



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING**

**Thursday, September 17, 2020
10:30 AM**

Committee Members:

Councilmembers Ben Bartlett, Kate Harrison, and Lori Droste
Alternate: Mayor Jesse Arreguin

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY
THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/83924389951>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **839 2438 9951**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - July 17, 2020

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

- 2. Berkeley Economic Dashboards and Demographic Profile Update**
From: City Manager
Referred: March 10, 2020
Due: December 31, 2020
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

Committee Action Items

3a. Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

From: Homeless Commission

Referred: March 30, 2020

Due: December 31, 2020

Recommendation: The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

Financial Implications: See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

3b. Companion Report: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

From: City Manager

Referred: March 30, 2020

Due: December 31, 2020

Recommendation: The City Manager thanks the Homeless Commission for their concern regarding potential discrimination against residents trying to utilize rental assistance vouchers in Berkeley. She recommends, however, taking no action on the Homeless Commission recommendation since the City already funds legal assistance for low-income residents that may be used to obtain relief under BMC 13.31.

Financial Implications: None

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

4. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

From: Councilmember Harrison (Author)

Referred: July 28, 2020

Due: February 14, 2021

Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

Financial Implications: See report

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

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

5. **Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89**

From: Mayor Arreguin (Author)

Referred: February 24, 2020

Due: January 1, 2021

Recommendation: 1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and

2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:

1. Developing Administrative Regulations;

2. Preparing an implementation strategy;

3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;

4. Determining necessary staffing for program administration and hearing officers for adjudication;

5. Timelines for project “roll-out”;

6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;

7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment

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*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 10, 2020.



Mark Numainville, City Clerk

## **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
REGULAR MEETING MINUTES**

**Friday, July 17, 2020  
10:30 AM**

Committee Members:

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**Roll Call:** 10:33 a.m. Councilmembers Bartlett, Harrison, and Droste present.

**Public Comment on Non-Agenda Matters:** 1 speaker.

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - March 5, 2020**

**Action:** M/S/C (Bartlett/Harrison) to approve the March 5, 2020 minutes.

**Vote:** All Ayes.

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### 2. **Berkeley Economic Dashboards and Demographic Profile Update**

**From: City Manager**

**Referred: March 10, 2020**

**Due: December 31, 2020**

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

**Action:** 1 speaker. Discussion held. Item rescheduled to the next scheduled Land Use, Housing, and Economic Development policy committee meeting.

### 3a. **Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure**

**From: Homeless Commission**

**Referred: March 30, 2020**

**Due: December 31, 2020**

**Recommendation:** The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

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**Financial Implications:** See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400



## Committee Action Items

### 3b. Companion Report: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

**From:** City Manager

**Referred:** March 30, 2020

**Due:** December 31, 2020

**Recommendation:** The City Manager thanks the Homeless Commission for their concern regarding potential discrimination against residents trying to utilize rental assistance vouchers in Berkeley. She recommends, however, taking no action on the Homeless Commission recommendation since the City already funds legal assistance for low-income residents that may be used to obtain relief under BMC 13.31.

**Financial Implications:** None

Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400

**Action:** 3 speakers. Discussion held. M/S/C (Droste/Harrison) to reschedule the item to the next Land Use, Housing, and Economic Development policy committee meeting to hear back a report from the Mayor and get more information from staff.

**Vote:** All Ayes.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

### 4. Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

**From:** Mayor Arreguin (Author)

**Referred:** February 24, 2020

**Due:** January 1, 2021

**Recommendation:** 1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and

2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:

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5. Timelines for project "roll-out";

6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;

7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment

**Action:** M/S/C (Droste/Bartlett) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 11:44 a.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on July 17, 2020.

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Sarah K. Bunting, Assistant City Clerk

## Communications

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*



Office of the City Manager

02

INFORMATION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Economic Development Manager

Subject: Berkeley Economic Dashboards and Demographic Profile Update

INTRODUCTION

The Office of Economic Development (OED) is pleased to present the Citywide Economic Dashboard update for December 2019 (Attachment 1), the updated Commercial District Dashboards (Attachment 2), and a Demographic and Economic Profile update (Attachment 3).

CURRENT SITUATION AND ITS EFFECTS

Over the past five years, Berkeley has experienced economic growth comparable with that of the Bay Area region. By a variety of indicators, Berkeley's economy continued to perform well through the start of 2019 and the final quarter of 2018. However, there are also some indicators of slowed or flattening growth, such as decreasing sales tax revenues. Key findings include:

- **Berkeley's unemployment rate remains extremely low.** Berkeley's average unemployment rate for 2019 is 2.4% as compared with 2.8% in 2018. In comparison, Alameda County's average unemployment rate in 2019 is 3.1%, while California's is 4.2%.
- **Berkeley's sales tax performance was essentially flat from FY2018 to 2019.** The year-end cumulative total sales tax revenues increased by 0.7% from Q2 2018 to Q2 2019. This trends behind both the 9-county region (which increased by 2.5%) and the state (+2.5%). Quarter over quarter, sales tax revenues in Q2 2019 were 1.3% lower than in Q2 2018, including decreases in sales tax generated by Retail activities (-2.2%) and by the Construction sector (-6.3%).
- **Office vacancy rates in Berkeley remain low.** Overall office availability in Berkeley increased six-tenths of a percent from Q2 2019 (4.2%) to Q3 2019 (4.8%). For context, the East Bay office market area average during this same period was 10.3%. Demand remains high in Berkeley while inventory continues to remain low; asking office rents in the City average \$3.30 per square foot.

- **The average citywide ground floor commercial vacancy rate was up slightly to 5.4% in Q3 2019 (from 5.0% in Q4 2018).** In particular, the Downtown Berkeley and West Berkeley districts have increased commercial vacancy, owing to a small number of large square footage vacancies (2,000-10,000 square feet). The newly vacant spaces are being actively marketed for tenants and new leases are currently under development. In each of the other seven districts tracked in the database, vacancy rates have stayed level or slightly decreased.
- **Retail in commercial districts, as a share of total square footage, continues to decline.** The percentage of ground floor commercial square footage occupied by retail uses has decreased from 42.8% in 2015 to 37.7% in 2019. As retail has declined, ground floor commercial spaces have been increasingly occupied by office uses, personal services, food and beverage services, and other non-retail uses (including non-conforming uses, spaces that are leased but inactive, and pending development projects).
- **Housing costs in Berkeley remain high for buyers and for renters, consistent with the Bay Area region overall.** In 2019 Berkeley's median home sale prices remain higher than its neighboring communities, driven by a strong overall economy and limited housing inventory. As of September 2019 the median sale price for a single family home was \$1.24 million. However, prices in Albany and Alameda increased by a third in the past year, while Berkeley's home prices have remained relatively stable.

## BACKGROUND

In a December 2015 information report to City Council, OED released a set of new publications, the Citywide Economic Dashboard and Commercial District Dashboards, which analyze a wide variety of economic trends and indicators in Berkeley. Attached to this report is an updated version of the Citywide Economic Dashboard and Commercial District Dashboard for December 2019 (Attachments 1 and 2). These dashboards are designed to make current economic and community data and information more accessible to Council, City staff, and community stakeholders. The reports provide updated information through Q3 2019. OED staff will continue to update these dashboards on a semi-annual basis, as staffing allows, and has posted the most recent version on the City's website at <http://www.ci.berkeley.ca.us/oed/reports/>.

Also included in this package of publications is an update to the Citywide Demographic and Economic Profile (Attachment 3) which provides information about Berkeley's population, business sectors and amenities. This information helps investors, business owners, and other stakeholders become more familiar with the Berkeley market.

To produce these publications, OED staff compiled and analyzed a wide variety of data sources including the American Community Survey (US Census Bureau), the Quarterly Census of Employment and Wages (Bureau of Labor Statistics), Monthly Labor Force

Data (California Employment Development Department), commercial real estate data (Newmark Cornish & Carey), housing market MLS data (Berkeley Rent Stabilization Board, Redfin) and sales tax data (MUNI Services/Avenu Insights). Staff also analyzed data from City databases including business licenses, building permits and planning permits, and City publications such as rent board reports and start up information from the Berkeley Startup Cluster, and those of Berkeley's startup incubators and accelerators. Finally, in the third quarter of 2019 OED staff updated its periodic occupancy survey of ground floor commercial spaces in commercial districts around the City (Attachment 2). Due to a lag in availability of some data, many of the findings presented in the attached publications are most relevant to beginning of 2019 or late 2018, but others reflect the third quarter of 2019. These publications support the City's Strategic Plan, advancing our goal *to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.*

#### ENVIRONMENTAL SUSTAINABILITY

Many of the City's environmental sustainability goals are inextricably tied to the overall health of the City's economy. Staff believes that the continued pursuit of sustainable economic goals, represents a strength for Berkeley and demonstrates a competitive advantage of the City and the region.

#### POSSIBLE FUTURE ACTION

OED staff will, as directed by Council through previous and future referral items, partner with other City departments and community partners to implement programs and policies that foster a dynamic, sustainable, and locally-based economy.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Actions that facilitate increased economic activity tend to boost revenues related to sales tax and property tax, and thus have positive fiscal impacts on the city.

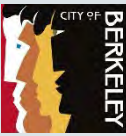
#### CONTACT PERSON

Jordan Klein, Economic Development Manager, (510) 981-7534

Eleanor Hollander, Economic Development Project Coordinator, (510) 981-7536

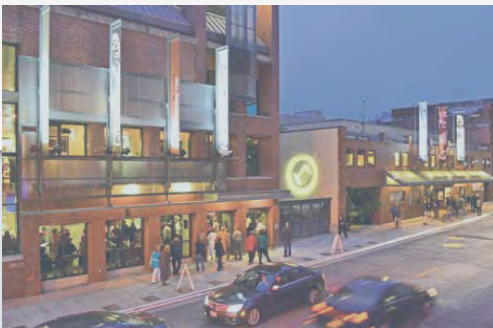
#### Attachments:

- 1: Citywide Economic Dashboard
- 2: Commercial District Dashboards
- 3: Citywide Demographic and Economic Profile



city of

# BERKELEY



## Economic Dashboard

December 2019

Office of Economic Development

**Disclaimer:** The City of Berkeley makes no representations about the suitability of the information contained in this document for any purpose. The information is provided "as is" without warranty, either express or implied, of any kind. The published document may contain technical inaccuracies or typographical errors. Changes are periodically added to the information herein. The City of Berkeley may make improvements and/or changes to the document at any time. **14**

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# EMPLOYMENT:

## labor force & employment figures

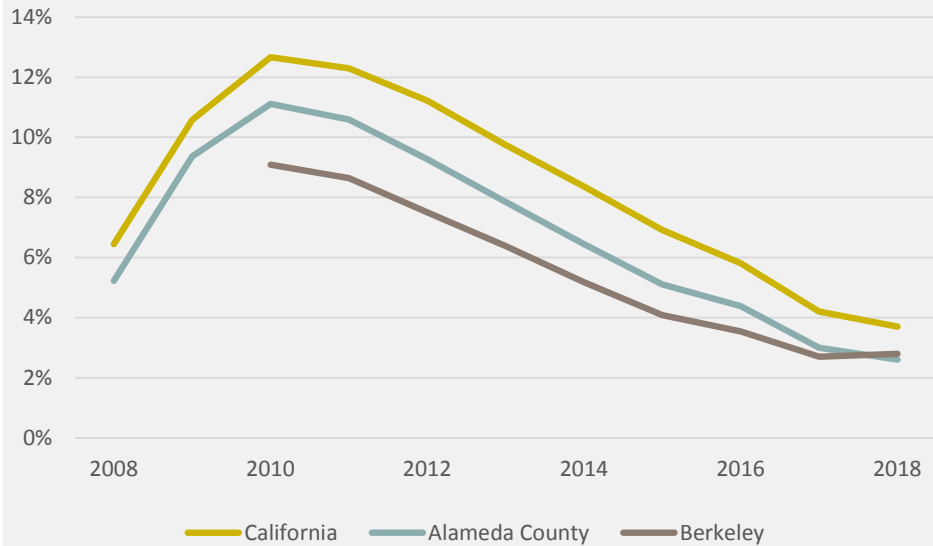


### City of Berkeley Averages, 2016-2018

| Year | Labor Force | Employed Residents | Unemployment Rate |
|------|-------------|--------------------|-------------------|
| 2016 | 62,166      | 60,000             | 3.5%              |
| 2017 | 63,700      | 61,900             | 2.7%              |
| 2018 | 64,700      | 62,900             | 2.8%              |

Source: CA Employment Development Department, Labor Market Information Division

### Unemployment Rates, Averages 2000-2018



Source: CA Employment Development Department (EDD), LMI Division, Reported Q4 2018

### Employment & Jobs: Fast Facts

- The East Bay (Oakland, Berkeley, Hayward) average unemployment rate for Q2 2019 is 3%.
- In comparison, Alameda County's average unemployment rate in Q2 2019 is 3.1%, while California's is 4.2%.
- Between July 2018 and July 2019, the total number of jobs in the East Bay increased by 21,600 jobs, or 1.8%.

