

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC.

d/b/a, Apartment Association of Greater Los Angeles

**AAGLA**

*"Great Apartments Start Here!"*

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August 4, 2020

**Via Electronic Mail**

Hon. Mayor Lester Friedman and Members of the City Council  
455 N. Rexford Drive  
Beverly Hills, California 90210

Re: Request by Council Member Mirisch to Discuss the City of San Francisco's Community Opportunity to Purchase Act and the City of Washington, D.C.'s Tenant Opportunity to Purchase Act (Agenda Item A-4)

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Dear Hon. Mayor Friedman and the Members of the Beverly Hills City Council:

Council Member John Mirisch has requested that the City Council review and discuss Tenant Opportunity to Purchase ordinances imposed by other local jurisdictions such as the Cities of San Francisco and Washington, D.C. The Apartment Association of Greater Los Angeles (AAGLA or Association) is opposed to the City's advancement of any initiative that would provide for a right of purchase or right of refusal upon the sale of residential rental properties to any entities, and we urge the City Council's rejection of the establishment of either a Community Opportunity to Purchase Act (COPA) or Tenant Opportunity to Purchase Act (TOPA) program, or any similar program.

The Association believes that by imposing a right of refusal or right of purchase on the sale of residential property, the City would be guilty of an unconstitutional taking without just compensation. The grant of a right of first refusal is one of the valuable bundle of rights that makes up property ownership, and such "rights of first refusal" or "matching rights" are very valuable entitlements typically discussed among parties negotiating arms-length sale contracts. The City should not be contemplating legislating away this valuable right inherent in real property ownership. In short, these valuable, private rights of real property owners are disregarded by these types of ordinances.

"Incidents of property ownership, include the sale, transfer, or rental of property, as well as the use of city services." *Thomas v. City of East Palo Alto* (1997) 53 Cal.App.4th 1084. The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. The Clause applies to the States via the Fourteenth Amendment. *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942 (2017). Regulations imposed by the government, including public health and safety regulations, may amount to a taking, where,

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**"Legislators cannot help tenants by destroying the incomes of those who provide much-needed rental housing."** -Steven Greenhut, *Orange County Register* (April 2020)

although there is no physical appropriation, the regulation is “so onerous that its effect is tantamount to a direct appropriation or ouster—and that such ‘regulatory takings’ may be compensable under the Fifth Amendment.” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005).

Notwithstanding constitutional implications, these ordinances create numerous issues that, among other things, cause severe, adverse impacts on the sale of real properties such as by causing significant delays, increasing expenses, reducing the number of buyers and hindering small rental housing providers, who may be selling their property under emergency circumstances, from selling their properties. Generally, first right of refusal ordinances fail to account for the dynamics and complexities of the private real estate market. Our Association’s experience and research of similar ordinances, including the one passed by the City of San Francisco, indicate that these programs resulted in the following adverse consequences:

- Substantially lengthens the time and expense required to sell the property, diminishing the number of buyers and stifling emergency sales.
- Reduces the sales value of real property, often forcing a seller to relinquish their property below open market prices had not right of refusal or matching right been imposed.
- Restricts the ability of a seller to convey the property as part of estate planning or to complete a 1031 tax-free exchange, which requires specific timing for the identification and purchase of an exchange property.
- Adversely impacts the ability of smaller rental housing providers to sell due to increased sale requirements and expenses.
- Residents often demand compensation to either agree to waive these rights or to sell their rights to a potential non-profit buyer. In other words, sellers are often forced to compensate their renters to waive their rights under the COPA or TOPA which is clearly not the intention of the ordinance and is extremely unmerited.
- Potential buyers often fail to timely perform their sale obligations. Examples include resident(s) inability or unwillingness to participate in the purchase, and changes in financing terms and conditions including interest rate changes, down-payment requirements, and value of property increases/decreases. Ordinances such as a TOPA or COPA do not take into consideration the dynamics of the private real estate market.
- Result in the displacement of residents when the residents do not qualify for the nonprofit’s income-restricted housing requirements.
- Inhibit housing production by not providing capital investors a clear path to an exit of their investment.
- Failure to maintain a property after purchase because of a lack of capital or rental income, or lack of experience of or disagreement among new buyers.

Finally, the City’s own Staff report highlights the potential challenges of a COPA or TOPA program, including fiscal impact for administration and monitoring of the program and the yet to be fully evaluated legal implications.

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The logo for the Apartment Association of Greater Los Angeles (AAGLA) features the letters "AAGLA" in a bold, blue, sans-serif font. To the right of the text is a solid gold-colored square.

*"Great Apartments Start Here!"*

California is experiencing severe housing shortages and is in dire need of advancing initiatives that encourage, not discourage, housing production. We urge the City Council to consider ways to encourage innovative and immediate housing production and not the establishment of costly programs that will do little or nothing to accomplish that objective. The COVID-19 pandemic and resulting circumstances of economic uncertainty and economic instability necessitate thoughtful and fiscally prudent government action, not costly initiatives such as COPA or TOPA program.

Please, imagine this was your home we are talking about. Think about the implications and the burdens that would be experienced by you should you decide to sell your property.

Thank you for your time and consideration of these matters. If you have any questions, please call me at (213) 384-4131; Ext. 322 or contact me via electronic mail at [dan@aagla.org](mailto:dan@aagla.org).

Very truly yours,

*Daniel Yukelson*

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