



**REVISED PROCLAMATION
CALLING A SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL
(REVISED TO REMOVE A TELECONFERENCE LOCATION)**

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

**Monday, September 30, 2024
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1619 EDITH STREET, BERKELEY, CA 94703

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1618584419>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial 1-669-254-5252 or 1-833-568-8864 (Toll Free) and enter Meeting ID: 161 858 4419. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Government Code Section 84308 (Levine Act) - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

Preliminary Matters

Roll Call:

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during one of the Action Calendar public comment periods on the item. Public comment will occur for each Action item (excluding public hearings, appeals, and/or quasi-judicial matters) in one of two comment periods, either 1) before the Action Calendar is discussed; or 2) when the item is taken up by the Council.

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Action Calendar

- 1. Adopt Berkeley Municipal Code Chapter 13.89: Community/Tenant Opportunity to Purchase Act** *(Reviewed by the Land Use, Housing, & Economic Development Committee) (Item contains revised material)*
From: Councilmember Harrison (Author)
Recommendation: Adopt Berkeley Municipal Code Chapter 13.89: The Community/Tenant Opportunity to Purchase Act (COPA/TOPA).
Policy Committee Recommendation: To forward the item to the City Council with a negative recommendation that the City Council not approve the item.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on September 27, 2024.



Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Date: September 27, 2024
Mark Numainville, City Clerk

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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COMMUNICATION ACCESS INFORMATION:

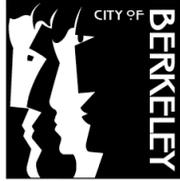
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PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

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Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

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Jesse Arreguin, Mayor

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ATTEST:



Date: September 26, 2024
Mark Numainville, City Clerk

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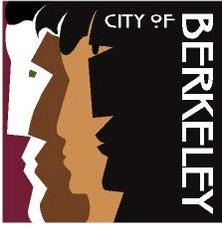
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Kate Harrison
Councilmember District 4

01
Special Meeting Item

REVISED AGENDA MATERIAL

Meeting Date: December 4, 2023

Item Number: TBD

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

Submitted by: Councilmember Harrison

The revised ordinance includes more specific criteria to define “Owner-Occupied” residences. The revised material packet also includes a chart that compares Berkeley’s TOPA legislation that was proposed in 2022 with the current iteration of the policy to provide more clarity on the proposed changes.

ORDINANCE NO. -N.S.

ADDING CHAPTER 13.89 TO THE BERKELEY MUNICIPAL CODE
COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Chapter 13.89 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.89

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

- 13.89.010 Title and Purpose**
- 13.89.020 Findings**
- 13.89.030 Definitions**
- 13.89.040 Applicability**
- 13.89.050 Sale Defined**
- 13.89.060 Exemptions**
- 13.89.070 Qualified Nonprofits**
- 13.89.080 Supportive Partners**
- 13.89.090 Notice of Intent to Sell; Statement of Interest**
- 13.89.100 Right of First Offer**
- 13.89.110 Right of First Refusal**
- 13.89.120 Contract Negotiation**
- 13.89.130 Incentive to Accept Offer from Qualified Organization**
- 13.89.140 Confidential Information Protected**
- 13.89.150 Prohibited Conduct**
- 13.89.160 Complying Anew with the Right of First Offer**
- 13.89.170 Financial Assistance**
- 13.89.180 Price Stabilization; Tenant Protections**
- 13.89.190 Anti-Speculation Penalty**
- 13.89.200 Implementation**
- 13.89.210 Enforcement**
- 13.89.220 Severability**
- 13.89.230 Effective Date**

13.89.010 Title and Purpose.

A. This Chapter shall be referred to as the “Berkeley Community/Tenant Opportunity to Purchase Act.”

B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

13.89.020 Findings.

A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.

B. The current need for affordable housing units in Alameda County is 51,732 units (California Housing Partnership). Approximately 20% of residents in Berkeley are living in poverty.

C. The lack of affordable housing for Berkeley’s low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.

D. The nine-county Bay Area has been losing an annual average of 32,000 unsubsidized affordable homes occupied by low-income households since 2012. Unsubsidized affordable housing is the most common form of low-income housing, and at the same time is the most at risk of loss through rent increases, evictions, condo conversions, demolition and more. And, overall preservation is cost-effective compared to new production, at 50-70% of the cost of new affordable housing production (Enterprise Community Partners).

E. Affordable housing preservation and anti-displacement strategies will help keep low-income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.

F. The City Council finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants and qualified nonprofit organizations the opportunity to purchase the property before it may be sold on the market to a third-party purchaser.

13.89.030 Definitions.

A. “Dwelling Unit,” “Accessory Dwelling Unit,” “Single-Family Dwelling,” “Multi-Family

Dwelling,” and “Group Living Accommodations” are defined in Section 23.502.020.

B. “Designated as the Owner’s Primary Residence” means any unit that the Owner has validly claimed as their principal residence for purposes of either the homeowners’ property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans’ exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

C. “Offer for Sale” means an offer to sell a Rental Property that includes all material and commercially reasonable terms.

D. “Qualified Nonprofit” means a nonprofit, which is either exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low-income households, and is certified by the City Manager pursuant to Section 13.89.070.A.

E. “Qualified Organization” means either a Tenant Organization or a Qualified Nonprofit.

F. “Owner” means any person, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of a Rental Property. Each Owner shall be jointly and severally responsible for compliance with the requirements of this Chapter.

G. “Rental Property” means any residential property containing one or more Rental Units and located in the City of Berkeley

H. “Rental Unit” means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley, consistent with the records of the City of Berkeley Rent Stabilization Board, and subject to the exemptions set forth in Section 13.89.060

I. “Sale,” “sell,” or “transfer” is defined in Section 13.89.050.

J. “Supportive Partner” means any person or organization certified by the City Manager pursuant to Section 13.89.080.A to provide Tenant counseling and technical support services on first-time homeownership, obtaining financing for the purchase of Real Properties, assisting in the process of closing on property transactions, the formation and governance of legal and collective ownership structures, and supporting Tenants in the exercise of their rights pursuant to this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents.

K. “Tenant” means any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a renter’s interest, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of

such Rental Unit.

L. “Tenant Organization” means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant Organization must adopt a Governing Document and Governing Principles and may appoint officers and any other authorized agents specifically designated to execute contracts on its behalf. If only one Tenant of a Rental Property seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit or Group Living Accommodations sleeping quarters are collectively considered to be one Tenant, and such lessees of a Group Living Accommodation or Dwelling Unit must consent to representation by the Tenant Organization, as furthered defined in Administrative Regulations.

M. “Third-Party Purchaser” means any prospective purchaser of a Rental Property other than a Qualified Organization as defined in Paragraph D.

N. “The City” shall mean the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.

O. “City Manager” means the City Manager or their designee.

P. “Governing Document” means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization’s decision-making processes and appointing officers and other authorized agents to act on its behalf.

Q. “Governing Principles” means the governance and management principles stated in a Tenant Organization’s Governing Documents.

R. “Majority” means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.

13.89.040 Applicability.

This Chapter shall apply to the sale or transfer of all Rental Property in the City of Berkeley, unless otherwise exempted herein.

13.89.050 Sale Defined.

A. “Sale,” “sell,” or “transfer” is defined as the following:

1. The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Property, including beneficial use, where the value of the present interest is the fee interest in the Rental Property, or substantially equal to the

value of that fee interest.

2. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c).

3. Multiple transfers of minority interests in the Rental Property which, in effect, result in a transfer of the Rental Property.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following Rental Properties are not subject to the requirements of this Chapter.

1. Any Rental Property comprised entirely of owner-occupied Rental Units, including any owner-occupied Single-Family Dwelling. For a residence to qualify as owner-occupied, the property owner must have lived in the property for one year or longer.

2. Any Rental Property that has no more than one Single Family Dwelling and is vacant at the time of sale.

3. A Rental Property containing a Dwelling Unit that is Designated as the Owner's Primary Residence, if and only if **the Owner has lived in the Rental Property for one year or longer and** one of the following applies:

a. The Rental Property has no more than one Single-Family Dwelling, and either the Single-Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single-Family Dwelling is Designated as the Owner's Primary Residence.

b. The Rental Property has no more than one Duplex, and (1) one of the units in the Duplex is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

c. The Rental Property has no more than one Multi-Family Dwelling that contains no more than four Dwelling Units, and (1) one of the units is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

4. Rental Properties owned by the local, state, or federal government.

5. Rental Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

6. Group Living Accommodations subject to monitoring by a Monitoring Organization, as defined in Section 13.42.020.E.

7. Properties owned by housing cooperatives, if the cooperative entity is owned and controlled by a majority of residents. This definition includes non-profit mutual housing associations and limited equity housing cooperatives.

8. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.

B. Transfers Exempted. The following transfers of Rental Properties are not subject to the requirements of this Chapter.

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent’s estate if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Rental Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Tenants or Qualified Nonprofits under the California Civil Code Sections 2924f-h, 2924m-n, or 2929.3.

4. A transfer of bare legal title into or out of a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. A transfer of a fractional interest in a Rental Property that is less than 50% of an undivided interest in the Rental Property, unless Section 13.89.050.A30 applies.

9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.

10. A transfer of a Rental Property that is the Owner’s sole Rental Property and has no more than five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such health care expenses incurred by a spouse, domestic partner, or child of any Owner (“Eligible Persons”), where requiring the Owner to comply with the requirements of this Chapter

would result in medical financial hardship to an Eligible Person. For purposes of this subparagraph only, "Owner" shall be limited to a natural person having an undivided interest in the Rental Property of at least 50%. The process and requirements for determining eligibility of this exemption shall be defined in Administrative Regulations implementing this Chapter.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.
2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.
3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

13.89.070 Qualified Nonprofits.

A. Certification, Term, and Renewal. The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter. The Qualified Nonprofit shall be a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation that is committed to furthering permanent affordability, democratic residential control, and tenant ownership, as further defined in Administrative Regulations, and shall have demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property and to provide affordable housing for very low and/or low-income households. The City Manager may prescribe additional requirements necessary to effectuate the purpose of this Chapter by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

B. Conflicts of Interest; Disqualification of Qualified Nonprofits. A Qualifying Nonprofit may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. A Qualifying Nonprofit may not act as a Supportive Partner if it exercises its right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110. The City Manager shall promptly investigate any complaint alleging that a Qualified Nonprofit has a conflict of interest or has failed to comply with the

requirements of this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

C. A Qualified Nonprofit is conferred a right of first offer and right of first refusal as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights under this Chapter to the Qualified Nonprofit within the Notice Period;(2) executes a written waiver of the Tenants' rights under this Chapter within the Notice Period; or (3) no Tenant submits a statement of interest pursuant to Section 13.89.090.C. Subsequently, Qualified Nonprofits shall have the same amount of time conferred to Tenants to perform under this Chapter, except that Qualified Nonprofits shall only have the remaining time conferred to Tenants to perform within the Notice Period, and any extensions thereof, or a minimum of 5 days, whichever is greater. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or written waiver of rights pursuant to this Paragraph shall be valid if signed by the majority of Tenants.

13.89.080 Supportive Partners.

A. Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110 must select a Supportive Partner and disclose the Supportive Partner to the City and Owner of the Rental Property within the time set forth in the Notice Period and/or the Offer Period and any extensions thereof. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

C. Conflicts of Interest; Disqualification of Supportive Partners. A Supportive Partner may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Supportive Partner.

13.89.090 Notice of Intent to Sell; Statement of Interest.

A. Notice of Intent to Sell. An Owner of a Rental Property shall provide all Tenants (if any) notice of their intent to sell prior to listing or otherwise marketing a Rental Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least 45 days before marketing a Rental Property with two or more Rental Units, or at least 20 days before marketing a Rental Property with one Rental Unit ("Notice Period"). The Notice of Intent to Sell shall be sent to each Tenant address via certified mail and posted at conspicuous locations at the Rental Property and shall include the following:

1. A statement that the Owner intends to sell the Rental Property.
2. A statement describing the rights of Tenants under this Chapter and stating the deadlines for exercising those rights.
3. A list of units by address and the rent due for each unit, if occupied, and any available contact information for each occupant.
4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.
5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

B. Notice to Qualified Nonprofits. On the same date as notice is provided to any Tenants pursuant to Paragraph A, or if there are no Tenants, on the date on which such notice would have been provided pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, the majority of Tenants may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C. The Statement of Interest shall notify the Owner of the Tenants' or Qualified Nonprofit's interest in exercising their rights under this Chapter. In the event that the majority of

Tenants submit a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J.; provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit prior to the expiration of the Notice Period. In the event that there are no Tenants in the Rental Property at the time the Owner's Notice of Intent to Sell is provided, and the Rental Property otherwise contains Rental Units that have not been lawfully withdrawn from the rental market, any Qualified Nonprofit that received a copy of the Notice of Intent to Sell pursuant to Paragraph B may submit a Statement of Interest to exercise its rights under this Chapter.

D. **Formation of Tenant Organization; Selection of Supportive Partner.** If the majority of Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.K and select a Supportive Partner, subject to Section 13.89.080.B. If there is only one Tenant of a Rental Property who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter but shall not be exempt from the requirement to select a Supportive Partner. A Tenant Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.100 and 13.89.110.

E. **Effect of Statement of Interest. Receipt of a timely Statement of Interest shall trigger an Offer Period of 30 days.** For Rental Properties having two to nine Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted an additional 30-day extension of the Offer Period. For Rental Properties having ten or more Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted a total of two additional 30-day extensions of the Offer Period.

F. **Prohibition on Marketing Property to Third-Party Purchasers During Notice Period and/or Offer Period.** Prior to the expiration of the Notice Period and/or Offer Period, the Owner of a Rental Property shall be prohibited from listing or marketing the Rental Property for sale or entering into any agreement for the sale or transfer of the Rental Property to Third-Party Purchasers.