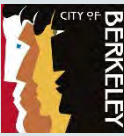


Images clockwise from left: Nabolom Bakery, UC Berkeley, UCB, Slingfin.

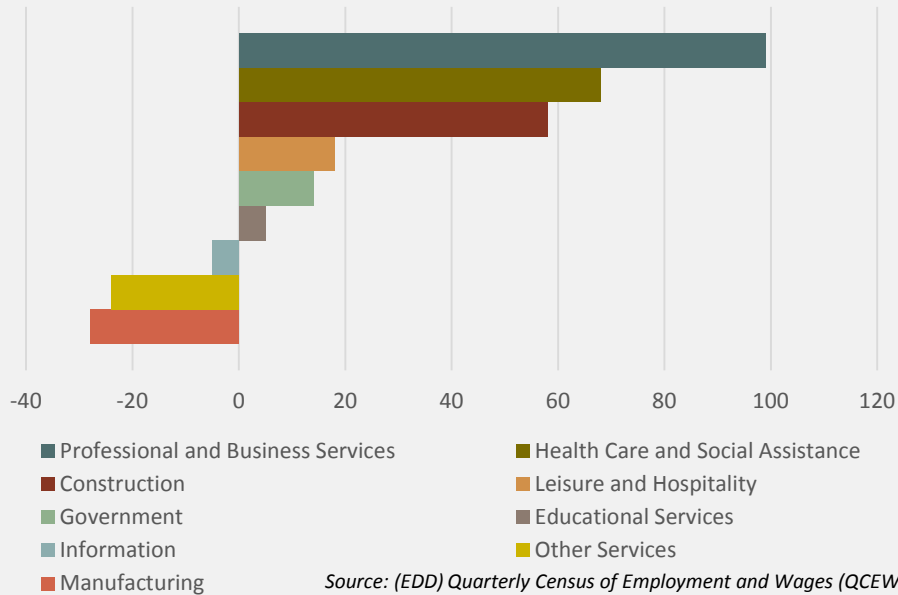


# EMPLOYMENT:

## growth by industry sector



Number of Jobs Added 2018-2019, By Sector



### Bayer Expanding in Berkeley

In May of 2019, Bayer broke ground on a new technology center, expanding their scientific research activities and their community-wide impact in Berkeley. Bayer plays an important role in the City, creating hundreds of jobs, fashioning training and mentorship programs with local students, and supporting local health and educational programs through their foundation.



Once opened, Bayer expects to have 100 new employees assigned to the facility.<sup>1</sup> Construction is expected to be completed in 2021.

Image: Bayer

<sup>1</sup> Bayer breaks ground on \$150m building to make biologic therapies, Berkeleyside, May 10, 2019

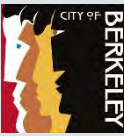
### Kaiser Brings Jobs and More Health Options

This year the Zoning Adjustment Board and City Council approved plans for a new medical office building to be completed in 2021. Kaiser's expansion will bring new medical services, mental health care, a pharmacy and other outpatient offerings to San Pablo Avenue.



Image: Gould Evans

| Sector                     | % Change in Employment 2018 | % Change in Employment 2019 |
|----------------------------|-----------------------------|-----------------------------|
| Construction               | 4.0%                        | 7.6%                        |
| Personal Care Services     | 4.2%                        | -3.1%                       |
| Food and Beverage          | 3.1%                        | 0.4%                        |
| Leisure and Hospitality    | 0.5%                        | 1.5%                        |
| Social Assistance Services | 3.4%                        | 4.3%                        |
| Health Care Services       | 2.2%                        | 4.0%                        |



## top employers & innovation sector

### Berkeley's Largest 25 Employers, by Number of Employees

|                                  |                                    |
|----------------------------------|------------------------------------|
| Ansys, Inc.                      | Lawrence Berkeley Laboratory       |
| Backroads Inc.                   | Lifelong Medical Care              |
| Bayer Healthcare LLC             | OC Jones & Sons                    |
| Berkeley Bowl Produce            | Recreational Equipment Inc. (REI)  |
| Berkeley Cement Inc.             | Rigetti Quantum Computing          |
| Berkeley City College            | Siemens Corporation                |
| Berkeley Marina Doubletree       | Solar Mosaic Inc.                  |
| Berkeley Repertory Theatre       | Sutter Bay Hospitals               |
| Berkeley Unified School District | Target Corporation                 |
| City of Berkeley                 | University of California, Berkeley |
| Genji Pacific                    | Whole Foods Market California Inc. |
| Kaiser Permanente                | YMCA of the Central Bay Area       |
| Meyer Sound Laboratories         | Source: EDD, QCEW Data Q4 2018     |

### Discovered in Berkeley: Home-Grown Success



**Wild Earth: Taking on factory farms, one bag of kibble at a time**

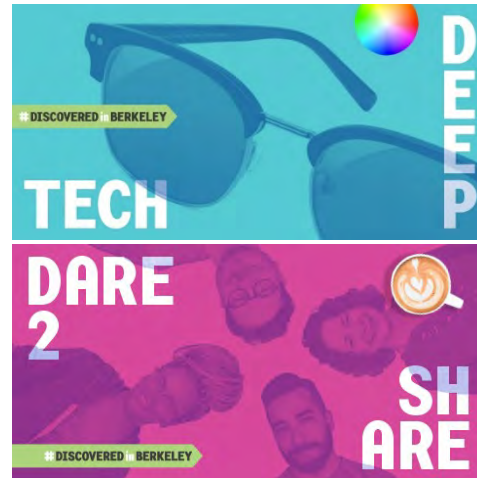
By Local sponsor, Dec. 5

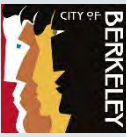
Image: *Berkleleyside.com*

From glasses for the colorblind, to craft beverages, to sustainable reuse companies, Berkeley businesses are developing exceptional products in our backyard and spreading their success throughout the world. This year, the City of Berkeley launched Discovered in Berkeley, designed to highlight, celebrate, and support the innovative ecosystem of Berkeley based startups, businesses, and manufacturers building businesses, economic success, and community. This initiative provides assistance to grow businesses, local employees, and personalized advice and support to ensure long-term success and impact. Throughout 2020, the Office of Economic Development will be featuring stories highlighting these companies in the local publication *Berkleleyside*, and the micro-site *DiscoveredinBerkeley.com* and on social media with the hashtag: #DiscoveredinBerkeley.



Images from the Discovered in Berkeley marketing campaign: ACCI Gallery (Above), Encroma Inc. (Right-Top) Bay Area Co-Roasters (Right-Bottom)





## small business revolving loan fund

The City of Berkeley's Revolving Loan Fund (RLF) is federally funded by the Economic Development Administration (EDA) and provides access to capital for businesses that don't qualify for traditional commercial loans.

| Portfolio Summary 2019      | Total Loans* | Active Loans |
|-----------------------------|--------------|--------------|
| Number of RLF Loans         | 42           | 9            |
| RLF \$ Loaned               | \$2,463,417  | \$910,000    |
| Total Non-RLF \$ Leveraged  | \$7,568,959  | \$2,414,543  |
| Private Sector Jobs Created | 206          | 39           |
| Private Sector Jobs Saved   | 96           | 71           |

\*Total Loans originated from RLF fund since inception (1980).

|                | Number of Loans | \$ Loaned          | Number of Jobs - Created and Saved |
|----------------|-----------------|--------------------|------------------------------------|
| Minority Owned | 17              | \$949,840          | 119                                |
| Women Owned    | 12              | \$565,300          | 108                                |
| <b>Totals</b>  | <b>26</b>       | <b>\$1,515,140</b> | <b>227</b>                         |

## Giving Worker Owned Co-Ops a Hand

Worker owned cooperatives are a vital part of Berkeley's local economy. These businesses are owned and run by employees, and often provide higher wages, benefits, professional development, job security, and upward mobility for low to moderate income people. Unfortunately, these businesses are at a disadvantage to conventional business ownership models when it comes to accessing startup capital or loans. The City of Berkeley has recently developed policies and programs to support worker cooperatives, including increasing access to capital. Over the past year, OED staff and the Loan Administration Board have worked to consider modifications to the RLF to support worker owned cooperatives which were approved by Council in September 2019. The revised RLF Administrative Plan was approved by the EDA in November 2019.



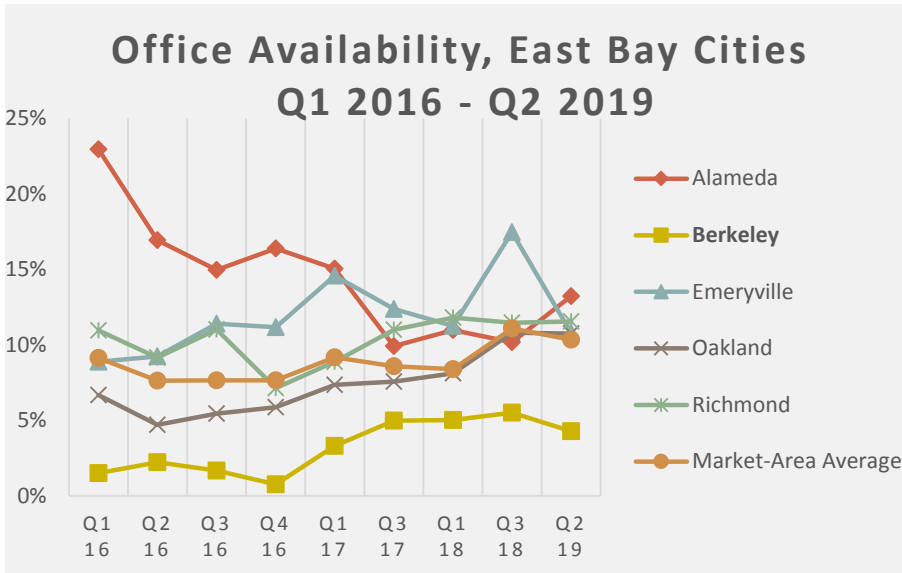
Images: Worker owned co-ops in Berkeley (L-R), Missing Link Bicycle Co-Op, Three Stone Hearth, The Cheese Board Collective, BioFuel Oasis



## office trends & transactions

| Q2 2019 Office Market, Berkeley | Indicators   |
|---------------------------------|--------------|
| Total Inventory                 | 3,407,669 SF |
| Under Construction              | 42,000 SF    |
| Availability Rate               | 4.27%        |
| Qtr Gross Absorption            | 45,171       |
| Qtr Net Absorption              | 27,000       |
| YTD Net Absorption              | -9,101       |
| Average Asking Rent             | \$3.25 / SF  |

Source: Newmark Cornish & Carey, 2Q19 East Bay Office Market Report



Source: Newmark Cornish & Carey, Q2 19 East Bay Office Market Report

## Office and Industrial Updates

**2105 Bancroft Way** is a historic resource that was originally built



Image: Loopnet

in 1905 as a Masonic Temple, recently completed a full renovation and is now available for lease to office tenants. This is a prime example of how adaptive reuse can add high quality commercial spaces in Downtown Berkeley and beyond.

