019, community-based organizations provided TOPA outreach and technical assistance to 57% of the 454 buildings with five or more units that issued TOPA notices, and buildings that received this assistance were more than three times as likely to register their TOPA rights as those that did not.[34] This successful outreach represents a significant accomplishment that could be amplified with additional funding, since the volume of TOPA notices still exceeds current organizational outreach capacity given limited resources.

Once tenants have formed a tenant association and registered their rights, they must assemble a team that includes legal and development assistance in addition to community-based technical assistance providers, if they want to form a cooperative; or decide on a partner to whom they will assign or sell their rights. DC's strong network of community-based organizational partners, built out over the years and including the DHCD-funded groups referenced above, supported 421 tenant associations through this process.[35] The sales process can be daunting and bring significant outside pressure, including from lawyers, brokers, and developers leading their own proactive tenant outreach efforts to offer to buy out existing tenants in exchange for vacating their units, or offer building upgrades and amenities to current tenants in exchange for market-rate rents in vacant units.[36] Particularly in rapidly gentrifying neighborhoods, tenants may find themselves at the center of a bidding war, which may offer financial benefits or some building upgrades but also undermine meaningful decision-making and long-term building affordability.[37] Though recent analysis from the Coalition for Nonprofit Housing and Economic Development found that buyouts are relatively uncommon, with partial buyouts occurring in roughly 19% of TOPA cases and full buyouts occurring in just 2% of cases for the 17,827 units with known buyout information, buyouts are more likely to occur in buildings where rents are below market, and the use of 100% buyouts began to increase in 2019.[38]

In the case of La Union Buena Vista, for example, each tenant was offered $50,000 to give up their rights. While that is a significant sum in the short term, tenants recognized it would not last long as average rents in DC approach $2,500,[39] and felt that their interests were better served by staying in place and buying their building together. Strong organizing and communication that kept tenants united through the process contributed to this outcome. Anticipating this kind of pressure and addressing it through education and organizing is essential to ensuring that tenants can make informed decisions. These efforts must include resources for interpretation and translation to enable multilingual organizing so that tenants can communicate with each other and fully engage in the decision-making process.[40]

> TOPA paired with funding for community-based partners has supported tenant organizing by enabling the creation of at least 425 tenant associations since 2006, which have given tenants a meaningful role in deciding the future of their buildings.

In line with one of its original policy goals, TOPA paired with funding for community-based partners has supported tenant organizing by enabling the creation of at least 425 tenant associations since 2006, which have given tenants a meaningful role in deciding the future of their buildings. Out of a sample of 37,471 multifamily units sold after a TOPA notice since 2006, tenant associations successfully negotiated a rental or sale outcome in 19,170 units, or 51% of cases.[41] Tenants also overwhelmingly prioritized affordability and building improvements in their negotiations, with 16,224 units—or roughly 85% of units sold—preserved as affordable, using subsidy programs described in the next section, and 14,993 units receiving repairs or renovations.[42] These successful organizing and building outcomes stand in stark contrast to predatory landlords that evict tenants or raise rents after purchasing buildings, or use debt to pull equity out of buildings rather than investing in upkeep.[43]

19,170

Out of a sample of 37,471 multifamily units sold after a TOPA notice since 2006, tenant associations successfully negotiated a rental or sale outcome in 19,170 units, or 51% of cases.

After the significant achievement of buying their building together, residents have passed the first hurdle. But tenants also need organizing support and technical assistance for asset management, including securing permanent financing, and ongoing leadership development, particularly over time as residents involved in the original acquisition may move out or pass away, and new residents move in. Some DC cooperatives express that they do not know where to go with questions after the acquisition phase is over, despite the established network of housing organizations and cooperative experts in the District. Peer learning and collaboration among cooperatives have been an important source of information and support.[44] Supporting peer networks and collaboration among tenant associations and cooperatives as well as long-term technical assistance should be factored into budget proposals for TOPA, as they are critical for long-term stewardship of housing preserved through these policies.

Financing considerations

DC's public investment in TOPA acquisition and permanent financing has been critical to the policy's successful preservation of thousands of homes. The District requires that TOPA buildings receiving public subsidy must stay affordable for up to 40 years.[45] Two major funds are currently in place in DC to support TOPA predevelopment, acquisition, and repair. The Affordable Housing Preservation Fund managed by LISC DC, Capital Impact Partners, and the Low-Income Investment Fund provides early-stage financing to support TOPA projects as they acquire their building, conduct predevelopment work, and perform critical repairs. The Housing Production Trust Fund (HPTF), created in 2000 and which is managed directly by the Department of Housing and Community Development (DHCD), provides later-stage construction and permanent financing and allows projects to complete more significant renovations and gut rehabilitations, as needed. HPTF requires 40 years of affordability, while the Preservation Fund requires 10. Although a third fund, DHCD's First Right Purchase Program, is codified in DC law and regulations and historically made awards for acquisition, critical repair, and predevelopment funding on a rolling basis, it has not made any awards in over five years.[46]

DC's public investment in TOPA acquisition and permanent financing has been critical to the policy's successful preservation of thousands of homes.

Launched in 2018, the Affordable Housing Preservation Fund makes predevelopment, acquisition, and critical repair loans of up to 125% of the building's value at 0%-3% interest for low-income buildings with more than five units. The District typically allocates $9 million to $10 million annually to the preservation fund, divided evenly among the three fund managers. With this public investment, fund managers leverage additional private capital from actors interested in reinvestment, for a total investment of nearly $125 million over the last five years. The public dollars also function as credit enhancement that allows fund managers to make acquisition loans of up to 125% of the property's value at lower interest rates, which means that tenant cooperatives can access larger loans on better terms. "These public dollars are critical in enabling us to support projects that would otherwise not have access to early-stage financing," said Melanie Stern, senior lending program officer at LISC DC.

Tenant cooperatives are typically connected to Affordable Housing Preservation Fund lenders by their development consultants, who have built strong relationships with local lenders and program staff through their decades of work supporting tenants through the TOPA process. TOPA acquisition and financing may be complicated for newly formed tenant cooperatives to navigate, and tenants bring different strengths and experiences to the work—including, in many cases, understandable mistrust of government and financial institutions after years of disinvestment. As a result, LISC DC sees a core part of its lending role as working directly with residents to ensure a clear understanding of the loan terms and how repayment fits into the broader process of managing a building together, to ensure long-term success. This work includes, for example, meeting tenants in their buildings and having interpreters to help facilitate conversations in multiple languages, and using inclusive, accessible language.

LISC DC sees a core part of its lending role as working directly with residents to ensure a clear understanding of the loan terms and how repayment fits into the broader process of managing a building together, to ensure long-term success.