13.89.100 Right of First Offer.

A. **Right of First Offer.** A Tenant or Qualified Nonprofit that submits a Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.090.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.K unless an assignment or waiver of rights have been executed pursuant to Section 13.89.070.C.

B. The Qualified Organization may deliver to the Owner of the Rental Property an offer to purchase the property, together with disclosure of its selected Supportive Partner,

at any time prior to the expiration of the Offer Period. The Owner may accept or reject any offer to purchase received from a Qualified Organization.

C. **Acceptance of Offer of Purchase.** Upon acceptance of any offer to purchase a Rental Property made pursuant to Paragraph A, the Owner and Qualified Organization shall make reasonable and good faith efforts to close the transaction. The Qualified Organization shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 60 days to close the transaction for the sale of property having two to nine Rental Units; and 90 days to close the transaction for the sale of property having ten or more Rental Units. The deadline to close a transaction for the sale of Rental Property having one Rental Unit shall be extended for an additional 60 days from the date of acceptance of the offer if the Qualified Organization provides written documentation that its lender will require a commercial loan for the purchase of the Rental Property. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or diligently pursuing the completion of other requirements to close the transaction. Nothing in this Paragraph shall prevent the Owner and the Qualified Organization for agreeing to further extend the deadline to close the transaction.

D. **Termination of Right of First Offer.** Upon (1) rejection of all offers to purchase made within the Offer Period, (2) the expiration of the Offer Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally accept offers from a Third-Party Purchaser, subject to the requirements of Section 13.89.110. The requirements of Section 13.89.110 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

13.89.110 Right of First Refusal.

A. **Disclosure of Offer of Sale.** The Owner shall disclose any Offer of Sale received from a Third-Party Purchaser to any Qualified Organization that exercised a valid right of first offer under Section 13.89.100, and shall provide said Qualified Organization a right of first refusal pursuant to the requirements of this Chapter. The Owner shall disclose to each Qualified Organization eligible to exercise a right of first refusal under this Section all material terms of any Offer of Sale of the Rental Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Qualified Organizations; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph may be redacted from such offers.

B. **Right of First Refusal.** Any Qualified Organization that exercised a valid right of first offer under Section 13.89.100 may exercise a right of first refusal and accept the Offer for Sale of the Rental Property within the time period set forth in Paragraph C. To exercise its right of first refusal, the Qualified Organization must accept all material terms of the Offer for Sale; provided, however, the financing of the Qualified Organization's purchase shall not be considered a material term of the Offer for Sale so long as it does

not affect the net value of the Sale to the Owner. Specific obligations of material terms of sale are sale price, timeline to close, and contingencies.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Qualified Organization eligible to exercise a right of first refusal under this Section at least 10 days to accept the Offer of Sale of a Rental Property having one Rental Unit, or at least 30 days to accept the Offer of Sale of Rental Property having two or more Rental Units. The acceptance of an Offer of Sale by any Qualified Nonprofit extinguishes any right of first refusal of other eligible Qualified Nonprofits.

D. Time to Close. Upon acceptance of the Offer of Sale, the Qualified Organization must agree to the material terms of the third-party offer. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or completing other requirements to close the transaction.

E. Rejection of Offer or Failure to Close. If each Qualified Organization entitled to receive an Offer of Sale rejects or fails to accept such offer of sale within the time set forth in Paragraph C or if a Qualified Organization that accepts an Offer for Sale fails to close the transaction within the time set forth in Paragraph D, the Owner may immediately proceed with the sale or transfer of the Rental Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this Section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Qualified Organization exercises a right of first refusal conferred by this Chapter.

13.89.120 Contract Negotiation.

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third-Party Purchaser.
2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.
3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.130 Incentive to Accept Offer from Qualified Organization.

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.100 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of half of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

B. Exempt Properties. An Owner of a Rental Property that is exempt from this Chapter may comply with the requirements of this Section, and shall be entitled to reimbursement of real property transfer tax pursuant to Paragraph A upon sale of the Rental Property to a Qualified Organization.

13.89.140 Confidential Information Protected.

Any information exchanged between an Owner, Tenants, or Qualified Organizations under this Chapter shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of Berkeley or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

13.89.150 Prohibited Conduct.

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.060 is prohibited unless the Owner complies with Sections 13.89.100 and 13.89.110.

B. A Tenant or Qualified Organization shall not buy or sell any right afforded to them under this Chapter or sell a waiver of any such right, nor shall any Tenant or Qualified Organization assign or otherwise transfer any such right except as authorized to do so under this Chapter.

C. An Owner shall not (1) coerce a Tenant or Tenant Organization to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

13.89.160 Complying Anew with the Right of First Offer.

An Owner shall comply anew with the Right of First Offer if one of the following occur:

A. The Owner decides not to sell the Rental Property after providing the Notice of Intent to Sell, and then proceeds to undertake a Sale again as defined in Section 13.89.050; or the Owner cancels a contract of sale entered into with Tenant or Qualified Organization after escrow has opened.

B. 365 days have elapsed since a Tenant or Qualified Organization cancelled a contract of sale entered into with the Owner after escrow has opened, and the Owner has not sold the Rental Property to a Third-Party Purchaser.

C. 90 days have elapsed from the date of an Owner's rejection of an offer from a Tenant or Qualified Organization pursuant to Section 13.89.100.B and the Owner has not provided an Offer of Sale to the Tenant or Qualified Organization pursuant to Section 13.89.110.A; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

D. 180 days have elapsed since the expiration of an Offer Period and any extensions thereof and no Tenant or Qualified Organization submitted a Statement of Interest or offer and the Owner has not sold the Rental Property to a Third-Party Purchaser; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

13.89.170 Financial Assistance.

The City Manager shall develop guidelines for providing financial assistance to allow for the acquisition of Rental Properties pursuant to this Chapter. Financial assistance may be provided to Tenants, Tenant Organizations, or Qualified Nonprofits. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Rental Property under this Chapter.

13.89.180 Price Stabilization; Tenant Protections.

A. **Affordability Restriction.** Except as otherwise provided herein, any Rental Unit acquired pursuant to this Chapter shall be subject to a recorded affordability restriction that ensures that each Rental Unit acquired is available to very low-, low-, or moderate-income renters or buyers in perpetuity. The City Manager shall set standards for the provisions of affordable units by Administrative Regulation and for the enforcement of the requirements of this Section.

B. **Exemptions from Affordability Restriction.**

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the

guidelines established under Section 13.89.170.

2. A limited equity housing cooperative that meets the requirements of Civil Code Sections 817 and 817.1 is exempt from the requirements of Paragraph A.

C. The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized over the life of the improvement. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%).

D. Rental Properties acquired pursuant to this Chapter and converted to condominiums or stock cooperatives (including limited equity housing cooperatives that meet the requirements of Civil Code Sections 817 and 817.1) subject to a recorded affordability restriction under this Section shall be exempt from the requirements of Section 21.28.070 ("Affordable housing mitigation fee").

E. Non-Purchasing Tenants, Life Lease. Any Tenant that does not join a Tenant Organization that acquires a Rental Property pursuant to this Chapter must be offered a life lease for their Rental Unit so long as the Rental Unit remains their principal residence.

13.89.190 Anti-Speculation Penalty.

A. Purpose. Tenants, Tenant Organizations, and Qualified Nonprofits acknowledge the displacement prevention, affordable housing preservation, and neighborhood stability purposes of this Chapter, and as a condition for the rights and benefits conferred to them under this Chapter, agree not use any purchased Rental Property for speculative purposes. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must be conditioned on the terms described herein. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Section.

B. **Minimum Term and Owner-Occupancy Requirement.** Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must not resell the Rental Property, or any separate ownership interests in the Rental Property, within 36 months of acquiring it. From the date of the initial purchase of the Rental Property up until 36 months, the Tenant must submit an annual owner-occupancy certification to the City demonstrating the use of the acquired Rental Property as their primary residence. The requirements of this Section shall materialize as a restrictive covenant placed on the recorded title deed to the purchased Rental Property that runs with the land and is enforceable by the City against the Tenant or Tenant Organization. The failure to submit an annual owner-occupancy certification to the City is a violation of this Chapter that shall be subject to the civil penalties described in Section 13.89.210 (Enforcement). The City may create Administrative Regulations for further guidelines concerning any exemptions from the requirements of this Section only in the event of an exigent circumstance.

C. **Penalty.** The City shall impose a penalty on any profits gained from the transfer of the purchased Rental Property, or any separate ownership interests in the Rental Property, prior to the expiration of the 36-month term described herein. The City shall create Administrative Regulations concerning the procedures for imposing such a penalty, which shall include notice to the alleged violator and the opportunity to contest the penalty at a hearing. The City shall establish such penalty as follows:

1. When the transfer occurs less than 12 months from the initial purchase date, 20 percent of the profits gained from the resale of the Rental Property or the separate ownership interest in the Rental Property;
2. When the transfer occurs more than or equal to 12 months but less than 24 months from the initial purchase date, 15 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property; or
3. When the transfer occurs more than or equal to 24 months but less than 36 months from the initial purchase date, 10 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property.

D. **Required recordings and filings.**

1. All covenants created in accordance with this Section shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the purchased Rental Property is located and shall contain a legal description of the purchased property, indexed to the name of the Tenant or Tenant Organization who purchased the Rental Property as grantee.

2. The City may engage a third-party monitoring agent to monitor the compliance of the annual owner occupancy certification.

13.89.200 Implementation.

A. The City Manager shall adopt Administrative Regulations necessary to implement the requirements of this Chapter, and may adopt additional rules and regulations for purposes of administering this Chapter, including but not limited to rules and regulations governing the reporting of information regarding transactions subject to the requirements of this Chapter.

B. This ordinance shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

C. Supportive partners shall report annually on the implementation of this Chapter to the City Council or to such City Council Committee as the City Council may designate. Supportive partners shall collect and analyze data in partnership with tenants or tenant organizations to evaluate the number and types of sales of tenant-occupied properties including whether purchased by a Qualified Organization or Third-Party Purchaser; the number of Qualified Organizations that purchase Real Property pursuant to this Chapter; the number and types of units covered by this Chapter; and other data and information relevant to evaluating the effectiveness of this Chapter in creating and preserving affordable housing for residents in the City of Berkeley and in preventing displacement of City of Berkeley tenants.

D. The City Manager or their designee shall provide counseling and technical assistance to Owners regarding the requirements of this Chapter to assist in achieving compliance.

13.89.210 Enforcement.

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.200.A shall be subject to administrative citation under Chapter 1.28.

B. The City Attorney, any Tenant of a Rental Property subject to this Chapter, or a Qualified Organization eligible to purchase Rental Property under this Chapter may bring a civil action to enforce this Chapter, and shall be entitled to the remedies set forth in this Section to the greatest extent permitted by law.

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed \$1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each Rental Unit on a Rental Property.

D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may order that an Owner of Rental Property comply with the requirements of this Chapter.

13.89.220 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

13.89.230 Effective Date.

- A. Section 13.89.100 shall take effect January 1, 2024.
- B. Properties with five or more housing units will be subject to Section 13.89.110 on January 1, 2024.
- C. Properties with four or fewer housing units, pending analysis findings, shall be subject to section 13.89.110 on January 1, 2027.
- D. All other provisions in this ordinance are effective January 1, 2024.

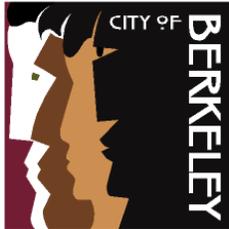
Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

COMPARISON OF COPA/TOPA DRAFT – 2022 AND 2023

	2022	2023
Applicability	Applied to all vacant properties; exempted all non-investor SFHs	Exempts vacant or principal residence SFHs
	Exempted owner-occupied duplexes if owner's only Berkeley rental Applied to all 3- and 4-unit properties	Exempts duplexes, triplexes and quadraplexes if one is owner's principal residence and only Berkeley residential property
Displacement Protections	Lacked life leases for tenants who want to remain at the property	Requires offering life leases to tenants who want to remain at the property
	No anti-speculation language	Anti-speculation language to ensure good faith property purchase
Effective Date	Notice of sale provision effective 30 days after adoption; all other provisions effective with administrative regulations	30 days after adoption; ROFR for properties with four or fewer units considered after three years

COMPARISON OF COPA/TOPA DRAFT – 2022 AND 2023

	2022	2023
Timelines	Right of First Offer	
	<p>Offer period:</p> <ul style="list-style-type: none"> ○ 1-9 units: 60 days ○ 10+: may ask for 90 days ○ 20+: may ask for 120 days <p>Closing:</p> <ul style="list-style-type: none"> ○ 1 unit: 30 days (commercial: 60 days) ○ 2: 90 days ○ 3+: 120 days 	<p>Offer period:</p> <ul style="list-style-type: none"> ○ 1 unit: 30 days ○ 2-9: 60 days ○ 10+: 90 days <p>Closing:</p> <ul style="list-style-type: none"> ○ 1 unit: same ○ 2-9: 60 days ○ 10+ units 90 days
	Right of First Refusal	
	<p>Buyer accepts price/terms:</p> <ul style="list-style-type: none"> ○ 1-2 units: 10 days ○ 3+: 30 days <p>Closing:</p> <ul style="list-style-type: none"> ○ 1 unit: 30 days to close ○ 2 units: 90 days to close ○ 3 or more units: 120 days to close (One 30-day extension on time to close may be granted) 	<p>Buyer accepts price/terms:</p> <ul style="list-style-type: none"> ○ 1 unit: 10 days ○ 2+: 30 days <p>Closing:</p> <p>No specified period. Buyers to match closing timeline from third-party offer</p>



Kate Harrison
Councilmember, District 4

ACTION CALENDAR
September 30, 2024

To: Honorable Members of the City Council
From: Councilmember Harrison
Subject: Adopt Berkeley Municipal Code Chapter 13.89: Community/Tenant Opportunity to Purchase Act

RECOMMENDATION

Adopt Berkeley Municipal Code Chapter 13.89: The Community/Tenant Opportunity to Purchase Act (COPA/TOPA).