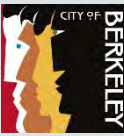


Image: Devi Dutta Architecture

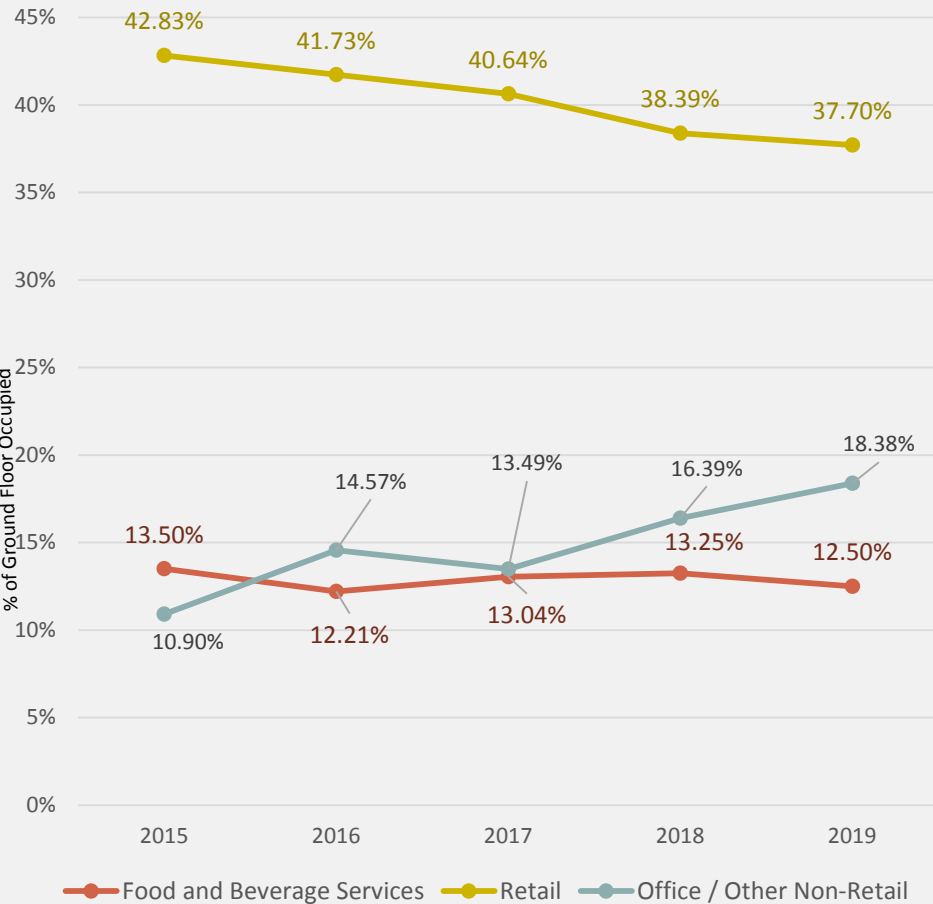
**2120 Berkeley Way** is the first new private office space to be built in Downtown Berkeley in 30 years. The old UC Press building was purchased in 2015 for \$4.8 million and will be converted into a six-story office building which is expected to open in 2020.

Source: Newmark Cornish & Carey, Q2 2019 East Bay Office Market Report

## commercial trends & transactions



### Citywide Commercial Inventory, Select Categories, By Square Footage, 2014-2019



Source: OED, Q3 2019

### Berkeley's Legacy and Family Businesses are Thriving

#### Berkeley's Book Haven and Local Landmark



Image Credit: ABE Books, 2017

Moe's books has been a Berkeley staple since 1959. In it's 60 years, this 4-story readers paradise has grown and thrived despite the ups and downs of the internet era and recessions. Recently, the [New York Times](#) wrote about Moe, the founder, and his daughter's quest to continue his legacy.

#### There's Magic for All at Games of Berkeley

Serving as a one-stop-shop for games, toys, activities and more for the past four decades, Games of Berkeley has a long history in Berkeley. Even with a recent move to Durant Ave, the shop is booming as it connects young and old to the joy of games, magic and fun.

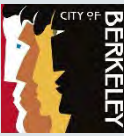


#### Amoeba Music is Jamming Along

The world's largest independent record store, Amoeba Music was founded in Berkeley in 1990. Despite the decline in CD sales since the 2000s, Amoeba is still at home on Telegraph and is flourishing and innovating, opening a cannabis dispensary "Hi-Fidelity" as part of their shop in 2018.

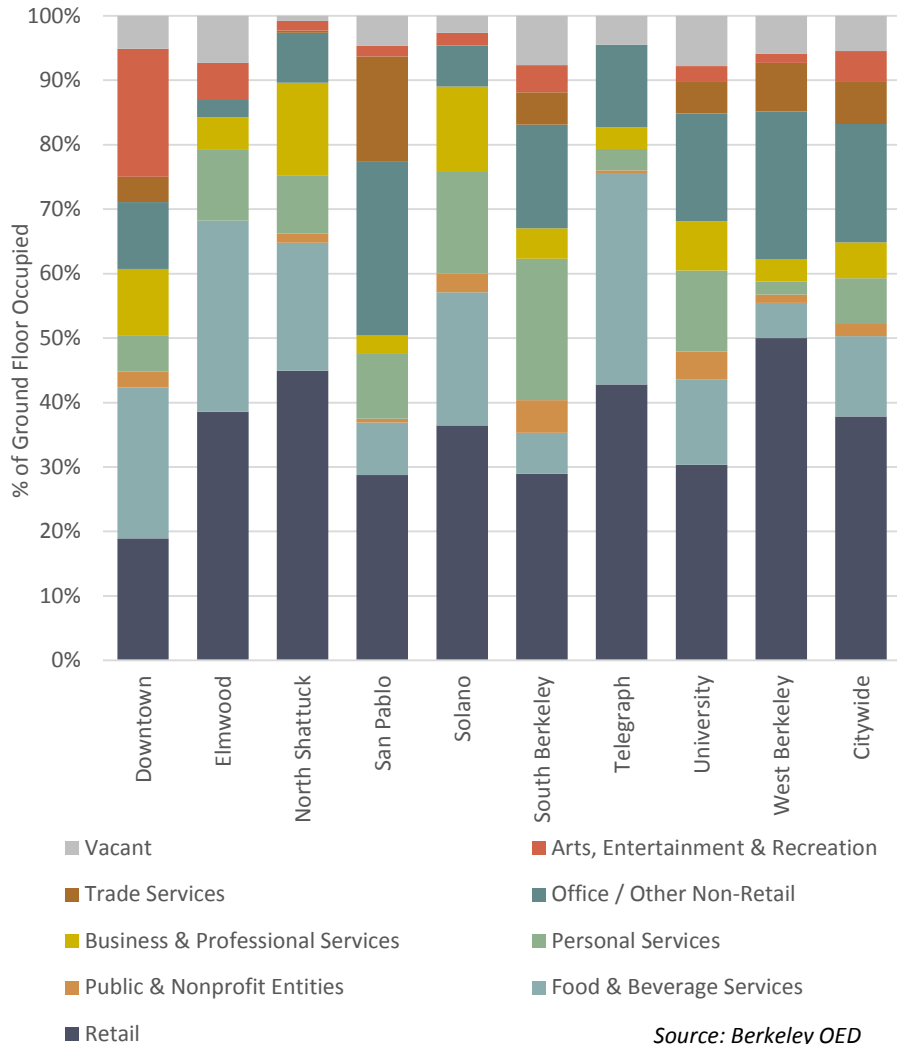


Image Credit: Janet LaFleur, 2015



## commercial districts & vacancy rates

**Ground Floor Commercial Occupancy By Category, 2019 Q3**



Source: Berkeley OED

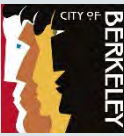
Citywide, the ground floor commercial vacancy rate has increased to 5.4%, an increase of 0.4% since Q4 of 2018. By district, North Shattuck, Telegraph, and Solano districts have experienced decreases in their vacancy rates since 2018. Downtown and West Berkeley saw slight increases due to turnover in a few key large-floor plate sites.

**Vacancy Rates by District, Calculated by Square Footage, 2014 – Q3 2019**

| District             | 2014 Q4     | 2015 Q3     | 2016 Q3     | 2017 Q4     | 2018 Q4     | 2019 Q3     |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Downtown             | 11.2%       | 8.4%        | 4.7%        | 4.6%        | 3.1%        | 5.1%        |
| Elmwood              | 2.0%        | 2.0%        | 1.5%        | 5.4%        | 7.3%        | 7.3%        |
| North Shattuck       | 1.6%        | 2.1%        | 2.6%        | 0.4%        | 1.7%        | 0.7%        |
| San Pablo            | 5.9%        | 7.3%        | 5.9%        | 5.5%        | 4.9%        | 4.6%        |
| Solano               | 4.2%        | 3.5%        | 7.5%        | 4.8%        | 4.1%        | 2.6%        |
| South Berkeley       | 8.9%        | 7.9%        | 8.2%        | 9.6%        | 9.7%        | 7.6%        |
| Telegraph            | 12.7%       | 7.1%        | 5.1%        | 7.1%        | 7.9%        | 4.4%        |
| University           | 4.4%        | 9.4%        | 14.2%       | 12.0%       | 11.0%       | 7.8%        |
| West Berkeley        | 3.9%        | 3.3%        | 8.8%        | 1.9%        | 3.7%        | 5.8%        |
| <b>Citywide Avg.</b> | <b>6.6%</b> | <b>5.9%</b> | <b>6.5%</b> | <b>4.6%</b> | <b>5.0%</b> | <b>5.4%</b> |

