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TO: Detroit City Council
FROM: David Whitaker, Director 
Legislative Policy Division
DATE: June 15, 2022
RE: **Community Opportunity to Purchase (COPA)**

Council member Latisha Johnson requested that the Legislative Policy Division (LPD), prepare a comparative analysis report that provides case studies of the implementation of the Community Opportunity to Purchase (COPA) programs and to explore how the City of Detroit may adopt similar legislation.

In addition to reporting on the COPA programs, LPD is to report on how the programs addresses:

- **Preventing the displacement of lower-income renters**
- **Preserving affordable housing & stability**
- **Empowering tenants**
- **Providing a tool to support homeownership opportunities and other asset-building opportunities**

Washington DC Tenant Opportunity to Purchase Act (TOPA)

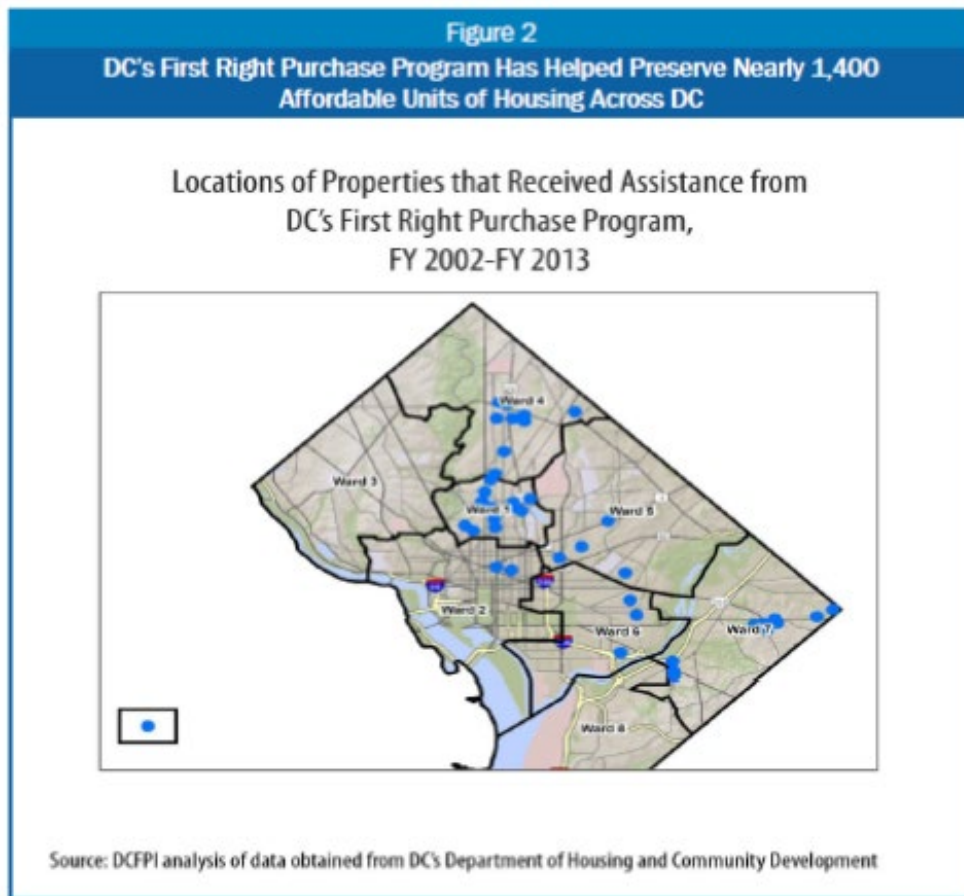
The Tenant Opportunity to Purchase Act (TOPA), was first enacted in Washington, D.C., in 1980. The Washington DC TOPA, locally known as the **DC First Right Purchase Program**,¹ was developed in order to give tenants at risk of eviction, a pathway to ownership and control over their residences. A 2013 report from the D.C. Fiscal Policy Institute found that DC's First Right Purchase program, which is managed by DC's Department of Housing and Community

¹ Also commonly known as "tenant purchase"

Development, helped to preserve nearly 1,400 units of affordable housing in the District between 2003 and 2013, at just a fraction of a cost of building new affordable units.²

The First Right Purchase program is also an effective tool to help prevent the displacement of existing residents, as neighborhoods develop, and it helps to preserve affordable housing in those neighborhoods for a significant period of time. In addition, the program offers many low- and moderate-income residents their first opportunity for homeownership.