POLICY COMMITTEE RECOMMENDATION

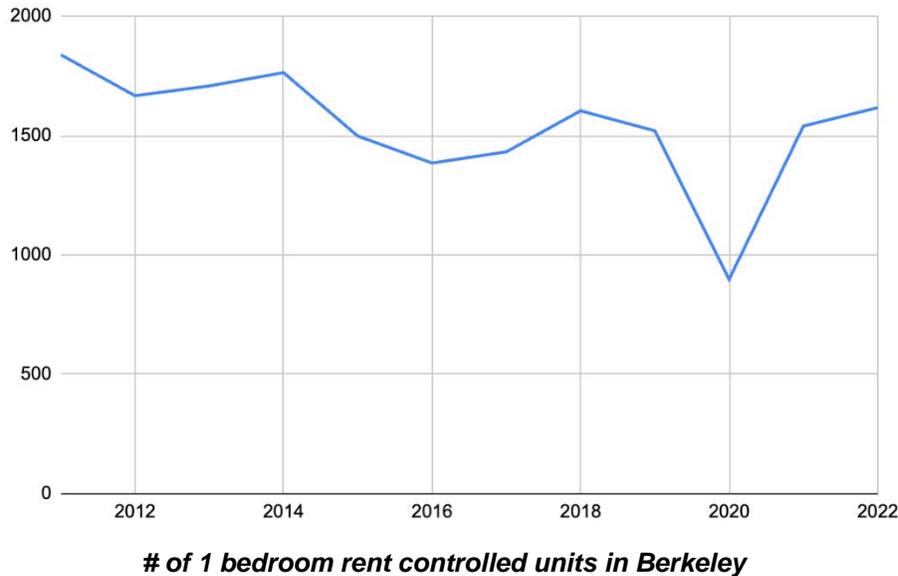
On July 1, 2024, the Land Use, Housing, & Economic Development Committee adopted the following action: M/S/C (Humbert/Wengraf) to send the item to the full Council with a negative recommendation that the City Council not approve the item. Vote: Ayes – Wengraf, Humbert; Noes – Lunaparra; Abstain – None; Absent – None.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley continues to grapple with enduring housing affordability and displacement crises, leaving increasingly limited prospects for property ownership and wealth accumulation amongst residents. In Berkeley, 58% of residents are renters. Berkeley residents who have been historically and institutionally marginalized based on race, income, and immigration status face the most barriers to wealth accumulation and property ownership. Discriminatory practices, often supported and/or facilitated by financial institutions and government policy, such as redlining, inequitable use of eminent domain, and ongoing demolition of affordable housing has led to disproportionate rates of displacement, housing injustice, and poverty among Black, Brown, Indigenous, and immigrant communities.

The preservation of affordable housing is key to reaching the housing and equity goals codified in Berkeley's recently adopted 2023-2031 Housing Element and strategic plan. Properly designed, the Community/Tenant Opportunity to Purchase Act (COPA/TOPA) can be an effective strategy to help break the cycle of displacement from multi-family housing by converting naturally affordable housing into permanently affordable units. Unfortunately, our City is losing affordable housing according to data from a *Berkeleyside* study. The number of one bedroom rent controlled units have decreased

over the last 11 years by approximately 220 units, one of the reasons why renting in Berkeley has become increasingly more burdensome.



COPA/TOPA not only serves to stabilize housing for existing tenants and safeguard affordable housing units in Berkeley, it can also open avenues for tenants to embark on first-time homeownership through land trusts that convert rental property to ownership units. It is imperative to underscore that nothing about COPA/TOPA prevents property owners from seeking fair market value for their properties. In fact, it can benefit property owners by offering various cost-saving benefits through tax refunds and reduced relocation fees.

Attachment D provides a flowchart depicting the proposed process. In summary, the proposed legislation:

- **Excludes buildings with four-units or less that are owner-occupied** except for the financial incentive, which gives any property owner who sells to existing tenants a transfer tax refund.
- **Requires property owners to notify existing tenants (with the exception of four-unit and smaller owner-occupied buildings) of their intent to sell** between 20 and 45 days (depending on property size) in advance of putting the property on the market.
- **Allows existing tenants to express interest in purchasing the property** within the 20 or 45 days of notice.
- Requires tenants to create a tenant organization and select a supportive partner, or, alternatively, formally transfer their rights to a qualified nonprofit, and **make a formal offer, depending on property size, within another 30, 60 or 90 days** starting from the date the statement of interest is submitted.

- **Allows property owners to reject the offer** within a time frame suggested by California State standards,¹ however, this time frame is ultimately decided through buyer/seller negotiation. If the property owner rejects the offer or if the offer period expires, **the property owner may take the property to market.**
- **In buildings of more than four-units, COPA/TOPA requires the property owner to notify tenants or qualified nonprofits that issued a first offer of the market offer.** Expanding this requirement to smaller buildings will be assessed in year 4.
- **Requires qualified organizations to match the substantive terms of the market offer within 10 or 30 days** (depending on property size).²
- **Gives the property owner discretion to decide whether to accept the offer from the tenants or the qualified nonprofit.** The property owner is not compelled to sell their property to existing tenants or a qualified nonprofit, nor are they discouraged from selling it at market price.
- **Provides a financial incentive to property owners to sell to existing tenants or qualified nonprofits by refunding 50% of the city's base transfer tax,** excluding the additional share voted on in Measure P.³
- **Supports tenant organizations by providing technical guidance and educational resources.** Financial assistance may be offered upon the development of guidelines by the City Manager. Nothing in the ordinance commits the City Council to providing a specified level of funding for acquiring properties.

BACKGROUND

COPA/TOPA was first introduced to Council in 2020 by Mayor Arreguin and referred to the Land Use, Housing, and Economic Development Policy Committee. After significant public input, Council Committee members recommended revisions to the legislation and planned to review it January of 2021, addressing budgetary, administrative, and outreach recommendations. However, due to the COVID-19 pandemic and subsequent lockdown, Council priorities shifted and, while agendaized once in March and once in April of 2021, action was not taken by Committee members until May of 2021. At that time, COPA/TOPA passed through Committee with a 2-1 vote with a positive recommendation on the condition of additional revisions. On January 27, 2022, the Mayor conducted an informational work session regarding COPA/TOPA to provide a

¹ California Department of Real Estate, "Chapter 20: Basic Contract Provisions and Disclosures in a Residential Real Estate Transaction," *California Real Estate Reference Book*, <https://dre.ca.gov/files/pdf/refbook/ref20.pdf> (accessed November 1, 2023).

² Substantive terms include purchase price, time to close, and contingencies.

³ 50% of the City's total base transfer tax refund is .75% of the sale price. For a house sold at \$1.8 million, the amount of the base transfer tax would be \$27,000, of which 50% is \$13,500. "Property Transfer Tax," City of Berkeley, <https://berkeleyca.gov/city-services/report-pay/property-transfer-tax> (accessed October 9, 2023).

forum for the public, Council, and staff to convey their thoughts about the proposed policy. COPA/TOPA has not yet been put to a vote.

Councilmember Harrison's Office has since conducted significant outreach in collaboration with the NAACP, faith groups, senior centers, housing justice organizations, law centers, property owners, and tenant advocacy groups. Councilmember Harrison has also worked with the City Attorney's office to develop a revised version of COPA/TOPA based on the concerns and recommendations of our diverse community.

A factor that became apparent during our outreach is that, in addition to providing property owners full discretion choosing to whom they sell their properties, COPA/TOPA can also provide extensive cost saving benefits to property owners. On top of providing a transfer tax refund explained below, when a property owner sells to existing tenants, they are no longer obligated to cover relocation costs. In the case of owner move-in evictions, landlords must pay \$18,011 to any tenant household that has lived in the residence for one year or more. Moreover, the landlord may also have to pay an additional \$6,000 to any tenant household that is low-income, disabled, elderly, includes children, or tenancies that began prior to 1999.⁴ Under COPA/TOPA, property owners can save on legal, real estate and renovation expenses.

Overview of Policy Differences Between the Proposed 2022 and 2023 COPA/TOPA

To respond to salient community concerns shared by tenants, property owners, and nonprofit partners alike, the proposed ordinance includes the following revisions and additions:

1. Expanded exemptions for owner-occupied properties;
2. Changed Right-of-First-Refusal to only be applicable to properties of more than four-units; smaller properties to be considered after assessment of the initial program;
3. Altered requirements for smaller properties;
4. Revised timelines for notice, offer, and close period for all properties;
5. Added a lifelong lease provision;
6. Clarified that properties with one-unit may only be purchased/sold under TOPA to sitting tenants with or without the assistance of a tenant organization;
7. Added provisions for anti-speculation.

Exemptions for Owner-Occupied Properties

⁴ City of Berkeley, "Tenant Relocation and Repairs," City of Berkeley, <https://berkeleyca.gov/doing-business/operating-berkeley/landlords/tenant-relocation-repairs> (accessed November 1, 2023).

One of the most significant concerns that emerged during earlier hearings was the potential issues for owner-occupied properties. It is important to acknowledge that many Black, Brown, Indigenous and low-income people are small property owners who live in their property in Berkeley and that these small properties may be one of their only sources of generational wealth accumulation.

The policy as redrafted intends to foster a more equitable housing environment for communities that have endured significant discrimination by exempting bona fide owner-occupied triplexes and quadruplexes (in addition to owner-occupied duplexes and single-family homes as called for in the original legislation).

Smaller Properties

To address concerns raised by smaller property owners who may not have the immediate resources to implement this policy, the following section excludes implementation of Section 13.89.110, Right of First Refusal, for smaller units (four or fewer units) and only adds that requirement to those properties upon a showing of results from application of COPA/TOPA to larger properties. The Right of First Refusal provision for will take effect for larger properties on January 1, 2024 and only come into effect for properties or four or fewer units on January 1, 2027 pending analysis and findings mandated by chapter 13.89.200. In the interim, non-owner-occupied smaller properties (four or fewer units) will be subject to the Right of First Offer. The limitation of right of first refusal to larger properties is intended to balance the rights of existing tenants with the needs of smaller property owners, who may not have the resources to afford the ongoing process necessary to fairly administer COPA/TOPA, and to give the City and qualified tenant organizations needed experience with administering COPA/TOPA.

The policy that was proposed in 2022 granted full exemption to single-family homes under TOPA, regardless of whether they were currently occupied by a tenant. In the current policy, tenant-occupied single-family homes are now included within TOPA's scope, while continuing to exempt owner-occupied and vacant single-family homes or single-family homes that are a person's primary residence. This exemption mechanism aims to balance the interests of owners and of existing tenants.

Revised Timeline for Notice, Offer, and Close Periods

Councilmember Harrison's office also considered the impact longer timelines may have on smaller property owners. For many smaller property owners, time is money, and to wait between six months and a year to close on their property, is not a feasible financial option. In the revised ordinance, the timelines for each step of the TOPA process have shifted based on the concerns of many smaller property owners, shortening many of them and clarifying that instead of a dictated timeline for close of properties, tenant purchasers must match the substantive terms of the third-party market offer including

price, timeline to close, and contingencies.

	2022 Policy	2023 Policy
Offer Period	<ul style="list-style-type: none"> • 90 days for two-unit property • 120 days for three+ unit properties 	<ul style="list-style-type: none"> • 30 days for one-unit property • 60 days for two – four-unit properties • 90 days for five+ unit properties
Close Period	<ul style="list-style-type: none"> • 60 days for two-unit property • 120 days for three+ unit properties 	<ul style="list-style-type: none"> • 30 days for one-unit property • 60 days for two – four-unit properties • 90 days for five+ unit properties
Right of First Refusal – Accept Offer	<ul style="list-style-type: none"> • 10 days for two-unit properties • 30 days for three+ unit properties 	<ul style="list-style-type: none"> • 10 days for one-unit property • 30 days for two+ unit properties
Right of First Refusal - Close	<ul style="list-style-type: none"> • 90 days for two-unit properties • 120 for three+ unit properties 	<ul style="list-style-type: none"> • Must match terms of third-party offer including price, timeline to close, and contingencies.

Lifelong Lease Provision

The Lifelong Lease Provision intends to maintain tenant protections for tenants who are not interested in purchasing their current residence, but want to still live there. The lifelong lease ensures that if another tenant/s or qualified nonprofit purchase the property, the tenant/s who want to remain there, are protected in doing so.

Provisions for Anti-Speculation

To prevent speculation, under which tenants purchase a property with the intention of selling it in the very short term for profit, the ordinance includes an Anti-Speculation penalty aimed at furthering the intention of COPA/TOPA as an anti-displacement and homelessness prevention mechanism. These provisions apply to properties not subject to an affordability covenant with the City of Berkeley (because those will remain affordable even on sale). Section 13.89.190 lays out these provisions; in brief, the ordinance includes language to prohibit and penalize this behavior, including:

- An affirmative agreement by tenant-owners to not engage in speculation.

- Placing a temporary restrictive covenant on the title to ensure the city is notified of property resales. The covenant will expire after the three-year anti-speculation period ends.
- Requiring an annual owner-occupancy certification to prove residency for the first three years, and
- Application of a 10-20% penalty on any profits for properties sold in less than three years, depending on the transaction date.