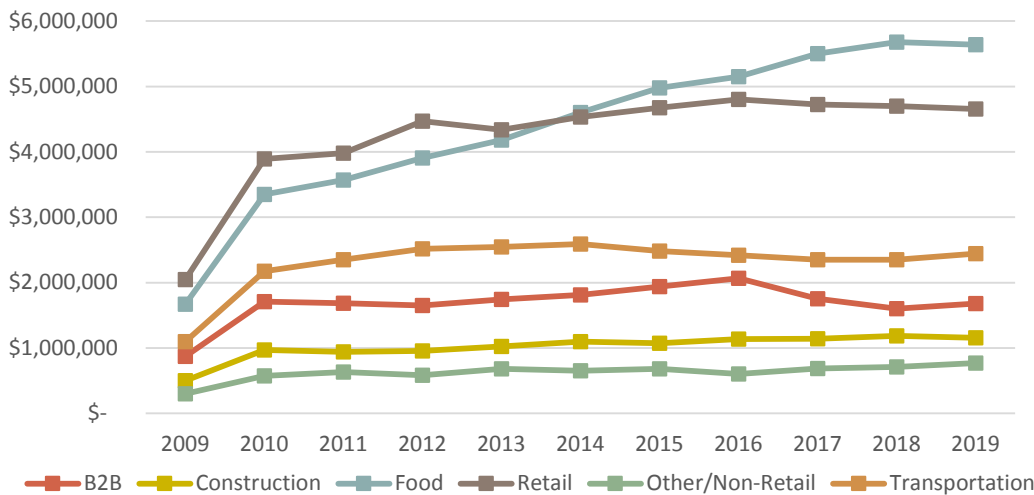
Source: Berkeley OED

# COMMERCIAL ACTIVITY: sales tax revenues



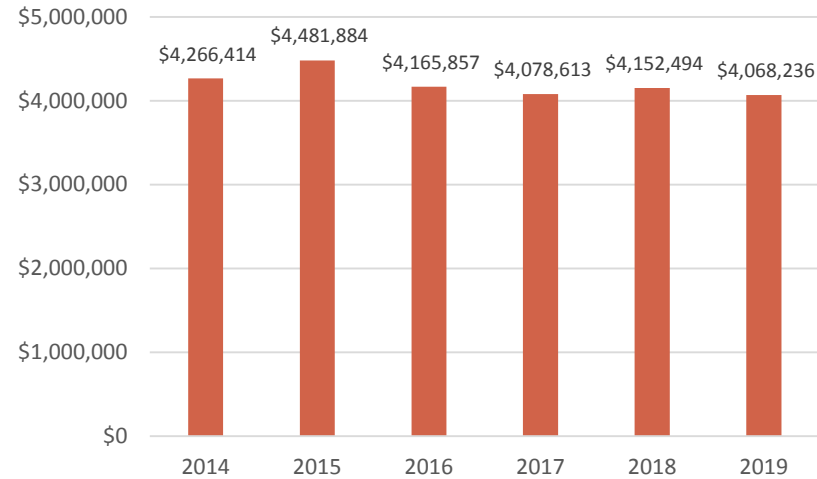
| Total Annual Sales Tax Revenue - Past 4 Quarters | Q3 2017- Q2 2018 | Q3 2018- Q2 2019 | Change |
|--------------------------------------------------|------------------|------------------|--------|
| City of Berkeley                                 | \$16,243,630     | \$16,360,621     | 0.7%   |
| SF Bay Area (Nine County Region)                 | \$1,291,825,554  | \$1,323,927,359  | 2.5%   |
| State of California                              | \$5,466,121,016  | \$5,603,174,227  | 2.5%   |

Annual Sales Tax by Business Category



Source: MuniServices/Avenu, Benchmark Year over Year from 2019 Q2

City of Berkeley  
Q2 Sales Tax Revenues, 2013-2019 (in 2019 \$)



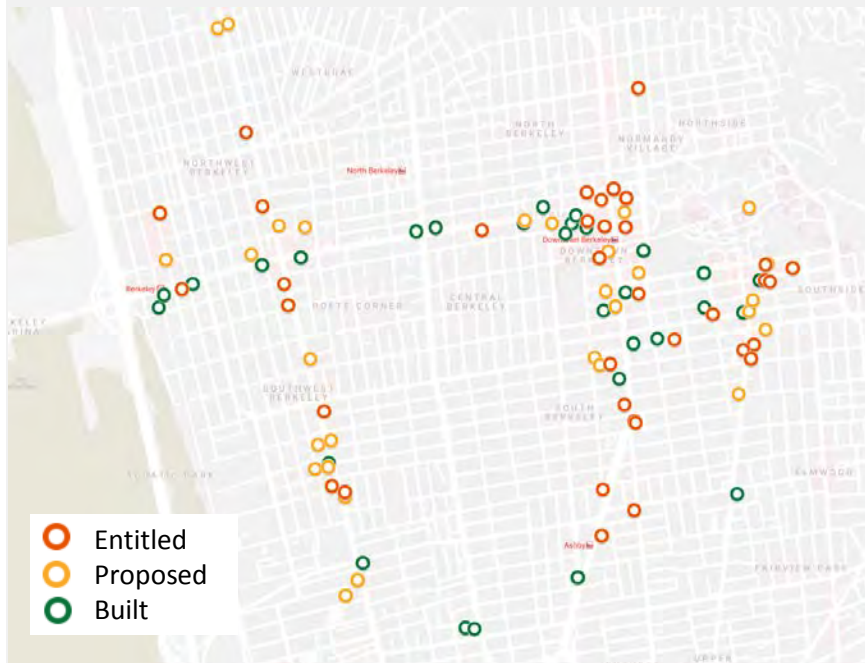
Source: MuniServices/Avenu (Figures Adjusted for 2019 \$)

Berkeley's total annual sales tax revenues (quarter over quarter) decreased by 1.3% from Q2 2018 to Q2 2019. This drop was due to the 2.2% decrease in *Retail* (General Retail) sales tax collected and a 6.3% decrease in sales tax collected from *Construction* sector (Building Material sales etc.). While previous increases in *Food and Beverage Sales Tax* helped to make up for these decreases in past years, *Food and Beverage Sales Tax* revenue in 2019 was flat, resulting in the slight Sales Tax revenue decrease overall. Still, as of Q2 2019, the *Food and Beverage* subsector continued to be the largest contributor to the city's sales tax revenue (34.5%), with *Retail* the next largest (28.0%).



## construction & pipeline

### Multi-Unit Projects (5+ Units), 2005 to Present



Data Source: City of Berkeley Planning Department (September 2019); Map: OED

As of September 2019, there are currently 36 housing developments of 5 or more units that are entitled for development or under construction, which will contain 2,458 net new units; this represents a small increase from the number of units that were entitled or under construction as of December 2018 (2,268). An additional 2,206 units (in 27 distinct projects) are proposed. The overall trend in the last two years has been one of increasing numbers of units in the development and construction pipeline.

### Pipeline Project Highlights



Images: Solomon Cordwell Buenz

**1951 Shattuck** is a 12-story, 156-unit project in Downtown Berkeley. The project was by the Berkeley Zoning Adjustments Board (ZAB) in July 2019. Featuring LEED Gold certification, the building will be exclusively powered by electricity rather than gas, and will use union workers throughout construction.

### Pre-Fab Building Constructed in Four Days

The first complex in the nation to use prefabricated steel modular units, this building at 2711 Shattuck Ave was assembled in four days. Hosting 22 apartment units, this accelerated construction time may be an innovative solution to housing shortages around the Bay.

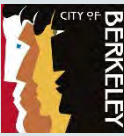
Images: Panoramic Interests



Images: Trachtenberg Architects

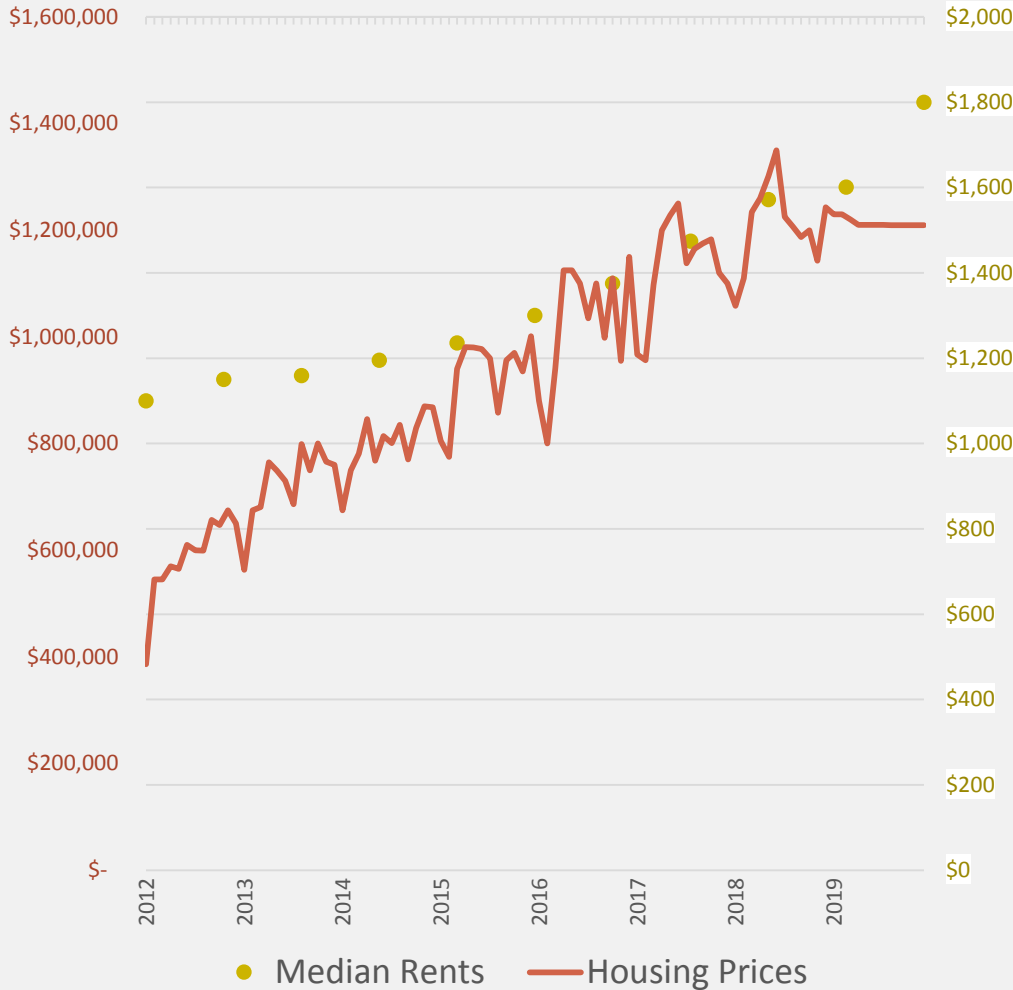
**Third New Complex Opens on Fourth St.** The Aquatic III, the third mixed-use complex spanning the block from 4<sup>th</sup> to 5<sup>th</sup> St. on University Ave, opened in August 2019. Together with the Aquatic I and II, the three buildings hold 258 apartments, 18,000 SF of retail space, 219 parking spots, and room for 98 bicycles.





## housing costs

### Housing Prices and Median Rents in Berkeley 2012-2019



Sources: MLS, Zillow, and City of Berkeley Rent Stabilization Board

### Median Sale Price, Single-Family Homes, Sept. '19

|                 |                    |
|-----------------|--------------------|
| Alameda         | \$923,000          |
| Albany          | \$970,400          |
| <b>Berkeley</b> | <b>\$1,240,000</b> |
| El Cerrito      | \$842,000          |
| El Sobrante     | \$492,300          |
| Emeryville      | \$518,300          |
| Oakland         | \$732,800          |
| Richmond        | \$444,700          |
| San Leandro     | \$645,800          |

Sources: Zillow (top), Curbed SF May 6, 2019 (bottom)

Berkeley home values have cooled slightly over the past year, snapping a 7 year upward trend in the market, and reflecting a small downward trend in housing prices nationally.