Within this relational lending approach, TOPA acquisitions bring additional underwriting considerations that differ from typical LISC loans. Sometimes TOPA deadlines will require LISC to expedite its underwriting processes. In other cases, especially where there are too many unanswered questions, LISC DC will seek extensions through the TOPA process, which allows them under specific circumstances, with the result that LISC can work out issues with borrowers and ultimately close on loans it initially could not approve. Allowing for timeline extensions and flexibility in working with tenants are therefore important components of TOPA underwriting. Because newly incorporated tenant cooperatives do not have a financial history, LISC DC instead focuses on the building's cash flow—essentially, how many tenants are consistently paying rent—and potential source of permanent financing. Along with these financials, LISC DC evaluates the commitment of the cooperative members to seeing the project through, and the strength of their relationships and their development team members. "The cooperative's commitment and the expertise of their development team is really critical. While every decision must go through the cooperative board, residents are really learning as they go. These decisions are made in close partnership with development partners, who guide cooperative members in each step along the way," said LISC DC's Stern. Because of the staff intensity of relational lending, new TOPA proposals should ensure adequate funding to hire loan officers to do the kinds of time-intensive, relational work needed to underwrite TOPA loans, whether these personnel are housed within government agencies or CDFIs.

Allowing for timeline extensions and flexibility in working with tenants are important components of TOPA underwriting.

In addition to rapid acquisition financing and underwriting guidelines tailored to cooperatives, TOPA projects need permanent financing to refinance the initial acquisition loan and make other building repairs and upgrades, which are often significant. Initially funded with deed and recordation tax revenue, the Housing Production Trust Fund was later supplemented with a $100 million annual allocation under the Bowser administration's investments in preservation (one of the highest commitments of general resources in the country), which also included creating a new preservation unit within DHCD.[47]

"This is one big need we see in most TOPA properties we lend to. Many of these projects have been severely underinvested in over the years," said Stern. DC's Housing Production Trust Fund is one important source of permanent financing for tenant cooperatives, while the federal Low-Income Housing Tax Credit (LIHTC) can also be a permanent financing option for rental projects where tenants have assigned their rights to a developer.

> "The cooperative's commitment and the expertise of their development team is really critical. While every decision must go through the cooperative board, residents are really learning as they go. These decisions are made in close partnership with development partners, who guide cooperative members in each step along the way,"

It is important to note that the District does not guarantee permanent financing to projects that receive acquisition funds; instead, the Housing Production Trust Fund makes awards through an annual, competitive request for proposal (RFP) process. Because tenant cooperatives do not have an extensive development track record, they often struggle to compete with larger, experienced affordable housing developers for these funds, and may have to apply multiple times to address significant rehabilitation needs. The lengthy process to secure permanent financing and lack of visible improvements to individual apartments even when major structural systems are being repaired can drive tensions and organizing challenges within buildings, as tenants question the process. In the worst-case scenario, tenants may lose hope and move away or withhold rent, which negatively impacts building cash flow and in turn building maintenance and loan repayment.[48] Though some of these challenges can be mitigated with ongoing organizing and education that sets clear expectations about the rehabilitation process and financing sources from the beginning, robust and timely permanent financing plays a critical role in ensuring long-term success and cohesion.[49] In the absence of such a commitment, organizations may be unable to access sufficient financing for permanent conversion and face the devastating decision to sell recently acquired buildings, as is the case with MANNA DC, a prominent housing nonprofit in DC that is currently selling a portfolio of 19 buildings it acquired from a notorious DC landlord in 2019.[50]

To address these issues, DC housing advocates have called for increased acquisition as well as permanent financing, together with a streamlined, rolling application process that would make it easier for tenant cooperatives to apply. Guaranteeing permanent financing for projects that qualify for acquisition funds—as San Francisco does, described in more detail below— would also help simplify the process. Said Stern, "There should be a guarantee that if you're awarded acquisition financing, then you get permanent financing. We don't want projects to be in limbo, and if they've made it through the first step and have been acquired and preserved, then they're ready for the next step." Aligning other tenant and homeowner support programs with TOPA projects to reach deeper affordability and maximize the impact of public subsidy by investing in tenant-owned homes with longer affordability terms is another important strategy: for example, advocates have called on DC to better coordinate its Home Purchase Assistance down-payment assistance program and Local Rent Supplement Program with TOPA projects.[51] Lastly, because permanent housing affordability and wealth building through housing ownership are distinct policy goals, LISC DC is also exploring ways to support cooperatives with other community wealth-building opportunities, such as matched savings accounts or community investment vehicles, through which residents can invest money saved on housing costs in regenerative ways.

"There should be a guarantee that if you're awarded acquisition financing, then you get permanent financing. We don't want projects to be in limbo, and if they've made it through the first step and have been acquired and preserved, then they're ready for the next step."

LISC and UNHP research on the drivers of eviction, and the protective power of affordable housing investments

Since pandemic-era restrictions were lifted, locations across the country have seen rising eviction rates, with research supporting tenant claims that corporate landlords and private equity have contributed to the upsurge.[52] By promoting tenant and community ownership, TOPA and COPA undercut the strategies that speculators and corporate landlords use to realize profit by harming tenants. These tactics especially involve flipping properties at prices that incentivize the new owner to drive out existing residents, and refinancing mortgages for ever-higher amounts, while using these proceeds to buy new buildings rather than to maintain existing properties. Recent research by LISC and United Neighborhood Housing Program (UNHP) quantified the harm caused by these speculative strategies, which were most likely to occur in neighborhoods where Black, Indigenous, and other people of color (BIPOC) live: landlords who sold their buildings for the highest price increases or who refinanced to take out the highest amounts of additional debt had up to 2.7 times more housing code violations and evicted their tenants at 1.5 times the rates of owners of similar properties in comparable neighborhoods. In contrast, buildings that received some form of affordable housing subsidy were better maintained, holding as many as 75% fewer housing violations in some years.[53]