The combined strategy that penalizes wrongful behavior and mandates reporting, encourages accountability and transparency while creating a financial deterrent for those who may leverage the policy in bad faith. The anti-speculation section protects property owners, qualified nonprofits, and tenants who are operating in accordance with the principles of this policy.

FISCAL IMPACTS OF RECOMMENDATION

This policy requires funding for administration, implementation, and enforcement. Councilmember Harrison’s office submitted a budget referral that was delayed to the AAO1, which will be considered in December 2023.⁵ The budget referral includes funding for:

- One Health, Housing, and Community Services (HHCS) Coordinator to develop education and outreach materials, assist and direct qualified organizations through the COPA/TOPA process, complete monitoring and data analysis to improve the policy and acquisition capacity needs.
- A portion of a Deputy City Attorney II position to manage any potential disputes or violations and support Tenant Organizations when necessary.
- Qualified organization capacity support for up to two projects a year, to assist tenants as they engage in the COPA/TOPA process.

Community Development Project Coordination for acquisition capacity, outreach, and administrative needs (HHCS)	1 FTE - \$220,676* ⁶ *Includes \$4,500 to support office, technology, and training needs
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⁵ City of Berkeley, "City Council Meeting Agenda - Item 26 - Referring \$579,000 to the June 2023 Ballot," April 11, 2023, <https://berkeleyca.gov/sites/default/files/documents/2023-04-11%20Item%2026%20Referring%20579,000%20to%20the%20June%202023.pdf> (accessed October 31, 2023).

⁶ An additional 1 FTE for a Community Development Project Coordinator was included in the original budget referral for programmatic capacity needs, namely, for identifying vacant or mostly vacant properties so that the City could more effectively partner with nonprofit housing providers to increase affordable housing stock. The funding request for the 1 FTE in the HHCS department will be delayed until fiscal year 2025, to allow COPA/TOPA programming to stabilize capacity and processes. Once COPA/TOPA is fully functioning, an additional HHCS FTE will be needed; funding has been requested in the budget process.

Deputy City Attorney II	0.35 FTE - \$101,884
Qualified organization capacity support for two additional projects per year (in addition to existing allocation of \$100,000 to the Bay Area Community Land Trust)	\$50,000

The initial direct fiscal impact is estimated at \$373,000 per year. With a considerable nexus with housing equity and the City’s Small Sites Program, the City may also be able to leverage funds from the Measure U1 tax, the Housing Trust Fund, Measure O, and Measure M Empty Homes (Vacancy) Tax.

In addition, to the extent that properties are refunded one-half of the base transfer tax, or 0.75% of the property value, for each project valued at a price of \$2 million, the amount of transfer tax foregone by the City would be \$15,000. To illustrate the scope of the figures, the associated foregone transfer tax for a \$1.8 million single-family residence would be \$13,500. For a 21-unit building, which is the largest building that has sold in Berkeley within the two years (November 2021 – November 2023), the amount of foregone property tax if sold under TOPA would be \$40,000.⁷

ENVIRONMENTAL SUSTAINABILITY

This budget referral has no effect on environmental sustainability.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

ATTACHMENTS

- A. Revised BMC Chapter 13.89: Community/Tenant Opportunity to Purchase Act
- B. Comparison of Revised BMC Chapter 13.89 with 2022 Version
- C. 2022 Budget Referral: “Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multifamily Housing”
- D. COPA/TOPA Timeline Chart

⁷ MLS Listings, "Property Listing 1," <https://www.mlslistings.com/Search/Result/ec6ddea7-ee1b-4620-9c3a-25190c068d1f/1> (accessed November 1, 2023); Redfin, "Property Listing 2," <https://www.redfin.com/CA/Berkeley/1626-Dwight-Way-94703/home/95473170> (accessed November 1, 2023).

ORDINANCE NO. -N.S.

ADDING CHAPTER 13.89 TO THE BERKELEY MUNICIPAL CODE
COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Chapter 13.89 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.89

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

- 13.89.010 Title and Purpose**
- 13.89.020 Findings**
- 13.89.030 Definitions**
- 13.89.040 Applicability**
- 13.89.050 Sale Defined**
- 13.89.060 Exemptions**
- 13.89.070 Qualified Nonprofits**
- 13.89.080 Supportive Partners**
- 13.89.090 Notice of Intent to Sell; Statement of Interest**
- 13.89.100 Right of First Offer**
- 13.89.110 Right of First Refusal**
- 13.89.120 Contract Negotiation**
- 13.89.130 Incentive to Accept Offer from Qualified Organization**
- 13.89.140 Confidential Information Protected**
- 13.89.150 Prohibited Conduct**
- 13.89.160 Complying Anew with the Right of First Offer**
- 13.89.170 Financial Assistance**
- 13.89.180 Price Stabilization; Tenant Protections**
- 13.89.190 Anti-Speculation Penalty**
- 13.89.200 Implementation**
- 13.89.210 Enforcement**
- 13.89.220 Severability**
- 13.89.230 Effective Date**

13.89.010 Title and Purpose.

A. This Chapter shall be referred to as the “Berkeley Community/Tenant Opportunity to Purchase Act.”

B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

13.89.020 Findings.

A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of low-income residents.

B. The current need for affordable housing units in Alameda County is 51,732 units (California Housing Partnership). Approximately 20% of residents in Berkeley are living in poverty.

C. The lack of affordable housing for Berkeley’s low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.

D. The nine-county Bay Area has been losing an annual average of 32,000 unsubsidized affordable homes occupied by low-income households since 2012. Unsubsidized affordable housing is the most common form of low-income housing, and at the same time is the most at risk of loss through rent increases, evictions, condo conversions, demolition and more. And, overall preservation is cost-effective compared to new production, at 50-70% of the cost of new affordable housing production (Enterprise Community Partners).

E. Affordable housing preservation and anti-displacement strategies will help keep low-income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.

F. The City Council finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants and qualified nonprofit organizations the opportunity to purchase the property before it may be sold on the market to a third-party purchaser.

13.89.030 Definitions.

A. “Dwelling Unit,” “Accessory Dwelling Unit,” “Single-Family Dwelling,” “Multi-Family

Dwelling,” and “Group Living Accommodations” are defined in Section 23.502.020.

B. “Designated as the Owner’s Primary Residence” means any unit that the Owner has validly claimed as their principal residence for purposes of either the homeowners’ property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans’ exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

C. “Offer for Sale” means an offer to sell a Rental Property that includes all material and commercially reasonable terms.

D. “Qualified Nonprofit” means a nonprofit, which is either exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low-income households, and is certified by the City Manager pursuant to Section 13.89.070.A.

E. “Qualified Organization” means either a Tenant Organization or a Qualified Nonprofit.

F. “Owner” means any person, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of a Rental Property. Each Owner shall be jointly and severally responsible for compliance with the requirements of this Chapter.

G. “Rental Property” means any residential property containing one or more Rental Units and located in the City of Berkeley

H. “Rental Unit” means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley, consistent with the records of the City of Berkeley Rent Stabilization Board, and subject to the exemptions set forth in Section 13.89.060

I. “Sale,” “sell,” or “transfer” is defined in Section 13.89.050.

J. “Supportive Partner” means any person or organization certified by the City Manager pursuant to Section 13.89.080.A to provide Tenant counseling and technical support services on first-time homeownership, obtaining financing for the purchase of Real Properties, assisting in the process of closing on property transactions, the formation and governance of legal and collective ownership structures, and supporting Tenants in the exercise of their rights pursuant to this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents.

K. “Tenant” means any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a renter’s interest, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of

such Rental Unit.

L. “Tenant Organization” means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant Organization must adopt a Governing Document and Governing Principles and may appoint officers and any other authorized agents specifically designated to execute contracts on its behalf. If only one Tenant of a Rental Property seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit or Group Living Accommodations sleeping quarters are collectively considered to be one Tenant, and such lessees of a Group Living Accommodation or Dwelling Unit must consent to representation by the Tenant Organization, as furthered defined in Administrative Regulations.

M. “Third-Party Purchaser” means any prospective purchaser of a Rental Property other than a Qualified Organization as defined in Paragraph D.

N. “The City” shall mean the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.

O. “City Manager” means the City Manager or their designee.

P. “Governing Document” means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization’s decision-making processes and appointing officers and other authorized agents to act on its behalf.

Q. “Governing Principles” means the governance and management principles stated in a Tenant Organization’s Governing Documents.

R. “Majority” means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.

13.89.040 Applicability.

This Chapter shall apply to the sale or transfer of all Rental Property in the City of Berkeley, unless otherwise exempted herein.

13.89.050 Sale Defined.

A. “Sale,” “sell,” or “transfer” is defined as the following:

1. The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Property, including beneficial use, where the value of the present interest is the fee interest in the Rental Property, or substantially equal to the

value of that fee interest.

2. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c).

3. Multiple transfers of minority interests in the Rental Property which, in effect, result in a transfer of the Rental Property.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following Rental Properties are not subject to the requirements of this Chapter.

1. Any Rental Property comprised entirely of owner-occupied Rental Units, including any owner-occupied Single-Family Dwelling.

2. Any Rental Property that has no more than one Single-Family Dwelling and is vacant at the time of sale.

3. A Rental Property containing a Dwelling Unit that is Designated as the Owner's Primary Residence, if and only if one of the following applies:

a. The Rental Property has no more than one Single-Family Dwelling, and either the Single-Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single-Family Dwelling is Designated as the Owner's Primary Residence.

b. The Rental Property has no more than one Duplex, and (1) one of the units in the Duplex is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

c. The Rental Property has no more than one Multi-Family Dwelling that contains no more than four Dwelling Units, and (1) one of the units is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley.

4. Rental Properties owned by the local, state, or federal government.

5. Rental Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

6. Group Living Accommodations subject to monitoring by a Monitoring Organization, as defined in Section 13.42.020.E.

7. Properties owned by housing cooperatives, if the cooperative entity is owned and controlled by a majority of residents. This definition includes non-profit mutual

housing associations and limited equity housing cooperatives.

8. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.

B. Transfers Exempted. The following transfers of Rental Properties are not subject to the requirements of this Chapter.

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent’s estate if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Rental Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Tenants or Qualified Nonprofits under the California Civil Code Sections 2924f-h, 2924m-n, or 2929.3.

4. A transfer of bare legal title into or out of a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. A transfer of a fractional interest in a Rental Property that is less than 50% of an undivided interest in the Rental Property, unless Section 13.89.050.A30 applies.

9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.

10. A transfer of a Rental Property that is the Owner’s sole Rental Property and has no more than five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such health care expenses incurred by a spouse, domestic partner, or child of any Owner (“Eligible Persons”), where requiring the Owner to comply with the requirements of this Chapter would result in medical financial hardship to an Eligible Person. For purposes of this subparagraph only, “Owner” shall be limited to a natural person having an undivided

interest in the Rental Property of at least 50%. The process and requirements for determining eligibility of this exemption shall be defined in Administrative Regulations implementing this Chapter.

C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.
2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.
3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

13.89.070 Qualified Nonprofits.

A. Certification, Term, and Renewal. The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter. The Qualified Nonprofit shall be a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation that is committed to furthering permanent affordability, democratic residential control, and tenant ownership, as further defined in Administrative Regulations, and shall have demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property and to provide affordable housing for very low and/or low-income households. The City Manager may prescribe additional requirements necessary to effectuate the purpose of this Chapter by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

B. Conflicts of Interest; Disqualification of Qualified Nonprofits. A Qualifying Nonprofit may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. A Qualifying Nonprofit may not act as a Supportive Partner if it exercises its right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110. The City Manager shall promptly investigate any complaint alleging that a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to be heard, the City Manager determines that an organization listed as a

Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

C. A Qualified Nonprofit is conferred a right of first offer and right of first refusal as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights under this Chapter to the Qualified Nonprofit within the Notice Period;(2) executes a written waiver of the Tenants' rights under this Chapter within the Notice Period; or (3) no Tenant submits a statement of interest pursuant to Section 13.89.090.C. Subsequently, Qualified Nonprofits shall have the same amount of time conferred to Tenants to perform under this Chapter, except that Qualified Nonprofits shall only have the remaining time conferred to Tenants to perform within the Notice Period, and any extensions thereof, or a minimum of 5 days, whichever is greater. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or written waiver of rights pursuant to this Paragraph shall be valid if signed by the majority of Tenants.

13.89.080 Supportive Partners.

A. Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110 must select a Supportive Partner and disclose the Supportive Partner to the City and Owner of the Rental Property within the time set forth in the Notice Period and/or the Offer Period and any extensions thereof. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

C. Conflicts of Interest; Disqualification of Supportive Partners. A Supportive Partner may not act in a manner that is adverse to the interests of Tenants occupying a Rental

Property that is subject to this Chapter. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Supportive Partner.

13.89.090 Notice of Intent to Sell; Statement of Interest.

A. Notice of Intent to Sell. An Owner of a Rental Property shall provide all Tenants (if any) notice of their intent to sell prior to listing or otherwise marketing a Rental Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least 45 days before marketing a Rental Property with two or more Rental Units, or at least 20 days before marketing a Rental Property with one Rental Unit ("Notice Period"). The Notice of Intent to Sell shall be sent to each Tenant address via certified mail and posted at conspicuous locations at the Rental Property and shall include the following:

1. A statement that the Owner intends to sell the Rental Property.
2. A statement describing the rights of Tenants under this Chapter and stating the deadlines for exercising those rights.
3. A list of units by address and the rent due for each unit, if occupied, and any available contact information for each occupant.
4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.
5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

B. Notice to Qualified Nonprofits. On the same date as notice is provided to any Tenants pursuant to Paragraph A, or if there are no Tenants, on the date on which such notice would have been provided pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, the majority of Tenants may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C. The Statement of Interest shall notify the Owner of the Tenants' or Qualified Nonprofit's interest in exercising their rights under this Chapter. In the event that the majority of Tenants submit a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant

Organization that satisfies the requirements of Section 13.89.030.J.; provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit prior to the expiration of the Notice Period. In the event that there are no Tenants in the Rental Property at the time the Owner's Notice of Intent to Sell is provided, and the Rental Property otherwise contains Rental Units that have not been lawfully withdrawn from the rental market, any Qualified Nonprofit that received a copy of the Notice of Intent to Sell pursuant to Paragraph B may submit a Statement of Interest to exercise its rights under this Chapter.