SF REAL ESTATE MARKET REPORTS

### Bay Area home prices (barely) drop for first time in seven years

"The chickens will be coming home to roost this spring"

By Adam Brinklow | May 2, 2019, 10:21am PDT



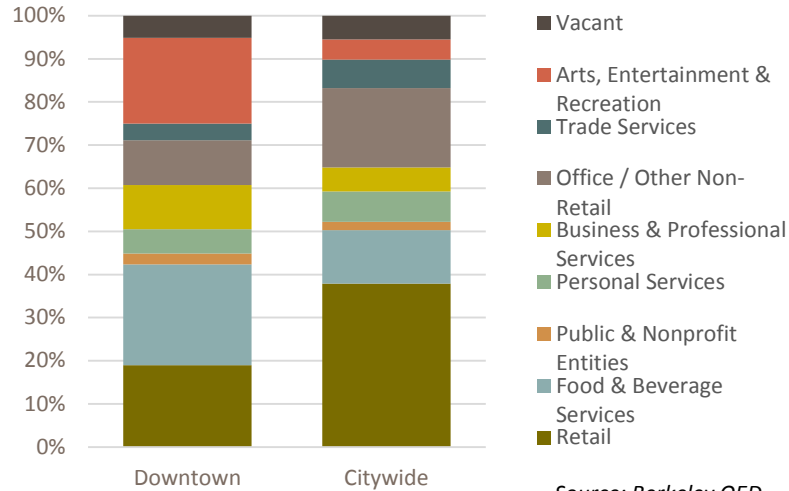
Photo by Sartharman59



Downtown Berkeley serves as the City's core commercial district, meeting the daily needs of residents, students, workers, and visitors. The district benefits from a significant concentration of arts and entertainment uses, which occupy 19.8% of total ground floor commercial space in the district compared to 4.6% citywide. As of Q3 2019, the vacancy rate in Downtown is 5.1%, which has increased since 2018. Sales tax revenue generated in 2018 by Food & Beverage services continues to rise coming in over one million dollars in 2018 (\$1,112,586). Retail sales tax revenue has decreased slightly from 2017.

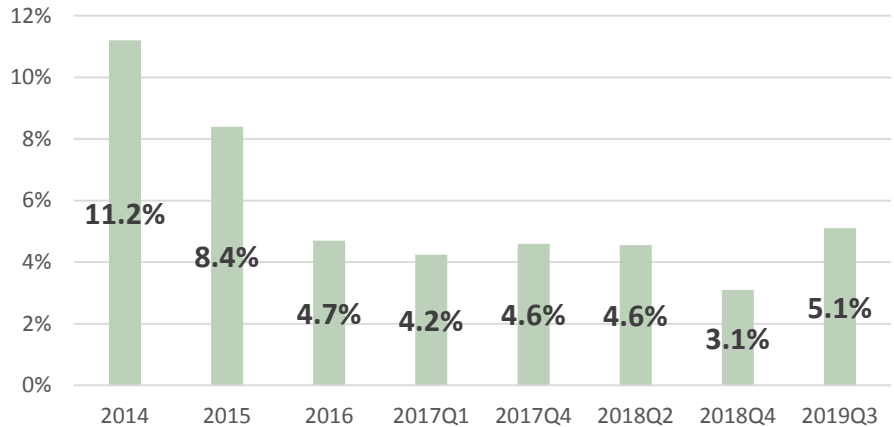


**Ground Floor Commercial Business Mix (by Square Footage), 2019 Q3**



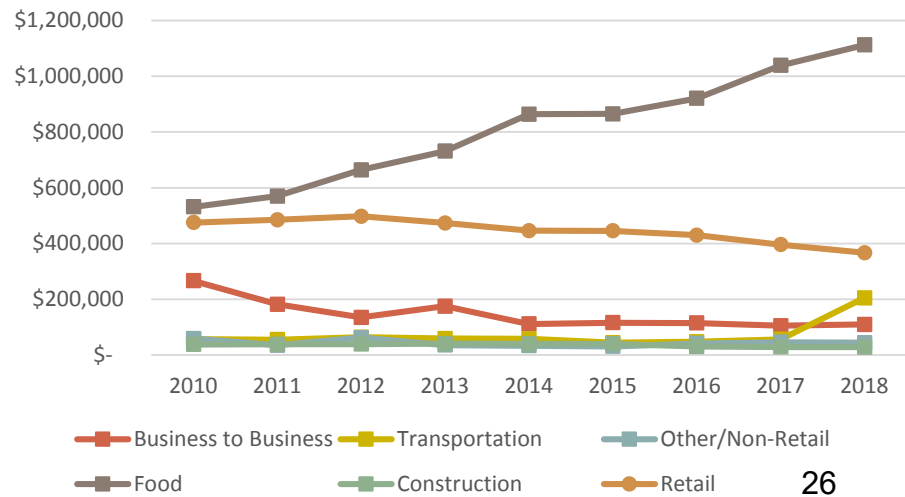
Source: Berkeley OED

**Ground Floor Commercial Vacancy Rate (by Square Footage), 2014-2019**

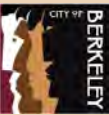


Source: Berkeley OED

**Sales Tax Revenue by Sector, 2010-2018**



26  
Source: MuniServices

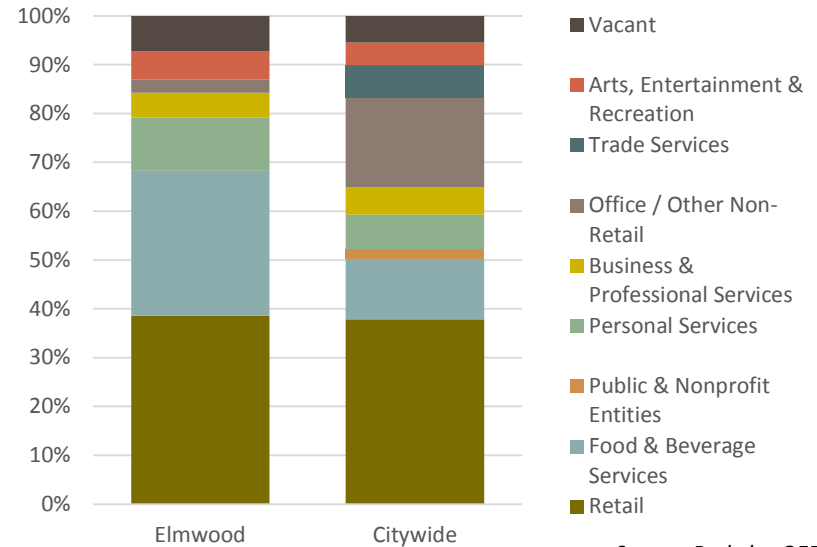


The Elmwood is a compact three block commercial district along College Avenue near the Berkeley-Oakland border and the neighboring Rockridge shopping district. The Elmwood district is characterized by a high concentration (29.6%) of Food & Beverage services, and is a walkable, neighborhood-serving commercial district. As of Q3 2019, the district's vacancy rate by square

footage was 7.3%, a decrease from Q2 2018 (10.4%). The decrease is due primarily to the turnover of smaller (by square footage) restaurants and expanding service businesses. Despite the fluctuations in the vacancy rate over this period, when vacant, Elmwood storefronts remain actively marketed for lease and turnover is brisk.

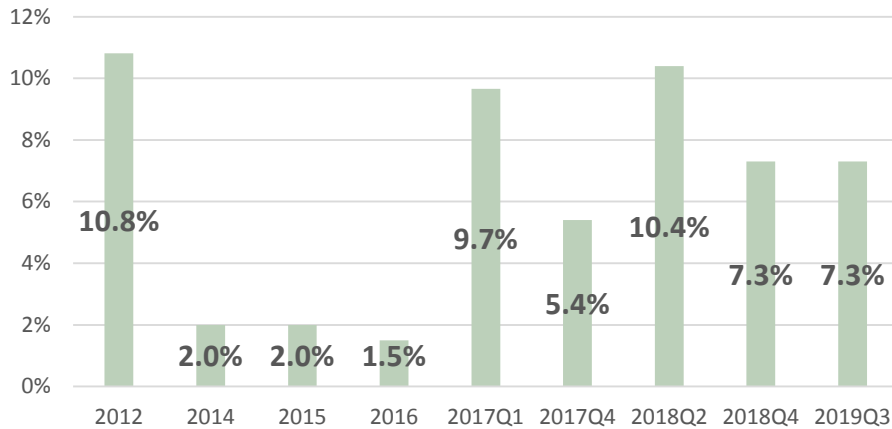


## Business Mix (by Square Footage), 2019 Q3



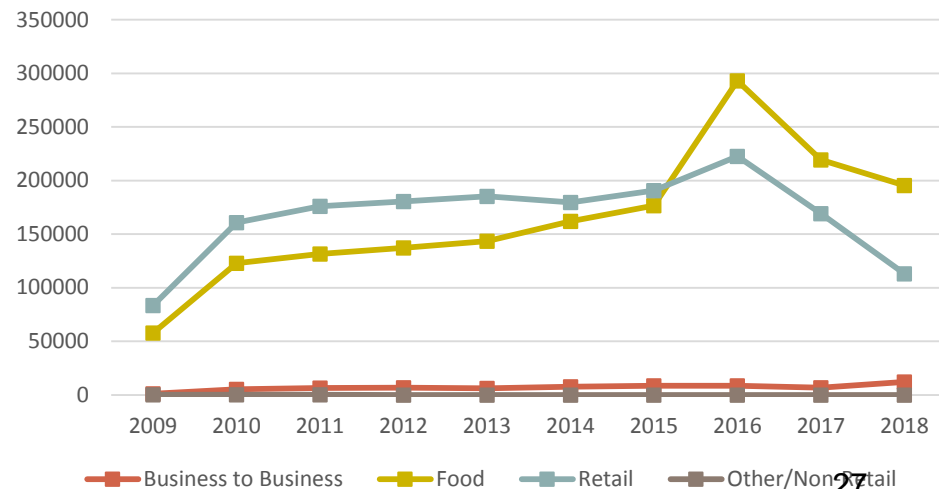
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019



Source: Berkeley OED

## Sales Tax Revenue by Sector, 2010-2018



Source: MuniServices

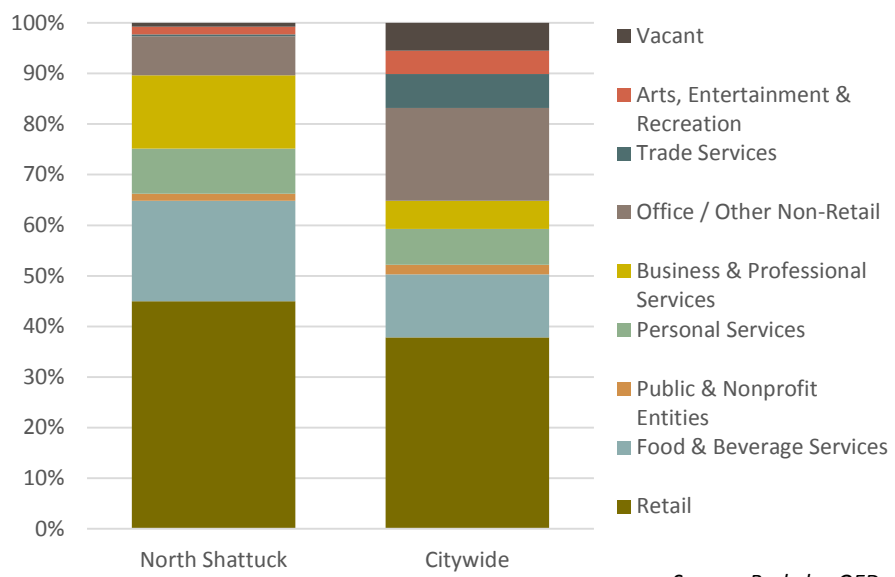


North Shattuck is one of Berkeley's oldest commercial districts, just north of Downtown. The district is characterized by a high concentration of well-known, long-standing, and celebrated restaurants, including Chez Panisse and the Cheeseboard. North Shattuck is both a walkable, neighborhood-serving commercial district as well as a global destination for food and dining. As of Q3 2019, the district's vacancy rate by square footage was 0.7%, which is up slightly from the lowest ever of 0.4% in 2017.