However, in recent years, reductions in resources have resulted in limited use of the program, given that the majority of the funding comes from either the District's Housing Production Trust Fund or the federal Community Development Block Grant, which have both been significantly reduced. While over 5,000 units of rental housing were up for sale across 99 buildings in fiscal year 2012 in Washington DC, only 35 new units were preserved using the program. The First Right Purchase program is only effective in preserving housing that is affordable to low and moderate income residents when it is adequately supported.



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² [9-24-13-First Right Purchase Paper-Final.pdf \(dcfpi.org\)](#)

³Source: [9-24-13-First Right Purchase Paper-Final.pdf \(dcfpi.org\)](#)

Table 1
DC's First Right Purchase Program Has Helped Preserve Nearly 1,400 Units of Affordable Housing

Ward	Projects	Units	Total DHCD Investment (in thousands)	Average Subsidy Per Unit (in thousands)
1	17	437	\$46,500	\$114
2	2	158	\$26,940	\$171
3	0	0	\$0	\$0
4	10	268	\$20,880	\$91
5	4	124	\$9,070	\$70
6	3	34	\$3,970	\$117
7	8	397	\$23,470	\$58
8	0	0	\$0	\$0
Total	45	1,391	\$129,600	\$97,900

Source: DCFPI analysis of data provided DC's Department of Housing and Community Development. Dollars are in thousands and adjusted for inflation to equal FY 2013 dollars. Per unit costs do not include units that were preserved using loan modifications or only got seed money which have no dollar value associated with them or minimal dollar amounts, respectively.

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D.C.'s TOPA law does not have a permanent affordability requirement, meaning that tenants who collectively purchase a property through TOPA using private funds could resell that property at market-rate prices without resale caps. However, if tenants utilize public subsidies or subsidized loans offered by the Department of Housing and Community Development to purchase the property, affordability restrictions (resale caps or rent limits) are triggered.⁵

According to recent news reports, to-date, Washington DC's TOPA law, enacted in 1980, has facilitated the conversion of 4,400 rental units into limited-equity cooperatives, stabilizing buildings primarily occupied by low-income tenants of color. A limited- equity cooperative is a homeownership model in which residents purchase a share in a development (rather than an individual unit) and commit to resell their share at a price determined by pre-established formula, which maintains affordability at purchase and over the long term.

Washington DC District Opportunity to Purchase Act (DOPA)

Prior to its TOPA law, DC enacted the District Opportunity to Purchase Act (DOPA),⁶ which promotes affordable rental housing by maintaining the affordable status of existing affordable rental units as well as increasing the total number of affordable rental units within the District.

DOPA requires rental property owners to provide the District of Columbia with the opportunity to purchase housing accommodations consisting of five or more rental units, as long as 25 percent or more of the rental units are "Affordable Units."⁷ DOPA sale offers should be submitted concurrently with, but are subordinate to, a tenant's right to purchase under the Tenant Opportunity to Purchase Act (TOPA).

⁴ Ward 3 is a largely residential area that occupies the northwest section of the District of Columbia beyond Georgetown, extending to the Potomac River, Western Avenue and Rock Creek. The ward is today widely recognized for its prosperous communities, largely dating from the early to mid-20th century.

⁵ Although D.C. policymakers may have intended to allow for tenants to build equity, this aspect of their TOPA bill does not accomplish other policymakers' goals of reusing public subsidies to preserve the units of affordable housing in perpetuity.

⁶ D.C. Official Code 2001 ed., as amended, §§42-3404.31-37

⁷ An "Affordable Unit" is defined as a rental unit in a housing accommodation for which the current monthly rent, including tenant-paid utilities, is not greater than 30 percent of the monthly income of a household at 50 percent of the area median income (AMI). AMI is the median income of the D.C. metropolitan statistical area, defined annually by the U.S. Department of Housing and Urban Development, adjusted for the household size. The FY 2017 AMI is \$110,300. Utilities include all tenant-paid utilities, such as heat, air conditioning, cooking, electricity or hot water.