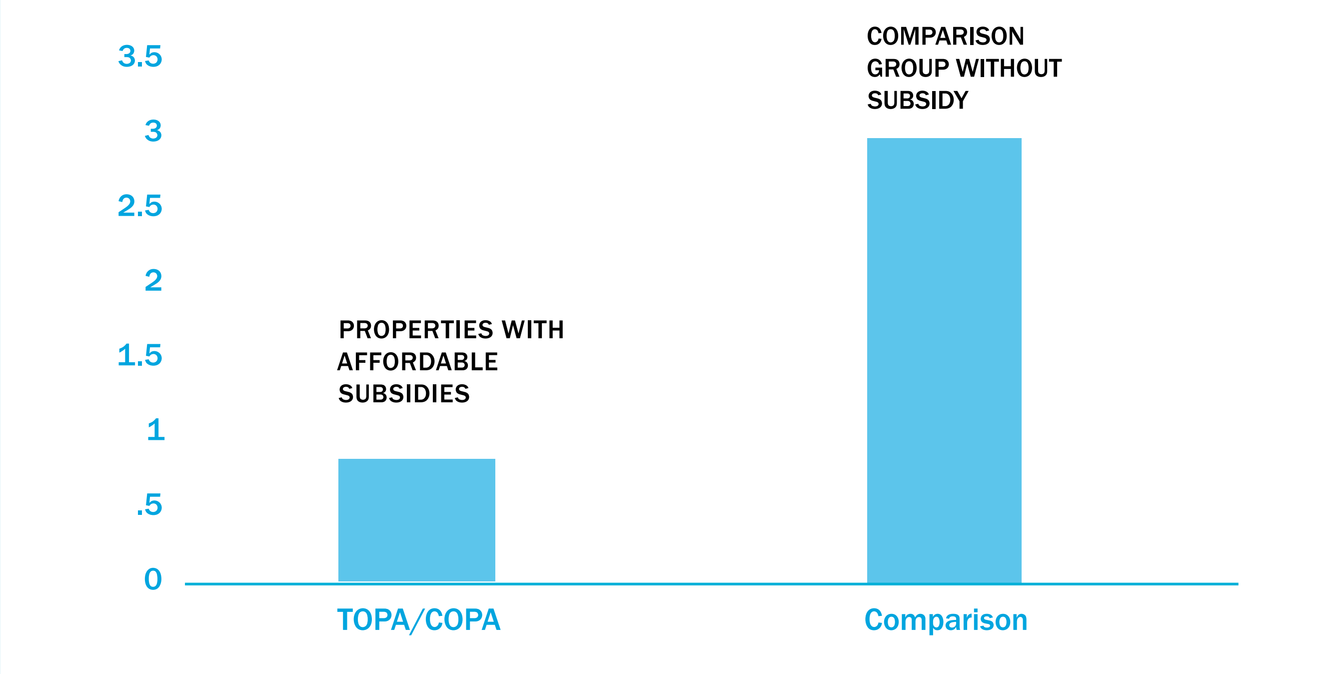
According to LISC modeling, in New York, maintenance violations appear to decrease threefold in properties after being sold and then supported by affordable subsidy, compared to similar properties that were merely sold to another owner.

Additional analyses by LISC modeling the effect of TOPA- or COPA-like subsidies suggest the potential benefits of the policies on tenant quality of life. To understand these benefits, we examined the number of maintenance violations recorded on apartment buildings before and after a transfer of ownership, comparing properties that subsequently received a broad range of affordable housing subsidies to those that did not. That is, we asked whether properties that were acquired and rehabilitated through a preservation program were better maintained than those that were simply transferred to another owner, potentially as part of the cycle of speculation described above. While not the only measure of tenant quality of life, living in better-maintained properties is an objective indicator of well-being, especially as housing quality has been tied to other health and mental health outcomes.

To ensure an accurate comparison, we compared properties that received a subsidy to similar, unsubsidized buildings that were sold in the same year, located in neighborhoods with similar levels of poverty, sold for similar amounts per unit, and that had similar numbers of recorded housing maintenance violations per unit before the transfer of ownership. This matching strategy yielded a group of properties that were very similar to each other, except for the fact that one group received subsidy and one did not. We limited our analysis to subsidies that were most like acquisition-rehabilitation investments found in COPA and TOPA programs, excluding, for example, tax abatements that have been criticized for producing very limited amounts of affordable housing.[54]

The results of this analysis were striking: maintenance violations appear to decrease threefold in properties after being sold and then supported by affordable subsidy, compared to similar properties that were merely sold to another owner. These effects were highly significant in regression analyses, and appear to be driven by substantial improvements in more severely distressed properties, suggesting that the level of investment may matter a great deal in driving these improvements. Our analysis of a broad universe of preservation programs shows the positive impact an expansion of TOPA and COPA policies can have on tenant quality of life. Given the fact that prior research also identified that affordable housing investments helped remove distressed properties from the cycle of speculative ownership that results in their deterioration, it may also indicate the effects of changed ownership, to stewards who prioritize tenant needs.

Maintenance violations per unit after acquisition



Because COPA and TOPA policies are paired with subsidies that can help lower-income tenants and their representatives buy and rehabilitate properties, this research suggests that these initiatives—when adequately complemented with acquisition, rehabilitation, and technical assistance funds—can substantially improve tenant quality of life, while reducing evictions that particularly harm BIPOC communities.

Promoting nonprofit stewardship and permanent affordability: San Francisco's COPA

In contrast to DC, where TOPA passed forty years ago to help stabilize tenants against decline and disinvestment, San Francisco passed COPA in 2019 to preserve permanently affordable rental housing through nonprofit ownership in a supercharged real estate market. COPA's unanimous approval by the San Francisco Board of Supervisors was the result of over a decade of organizing and advocacy for broader investments in housing preservation, led by the Council of Community Housing Organizations (CCHO), the San Francisco Community Land Trust, and grassroots housing organizations.[55] Recognizing that multifamily buildings in low-income and working-class communities of color were most at risk of rent deregulation and evictions as the city's real estate market began to heat up following the Great Recession—and that new construction alone would not address this challenge—advocates first won passage of legislation directing the Mayor's Office of Housing and Community Development (MOHCD) to study and create a preservation program in 2009. As this work gained momentum, a 2014 citywide tenant congress of housing organizations and labor unions identified a right of first purchase and first refusal as a policy priority and continued strengthening a coalition to explore legislation. By 2019, a strong network of community-based preservation purchasers and a preservation financing ecosystem were in place, with a growing list of successful projects and a strong champion in Sandra Lee Fewer, District 1 supervisor. Through these series of overlapping activities—starting with a study, building toward consensus within broad coalitions, and culminating in legislative advocacy—organizers had created the conditions for the Board of Supervisors to pass COPA, and direct MOHCD to develop program rules and implementation.

San Francisco's COPA gives qualified nonprofit buyers both a right of first offer and a right of first refusal for multifamily buildings with three or more units and vacant lots zoned for three or more units. The right of first offer means that owners must notify qualified nonprofits before they put their buildings on the open market, which triggers a five-day period for qualified nonprofits to express their interest in buying the building, and then 25 days to make an offer. If their offer is rejected by the seller, qualified nonprofits can then match a third-party offer through their right of first refusal, which provides nonprofits with critical leverage through the purchase process.[56] Unlike DC, which requires only long-term affordability for TOPA projects developed

Right of first offer and refusal

1. **Owners must notify qualified nonprofits before they put their buildings on the open market.**
2. **Organizations have five days to express interest in buying the building.**

   5 DAYS
3. **Nonprofits have 25 days to make an offer on a building.**

   25 DAYS
4. **If their offer is rejected, they can match a third party offer through their right of first refusal.**

with District subsidy, San Francisco requires all COPA projects to be permanently affordable rentals, which ensures that these upfront investments will pay dividends in perpetuity. A 2020 amendment allows for buildings purchased through COPA by nonprofits as rentals to later convert to limited-equity cooperatives, as long as they remain permanently affordable (though MOHCD's Small Sites financing, described in more detail below, has typically funded affordable rental properties rather than cooperative homeownership projects). This flexibility allows nonprofits to move quickly to buy buildings to secure them from speculators, and then work with tenants to create cooperative governance structures and secure permanent financing for a limited-equity cooperative conversion later.