D. Formation of Tenant Organization; Selection of Supportive Partner. If the majority of Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.K and select a Supportive Partner, subject to Section 13.89.080.B. If there is only one Tenant of a Rental Property who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter but shall not be exempt from the requirement to select a Supportive Partner. A Tenant Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.100 and 13.89.110.

E. Effect of Statement of Interest. Receipt of a timely Statement of Interest shall trigger an Offer Period of 30 days. For Rental Properties having two to nine Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted an additional 30-day extension of the Offer Period. For Rental Properties having ten or more Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted a total of two additional 30-day extensions of the Offer Period.

F. Prohibition on Marketing Property to Third-Party Purchasers During Notice Period and/or Offer Period. Prior to the expiration of the Notice Period and/or Offer Period, the Owner of a Rental Property shall be prohibited from listing or marketing the Rental Property for sale or entering into any agreement for the sale or transfer of the Rental Property to Third-Party Purchasers.

13.89.100 Right of First Offer.

A. Right of First Offer. A Tenant or Qualified Nonprofit that submits a Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.090.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.K unless an assignment or waiver of rights have been executed pursuant to Section 13.89.070.C.

B. The Qualified Organization may deliver to the Owner of the Rental Property an offer to purchase the property, together with disclosure of its selected Supportive Partner, at any time prior to the expiration of the Offer Period. The Owner may accept or reject any offer to purchase received from a Qualified Organization.

C. Acceptance of Offer of Purchase. Upon acceptance of any offer to purchase a Rental Property made pursuant to Paragraph A, the Owner and Qualified Organization shall make reasonable and good faith efforts to close the transaction. The Qualified Organization shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 60 days to close the transaction for the sale of property having two to nine Rental Units; and 90 days to close the transaction for the sale of property having ten or more Rental Units. The deadline to close a transaction for the sale of Rental Property having one Rental Unit shall be extended for an additional 60 days from the date of acceptance of the offer if the Qualified Organization provides written documentation that its lender will require a commercial loan for the purchase of the Rental Property. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or diligently pursuing the completion of other requirements to close the transaction. Nothing in this Paragraph shall prevent the Owner and the Qualified Organization for agreeing to further extend the deadline to close the transaction.

D. Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the Offer Period, (2) the expiration of the Offer Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally accept offers from a Third-Party Purchaser, subject to the requirements of Section 13.89.110. The requirements of Section 13.89.110 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

13.89.110 Right of First Refusal.

A. Disclosure of Offer of Sale. The Owner shall disclose any Offer of Sale received from a Third-Party Purchaser to any Qualified Organization that exercised a valid right of first offer under Section 13.89.100, and shall provide said Qualified Organization a right of first refusal pursuant to the requirements of this Chapter. The Owner shall disclose to each Qualified Organization eligible to exercise a right of first refusal under this Section all material terms of any Offer of Sale of the Rental Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Qualified Organizations; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph may be redacted from such offers.

B. Right of First Refusal. Any Qualified Organization that exercised a valid right of first offer under Section 13.89.100 may exercise a right of first refusal and accept the Offer for Sale of the Rental Property within the time period set forth in Paragraph C. To exercise its right of first refusal, the Qualified Organization must accept all material terms of the Offer for Sale; provided, however, the financing of the Qualified Organization's purchase shall not be considered a material term of the Offer for Sale so long as it does not affect the net value of the Sale to the Owner. Specific obligations of material terms of sale are sale price, timeline to close, and contingencies.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Qualified Organization eligible to exercise a right of first refusal under this Section at least 10 days to accept the Offer of Sale of a Rental Property having one Rental Unit, or at least 30 days to accept the Offer of Sale of Rental Property having two or more Rental Units. The acceptance of an Offer of Sale by any Qualified Nonprofit extinguishes any right of first refusal of other eligible Qualified Nonprofits.

D. Time to Close. Upon acceptance of the Offer of Sale, the Qualified Organization must agree to the material terms of the third-party offer. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or completing other requirements to close the transaction.

E. Rejection of Offer or Failure to Close. If each Qualified Organization entitled to receive an Offer of Sale rejects or fails to accept such offer of sale within the time set forth in Paragraph C or if a Qualified Organization that accepts an Offer for Sale fails to close the transaction within the time set forth in Paragraph D, the Owner may immediately proceed with the sale or transfer of the Rental Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this Section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Qualified Organization exercises a right of first refusal conferred by this Chapter.

13.89.120 Contract Negotiation.

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third-Party Purchaser.
2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.
3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

B. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.130 Incentive to Accept Offer from Qualified Organization.

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.100 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of half of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

B. Exempt Properties. An Owner of a Rental Property that is exempt from this Chapter may comply with the requirements of this Section, and shall be entitled to reimbursement of real property transfer tax pursuant to Paragraph A upon sale of the Rental Property to a Qualified Organization.

13.89.140 Confidential Information Protected.

Any information exchanged between an Owner, Tenants, or Qualified Organizations under this Chapter shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of Berkeley or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

13.89.150 Prohibited Conduct.

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.060 is prohibited unless the Owner complies with Sections 13.89.100 and 13.89.110.

B. A Tenant or Qualified Organization shall not buy or sell any right afforded to them under this Chapter or sell a waiver of any such right, nor shall any Tenant or Qualified Organization assign or otherwise transfer any such right except as authorized to do so under this Chapter.

C. An Owner shall not (1) coerce a Tenant or Tenant Organization to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

13.89.160 Complying Anew with the Right of First Offer.

An Owner shall comply anew with the Right of First Offer if one of the following occur:

A. The Owner decides not to sell the Rental Property after providing the Notice of Intent to Sell, and then proceeds to undertake a Sale again as defined in Section 13.89.050; or the Owner cancels a contract of sale entered into with Tenant or Qualified Organization after escrow has opened.

B. 365 days have elapsed since a Tenant or Qualified Organization cancelled a contract of sale entered into with the Owner after escrow has opened, and the Owner has not sold the Rental Property to a Third-Party Purchaser.

C. 90 days have elapsed from the date of an Owner's rejection of an offer from a Tenant or Qualified Organization pursuant to Section 13.89.100.B and the Owner has not provided an Offer of Sale to the Tenant or Qualified Organization pursuant to Section 13.89.110.A; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

D. 180 days have elapsed since the expiration of an Offer Period and any extensions thereof and no Tenant or Qualified Organization submitted a Statement of Interest or offer and the Owner has not sold the Rental Property to a Third-Party Purchaser; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

13.89.170 Financial Assistance.

The City Manager shall develop guidelines for providing financial assistance to allow for the acquisition of Rental Properties pursuant to this Chapter. Financial assistance may be provided to Tenants, Tenant Organizations, or Qualified Nonprofits. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Rental Property under this Chapter.

13.89.180 Price Stabilization; Tenant Protections.

A. **Affordability Restriction.** Except as otherwise provided herein, any Rental Unit acquired pursuant to this Chapter shall be subject to a recorded affordability restriction that ensures that each Rental Unit acquired is available to very low-, low-, or moderate-income renters or buyers in perpetuity. The City Manager shall set standards for the provisions of affordable units by Administrative Regulation and for the enforcement of the requirements of this Section.

B. **Exemptions from Affordability Restriction.**

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the guidelines established under Section 13.89.170.

2. A limited equity housing cooperative that meets the requirements of Civil Code Sections 817 and 817.1 is exempt from the requirements of Paragraph A.

C. The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized over the life of the improvement. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%).

D. Rental Properties acquired pursuant to this Chapter and converted to condominiums or stock cooperatives (including limited equity housing cooperatives that meet the requirements of Civil Code Sections 817 and 817.1) subject to a recorded affordability restriction under this Section shall be exempt from the requirements of Section 21.28.070 ("Affordable housing mitigation fee").

E. Non-Purchasing Tenants, Life Lease. Any Tenant that does not join a Tenant Organization that acquires a Rental Property pursuant to this Chapter must be offered a life lease for their Rental Unit so long as the Rental Unit remains their principal residence.

13.89.190 Anti-Speculation Penalty.

A. Purpose. Tenants, Tenant Organizations, and Qualified Nonprofits acknowledge the displacement prevention, affordable housing preservation, and neighborhood stability purposes of this Chapter, and as a condition for the rights and benefits conferred to them under this Chapter, agree not use any purchased Rental Property for speculative purposes. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must be conditioned on the terms described herein. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Section.

B. Minimum Term and Owner-Occupancy Requirement. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant

Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must not resell the Rental Property, or any separate ownership interests in the Rental Property, within 36 months of acquiring it. From the date of the initial purchase of the Rental Property up until 36 months, the Tenant must submit an annual owner-occupancy certification to the City demonstrating the use of the acquired Rental Property as their primary residence. The requirements of this Section shall materialize as a restrictive covenant placed on the recorded title deed to the purchased Rental Property that runs with the land and is enforceable by the City against the Tenant or Tenant Organization. The failure to submit an annual owner-occupancy certification to the City is a violation of this Chapter that shall be subject to the civil penalties described in Section 13.89.210 (Enforcement). The City may create Administrative Regulations for further guidelines concerning any exemptions from the requirements of this Section only in the event of an exigent circumstance.

C. **Penalty.** The City shall impose a penalty on any profits gained from the transfer of the purchased Rental Property, or any separate ownership interests in the Rental Property, prior to the expiration of the 36-month term described herein. The City shall create Administrative Regulations concerning the procedures for imposing such a penalty, which shall include notice to the alleged violator and the opportunity to contest the penalty at a hearing. The City shall establish such penalty as follows:

1. When the transfer occurs less than 12 months from the initial purchase date, 20 percent of the profits gained from the resale of the Rental Property or the separate ownership interest in the Rental Property;
2. When the transfer occurs more than or equal to 12 months but less than 24 months from the initial purchase date, 15 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property; or
3. When the transfer occurs more than or equal to 24 months but less than 36 months from the initial purchase date, 10 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property.

D. **Required recordings and filings.**

1. All covenants created in accordance with this Section shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the purchased Rental Property is located and shall contain a legal description of the purchased property, indexed to the name of the Tenant or Tenant Organization who purchased the Rental Property as grantee.

2. The City may engage a third-party monitoring agent to monitor the compliance of the annual owner occupancy certification.

13.89.200 Implementation.

A. The City Manager shall adopt Administrative Regulations necessary to implement the requirements of this Chapter, and may adopt additional rules and regulations for purposes of administering this Chapter, including but not limited to rules and regulations governing the reporting of information regarding transactions subject to the requirements of this Chapter.

B. This ordinance shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

C. Supportive partners shall report annually on the implementation of this Chapter to the City Council or to such City Council Committee as the City Council may designate. Supportive partners shall collect and analyze data in partnership with tenants or tenant organizations to evaluate the number and types of sales of tenant-occupied properties including whether purchased by a Qualified Organization or Third-Party Purchaser; the number of Qualified Organizations that purchase Real Property pursuant to this Chapter; the number and types of units covered by this Chapter; and other data and information relevant to evaluating the effectiveness of this Chapter in creating and preserving affordable housing for residents in the City of Berkeley and in preventing displacement of City of Berkeley tenants.

D. The City Manager or their designee shall provide counseling and technical assistance to Owners regarding the requirements of this Chapter to assist in achieving compliance.

13.89.210 Enforcement.

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.200.A shall be subject to administrative citation under Chapter 1.28.

B. The City Attorney, any Tenant of a Rental Property subject to this Chapter, or a Qualified Organization eligible to purchase Rental Property under this Chapter may bring a civil action to enforce this Chapter, and shall be entitled to the remedies set forth in this Section to the greatest extent permitted by law.

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed \$1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each Rental Unit on a Rental Property.

D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may order that an Owner of Rental Property comply with the requirements of this Chapter.

13.89.220 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void,

unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

13.89.230 Effective Date.

- A. Section 13.89.100 shall take effect January 1, 2024.
- B. Properties with five or more housing units will be subject to Section 13.89.110 on January 1, 2024.
- C. Properties with four or fewer housing units, pending analysis findings, shall be subject to section 13.89.110 on January 1, 2027.
- D. All other provisions in this ordinance are effective January 1, 2024.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

_____ORDINANCE NO. -N.S.

~~ADOPTING~~ADDING CHAPTER 13.89 ~~OFTO~~ THE BERKELEY MUNICIPAL CODE

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Chapter 13.89 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.89

COMMUNITY/TENANT OPPORTUNITY TO PURCHASE ACT

- 13.89.010 Title and Purpose**
- 13.89.020 Findings**
- 13.89.030 Definitions**
- 13.89.040 Applicability**
- 13.89.050 Sale Defined**
- 13.89.060 Exemptions**
- 13.89.070 Qualified Nonprofits**
- 13.89.080 Supportive Partners**
- 13.89.090 Notice of Intent to Sell; Statement of Interest**
- 13.89.100 Right of First Offer**
- 13.89.110 Right of First Refusal**
- ~~**13.89.120 Contract Negotiation**~~
- 13.89.130 Incentive to Accept Offer from Qualified Organization**
- 13.89.140 Confidential Information Protected**
- 13.89.150 Prohibited Conduct**
- 13.89.160 Complying Anew with the Right of First Offer**
- ~~**13.89.170 Financial Assistance**~~
- 13.89.180 Price Stabilization; Tenant Protections**
- 13.89.190 Anti-Speculation Penalty**
- 13.89.200 Implementation**
- 13.89.~~200~~210 Enforcement**
- 13.89.~~210~~220 Severability**
- 13.89.230 Effective Date**

13.89.010 Title and Purpose.

A. This Chapter shall be referred to as the "Berkeley Community/Tenant Opportunity to Purchase Act."

~~B.~~ The purpose of this Chapter is to confer upon Tenants of Rental Properties as 4

B. defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

13.89.020 Findings.

A. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise which leads to displacement of ~~lowincome~~ low-income residents.