New establishments to look forward to in 2020 include a new operator (Cupcakin') in the former Virginia Bakery location, a Cheeseboard expansion at the northwest corner of Shattuck and Vine Streets and the return of North Berkeley Wine Imports to the northeast corner.

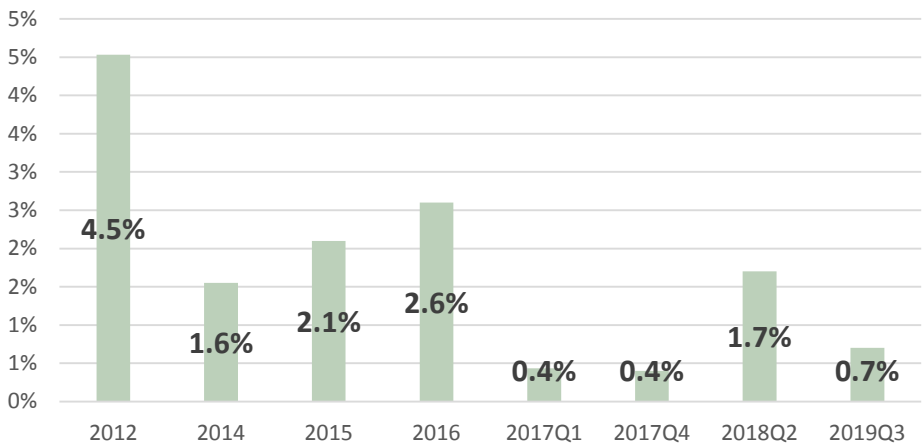


**Business Mix (by Square Footage), 2019 Q3**



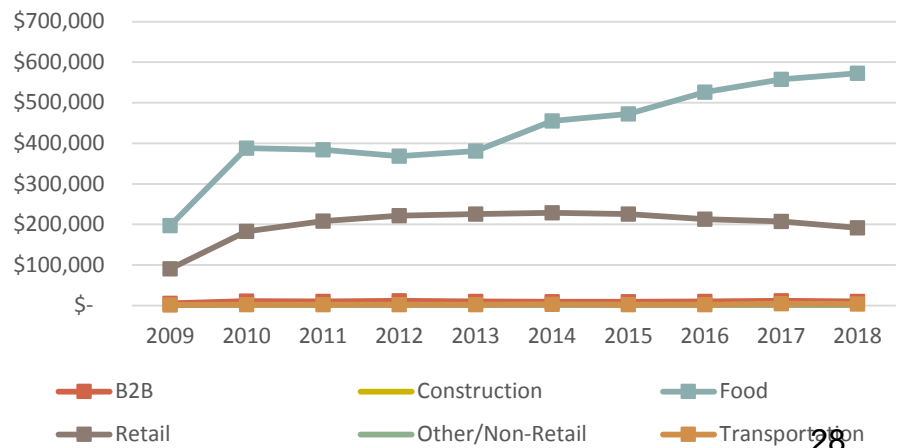
Source: Berkeley OED

**Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019**



Source: Berkeley OED

**Sales Tax Revenue by Sector, 2010-2018**



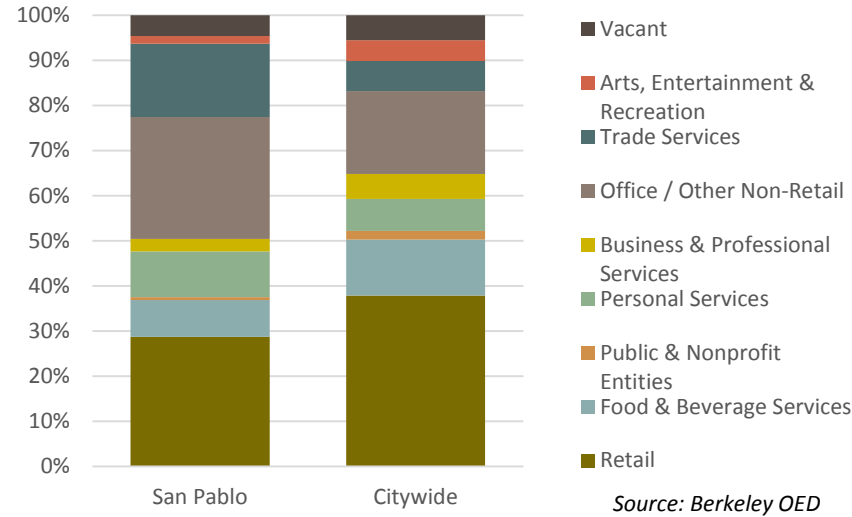
Source: MuniServices



San Pablo Avenue is Berkeley's largest commercial corridor, running the entire north-south length of the City. San Pablo is characterized by a high concentration of Trade Services (16.3%), including over 60 automobile services. San Pablo functions more as a regional destination for specific uses rather than a walkable, neighborhood-serving commercial district; as such, it features smaller percentages of Food & Beverage Services (8.2%) and Personal Services (10.2%). In Q4 2018, the district's vacancy rate by square footage was 4.9%, in 2019, it has decreased slightly to 4.6%, an all time low. Retail Sales tax revenue has decreased in recent years but continues to be the largest source of tax revenue for the area.

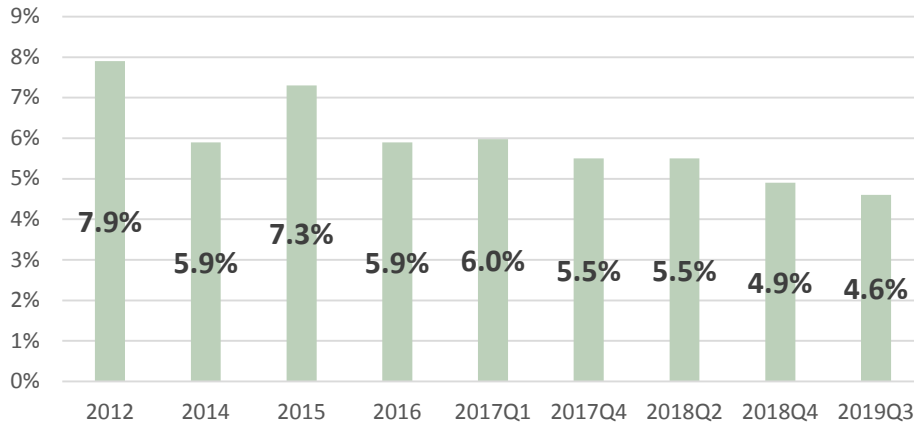


**Business Mix (by Square Footage), 2019 Q3**



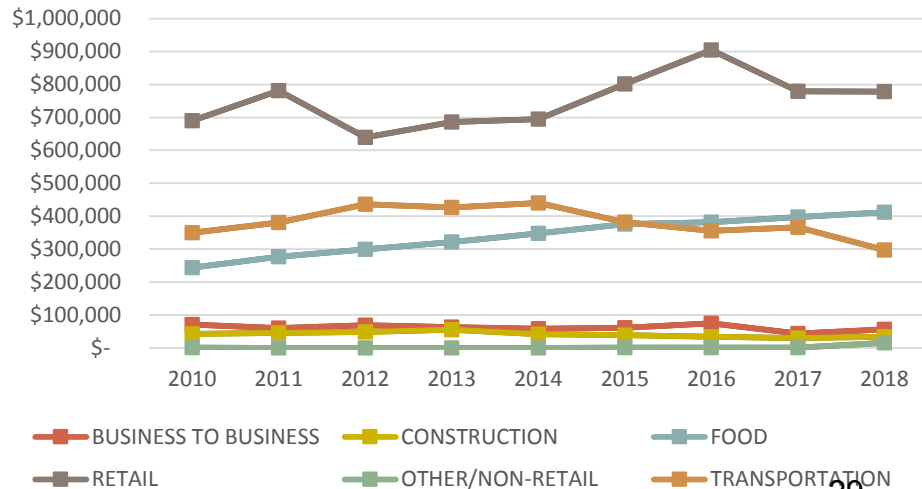
Source: Berkeley OED

**Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019**



Source: Berkeley OED

**Sales Tax Revenue by Sector, 2010-2018**



Source: MuniServices



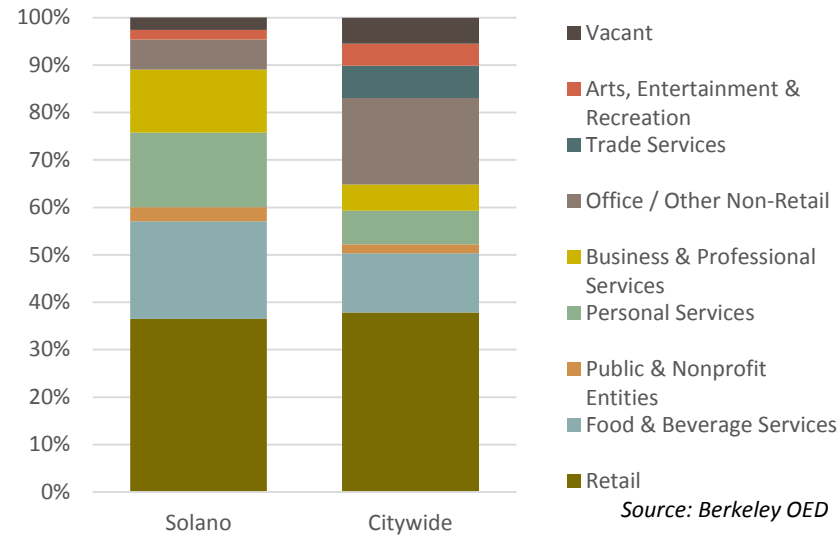


Solano is a small commercial district in North Berkeley, with a total of 130 commercial spaces and approximately 191,000 square feet of commercial space. It shares a border with Albany and is situated next to a large elementary school and an active neighborhood of single-family homes. Solano has a large key asset (the former Oaks Theatre) that is due to be occupied by a climbing gym in 2020. The district's vacancy rate by square footage was 2.6%, a decrease from Q4 2018 (4.1%).

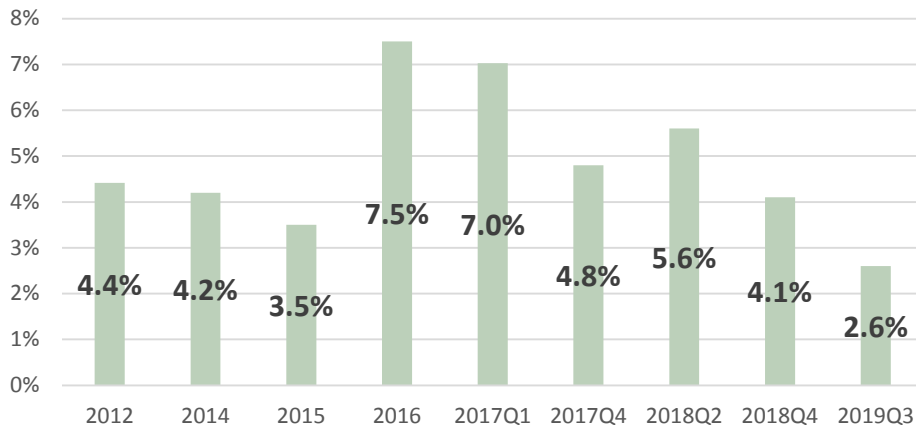


Despite the decrease in vacancy, Solano Avenue saw a decrease in Food and Beverage sales tax in 2018 while sales tax revenues from other industries held steady.