Newer flexibility provided by a 2020 amendment to COPA allows nonprofits to quickly secure buildings, then work with tenants to create limited-equity cooperatives.

As an additional incentive for sellers, San Francisco's COPA includes a provision that makes buildings sold to qualified nonprofit purchasers eligible for a partial exemption from the City of San Francisco's transfer tax, and qualified nonprofits also work with sellers to seek any federal tax benefits they may be eligible for under a 1031 exchange.[57] This transfer tax exemption has helped qualified nonprofits that were not able to enter a contract within the 30-day COPA timeline to still work with sellers to eventually finalize their purchase. This fact points to ways that COPA legislation can benefit both sellers and qualified nonprofits in the purchase process, even when negotiations are not finalized within the short timeline, because it starts conversations about transactions that may be realized over time.

COPA in action: Mission Economic Development Agency

> **COPA is one tool for you to use to help tenants fight displacement, and to have a permanent place in the neighborhood they call their own."**
>
> KAROLEEN FENG, CHIEF REAL ESTATE OFFICER AT MEDA

Mission Economic Development Agency (MEDA) was founded in 1973 to promote equitable asset building and economic development with low-income and working-class Latinx families in San Francisco's Mission District. In response to rising displacement and Latinx population loss in the early 2000s, MEDA launched its community real estate program in 2014, including both new construction and preservation of affordable housing and commercial and community spaces. As MEDA has built its own preservation capacity over the years, including through receipt of a $500,000 capacity-building grant from MOHCD in 2019, it has been deeply involved in housing preservation advocacy and shaping the Small Sites Program and COPA legislation. In the last 10 years, MEDA has built or preserved over 2,000 homes, which includes completing 35 Small Sites projects representing 291 permanently affordable units, with eight of these buildings benefiting from COPA—more COPA conversions than any other qualified nonprofit has completed to date.[58] "COPA is one tool for you to use to help tenants fight displacement, and to have a permanent place in the neighborhood they call their own," said Karoleen Feng, chief real estate officer at MEDA.

One recent example is 300 Ocean Avenue in the Mission Terrace neighborhood, an eight-unit building that is home to Black and Latinx families with children and people with disabilities, with average incomes at 40% AMI. Concerned about an investor buying their building and pursuing Ellis Act evictions (a method to evict tenants and convert units to condominiums or tenancies in common), tenants reached out to District 11 Supervisor Asha Safai, who brought the building to MEDA's attention. When owners put the building up for sale in summer 2022, MEDA was able to exercise its COPA rights and secure a $5.1 million acquisition-rehabilitation loan from the San Francisco Housing Accelerator Fund (a CDFI formed for rapid acquisition, described below) to buy the building, with permanent financing provided by MOHCD.

Even outside of the 30-day COPA timeline, MEDA has successfully leveraged COPA in partnership with organized tenants to negotiate with sellers. This strategy was used in the case of 3661 19th Street, a 12-unit rent-controlled building in the Mission Dolores neighborhood, where tenants initially began independently organizing after two limited liability corporations (LLCs) acquired the building for $6 million in 2018 and in 2020 filed Ellis Act evictions against the building's nearly two dozen tenants, most of whom are LGBTQ+, Asian-American, senior, and/or working-class residents of long standing. With Ellis Act evictions exempt from pandemic eviction moratoria, tenants battled their evictions in court with support from Tenderloin Housing Clinic, and with creative direct action strategies, including protesting the LLC owners' homes, delivering

Before and after photos of 2676 Folsom Street, which MEDA acquired in 2021 using COPA and financing from the San Francisco Housing Accelerator Fund and the Mayor's Office of Housing and Community Development. Originally an 8-unit building, MEDA converted two garage spaces into Accessory Dwelling Units (ADUs), preserving 10 units of permanently affordable housing.

PHOTO CREDIT: MISSION ECONOMIC DEVELOPMENT AGENCY

them fake coal for the holidays, and picketing open houses at other buildings the LLCs owned.[59] Tenants also had support from the Westside Tenants Association.

In addition to their independent organizing, tenants and their advocates reached out to District 8 Supervisor Rafael Mandelman, who worked with tenant attorneys to connect tenants to MEDA. MEDA began negotiating with sellers in summer 2022. Leveraging tenant pressure and the partial transfer-tax exemption that COPA provides for sales to qualified nonprofits (an incentive for the owners to continue negotiations even after the 30-day COPA offer period passed), MEDA was able to close on the building in January 2023. The 12 apartments will remain affordable in perpetuity, with higher-income tenant rents cross-subsidizing lower-income residents. "This experience has taught us that there are different ways you can win," said tenant leader Paul Mooney, a gay man who moved to San Francisco in 2003 in search of a supportive community, in an interview for Mission Local. "Winning and defeating an Ellis eviction doesn't mean defeating it in court. The Small Sites Program can help people stay in their homes."[60]

Organizing and technical assistance considerations

Along with acquisition and permanent financing described in the next section, MOHCD provided $3.6 million in grants to 12 community-based organizations to expand their staffing and build their preservation capacity from 2019 to 2021. Most grants were directed toward communities of color with high displacement pressures. Groups receiving funding ranged from established nonprofit housing developers with significant preservation experience to emerging organizations interested in pursuing their first projects. This funding was also intended to promote collaboration and peer learning between organizations, though the competitive award process made this goal challenging at first. There is significant overlap between the groups funded through these one-time capacity-building grants from MOHCD and the list of qualified COPA nonprofits, which has grown from eight at the time COPA was passed to 16 as of 2023, illustrating the importance of capacity-building investments to make COPA and TOPA effective. IMPACT Realty, a preservation-focused real estate broker that has closed over 40 Small Sites transactions and advocated for COPA and other preservation policies, has been another important source of technical assistance for many qualified nonprofits, as well as a source of new potential projects for these groups.

> Although COPA's primary goal is to promote nonprofit ownership of affordable rental housing, not direct tenant ownership, tenant organizing and outreach are critical to successful acquisition rehab projects, especially because funding for the Small Sites programs requires at least 80% of current tenants to sign new leases and income certify.

Although COPA's primary goal is to promote nonprofit ownership of affordable rental housing, not direct tenant ownership, tenant organizing and outreach are critical to successful acquisition rehab projects. Both Small Sites program requirements and COPA promote tenant engagement and decision-making in several important ways, and qualified nonprofits can work toward these goals with their own organizing staff as well as in partnership with tenant organizing groups. Small Sites requires at least 80% of current tenants to sign new leases, agree to pay 20% of their income on rent, and certify their household income in order for a nonprofit purchaser to receive financing. By requiring that sellers engage with potential nonprofit buyers during the 30-day first-right-of-offer period and provide information about the building and current tenants in their sale notification, COPA creates additional time for organizing and helps organizers immediately begin outreach to assess initial tenant interest in a nonprofit purchase. A 2020 amendment to COPA requires sellers to directly notify tenants at the same time as qualified nonprofits, and MOHCD is currently finalizing this disclosure form and educating sellers and brokers on this new requirement. Groups stressed the importance of direct tenant notification to ensure tenants know what is happening to their building and can reach out to qualified nonprofits to request more information or express interest in working together.