B. The current need for affordable housing units in Alameda County is 51,732 units (California Housing Partnership). Approximately 20% of residents in Berkeley are living in poverty.

C. The lack of affordable housing for Berkeley's low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.

D. The nine-county Bay Area has been losing an annual average of 32,000 unsubsidized affordable homes occupied by low-income households since 2012. Unsubsidized affordable housing is the most common form of low-income housing, and at the same time is the most at risk of loss through rent increases, evictions, condo conversions, demolition and more. And, overall preservation is cost-effective compared to new production, at 50-70% of the cost of new affordable housing production (Enterprise Community Partners).

E. Affordable housing preservation and anti-displacement strategies will help keep ~~low-~~income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.

F. The City Council finds that in the interest of preventing the displacement of ~~lowerincome~~ lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants and qualified nonprofit organizations the opportunity to purchase the property before it may be sold on the market to a third-party purchaser.

13.89.030 Definitions.

A. “Dwelling Unit,” “Accessory Dwelling Unit,” “Single-Family Dwelling,” “Multi-Family Dwelling,” and “Group Living Accommodations” are defined in Section ~~23F.04.01~~23.502.020.

B. “Designated as the Owner’s Primary Residence” means any unit that the Owner has validly claimed as their principal residence for purposes of either the homeowners’ property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans’ exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

~~A.C.~~ “Offer for Sale” means an offer to sell a Rental Property that includes all material and commercially reasonable terms.

~~B.~~ “Qualified Nonprofit” means a nonprofit, which is either exempt from federal ~~2~~

~~B.D.~~ income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low-income households, and is certified by the City Manager pursuant to Section 13.89.070.A.

~~C.E.~~ “Qualified Organization” means either a Tenant Organization or a Qualified Nonprofit.

~~D.F.~~ “Owner” means any person, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of a Rental Property. Each Owner shall be jointly and severally responsible for compliance with the requirements of this Chapter.

~~E.G.~~ “Rental Property” means any residential property containing one or more Rental Units and located in the City of Berkeley.

~~F.H.~~ “Rental Unit” means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley. ~~H.~~ consistent with the records of the City of Berkeley Rent Stabilization Board, and subject to the exemptions set forth in Section 13.89.060 ~~“Sale,” “sell,” or “transfer” is defined in Section 13.89.050.~~

~~I.~~ “Sale,” “sell,” or “transfer” is defined in Section 13.89.050. ~~H.I.~~

J. “Supportive Partner” means any person or organization certified by the City Manager pursuant to Section 13.89.080.A to provide Tenant counseling and technical support services on first-time homeownership, obtaining financing for the purchase of Real Properties, assisting in the process of closing on property transactions, the formation and governance of legal and collective ownership structures, and supporting Tenants in

the exercise of their rights pursuant to this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents.

K. ~~I.J.~~ "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of such Rental Unit.

L. ~~J.K.~~ "Tenant Organization" means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant Organization must adopt a Governing Document and Governing Principles and may appoint officers and any other authorized agents specifically designated to execute contracts on its behalf. If only one Tenant of a Rental Property seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit or Group Living Accommodations sleeping quarters are collectively considered to be one Tenant, and such lessees of a Group Living Accommodation or Dwelling Unit must consent to representation by the Tenant Organization, as furthered defined in Administrative Regulations.

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~~Organization, as furthered defined in Administrative Regulations.~~

M. ~~K.L.~~ "Third-Party Purchaser" means any prospective purchaser of a Rental Property other than a Qualified Organization as defined in Paragraph D.

N. ~~L.M.~~ "The City" shall mean the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.

O. ~~M.N.~~ "City Manager" means the City Manager or their designee.

P. ~~N.O.~~ "Governing Document" means a constitution, articles, bylaws, operating agreement, or other writings that governs the purpose and operation of a Tenant Organization and the rights and obligations of its members, which shall include provisions on the Tenant Organization's decision-making processes and appointing officers and other authorized agents to act on its behalf.

~~O.P.~~

Q. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.

R. ~~P.Q.~~ "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.

13.89.040 Applicability.

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This Chapter shall apply to the sale or transfer of all Rental Property in the City of Berkeley, unless otherwise exempted herein.

13.89.050 Sale Defined.

A. "Sale," "sell," or "transfer" is defined as the following:

1. The transfer, in exchange for money or any other thing of economic value, of a present interest in the Rental Property, including beneficial use, where the value of the present interest is the fee interest in the Rental Property, or substantially equal to the value of that fee interest.

2. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c).

3. Multiple transfers of minority interests in the Rental Property which, in effect, result in a transfer of the Rental Property.

13.89.060 Exemptions.

A. Residential Property Types Exempted. The following Rental Properties are not subject to the requirements of this Chapter.

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1. Any Rental Property comprised entirely of owner-occupied Rental Units, including any owner-occupied Single-Family Dwelling.

~~2. Any Rental Property havingthat has no more than one Single Family Dwelling (inclusive of an Accessory Dwelling Unit or a junior Accessory Dwelling Unit) and suchis vacant at the time of sale.~~

~~2.3. A Rental Property is the Ownerscontaining a Dwelling Unit that is Designated as the Owner's Primary Residence, if and only Rental Property in the City of Berkeley. For purposes of this subparagraph only, the "Owner" of such Rental Property must not be any if one of the following set forth under California Civil Code Section 1947.12(d)(5)(A)(i)-(iii) ("AB 1482"): a real estate investment trust, as defined in Section 856 of the Internal Revenue Code; a corporation; or a limited liability company in which at least one member is a corporation.applies:~~

~~a. 2.3-AnyThe Rental Property havinghas no more than one Single- Family Dwelling where the Owner occupies (or intends to reoccupy) as their principal residence, and either the Single- Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single- Family Dwelling- is Designated as the Owner's Primary Residence.~~

~~b. 4. AnyThe Rental Property havinghas no more than one Duplex where the Owner occupies (or intends to reoccupy) as their principal~~

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~~residence, and (1) one of the units and such in the Duplex is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the OwnersOwner's only Rental Property in the City of Berkeley. _~~

~~c. _____ 3.5.—The Rental Property has no more than one Multi-Family Dwelling that contains no more than four Dwelling Units, and (1) one of the units is Designated as the Owner's Primary Residence; and (2) the Rental Property in question is the Owner's only Rental Property in the City of Berkeley. _~~

4. Rental Properties owned by the local, state, or federal government.

5. ~~4.6.~~ Rental Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

6. ~~5.7.~~ Group Living Accommodations subject to monitoring by a Monitoring Organization, as defined in Section 13.42.020.E.

7. ~~6.8.~~ Properties owned by housing cooperatives, if the cooperative entity is owned and controlled by a majority of residents. This definition includes non-profit mutual housing associations and limited equity housing cooperatives.

8. ~~7.9.~~ Properties defined as "assisted housing developments" pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.

B. Transfers Exempted. The following transfers of Rental Properties are not subject to the requirements of this Chapter.

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

~~3.~~ A transfer of legal title or an interest in an entity holding legal title to

a Rental ~~5~~

3. Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Tenants or Qualified Nonprofits under the California Civil Code Sections 2924f-h,

2924m-n, or 2929.3.

4. A transfer of bare legal title into or out of a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. A transfer of a fractional interest in a Rental Property that is less than 50% of an undivided interest in the Rental Property, unless Section 13.89.050.A30 applies.

9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.

10. A transfer of a Rental Property that is the Owner's sole Rental Property and has no more than five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such health care expenses incurred by a spouse, domestic partner, or child of any Owner ("Eligible Persons"), where requiring the Owner to comply with the requirements of this Chapter would result in medical financial hardship to an Eligible Person. For purposes of this subparagraph only, "Owner" shall be limited to a natural person having an undivided interest in the Rental Property of at least 50%. The process and requirements for determining eligibility of this exemption shall be defined in Administrative Regulations implementing this Chapter.

C. Exemption Procedures and Burden of Proof.

C.

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.
2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.
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3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

13.89.070 **Qualified Nonprofits.**

A. **Certification, Term, and Renewal.** The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter. The Qualified Nonprofit shall be a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation that is committed to furthering permanent affordability, democratic residential control, and tenant ownership, as further defined in Administrative Regulations, and shall have demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property and to provide affordable housing for very low and/or low-income households. The City Manager may prescribe additional requirements necessary to effectuate the purpose of this Chapter by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

B. **Conflicts of Interest; Disqualification of Qualified Nonprofits.** A Qualifying Nonprofit may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. A Qualifying Nonprofit may not act as a Supportive Partner if it exercises its right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110. The City Manager shall promptly investigate any complaint alleging that a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Qualified Nonprofit with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Nonprofit has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Qualified Nonprofit.

C. A Qualified Nonprofit is conferred a right of first offer and right of first refusal as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights under this Chapter to the Qualified Nonprofit within the Notice Period;(2) executes a written waiver of the Tenants' rights under this Chapter within the Notice Period; or (3) no Tenant submits a statement of interest pursuant to Section 13.89.090.C. Subsequently, Qualified Nonprofits shall have the same amount of time conferred to Tenants to perform under this Chapter, except that Qualified Nonprofits shall only have the remaining time conferred to Tenants to perform within the Notice Period, and any extensions thereof, or a minimum of 5 days, whichever is greater. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or written waiver of rights pursuant to this Paragraph shall be valid if signed by the majority of Tenants.

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13.89.080 **Supportive Partners.**

A.——Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. Supportive Partners may include but are not limited to Tenant Organizations, Qualified Nonprofits, consultants with expertise in non-profit housing acquisition and formation of cooperative ownership models, attorneys with real estate and contract experience, and real estate agents. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing

A. Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.100 or right of first refusal under Section 13.89.110 must select a Supportive Partner and disclose the Supportive Partner to the City and Owner of the Rental Property within the time set forth in the Notice Period and or the Offer Period and any extensions thereof. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

C. Conflicts of Interest; Disqualification of Supportive Partners. A Supportive Partner may not act in a manner that is adverse to the interests of Tenants occupying a Rental Property that is subject to this Chapter. The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter. If after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that a Supportive Partner has a conflict of interest or has failed to comply with the requirements of this Chapter, the City Manager may limit, suspend, or revoke that organization's certification as a Supportive Partner.

13.89.090 Notice of Intent to Sell; Statement of Interest.

A.——Notice of Intent to Sell. An Owner of a Rental Property shall provide all Tenants (if any) notice of their intent to sell prior to listing or otherwise marketing a Rental Property for sale ("Notice of Intent to Sell"). The Notice of Intent to Sell shall be provided at least 45 days before marketing a Rental Property with threetwo or more Rental Units, or at least 20 days before marketing a Rental Property with two or fewerone Rental UnitsUnit ("Notice Period"). The Notice of Intent to Sell shall be sent to each Tenant address via certified mail and posted at conspicuous locations at the Rental Property and shall include the

A. following:

1. A statement that the Owner intends to sell the Rental Property.
2. A statement describing the rights of Tenants under this Chapter and stating the deadlines for exercising those rights.
3. A list of units by address and the rent due for each unit, if occupied, and any available contact information for each occupant.
4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.
5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

B. Notice to Qualified Nonprofits. On the same date as notice is provided to any Tenants pursuant to Paragraph A, or if there are no Tenants, on the date on which such notice would have been provided pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, the majority of Tenants may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C. The Statement of Interest shall notify the Owner of the Tenants' or Qualified Nonprofit's interest in exercising their rights under this Chapter. In the event that the majority of Tenants submit a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J.; provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit prior to the expiration of the Notice Period. In the event that there are no Tenants in the Rental Property at the time the Owner's Notice of Intent to Sell is provided, and the Rental Property otherwise contains Rental Units that have not been lawfully withdrawn from the rental market, any Qualified Nonprofit that received a copy of the Notice of Intent to Sell pursuant to Paragraph B may submit a Statement of Interest to exercise its rights under this Chapter.

D. Formation of Tenant Organization; Selection of Supportive Partner. If the majority of Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.K and select a Supportive Partner, subject to Section 13.89.080.B. If there is only one Tenant of a Rental Property who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant may exercise the rights of a Tenant Organization under this Chapter but shall not be exempt from the requirement to select a Supportive Partner. A Tenant

Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.100 and 13.89.110.

~~E.~~ Effect of Statement of Interest. Receipt of a timely Statement of Interest shall ~~9~~

~~E.~~ ~~extend the Notice~~ trigger an Offer Period ~~for 60~~ of 30 days. For Rental Properties having ~~10 or more~~ two to nine Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted an additional 30-day extension of the ~~Notice~~ Offer Period ~~upon timely written request.~~ For Rental Properties having ~~20~~ ten or more Rental Units, any Tenant or Qualified Nonprofit that submits a valid Statement of Interest shall be granted a total of two additional 30-day extensions of the ~~Notice~~ Offer Period ~~upon timely written request.~~

F. Prohibition on Marketing Property to Third-Party Purchasers During Notice Period. ~~and/or Offer Period.~~ Prior to the expiration of the Notice Period and/or Offer Period, the Owner of a Rental Property shall be prohibited from listing or marketing the Rental Property for sale or entering into any agreement for the sale or transfer of the Rental Property to Third-Party Purchasers.