**Business Mix (by Square Footage), 2019 Q3**

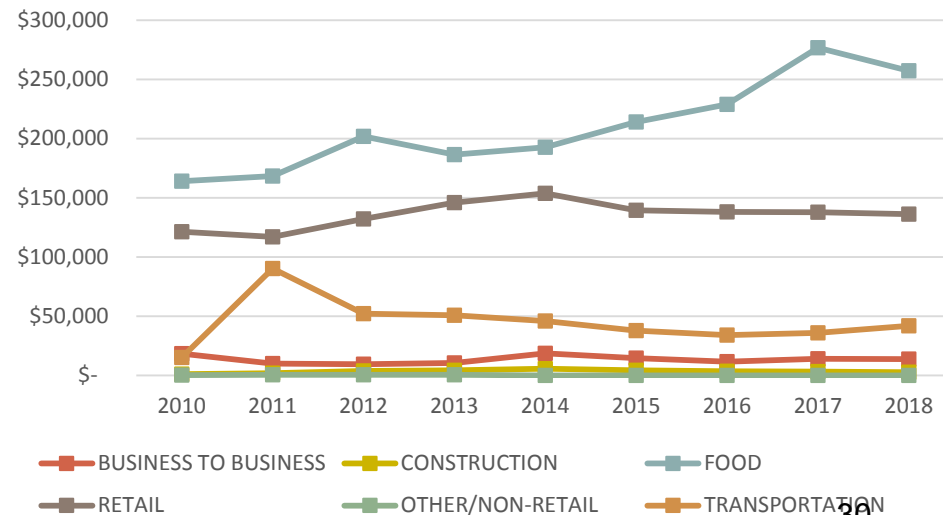


**Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019**



Source: Berkeley OED

**Sales Tax Revenue by Sector, 2010-2018**



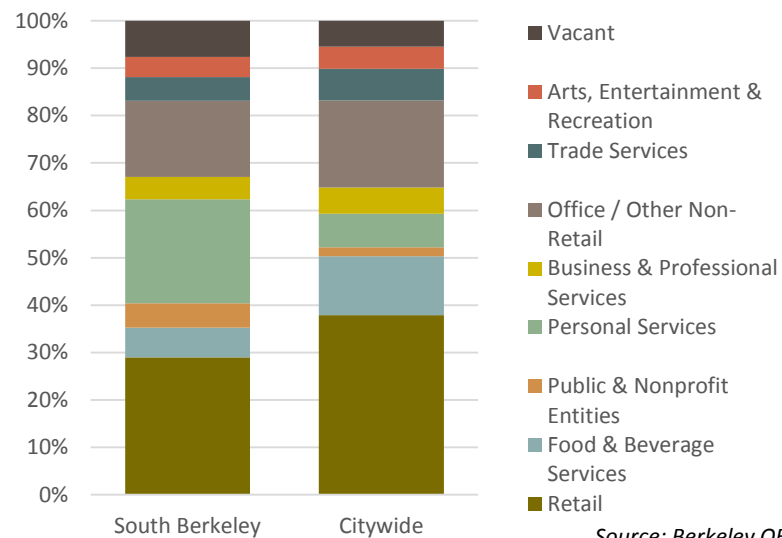
Source: MuniServices



South Berkeley is a large district stretching over an area known for its cultural diversity and includes the Lorin District, the Sacramento corridor, and the South Shattuck area. South Berkeley includes several car dealerships, which accrue significant retail sales tax revenue for the City. The area also features a high concentration of Personal Services businesses (22.0% vs. 7.1% citywide) but is under-served by Food & Beverage services, which account for only 6.3% of ground floor commercial space, as compared to 12.4% citywide. As of Q3 2019, the district's vacancy rate by square footage was 7.6%, an decrease from 2018. Sales tax revenue for retail and transport has increased steadily since 2016.

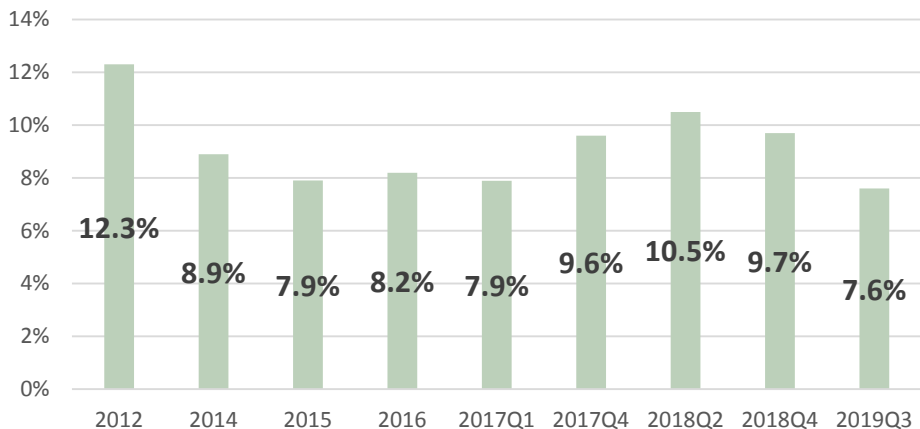


**Business Mix (by Square Footage) 2019**



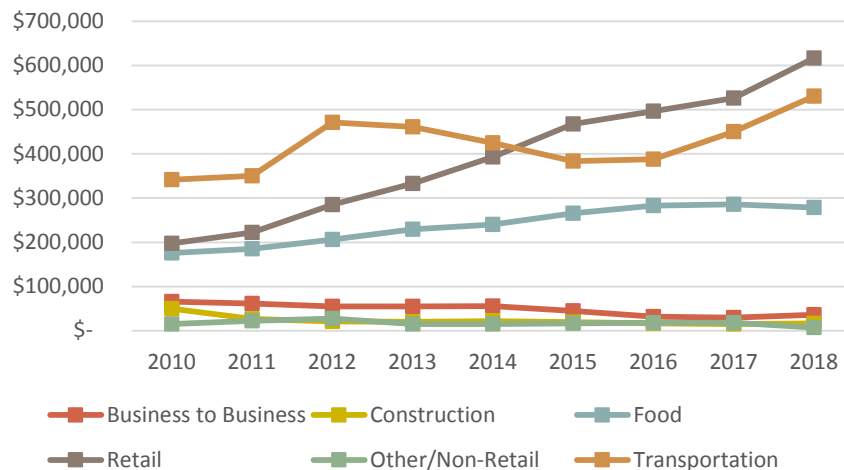
Source: Berkeley OED

**Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019**

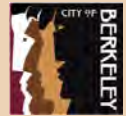


Source: Berkeley OED

**Sales Tax Revenue by Sector, 2010-2018**



31  
Source: MuniServices

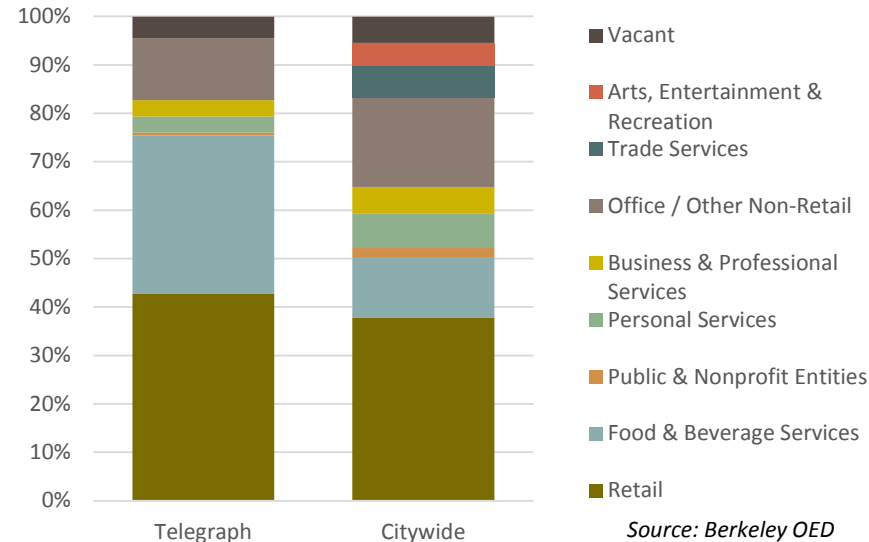


The Telegraph district has undergone significant change over the past several years. Food & Beverage services have shown a dramatic increase since 2012, with 32.7% of Food & Beverage services accounting for ground floor commercial space in the district, as compared to 12.4%

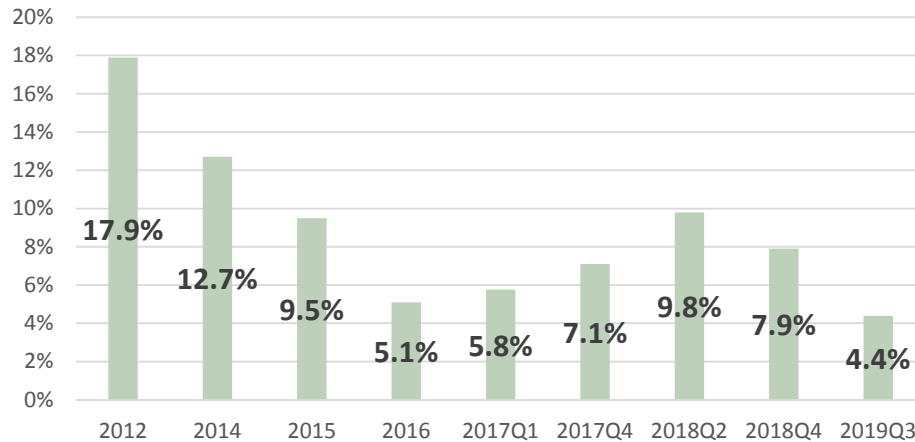
Citywide. As of Q3 2019, the district's ground floor commercial vacancy rate has continued to decrease from Q4 2018 from 7.9% to 4.4% and is significantly lower than the peak of 17.9% in 2012. New ground floor leases are anticipated along Telegraph Avenue in 2020, including the Nexus Building and the long-vacant lot at Telegraph and Haste St.