Even with the additional time and access to tenants that COPA provides, reaching 80% tenant approval requires tremendous effort on a short timeline. Some tenants are skeptical of any ownership change, particularly when it means shifting from the City of San Francisco's rent regulations into a new set of affordable housing guidelines. In the unusual case that a tenant is paying less than 20% of their income for a rent-controlled apartment, their rent would increase under such a shift. On the other hand, the potential for an Ellis Act eviction under speculative

Tenants at 3329-3333 20th Street in San Francisco organized and successfully pressured the former landlord to sell the building to MEDA via the Small Sites Program in 2017. San Francisco's COPA legislation was designed to work in concert with the Small Sites Program, in addition to the San Francisco Housing Accelerator Fund.

PHOTO CREDIT: MEDA

owners would be essentially removed, and allowable increases year to year may be less. Making space for transparent conversations in which tenants can discuss these trade-offs and make informed decisions is critical, and can be in tension with limited time. Additionally, low-income, BIPOC, and immigrant tenants who have had negative and harmful experiences with past landlords or government institutions may be understandably mistrustful of a proposed ownership change and the program behind it. Multilingual organizing is also often a need, and qualified nonprofits may not have these capacities in-house. In these cases, qualified nonprofits often choose to partner with trusted community organizations that have the necessary language and cultural competencies to build relationships with tenants. MEDA recommends starting with individual tenant outreach to assess initial interest before convening a larger tenant meeting to discuss potential acquisition, and underscored the importance of having trusted community partners at those meetings to help facilitate the discussion.

Though tenant organizing is a critical part of the COPA process, it can be distinct from the role of qualified nonprofit purchasers, which presents opportunities for qualified nonprofits and tenant organizers to learn from each other through partnerships. In contrast to traditional tenant association meetings where the landlord is rarely present, during COPA transactions, meetings with tenants often include the seller and the seller's representatives, so qualified nonprofits and organizing partners try to be sensitive in how they discuss building conditions and the impacts of a potential acquisition. Especially because of the potential for perception of conflicts of interest, groups stressed the importance of promoting a clear, unbiased understanding of the implications of a qualified nonprofit purchase for tenants, so that they can make an informed decision. "It's finding that balance as a nonprofit developer of defending and fighting for the

In 2021, San Francisco Community Land Trust acquired 285 Turk St, a 40-unit acquisition/preservation project in the Tenderloin neighborhood of San Francisco. Financing from the Bay's Future Fund/LISC Bay Area, Self-Help Federal Credit Union, and contributions from private donors helped San Francisco CLT make the $10.4 million purchase, leveraging COPA's partial transfer tax exemption in the process.

PHOTO CREDIT: LISC

clients, but also being good players in the real estate game," said Juan Diego Castro, national partnerships director at MEDA. "Tenant organizers are trained to make sure that tenants know their full rights, and advocate on their behalf," reflected Karoleen Feng, chief real estate officer at MEDA. "Our role is to help them to navigate this program to support the tenants—and yet at the end of the day, that may not be the tenants' choice. But let's make sure that we understand all the pros and cons so your presentation doesn't bias the conversation out of a lack of knowledge about the program—or the other way around, get the tenants super excited and then overpromise." In the case of 3661 19th Street described above, for example, tenants received organizing support from the Westside Tenants Association and legal assistance from Tenderloin Housing Clinic, whereas MEDA worked with the seller to finalize the purchase.

Just as qualified nonprofits strive to manage tenant expectations through the acquisition process, they also have been prepared to pass on buildings where tenant interest is low or where financing is insufficient to stabilize operations over time. Not pursuing mission-fulfilling deals can be a difficult decision for anti-displacement organizations motivated to shift buildings out of speculative ownership, but tenant support is more important as a determining factor. "We had a situation where a few tenants were very opposed to us acquiring the building and turned other residents against the idea," said Kim Piechota, director of housing development at Chinatown Community Development Center, which owns 36 properties that are home to more than 4,500 low-income families and has closed on four projects with Small Sites funding, in addition to larger LIHTC projects and single-room occupancy (SRO) buildings. "In those cases, we have walked away. We don't want to acquire a building if tenants don't want us there."

Tenant buy-in is an important consideration over the course of deal exploration. "If the project doesn't pencil out, or there are warning flags that may impair future operations, nonprofits have to be willing to drop it," said Justin Chen, senior vice president of lending and capital at San Francisco Housing Accelerator Fund (SFHAF). "That can be difficult if they've already engaged tenants." This challenging reality highlights the need for more subsidy to ensure that insufficient financing is not the limiting factor when tenants are otherwise on board. It also speaks to learning opportunities for groups newer to preservation, who may benefit from being discerning about their first projects as they gain experience, and for experienced nonprofit developers, who may benefit from being innovative and willing to take on smaller preservation projects at scale.

Tenant organizing is not only an important component of self-determination, but also impacts building finances and operations over time. After a building is acquired through COPA, there is a range of possible roles for tenants in building management and governance, from minimal participation to building-wide tenant associations to formal positions for tenants on the nonprofit steward's board or other decision-making bodies. For both qualified nonprofits and tenant organizers, it is important to recognize that there are multiple venues for tenant stewardship, both to ensure proper governance support to residents over time, and to understand that there are multiple feasible paths to achieve resident control. "We approach it from the perspective as we're creating stable homes in the community to empower residents," said Piechota. "When we open big buildings, we usually set up resident councils, to the extent people are interested and want to organize. For small buildings, staffing is a bit lighter." Similar to cooperatives owned and managed by residents, nonprofit housing stewards benefit from ongoing support for asset management, organizational development, and leadership development to ensure tenant concerns are prioritized and properties stay affordable and in good condition in perpetuity.

> **We approach it from the perspective as we're creating stable homes in the community to empower residents"**
>
> **Kim Piechota**
> CHINATOWN COMMUNITY DEVELOPMENT CENTER

Though direct tenant ownership is not the focus of COPA policies, they do not preclude such ownership transitions. For example, the San Francisco Community Land Trust (CLT) leveraged COPA to acquire 285 Turk Street, a 40-unit building in the Tenderloin, for eventual conversion into a limited-equity cooperative owned and managed by tenants. In response to poor conditions and rent hikes, tenants in the building, who are mostly Filipino and Indigenous Mayan immigrants from the Yucatan Peninsula, had been organizing for several years with Filipino Community Development Corporation. After the owner's attempted sale to a private-equity firm fell through, San Francisco CLT successfully acquired the $9.4 million building in 2022 using COPA's partial transfer-tax exemption as an additional incentive for the seller, coordinating closely with Filipino Community Development Corporation on tenant organizing and engagement.[61] Rather than using Small Sites financing for this project, San Francisco CLT quickly mobilized other financing sources, including a $3 million loan from the Bay's Future Fund managed by LISC Bay Area, a $4.5 million loan from Self-Help Federal Credit Union, and donations from philanthropic networks like Solidaire.[62]

Financing considerations

COPA was designed to operate in concert with San Francisco's preservation finance programs and network of qualified nonprofit purchasers, which housing organizers and advocates worked hard to strengthen in the years following the Great Recession. Since COPA's passage in 2019, qualified nonprofits have used it to preserve 230 units across 15 buildings, with seven projects financed by MOHCD; seven financed by MOHCD in partnership with the San Francisco Housing Accelerator Fund (SFHAF), a local CDFI incubated by MOHCD in 2017 to help deploy city funds at the speed of the market; and one project financed with no MOHCD funding. SFHAF uses a combination of private and public sources to provide fast-acting upfront acquisition and construction financing to a project and, 12 to 24 months later, after the project is stabilized, SFHAF or MOHCD converts the project to permanent financing sources, which are typically a combination of city subsidy and senior debt through the city's Preservation and Seismic Safety Program (PASS).