District Opportunity to Purchase Act Affordability Table

"Affordable Unit" Table for 2016				
Number of Bedrooms	Occupancy Pricing Standard	Estimated Utility Allowance	Monthly Rent	Maximum Housing Cost
Studio	1	\$160	\$805	\$965
1	1.5	\$240	\$863	\$1,103
2	3	\$323	\$918	\$1,241
3	4.5	\$404	\$1,113	\$1,517

The DOPA Offer of Sale must include:

- the asking price and material terms of sale;
- a statement on whether a third-party sale contract exists for the housing accommodation and a copy of such a contract shall be provided to the District within seven days after receiving a request;
- a list of tenant names and their corresponding unit numbers, along with the current rent charged for each rental unit as of the DOPA Offer of Sale issuance date;
- a list of vacant rental units, their unit numbers and the current rent charged for each rental unit as of the DOPA Offer of Sale issuance date;
- a list of Affordable Units, their unit numbers as of the DOPA Offer of Sale issuance date and the owner's calculations for determining the Affordable Units; and
- a statement that within seven days after receiving a request, the property owner will provide the following information: (1) monthly operating expenses; (2) utility consumption rates; (3) capital expenditures for the previous two years; and (4) a building floor plan.

How Much Time Does the District Have to Decide to Purchase the Housing Accommodation?

If the Mayor is interested in acquiring the housing accommodation, the Mayor shall:

1. provide a written statement of interest to the owner and tenants within 30 days of receiving the District's offer of sale;
2. have not less than 150 days from the date that the owner's receives the Mayor's written statement of interest to negotiate a contract for sale;
3. have 15 additional days for a total of 165 days to negotiate a contract of sale if a tenant organization is formed and delivers an application for registration to the Mayor;
4. receive the same extension of time as any tenant — the owner should provide written notification to the Mayor of any time extensions provided to the tenant;
5. extend the negotiation period one day for every day of delay in providing information by the owner; and
6. have up to 60 days after the execution date of a sale.⁸

New York State TOPA

New York State Sen. Zellnor Myrie introduced a proposal for a statewide TOPA bill, which is currently in deliberation. If passed, advocates of the bill hope that many of the properties acquired by tenants through this program will be converted into limited-equity co-ops or affordable rentals with tenant oversight.

⁸ [DOPA Frequently Asked Questions December 2018.pdf \(dc.gov\)](#)

A current report by the Community Service Society revealed that more than one in four low-income tenants in New York City owe back rent, with Black and Hispanic tenants at greatest risk for long-term housing instability. Across the state of New York, landlords have sued almost 228,000 households for eviction. Statewide, tenants' rental arrears are currently more than \$2 billion, which creates an opening for speculative real estate investors to scoop up these properties, withdraw services, drive up rents and evict long-term tenants.

If the New York State TOPA bill becomes law, its advocates hope it can help interrupt this predatory cycle of disinvestment and gentrification.⁹ The New York State TOPA legislation would give tenants the right of first refusal when their building goes up for sale, with a time allotment for organizing and securing funding, before the building can be sold on the open market.¹⁰

San Francisco Community Opportunity to Purchase (COPA)

San Francisco Community Opportunity to Purchase Act (COPA), was created by City ordinance by the City of San Francisco in 2019. This was a response by City leaders to address the affordable housing crisis in the city of San Francisco, California. As recently as April 20, 2022, a poll of 1,000 likely voters in San Francisco found that 65% of those polled indicated that they were concerned about finding affordable housing.

