



July 27, 2021

Mayor Jesse Arreguín
2180 Milvia Street 5th Floor
Berkeley, CA 94704

Re: Tenant Opportunity to Purpose (TOPA) ordinance – closing timelines

Dear Mayor Arreguín,

On June 7, the Bay Area and DC LISC offices shared a letter expressing support for the City of Berkeley to move forward and pass an implementable Tenant Opportunity to Purpose (TOPA) policy, while also expressing concern that amendments made on May 20 would make the policy more difficult to implement.

This letter provides follow-up information from our June 22 conversation with you and the San Francisco Foundation regarding the closing timelines during the Right of Refusal stage of TOPA. We hope this letter will provide the information you need to ensure Berkeley's TOPA policy has the timelines necessary to be effective and implementable.

The information in this letter is based on the experience of both our Bay Area LISC and DC LISC lending staff. LISC has been working in affordable housing and economic development in the Bay Area for 40 years. We facilitate the creation of community-centered agendas and drive investment (both loans and grants) to those agendas. We do this by investing in individuals and organizations as part of the community development ecosystem. Currently, we manage the Family of Funds associated with the Partnership for the Bay's Future: the Bay's Future Fund and Community Housing Fund. These tools aim to preserve and produce 8,000 units in Contra Costa, Alameda, San Mateo, Santa Clara and San Francisco counties.

LISC DC has nearly 40 years in the nation's capital and has invested almost half a billion dollars in the District, helping to building and preserve over 13,000 affordable homes, as well as numerous health clinics, theaters, community centers, and retail. A critical piece of the work in DC centers on preserving affordable housing, and LISC DC is a critical partner in implementing DC's TOPA law. Since 1988, and through TOPA, LISC DC has worked with over 4,600 households to preserve housing affordability, investing over \$140 million in nearly 100 different projects across the city. LISC DC provides several kinds of capital – recoverable grants, predevelopment, acquisition, and construction loans, and sometimes permanent funding as well.

Detailed information is included below, but in short, we want to emphasize **that closing timelines should be the same during the Right of First Offer stage and the Right of First**

Refusal stage. The underwriting process for a loan from a CDFI will be the same during both of these timelines, and closing on a commercial loan – in particular to a loan to tenants in a collective ownership model – will take, at minimum, the standard 90 – 120 days. Therefore, we recommend reverting the timelines to be: 120 days for 3+ units, 90 days for 2-units, and 30 days for 1-unit. We also recommend including the 30-day closing extension on any property upon demonstrating that the buyer is diligently pursuing close; is important because it provides further flexibility for partnerships and projects that might have more complexities to solve. This reflects the information that LISC and other CDFIs provided to the TOPA Working Group to inform the development of these timelines.

LISC recommends adjusting the closing timelines during the Right of First Refusal stage to match the closing timelines for Right of First Offer. Here’s our rationale:

1 - As stated above, the time required to close on a project is the same – whether that closing is happening during the Right of First Offer stage or the Right of First Refusal stage. Thus, the timelines should be consistent across both stages.

2 - Typical closing timelines for a commercial loan from a CDFI like LISC are between 90 and 120 days. LISC’s timelines fall within that period. Our process includes loan structuring, underwriting of the borrower and the project, due diligence, and loan approval. Loan structuring and underwriting are both complex for these TOPA projects given the tenants are typically organizing and making many decisions for the first time. These steps require multiple rounds of back-and-forth with the borrower, and it takes time for the borrower to answer the questions thoroughly. Due diligence includes appraisal, environmental, and assessment of the condition of the property, including seismic. For some of these acquisitions, understanding the rehab needs to bring the building up to code can require multiple consultations. Especially in working on acquisition projects and working with tenants acting as a collective, the 90-120 days can be a minimum, which makes the 30-day extension a useful option, so long as the buyer is working diligently to close.

3 - CDFI’s serve a special function in the overall housing and community development ecosystem. They were created to support community-oriented projects – to fund and finance projects that banks would not typically have the risk-tolerance or patience to support. The time estimates for closing while working with CDFIs reflects this mission-orientation, and the fact that CDFI supported project tend to be more complicated than projects that a residential lender would normally be well-positioned to support. TOPA deals fall into this category – they are aligned with the mission of CDFIs and can require more support, more back and forth between the lender and the prospective buyer, and all of that requires more time.

4 - We have found that working with organizations that are new to our processes, smaller organizations that work on fewer projects every year, or tenants - who have no project development experience - typically need more time within our typical closing period. The underwriting process involves a great deal of documentation collection, review, and analysis, and these steps can all require significant back and forth with the lender.

5 - One of the primary purposes of a TOPA policy is to give an opportunity to tenants to purchase their home. The extended timelines to purchase help give tenants a fair shot. And, tenants that go through the process – regardless of whether they develop a cooperative or partner with a developer to remain as renters – develop into strong tenant leaders and community leaders.

6 - In DC, where LISC has been supporting TOPA deals for many years, tenant organizations working to purchase a building with 5+ units typically have 120 days to close after the seller accepts an offer. DC’s TOPA policy also includes extension provisions of up to 240 days, particularly if a lending institution is engaged and estimates that additional time is needed. These timelines ensure TOPA is an effective and implementable policy in the DC area. Based on the experience of implementing TOPA in DC, once a seller has accepted an offer from tenants or a Qualified Non-Profit (QNP), the timelines provide the time needed to successful close on those projects.

7 - Based on the experience in DC, the closing timelines that allow for 120 days for 3+ unit properties, with an option to extend, are the minimum that would be needed to support an effective TOPA policy. Public funding sources tend to be slower than CDFI and other lenders, and often function on their own timelines. Homes and properties that are bought and sold absent a policy framework like TOPA are likely moving very very quickly today. That is not typical of the speed of real estate transactions in other parts of the country, and regulating the process to be reasonable allows TOPA to meet its goals of giving tenants an opportunity to purchase.

8 - The Right of First Refusal process is triggered when a seller wants to accept a 3rd party offer AND the tenants/QNP have previously made an offer to the seller. At the point of making an offer, the tenants/QNP would not have been able to secure a loan from a CDFI like LISC, or another lender. LISC would not begin our underwriting process and would never approve a loan until after the tenants or QNP had a made an offer that was accepted by the seller.

In summary, based on technical knowledge and experience, **we recommend that the closing timelines be the same during the Right of First Offer stage and the Right of First Refusal stage, and that the timelines that allow for 90-120 days, with a 30 extension, are appropriate to making a TOPA policy effective and impactful.**

Thank you for providing this opportunity to LISC to share our perspective and knowledge on this issue.

Best Regards,



Cindy Wu
Executive Director
LISC Bay Area

CC Judith Bell, Khanh Russo, Aysha Pamuku, and Evita Chavez, The San Francisco Foundation