COPA was designed to operate in concert with San Francisco's preservation finance programs and network of qualified nonprofit purchasers, which housing organizers and advocates worked hard to strengthen in the years following the Great Recession.

Practitioners described the synergies of having effective, reliable, and well-funded preservation programs in place as they were moving to advance COPA, and the benefits of these initiatives to realizing COPA rights in practice. That is, without preservation and capacity-building funding already being in place, COPA would be frustrating for both nonprofit purchasers and sellers, as it would simply add additional time to the sales process and provide a sales notice without any resources to make a competitive offer.

Following 2009 legislation authorizing MOHCD to create a preservation program and five years of extensive engagement of tenant organizers, community development organizations, and housing counselors to develop program guidelines and rules, MOHCD launched its Small Sites Program with a $3 million pilot investment in 2014.[63] The city's initial investment has since grown significantly to a cumulative total of over $217 million in Small Sites, PASS, and other preservation subsidies.[64] In recent years annual Small Sites allocations have ranged from $20 million to $45 million depending on available revenue from a variety of sources, including housing bonds, neighborhood-specific programs, the city's Housing Trust Fund, inclusionary and condo conversion fees, and a one-time windfall from California Educational Revenue Augmentation Fund (ERAF).[65]

The Small Sites Program provides rapid acquisition financing at 0%-3% interest to nonprofit purchasers to buy multifamily buildings and preserve them as permanently affordable rental housing, prioritizing buildings with 5 to 40 units that are most at risk of speculation and rent deregulation through California's Ellis Act. The average income in Small Sites-financed buildings cannot exceed 80% of area median income (AMI). "The ability to stabilize communities facing displacement in San Francisco is the number one force and virtue of Small Sites," said John Oliver, director of preservation at MOHCD. "When a building is set aside through Small Sites, as long as folks are okay with a 20% rent burden, they're going to be allowed to live in their unit for as long as they want.[66] The impact of preservation is immediate, plus 24 months of rehab work." In contrast, the same timeline for new construction programs is much longer; as Oliver notes, "This might be just the planning stage for a new development, and then it might be another five to seven years before anyone gets into their homes."

The transparent Small Sites program guidelines that MOHCD co-developed with input from community housing groups and updated in 2022 have been critical to the program's effectiveness. MOHCD shares its Small Sites scoring rubric publicly, which ensures everyone knows the basis for funding decisions. Amidst a tremendous volume of COPA notices, knowing what criteria will make projects more likely to be approved for loans can also help nonprofits prioritize which buildings to focus on, in addition to their own priority populations and geographies.

SFHAF is a crucial financing partner for COPA and Small Sites in San Francisco. When Small Sites was created, MOHCD had only one preservation staffer, which limited the agency's ability to underwrite acquisition loans quickly enough for qualified nonprofits to compete with market buyers. To create another option for rapid acquisition and construction financing, the City of San Francisco launched SFHAF with a $10 million public investment in 2017. SFHAF has since leveraged that funding to raise over $353 million for both housing preservation and new construction. As SFHAF takes in private capital, its loans come with higher interest rates than MOHCD financing, at costs more comparable to rates offered by other CDFIs. Importantly, all SFHAF acquisition loans receive a soft commitment of permanent financing from MOHCD, which gives lenders the security they need to underwrite quickly and ensures that projects do not run into challenges securing takeout financing later. "The MOHCD soft commitment has been the very strong backstop that's needed," said Justin Chen, SFHAF senior vice president of lending and capital. "Once MOHCD has done their own soft underwriting, we know there's backing, so even if there are some minor cost overruns, the city is not going to back down on the commitment." Because of this soft commitment as well as the City of San Francisco's subordinate investment in the fund, SFHAF works very closely with MOHCD, coordinating via regular check-ins on existing and new projects.

> Importantly, all SFHAF acquisition loans receive a soft commitment of permanent financing from MOHCD, which gives lenders the security they need to underwrite quickly and ensures that projects do not run into challenges securing takeout financing later.

Similar to LISC DC, SFHAF also provides individual technical assistance to its borrowers, which is an important source of support for organizations and staff that are new to housing preservation. "Tenant outreach is definitely a big hurdle, depending on if the seller is willing to cooperate, or even provide access to tenants or the actual building itself," said Chen. Ultimately, SFHAF views strong relationships with tenants as a critical strategy to ensure strong building operations and long-term success and reduce risk to the lender. MOHCD's program guidelines also create transparent guidance and standards for all stakeholders, including tenants, in ways that further these more trusted ties.

One of SFHAF's significant contributions has been the speed of its underwriting, which typically ranges from 60 to 90 days, allowing nonprofits to compete with market buyers.

One of SFHAF's significant contributions has been the speed of its underwriting, which typically ranges from 60 to 90 days, allowing nonprofits to compete with market buyers. This rapid financing was crucial for enabling nonprofits to work within San Francisco's streamlined COPA timeline of just 30 days, a relatively short window that reduced the likelihood of legal challenges that would have blocked COPA implementation. Said former Council of Community Housing Organizations co-director Peter Cohen, "The San Francisco Housing Accelerator Fund was an essential piece of the puzzle, and a really good partner. Access to fast money is the only way for nonprofits to take advantage of that 30-day window." In the six years since SFHAF launched, MOHCD has hired additional preservation staff and deepened its own capacity and can now typically close on acquisition loans in around 120 days, after initial negotiations during the 30-day window commence.

The successful growth of SFHAF, as well as MOHCD's preservation team, means that qualified nonprofits now have options for acquiring and rehabilitating their Small Sites projects, depending on the project needs, costs, and the purchase timeline. This experience highlights the importance of adequate staffing to underwrite quickly and work one-on-one with borrowers. It also suggests that jumpstarting rapid acquisition financing with a CDFI fund may be a useful strategy, particularly as city agencies staff up and build their own preservation capacity, and that close coordination between the two facilitates a much smoother experience for nonprofit borrowers and their tenants. While MOHCD's Small Sites Program and SFHAF have been critical to COPA implementation, practitioners highlighted the need for a permanent, ongoing source of public subsidy for preservation projects, rather than relying on different funds like the Housing Trust Fund or affordable housing bonds each year, which can leave programs vulnerable to fluctuations in funding levels or shifts in political priorities.