13.89.100 Right of First Offer.

A. Right of First Offer. A Tenant or Qualified Nonprofit that submits a Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.090.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.K unless an assignment or waiver of rights have been executed pursuant to Section 13.89.070.C.

~~B.~~ ~~A.B.~~ The Qualified Organization may deliver to the Owner of the Rental Property an offer to purchase the property, together with disclosure of its selected Supportive Partner, at any time prior to the expiration of the ~~Notice~~ Offer Period. The Owner may accept or reject any offer to purchase received from a Qualified Organization.

~~C.~~ ~~B.C.~~ Acceptance of Offer of Purchase. Upon acceptance of any offer to purchase a Rental Property made pursuant to Paragraph A, the Owner and Qualified Organization shall make reasonable and good faith efforts to close the transaction. The Qualified Organization shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 60 days to close the transaction for the sale of property having two to nine Rental Units; and 90 days to close the transaction for the sale of property having two Rental Units; and 120 days to close the transaction for the sale of property having three ~~ten~~ or more Rental Units. The deadline to close a transaction for the sale of Rental Property having one Rental Unit shall be extended for an additional ~~60~~ days from the date of acceptance of the offer if the Qualified Organization provides written documentation that its lender will require a commercial loan for the purchase of the Rental Property. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or diligently pursuing the completion of other requirements to close the transaction. Nothing in this Paragraph shall prevent the Owner and the Qualified Organization for agreeing to further extend the deadline to close the transaction.

C.D. Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the NoticeOffer Period, (2) the expiration of the NoticeOffer Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally accept offers from a

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D. Third-Party Purchaser, subject to the requirements of Section 13.89.110. The requirements of Section 13.89.110 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

13.89.110 Right of First Refusal.

A. Disclosure of Offer of Sale. The Owner shall disclose any Offer of Sale received from a Third-Party Purchaser to any Qualified Organization that exercised a valid right of first offer under Section 13.89.100, and shall provide said Qualified Organization a right of first refusal pursuant to the requirements of this Chapter. The Owner shall disclose to each Qualified Organization eligible to exercise a right of first refusal under this Section all material terms of any Offer of Sale of the Rental Property, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser. Any written offer received by the Owner shall be provided to said Qualified Organizations; provided, however, that any confidential information not necessary to comply with the requirements of this Paragraph may be redacted from such offers.

B. Right of First Refusal. Any Qualified Organization that exercised a valid right of first offer under Section 13.89.100 may exercise a right of first refusal and accept the Offer for Sale of the Rental Property within the time period set forth in Paragraph C. To exercise its right of first refusal, the Qualified Organization must accept all material terms of the Offer for Sale; provided, however, the financing of the Qualified Organization's purchase shall not be considered a material term of the Offer for Sale so long as it does not affect the net value of the Sale to the Owner. Specific obligations of material terms of sale are sale price, timeline to close, and contingencies.

C. Time to Exercise Right of First Refusal. The Owner shall provide any Qualified Organization eligible to exercise a right of first refusal under this Section at least 10 days to accept the Offer of Sale of a Rental Property having ~~no more than two~~one Rental ~~Units~~Unit, or at least 30 days to accept the Offer of Sale of Rental Property having ~~three~~two or more Rental Units. The acceptance of an Offer of Sale by any Qualified Nonprofit extinguishes any right of first refusal of other eligible Qualified Nonprofits.

D. Time to Close. Upon acceptance of the Offer of Sale, the Qualified Organization ~~shall have at least 30 days to close the transaction for the sale of a property having one Rental Unit; 90 days to close the transaction for the sale of property having two Rental Units; and 120 days to close the transaction for the sale of property having three or more Rental Units.~~must agree to the material terms of the third-party offer. The Qualified Organization shall be entitled to reasonable extensions of the time to close not to exceed 30 days upon demonstrating that it is diligently pursuing financing or completing other requirements to close the transaction.

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E. Rejection of Offer or Failure to Close. If each Qualified Organization entitled to receive an Offer of Sale rejects or fails to accept such offer of sale within the time set forth in Paragraph C or if a Qualified Organization that accepts an Offer for Sale fails to close the transaction within the time set forth in Paragraph D, the Owner may immediately proceed with the sale or transfer of the Rental Property to a Third-Party Purchaser.

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F. Notwithstanding any other provision of this Section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Qualified Organization exercises a right of first refusal conferred by this Chapter.

13.89.120 Contract Negotiation.

A. Bargaining in good faith. The Owner and any Tenant, Tenant Organization, and/or Qualified Organization shall bargain in good faith regarding the terms of any Offer for Sale. Any one of the following constitutes prima facie evidence of bargaining without good faith:

1. The failure of an Owner to offer a Tenant, Tenant Organization, or Qualified Organization a price and other material terms at least as favorable as that offered to a Third-Party Purchaser.
2. Any requirement by an Owner that a Tenant, Tenant Organization, or Qualified Organization waive any right under this Chapter.
3. The intentional failure of an Owner, Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter.

~~B.~~ B. Termination of rights. The intentional failure of any Tenant, Tenant Organization, or Qualified Organization to comply with the provisions of this Chapter shall result in the termination of their rights under this Chapter.

13.89.130 Incentive to Accept Offer from Qualified Organization.

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.100 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of half of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

B. Exempt Properties. An Owner of a Rental Property that is exempt from this Chapter may comply with the requirements of this Section, and shall be entitled to reimbursement of real property transfer tax pursuant to Paragraph A upon sale of the Rental Property to a Qualified Organization.

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13.89.140 Confidential Information Protected.

Any information exchanged between an Owner, Tenants, or Qualified Organizations under this Chapter shall be kept confidential to the greatest extent permitted by law. This Section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, or Qualified Organization, or to the City of Berkeley

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or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

13.89.150 Prohibited Conduct.

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.060 is prohibited unless the Owner complies with Sections 13.89.100 and 13.89.110.

B. A Tenant or Qualified Organization shall not buy or sell any right afforded to them under this Chapter or sell a waiver of any such right, nor shall any Tenant or Qualified Organization assign or otherwise transfer any such right except as authorized to do so under this Chapter.

C. An Owner shall not (1) coerce a Tenant or Tenant Organization to waive their rights under this Chapter; (2) retaliate against or harass a Tenant seeking to exercise their rights under this Chapter; or (3) engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement to shorten the time periods provided for exercise of any right afforded under this Chapter. Nothing in this Paragraph shall prohibit an agreement to extend the deadlines set forth herein.

13.89.160 Complying Anew with the Right of First Offer.-

An Owner shall comply anew with the Right of First Offer if one_ of the following occur:

A. The Owner decides not to sell the Rental Property after providing the Notice of Intent to Sell, and then proceeds to undertake a Sale again as defined in Section 13.89.050; or the Owner cancels a contract of sale entered into with Tenant or Qualified Organization after escrow has opened.

B. 365 days have elapsed since a Tenant or Qualified Organization cancelled a contract of sale entered into with the Owner after escrow has opened, and the Owner has not sold the Rental Property to a Third-Party Purchaser.

C. 90 days have elapsed from the date of an Owner's rejection of an offer from a Tenant or Qualified Organization pursuant to Section 13.89.100.B and the Owner has not provided an Offer of Sale to the Tenant or Qualified Organization pursuant to Section

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13.89.110.A; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a ~~ThirdParty~~Third-Party Purchaser.

D. 180 days have elapsed since the expiration of ~~a Noticean Offer~~ Period and any extensions thereof and no Tenant or Qualified Organization submitted a Statement of Interest or offer and the Owner has not sold the Rental Property to a Third-Party Purchaser; however, the Owner may submit a notarized statement to the City to extend this time period if the Owner is still actively seeking to sell the Rental Property to a Third-Party Purchaser.

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13.89.170 Financial Assistance.

The City Manager shall develop guidelines for providing financial assistance to allow for the acquisition of Rental Properties pursuant to this Chapter. Financial assistance may be provided to Tenants, Tenant Organizations, or Qualified Nonprofits. Nothing in this provision commits the City Council to providing a specified level of funding for the acquisition of Rental Property under this Chapter.

13.89.180 Price Stabilization; Tenant Protections.

A. Affordability Restriction. Except as otherwise provided herein, any Rental Unit acquired pursuant to this Chapter shall be subject to a recorded affordability restriction that ensures that each Rental Unit acquired is available to very low-, low-, or moderate-income renters or buyers in perpetuity. The City Manager shall set standards for the provisions of affordable units by Administrative Regulation and for the enforcement of the requirements of this Section.

B. Exemptions from Affordability Restriction.

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the guidelines established under Section 13.89.170.

2. A limited equity housing cooperative that ~~meet~~meets the requirements of Civil Code Sections 817 and 817.1 is exempt from the requirements of Paragraph A.

~~A.~~—The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental

Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized over the life of the improvement. In no event, however, shall the allowable annual

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C. adjustment be less than zero (0%) or greater than seven percent (7%).

D. Rental Properties acquired pursuant to this Chapter and converted to condominiums or stock cooperatives (including limited equity housing cooperatives that meet the requirements of Civil Code Sections 817 and 817.1) subject to a recorded affordability restriction under this Section shall be exempt from the requirements of Section 21.28.070 (“Affordable housing mitigation fee”).

E. Non-Purchasing Tenants, Life Lease. Any Tenant that does not join a Tenant Organization that acquires a Rental Property pursuant to this Chapter must be offered a life lease for their Rental Unit so long as the Rental Unit remains their principal residence.

13.89.190 Anti-Speculation Penalty.

A. Purpose. Tenants, Tenant Organizations, and Qualified Nonprofits acknowledge the displacement prevention, affordable housing preservation, and neighborhood stability purposes of this Chapter, and as a condition for the rights and benefits conferred to them under this Chapter, agree not use any purchased Rental Property for speculative purposes. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must be conditioned on the terms described herein. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Section.

B. Minimum Term and Owner-Occupancy Requirement. Any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) that is not subject to the recorded affordability restrictions described in Section 13.89.180A must not resell the Rental Property, or any separate ownership interests in the Rental Property, within 36 months of acquiring it. From the date of the initial purchase of the Rental Property up until 36 months, the Tenant must submit an annual owner-occupancy certification to the City demonstrating the use of the acquired

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Rental Property as their primary residence. The requirements of this Section shall materialize as a restrictive covenant placed on the recorded title deed to the purchased Rental Property that runs with the land and is enforceable by the City against the Tenant or Tenant Organization. The failure to submit an annual owner-occupancy certification to the City is a violation of this Chapter that shall be subject to the civil penalties described in Section 13.89.210 (Enforcement). The City may create Administrative Regulations for further guidelines concerning any exemptions from the requirements of this Section only in the event of an exigent circumstance.

C. Penalty. The City shall impose a penalty on any profits gained from the transfer of the purchased Rental Property, or any separate ownership interests in the Rental Property, prior to the expiration of the 36-month term described herein. The City shall create Administrative Regulations concerning the procedures for imposing such a penalty, which shall include notice to the alleged violator and the opportunity to contest the penalty at a hearing. The City shall establish such penalty as follows:

1. When the transfer occurs less than 12 months from the initial purchase date, 20 percent of the profits gained from the resale of the Rental Property or the separate ownership interest in the Rental Property;
2. When the transfer occurs more than or equal to 12 months but less than 24 months from the initial purchase date, 15 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property; or
3. When the transfer occurs more than or equal to 24 months but less than 36 months from the initial purchase date, 10 percent of the profits gained from the transfer of the Rental Property or the separate ownership interest in the Rental Property.

D. Required recordings and filings.

1. All covenants created in accordance with this Section shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the purchased Rental Property is located and shall contain a legal description of the purchased property, indexed to the name of the Tenant or Tenant Organization who purchased the Rental Property as grantee.

2. The City may engage a third-party monitoring agent to monitor the compliance of the annual owner occupancy certification.

13.89.200 Implementation.

A. The City Manager shall adopt Administrative Regulations necessary to implement the requirements of this Chapter, and may adopt additional rules and regulations for purposes of administering this Chapter, including but not limited to rules and regulations governing the reporting of information regarding transactions subject to the requirements of this Chapter.

B. This ordinance shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

~~C. The City Manager~~C. Supportive partners shall report annually on the implementation of this Chapter to the City Council or to such City Council Committee as the City Council may designate. ~~The City Manager's report shall include~~Supportive partners shall collect and analyze data in partnership with tenants or tenant organizations to evaluate the number and types of sales of tenant-occupied properties including whether purchased by a Qualified Organization or Third-Party Purchaser; the number of Qualified Organizations that purchase Real Property pursuant to this Chapter; the number and types of units covered by this Chapter; and other data and information relevant to evaluating the effectiveness of this Chapter in creating and preserving affordable housing for residents in the City of Berkeley and in preventing displacement of City of Berkeley tenants.

~~C.D.~~ The City Manager or their designee shall provide counseling and technical assistance to Owners regarding the requirements of this Chapter to assist in achieving compliance.

13.89.200210 Enforcement.

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.~~190200~~.A shall be subject to administrative citation under Chapter 1.28.

B. The City Attorney, any Tenant of a Rental Property subject to this Chapter, or a Qualified Organization eligible to purchase Rental Property under this Chapter may bring a civil action to enforce this Chapter, and shall be entitled to the remedies set forth in this Section to the greatest extent permitted by law.

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed \$1,000 per day of violation. Each failure to provide the required notice or disclosure under this Chapter shall be considered a separate violation for each Rental Unit on a Rental Property.