When those polled were asked what the most important problem facing the Bay Area right now, 24% listed homelessness as their first response, 21% listed housing and 10% listed the cost of living. Almost half of respondents, 48%, stated they were considering leaving the Bay Area, with the region's high housing costs cited among the top reasons.¹¹

COPA was pushed for by tenants' rights activists and enacted by the San Francisco Board of Supervisors to ensure qualified nonprofits had the right of first offer and/or the refusal to purchase

The COPA Ordinance, approved by the City of San Francisco Supervisor's on June 3, 2019, which was implemented on September 3, 2020, legally requires owners of residential buildings intending to sell their properties, to provide a five-day notice to qualified nonprofits. If the nonprofit expresses interest, they then have 25 days to provide an offer. If that offer is accepted, the building goes into contract for purchase; conversely, if the offer is not accepted, the nonprofit has the right of countering any future offers, provided they can match terms.¹²

Prior to the mandates of the COPA Ordinance,¹³ nonprofit developers and tenant advocates faced two challenges, many buildings were continuing to be sold off-market; and sellers were often not willing to consider offers from community-based organizations.¹⁴

⁹ For example, tenants at 1616 President St., a 24-unit building in Crown Heights, have endured years of atrocious building conditions at the hands of Jason Korn, crowned by the public advocate's office the city's worst landlord for two of the last three years. Today, the building has 229 open violations with the city's housing department.

¹⁰ [Help tenants control their own housing – New York Daily News \(nydailynews.com\)](https://www.nydailynews.com/housing/help-tenants-control-their-own-housing-new-york-daily-news-article-nyc11232022.html)

¹¹ [Bay Area Housing Crisis: Poll Finds 67% Saying It's Harder To Find A Home – CBS San Francisco \(cbslocal.com\)](https://www.cbsflocal.com/news/bay-area-housing-crisis-poll-finds-67-saying-its-harder-to-find-a-home/)

¹² [San Francisco's Community Opportunity to Purchase Act: Reflections On COPA One Year In \(medasf.org\)](https://www.mediasf.org/san-francisco-s-community-opportunity-to-purchase-act-reflections-on-copa-one-year-in/)

¹³ Properties are subject to COPA: Buildings with 3 or more residential units - Vacant land that could be developed into 3 or more residential units

¹⁴ COPA gives community-based organizations the chance to put in a competitive bid on buildings of three or more units, as a way to preserve affordable housing. COPA is critical in a high-cost, low-inventory market like that of San Francisco.

Conclusion and Other COPA/TOPA Bills in Development

The *East Bay Community Center*,¹⁵ a drafter of the **Berkeley, CA** TOPA bill, has also provided legal research for the **Oakland, CA** and **New York, NY** TOPA proposals, has studied what has worked with D.C.'s TOPA law, and what could be improved. The East Bay Community Law Center has recommended mandating permanent affordability to any property that is acquired through TOPA, which would be accomplished through a deed restriction.¹⁶ Their system would still allow for very modest equity-building while still preserving affordability long-term.¹⁷

Regarding a new COPA/TOPA Bill in the city of Detroit or any other city or state in America, the restrictions that may be placed on a potential owner of a multi-unit residential property who plans to sell their property in a respective jurisdiction, via a new COPA/TOPA Bill, may be limited by the restrictions of a respective state or local municipality's state and local laws and ordinances. In Michigan, any COPA/TOPA ordinance would need to be drafted, if possible, in a manner that does not conflict with State law MCL 123.411 which provides in pertinent part:

- (2) Subject to subsections (3) and (4), a local governmental unit shall not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential property.

This provision would preclude any ordinance that has the effect of controlling the amount of rent charged for leasing private residential property. If the effect of the COPA/TOPA ordinance would be to control the amount of rent of private residential property, it may arguably run afoul of State law. In addition, the effectiveness and the success of any said program would also be limited by the available sources of funding.

Please contact us if we can be of any further assistance.

¹⁵ [EBCLC's Tenant Opportunity to Purchase Act \(TOPA\) - East Bay Community Law Center](#)

¹⁶ Deed restrictions are written rules and regulations that spell out what a piece of land or property can and cannot be used for. In general, a deed restriction applies to the property itself, regardless of who owns it any given time.

¹⁷ As indicated earlier, D.C.'s TOPA law does not have a permanent affordability requirement, meaning that tenants who collectively purchase a property through TOPA using private funds could resell that property at market-rate prices without resale caps. A deed restriction could prohibit or limit this. However, if tenants utilize public subsidies or subsidized loans offered by the DC Department of Housing and Community Development to purchase the property, affordability restrictions (resale caps or rent limits) are triggered.