Two remaining challenges are a lack of operating subsidy to reach deeper affordability for extremely low-income households, as well as requirements for citywide marketing of vacant units that can create a significant administrative burden for smaller organizations and buildings, and pose tensions with the goals of community-based organizations seeking to prioritize local residents in their anti-displacement strategies. "There's a bit of a mismatch between the tool and the desired outcomes in terms of combating displacement," said Kim Piechota, director of housing development at Chinatown Community Development Center. "We understand the purpose of mixed-income developments and income averaging to 80% AMI. It's supposed to be self-sustaining and not require tons of public funds. But the kind of deep affordability that we want to see is difficult to impossible to achieve with limited city subsidies. By and large, our residents are extremely low-income households, seniors on fixed incomes, or people earning minimum wage trying to make ends meet. We've been pushing for operating subsidies for extremely low-income households. The City of San Francisco has a local operating subsidy, but it tends to go to bigger projects." These dynamics are familiar challenges in many jurisdictions and highlight the need for operating subsidies for deep affordability. They also suggest the need for thoughtful guidance about community preference policies for COPA and TOPA, with a focus on meeting local requirements while also allowing residents to remain in the neighborhood who are vulnerable to displacement and homelessness.

Jumpstarting rapid acquisition financing with a CDFI fund may be a useful strategy, particularly as city agencies staff up and build their own preservation capacity, and close coordination between the two facilitates a much smoother experience for nonprofit borrowers and their tenants.

How COPA has changed the acquisition process for San Francisco nonprofits

Though the early impacts of COPA are difficult to untangle from the ongoing impacts of the pandemic, the legislation has been an important addition to San Francisco's housing preservation ecosystem. In addition to the 230 homes that COPA has helped preserve over the last four years, COPA has changed the acquisition process for qualified nonprofits in at least three important ways:

- **Created transparency in multifamily building sales.** Prior to COPA, multifamily buildings often sold off-market without ever appearing on the Multiple Listing Service, which meant tenants and nonprofit partners often did not know they had changed hands until after the fact.[67] With COPA, qualified nonprofits have access to a valuable source of data about multifamily sales citywide. "Everyone has to enter through the COPA gate," said Oliver of MOHCD. "It's letting everyone see who and what is moving here in San Francisco, at least in terms of multifamily." This transparency could be further enhanced with a centralized platform for COPA notices. Sellers must file a disclosure form with MOHCD certifying they complied with the COPA process after the fact, but they are not currently required to provide notices to MOHCD on the front end.

- **Required sellers to engage with nonprofit purchasers.** "Before COPA, we had to do a lot of dancing and smooth talking because realtors had attitude about nonprofits and city funds as too much bother, and would rather wait for an investor," recalled Richard Hurlburt, founder, and Kristen Villalobos, sales agent, IMPACT Realty. "With COPA, they have to engage with us. They don't have to accept anything, but they do have to talk to us." By requiring that sellers engage with potential nonprofit buyers, COPA guarantees they and any organizing partners can speak with tenants and creates additional time for organizing, which is important for reaching the 80% tenant approval that Small Sites financing requires, and for the long-term success of the project. "COPA gave us the time we needed," said Piechota of Chinatown CDC. "With affordable, nonprofit-developed housing we're not able to react in the same ways that a private buyer would. COPA met its intended purpose giving nonprofit community development organizations a first chance to look at buildings and potentially make an offer. Those 25 days to take a closer look is very helpful."

- **Leveled the playing field for nonprofit purchasers.** Building on prior investments in a network of nonprofit preservation partners, COPA has strengthened their position as legitimate or even preferred buyers for multifamily buildings, especially as multifamily sales have cooled. Despite vociferous opposition to COPA from the real estate industry and claims that it would distort the market, sellers and their brokers have largely adjusted to COPA as simply another local law to comply with during the sales process. A relatively short timeline and partial transfer-tax exemption for owners who sell to qualified nonprofits helped minimize this opposition, and ongoing education of sellers and realtors was also an essential part of normalizing the policy. Now, some sellers proactively reach out to qualified nonprofits and their brokers even before listing their buildings. "Lots of agents now call us to say that they have a building they think would be good for COPA," said Hurlburt. "We now have more buildings with friendly agents than we can actually handle."

Conclusion and recommendations

With affordability at crisis levels and with housing instability exacerbated by the pandemic, many jurisdictions are exploring new housing production strategies, under the theory that supply shortages and deficits in low-cost units are contributing to the emergency. These production strategies are clearly necessary, but even if implemented will take years to realize impact and do not help tenants who are currently facing rent increases and evictions to remain in their homes. Such strategies also do not address the growing body of research showing that corporate ownership and financialization contribute to housing instability and other forms of harm to tenants.[68] Tenant and community Opportunity to Purchase policies, when well implemented, can both address current tenant needs and shift market dynamics away from harmful speculative ownership.

In addition, the current moment—with a cooling capital market and rising interest rates impacting a cohort of multifamily owners ready to refinance—may be ripe for preservation strategies, as owners may be more open to accepting offers from preservation purchasers. Given the urgency of action now and this window of opportunity, the experiences of both DC and San Francisco call for bold investments in scaling housing preservation strategies to stem the tide of displacement of low-income and BIPOC communities and strengthen the position of tenants and community purchasers.

One advantage of enshrining COPA or TOPA policies as rights alongside such broader preservation investments is to elevate community ownership models in ways that endure beyond a specific administration or council. For example, the 2019 passage of COPA has provided a boost to San Francisco preservation purchasers at a critical moment of community destabilization and multifamily market shift over the course of the pandemic, and TOPA's long legacy in DC has helped sustain a rich ecosystem of housing cooperatives and supportive organizations and programs found in few other cities.

The experiences of DC and San Francisco demonstrate how COPA and TOPA can strengthen housing preservation programs, as well as some common challenges that reinforce the importance of investments in capacity building, organizing, and acquisition and permanent financing. San Francisco's recent experience passing COPA also presents strategic considerations that may be especially relevant for advocates currently in the policy and program design process.

COPA and TOPA policies will be only as effective as the preservation investments behind them, and require fast, flexible preservation financing with guaranteed permanent financing.

Regardless of the policy specifics and the spectrum of ownership options allowed, groups stressed the importance of broader commitments to housing preservation and a supportive network of tenant organizers, developer partners, technical assistance providers, lenders, housing counselors, advocates, government program staff, and legislative champions for COPA and TOPA to be impactful. "If you don't have financing in place or developers with capacity to do these deals, it does look like you just want to frustrate landlords and give them extra paperwork," said one practitioner, who also cautioned against COPA and TOPA acting as mere "lip service" for community and tenant ownership or affordability goals: "On the other hand, this is why cities may want to pass COPA or TOPA without funding, because it can look like you're taking action without having to make any actual investment."