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D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may order that an Owner of Rental Property comply with the requirements of this Chapter.

13.89.210220 Severability

If any word, phrase, clause, sentence, subsection, section, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason by a decision of a court of competent jurisdiction, then such word, phrase, clause, sentence, subsection, section, or other portion, or the prescribed application thereof, shall be severable, and the remaining

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provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words had been declared invalid or unconstitutional.

13.89.230 Effective Date.

A. Section 13.89.100 shall take effect January 1, 2024.

B. Properties with five or more housing units will be subject to Section 13.89.110 on January 1, 2024.

C. Properties with four or fewer housing units, pending analysis findings, shall be subject to section 13.89.110 on January 1, 2027.

D. All other provisions in this ordinance are effective January 1, 2024.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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Kate Harrison
Councilmember, District 4

CONSENT CALENDAR
April 11, 2023

To: Honorable Mayor and Members of the City Council
 From: Councilmember Harrison
 Subject: Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

RECOMMENDATION

Refer \$579,000 to the June 2023 Budget Process for annual City staffing costs and for allied non-profits to implement and administer programs associated with acquisition and prevention of displacement from multi-family housing including the Small Sites Program, investments related to the Empty Homes Tax, and administrative implementation of the proposed Berkeley Community and Tenant and Opportunity to Purchase Act (COPA/TOPA):

Community Development Project Coordination for acquisition capacity of 3-6 additional projects per year (HHCS)	1.5 FTE (1 FTE for the Empty Homes Tax and 0.5 FTE for COPA/TOPA) - \$318,915* *Includes \$4,500 to support office, technology, and training needs
Community Development Project Coordination for COPA/TOPA (HHCS)	0.5 FTE - \$108,088
Deputy City Attorney II	0.35 FTE - \$101,884
Qualified Organization Capacity Support for two additional projects per year (in addition to existing allocation of \$100,000 to the Bay Area Community Land Trust)	\$50,000

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing and displacement crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been

Referring \$579,000 to the June 2023 Budget Process for Staffing Costs Associated with Acquisition of and Prevention of Displacement from Multi-Family Housing

particularly burdensome in a city where 58% of residents are renters.¹ While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build or acquire sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.² Unfortunately, Alameda County's housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.³

As documented by the Rent Board-sponsored Anti-eviction Mapping Project Report, the crisis has contributed to extreme displacement, with the City losing "49.2% of its Black population between 1990 and 2020," and "only 30% of households below 80% of Area Median Income (AMI) occupy[ing] units that are [] affordable to them."⁴

The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions including enhancing the resources of the Small Sites Program to support acquisitions under the Empty Homes Tax and COPA/TOPA, and staffing to implement and administer the COPA/TOPA. The market will not do this on its own. Acquiring and preserving affordable housing is key to reaching the housing and equity goals codified in Berkeley's recently adopted 2023-2031 Housing Element and strategic plan because this is a cost-effective way to ensure the city does not lose the affordable homes it already has while it invests in producing more affordable homes overall.⁵ The City of Berkeley is pursuing a number of strategies to acquire properties and make them permanently affordable but is forced to do so without adequate resources for City staff, its non-profit partners and for acquisition of properties.

Before the 2008 financial crisis, Berkeley had a robust housing department. The department was downsized and merged with the health department to form Health, Housing, and Community Services (HHCS). Despite limited housing staff, the Department has excelled in face of unprecedented Council demand for housing and acquisition. In contrast to other housing strategies, acquiring existing properties does

¹ Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>.

² Id.

³ California Housing Partnership Housing Needs Dashboard, 2019, <https://chpc.net/housingneeds/?view=37.405074,-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production>.

⁴ "Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity," 2022.

⁵ *City of Berkeley Housing Trust Fund and Small Sites Program Guidelines*. <https://berkeleyca.gov/sites/default/files/2022-04/Housing-Trust-Fund-Guidelines.pdf>.

not result in carbon-intensive demolition and it maximizes continuity and price security, minimizing displacement of long-term and low-income residents. However, to meet this demand in the face of the City's new Housing Element and other policies, it is critical to bolster staffing in the housing division.

BACKGROUND

The Small Sites program, which acquires and renovates occupied, multifamily rental properties and converts into permanently affordable units or non-equity housing cooperatives, has successfully purchased properties, most recently 13 units of affordable housing on Solano Avenue and eight units in South Berkeley on a church property.⁶ The program has been a critical piece of Berkeley's affordable housing strategy through the acquisition and rehabilitation of rental units. The sites guarantee below market rate rents.

On November 8, 2022 nearly two thirds of Berkeley voters approved Measure M, the Empty Homes Vacancy Tax, intended to incentivize owners of housing property to bring units back on the market and discourage speculation. The law will go into effect beginning January 1, 2024 and is expected to identify thousands of vacant units that could be candidates for acquisition, while also generating millions of dollars in revenue for housing acquisition and production. In addition to the staff needed to simply administer the tax, the City needs additional staff to help vet potential candidate properties identified as vacant and possibly available for acquisition. As a general tax, funds from the Empty Homes Tax will be placed into the General Fund. However, the voters in passing Measure M approved the non-binding intention of using the revenue in ways consistent with the Housing Trust Fund as well as other municipal purposes at the discretion of the Council.⁷

In addition, on March 10, 2020, COPA/TOPA was first presented to the Berkeley City Council's Land Use, Housing and Economic Development Policy Committee. The ordinance was heard again in March and May of 2021 before passing out of Committee on May 20, 2021 with a qualified positive recommendation. The Mayor held an informational work session on COPA/TOPA on January 27, 2022.⁸ The ordinance would create legal rights for tenants to make the first offer or match any final offer to buy their home whenever the owner chooses to put it up for sale. Alternatively, tenants could assign these rights to an affordable housing developer so that it can prevent the displacement of the tenants by acquiring the property and preserving its affordability. COPA/TOPA would also provide technical assistance, education, and financing to help make these purchases possible.

⁶ Savidge, Nico. "To Boost Affordable Housing, Berkeley Looks to Buy, Not Just Build." *Berkeleyside*, 19 Sept. 2022, <https://www.berkeleyside.org/2022/06/05/berkeleys-affordable-housing-acquisition-rehabilitation-small-sites>.

⁷ As discussed in the August 2022 Council report that accompanied the Empty Homes Tax and the tax ordinance.

⁸ Mayor Jesse Arreguín, "Tenant Opportunity to Purchase Act, Adding B.M.C. Chapter 13.89," January 27, 2022, <https://berkeleyca.gov/sites/default/files/2022-04/2022-01-27%20Item%2001%20Tenant%20Opportunity%20to%20Purchase%20Act.pdf>

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Thus, COPA/TOPA provides pathways to stabilize existing housing for tenants and preserve affordable housing, allows tenants to become first-time homeowners, and facilitates opportunities for democratic ownership of residential property. To be effective, COPA/TOPA requires a well-funded staffing infrastructure to administer and enforce it. Education, legal and technical assistance to tenants is also needed during implementation to ensure the rights that COPA/TOPA provides can be meaningfully exercised.

FUNDING DETAILS

HHCS' housing services are currently provided by two units; one unit, the Housing Development Unit, is dedicated to affordable housing development through the City's Housing Trust Fund, including the Small Sites Program. The unit has a total of 3.5 FTE. None of the staff are dedicated specifically to Small Sites. Instead, this program has been absorbed into the workload of the unit alongside other housing development projects.

The Department reports that at peak times ahead of multi-year predevelopment or development processes, each Small Sites Program project demands up to 0.5 FTE. The additional 1.5 FTE contemplated in this item could assist HHCS with expanding the capacity of the program and using data from the Empty Homes Tax to identify properties for acquisition and rehabilitation by the City or its partners, including the Land Trust, non-profit developers and the Berkeley Housing Authority.

Current Small Sites Program duties include, but are not limited to:

- Managing projects funded through the Small Sites Program, including acquisition, rehabilitation or new construction by other organizations (typically nonprofit developers);
- Coordinating the disposition of City-owned property for development as affordable housing as needed;
- Developing competitive solicitations (NOFAs, RFPs, RFQs) for development funding as well as consultant services;
- Providing technical assistance, reviewing funding applications, underwriting projects, and making funding recommendations;
- Preparing housing loan or grant agreements using boilerplate documents and negotiate revisions with borrowers. Researching and drafting other types of agreements as needed;
- Monitoring projects during predevelopment and construction. Reviewing and approving draw requests and work with the Department's fiscal unit to disburse funds;
- Preparing reports and presentations for the City Council and Housing Advisory Commission.

In addition, this budget referral includes the approximately .5 FTE as proposed by the Department in order to implement additional part-time support from HHCS to coordinate the acquisition of properties in connection with COPA/TOPA.

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The .5 FTE Community Development Project Coordinator duties will include:

- Program Design and Development, including coordinating with CAO to develop process, procedures, forms, etc.
- Developing and maintaining a webpage with certified Qualified Organizations (QO) and Supportive Partners (SP), active seller notices to tenants, and tenant/QO statements of interest
- Certifying and renewing QOs and SPs monitor and evaluate them on an ongoing basis
- Advising tenants and QOs on applying for SSP funding
- Developing targeted materials and provide ongoing education for landlords and tenants.
- Organizing trainings, meetings and webinars, and act as liaison to professional and civic groups, community organizations, and individuals

The City Attorney’s Office also indicates it will need additional resources to implement COPA/TOPA, as follows:

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

***This is strictly related to ordinance implementation and does not reflect any staffing required for legal challenges to the ordinance

Finally, this request also includes an additional \$50,000 per year to assist Qualified Organizations with staff support to acquire up to two projects per year. The \$25,000 per project line item is included to build sufficient project management capacity for partners with the City. HHCS already acquires approximately two projects per year through the Small Sites Program and provides \$100,000 in capacity support to the Bay Area Community Land Trust. Berkeley will need to support additional start-up capacity and allow for ongoing support through pre-development funds related to specific small sites and/or COPA/TOPA projects.

Thanks to the foresight of Berkeley voters, the Council and staff, the Council has a wide variety of General Fund, Special Tax, and fee revenue that can be used to acquire housing and maintain it as affordable for current residents and future generations. The Measure U1 tax, the Housing Trust Fund, Measure O, and Measure M Vacancy Tax all have a strong nexus to property acquisition.

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It is in the public interest to consider funding staff and non-profit support for acquisition of housing to remain perpetually affordable as part of the June, 2023 budget process.

FISCAL IMPACTS OF RECOMMENDATION

\$579,000 per year in staffing costs to enhance the Small Sites Program, fund programmatic and investment of Empty Homes Tax proceeds, and implement and administer COPA/TOPA.

ENVIRONMENTAL SUSTAINABILITY

Acquiring and rehabilitating existing housing stock can be a lower carbon alternative to demolition and building new affordable housing.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

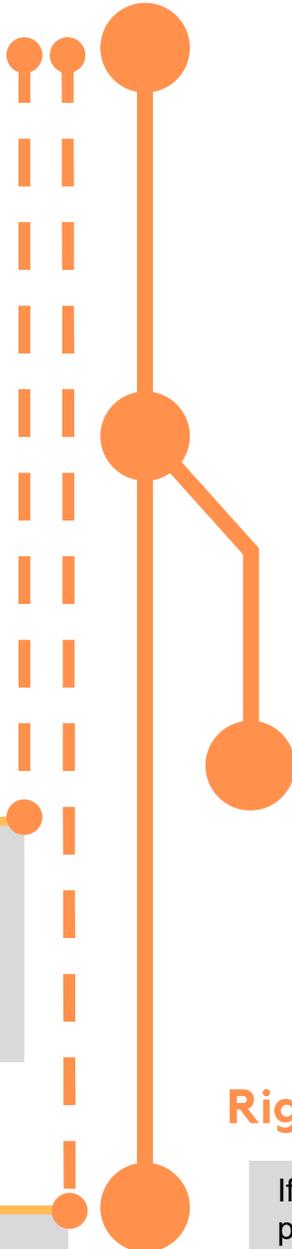


TOPA Timelines

Right of First Offer:

Total time to close:

The maximum time required for a TOPA sale will depend on the size of the property and the phase of the process in which the owner accepts an offer.



1 unit: 80 days
2-9 units: 165 days
10+ units: 255 days

1 unit: 60 days
2-9 units: 135 days
10+ units: 165 days
+ time on market and time to close

Step 1

Seller gives tenants and Qualified Nonprofits (QNP) **notice of intent to sell**.

Tenants or QNPs deliver **Statement of Interest** to Owner. If they do not, TOPA process ends; seller free to list on market/sell to 3rd party buyers.

Time to submit **statement of interest**:
1 unit: 20 days | 2+ units: 45 days

Step 2

Tenants/QNP who submitted a **statement of interest**, can submit an **offer**. Seller free to accept, counter, or reject offer. If tenants/QNP submits no offer, TOPA process ends.

Time to submit **offer**: 1 unit: 30 days | 2-9 units: 60 days
10+ units: 90 days

Step 3

If seller accepts offer, then parties execute contract, triggering the **closing** phase (seller eligible for transfer tax break). If offer rejected, seller is free to get 3rd party offer (subject to Right of First Refusal).

Time to **close**: 1 unit: 30 days | 2-9 units: 60 days
10+ units: 90 days (for commercial loans: additional 30 days)

Right of First Refusal:*

If seller wants to accept a **3rd party offer**, seller of building* must provide tenants/QNP (whoever made the initial offer in **Step 2**) with opportunity to meet price and terms of 3rd party offer. If no tenant/QNP made offer in Step 2, then this obligation does not apply.

Time for buyer to **accept** price/terms: 1 unit: 10 days
2+ units: 30 days

* Applies only to buildings with 5 or more units in first 3 years of policy