Given deferred maintenance in many buildings, acquisition and permanent financing that can cover extensive renovations are critical not only for building quality but also resident cohesion and engagement in the process. DC and San Francisco both have multiple sources of rapid acquisition financing that include a publicly managed fund and a fund managed by nonprofit CDFIs. In both cities, close coordination between city agencies and nonprofit lenders, and having adequate staffing to underwrite quickly enough to compete with market timelines and provide one-on-one support to borrowers, have been important for success. The existence of a strong preservation ecosystem in San Francisco was also important for neutralizing opposition to COPA, because nonprofits could point to their success buying buildings with MOHCD Small Sites funding since 2014—and could accept a shorter timeline because there were local lenders able to underwrite quickly. However, in DC, preservation projects must separately apply for permanent financing through a competitive RFP process, whereas in San Francisco all preservation projects approved for acquisition financing have a soft commitment of permanent financing—a guarantee that practitioners from both DC and San Francisco emphasized as essential for successful long-term stewardship. The substantial investments that both cities have made in preservation financing and policies remain outpaced by tremendous need, including for deeper operating subsidies to reach extremely low-income families. While this lack of investment relative to need is challenging, this reality also presents an organizing opportunity for community-based organizations and their members to advocate for well-funded, cost-effective, and sustainable preservation strategies.

The experiences of both DC and San Francisco call for bold investments in scaling housing preservation strategies to stem the tide of displacement of low-income and BIPOC communities and strengthen the position of tenants and community purchasers.

One advantage of enshrining COPA or TOPA policies as rights alongside such broader preservation investments is to elevate community ownership models in ways that endure beyond a specific administration or council.

Invest in ongoing organizing, capacity building, and technical assistance, including peer learning and collaboration.

DC provides this funding on an ongoing basis from its Community Development Block Grant (CDBG) allocation, which has helped sustain a network of nonprofits with preservation and TOPA expertise over time, whereas San Francisco made a one-time capacity-building investment through a competitive award process and has not yet made additional investments in dedicated COPA organizing and outreach. In addition to sustained public investments in organizing and technical and legal assistance, philanthropy has a critical role to play in supporting this work as well. Whether the acquisition process is tenant or nonprofit led, providing sales notices to tenants at the same time as community-based partners also can enhance proactive outreach to help counter misinformation and buyout pressures. Reporting and publishing this information on a shared platform could help facilitate more coordination between qualified nonprofits and building residents during the interest and offer process. San Francisco does not yet have such a platform, because sellers are required to notify MOHCD that they complied with COPA only after the fact, not at the time of sale; in DC, on the other hand, DHCD receives a copy of TOPA notices at the same time as tenants and publishes this information in weekly reports on its website. In addition to clear notification processes and educating residents and community partners about their rights under these policies, ongoing education of sellers and the real estate community on the law, process, and relevant forms is also critical. In San Francisco, this ongoing education has helped dispel initial opposition to COPA and increase seller comfort with the process.

Ensure a collaborative process, from policy and program design through implementation and evaluation.

In San Francisco, former supervisor Sandra Lee Fewer and her staff worked very closely with housing organizers and advocates through the entire legislative process. As a small landlord also dedicated to strong tenant protections and combating displacement, Fewer was a credible champion for COPA, describing the policy as a win-win for both long-term tenants who want stability and small building owners who want to “do well by doing good” in selling their building to a preservation purchaser. Fewer’s staff acted as a liaison between various city offices and coalition partners, and discussed all proposed changes and why they were necessary with the group before moving forward. Staff and coalition partners also stressed the importance of meeting with members of the opposition to address their questions, concerns, and any misconceptions about the policy. This collaboration made it possible to reach consensus on the original COPA legislation, with the understanding that some outstanding questions could be addressed through amendments. For example, although some groups wanted more time for the initial interest and offer process, experienced nonprofit preservation purchasers acknowledged that they do not need more than a few days to express initial interest in potentially acquiring a building and noted that there are other ways for buyers to maneuver within the purchase process for more time (e.g., through longer contract and escrow periods). The right of first refusal provides critical leverage, as groups can put in an initial offer and still have more time to secure financing to match a third-party offer if their initial offer is rejected, which can also be a strategy to buy additional time. With these factors in mind, groups ultimately accepted the 30-day timeline to reduce opposition. A collaborative process with MOHCD on Small Sites program design and updates has also been essential for realizing impact.

COPA and TOPA both create mechanisms to intervene on behalf of tenants at the critical and potentially harmful moment of their building’s sale, and to provide alternatives to speculative ownership. They are better understood as variations on a theme than as wholly distinct policies, especially because TOPA gives tenants the right to designate qualified nonprofits as their representatives.

Affordability measures and the specific forms of tenant or community ownership permitted over time are important implementation choices that should be addressed in the policy development process.

COPA and TOPA both create mechanisms to intervene on behalf of tenants at the critical and potentially harmful moment of their building’s sale, and to provide alternatives to speculative ownership. They are better understood as variations on a theme than as wholly distinct policies, especially because TOPA gives tenants the right to designate qualified nonprofits as their representatives. At the same time, both legislation and accompanying programs must consider the degree to which it is a local goal to create permanently affordable units, nonprofit-owned rental housing, cooperatives without affordability restrictions, limited-equity cooperatives, or some combination of these underlying strategies. For example, tenant organizing initiatives to prepare residents to affirm a nonprofit’s exercise of COPA are different in nature and intensity from those geared toward creating a self-managing cooperative, and the goal of creating permanently affordable units requires deeper subsidy and appropriate financing terms. Even if permitted forms of ownership may change over time—for example, San Francisco Community Land Trust is working with tenants to transform a CLT-owned building into a resident-owned limited-equity cooperative—these considerations are important for developing subsidy programs, financing guidelines, and tenant organizing programs. Given rising housing costs and limited public subsidy, permanent affordability that preserves public investment over the long term, as seen in San Francisco’s COPA, is an especially important policy goal in both hot and cool markets.

Establish systems for monitoring impact.

Related to a centralized notification system, some gaps remain in available COPA and TOPA data. A recent study from the Coalition for Nonprofit Housing and Economic Development (CNHED) commissioned by DC DHCD reports on TOPA antecedents, outcomes, impacts from 1975-2001, including quantitative data going back to 2006.[69] Though DHCD has tracked units preserved with the Housing Production Trust Fund and Affordable Housing Preservation Fund in more recent years, the number of homes preserved in prior years as well as outcomes in buildings that exercise TOPA rights but do not use either of these financing sources are harder to track. Similarly, MOHCD and SFHAF publish data on projects they finance, including those that use COPA, but not for projects that do not receive either of these financing sources. Together, these gaps mean that the full impacts of COPA and TOPA may well be understated. Developing collaborative processes to track not only the number of homes preserved using these policies but the experiences and outcomes for residents and community partners would give a fuller picture of impact and identify areas for improvement to ensure the policies are meeting intended goals.

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