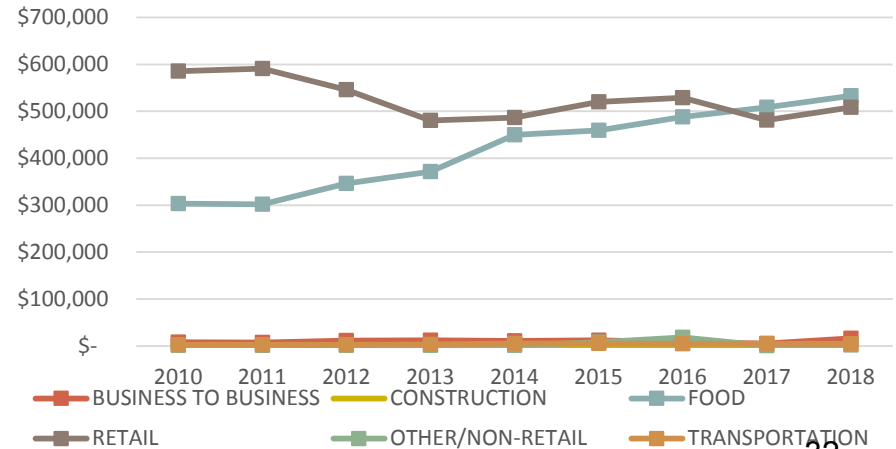
**Business Mix (by Square Footage), 2019 Q3**



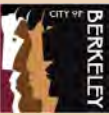
**Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019**



**Sales Tax Revenue by Sector, 2010-2018**



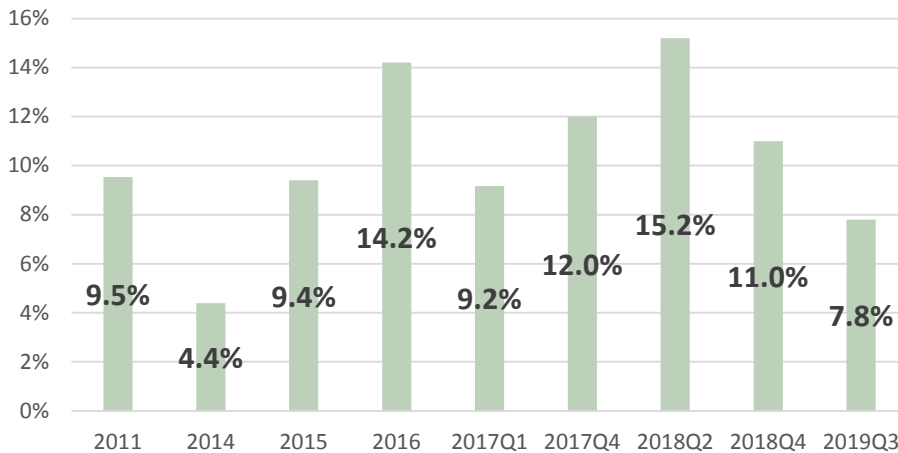




University Avenue, from Martin Luther King Jr Way to the waterfront, spans many of the City's neighborhoods and serves as the gateway to the UC Berkeley Campus. Since 2018, Transportation and Food & Beverage Services have generated the most sales tax revenue for the district. Over the past 8 years the vacancy rate has remained high, but has decreased to 7.8% in 2019 from the all-time high of 15.2% in Q2 2018.

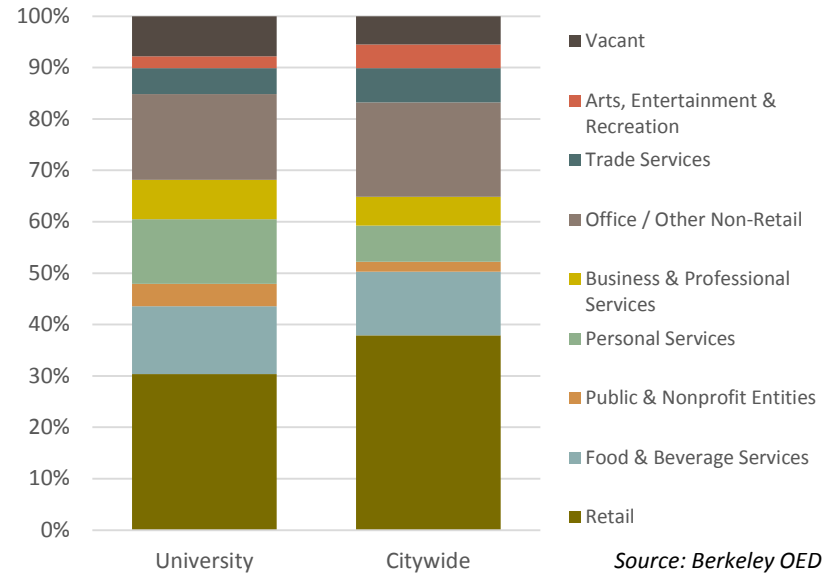


### Ground Floor Commercial Vacancy Rate (by Square Footage), 2011-2019



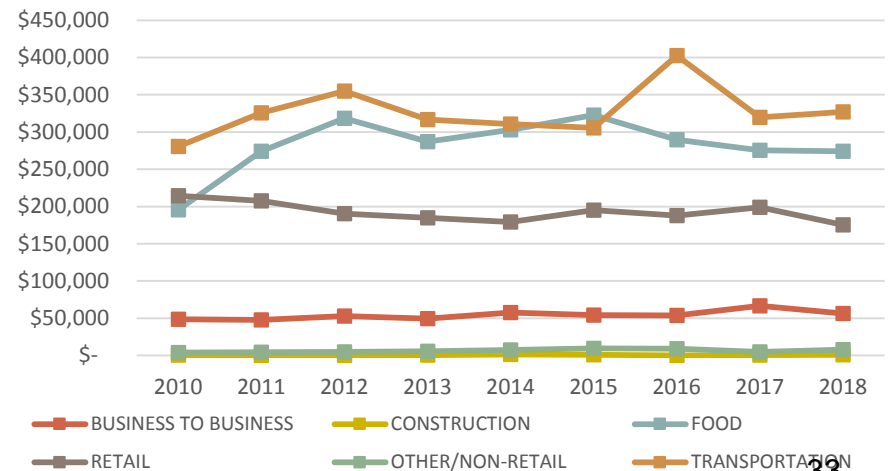
Source: Berkeley OED

### Business Mix (by Square Footage), 2019



Source: Berkeley OED

### Sales Tax Revenue by Sector, 2010-2018



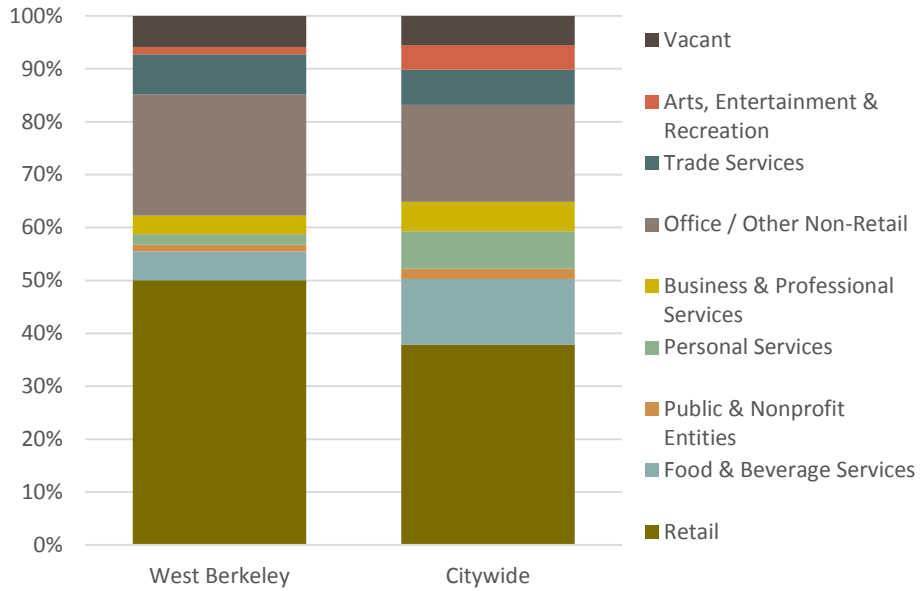
Source: MuniServices



West Berkeley represents all commercial spaces west of San Pablo Avenue, including 4<sup>th</sup> Street and the Gilman Corridor. There are a number of major, large-floor-plate retailers, and a dense cluster of home supplies and construction businesses. There is also a higher percentage of non-retail commercial uses, including manufacturing and warehousing. Retail accounts for 50.0% of ground floor commercial space in the district, as compared to 37.8% citywide. The commercial vacancy rate as of Q3 2019 was 5.4%, an increase from 2018 largely due to turnover of a few large floorplate retailers. Sales tax revenue has decreased in this area for all industries except Construction, which saw an uptick in sales tax revenue due to a number of large projects beginning in 2018.

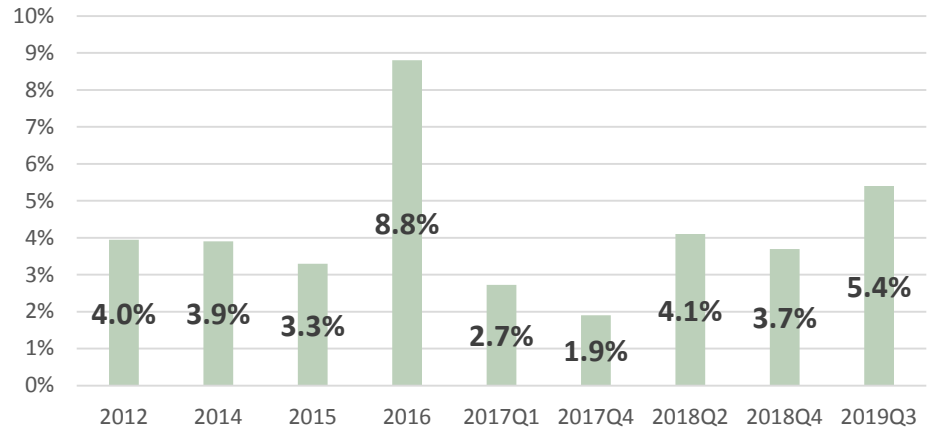


## Business Mix (by Square Footage), 2019 Q3



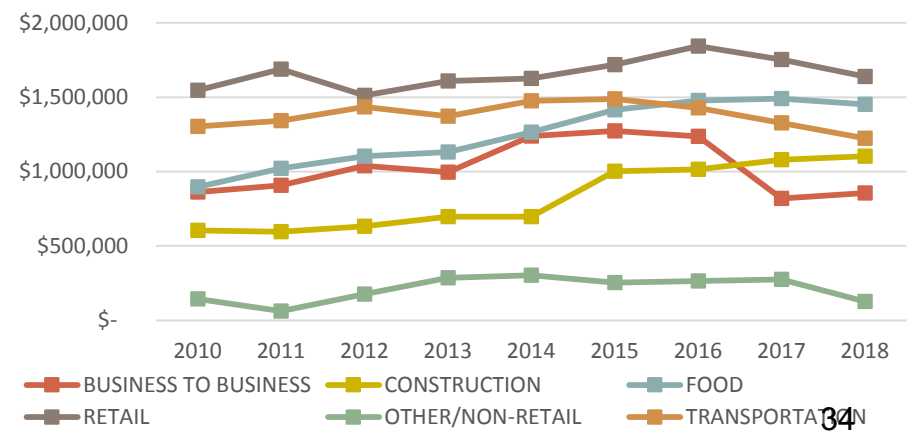
Source: Berkeley OED

## Ground Floor Commercial Vacancy Rate (by Square Footage), 2012-2019

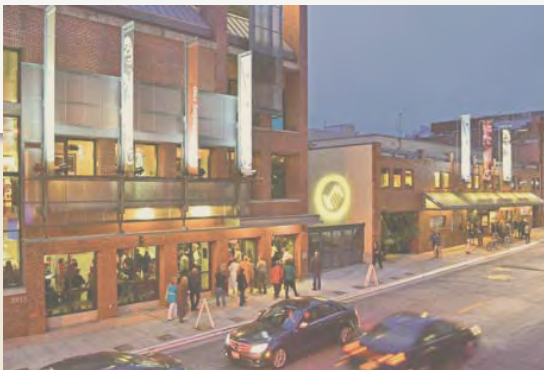


Source: Berkeley OED

## Sales Tax Revenue by Sector, 2010-2018



Source: MuniServices



city of

# BERKELEY

## Demographic & Economic Profile

**Disclaimer:** The City of Berkeley makes no representations about the suitability of the information contained in this document for any purpose. The information is provided "as is" without warranty, either express or implied, of any kind. The published document may contain technical inaccuracies or typographical errors. Changes are periodically added to the information herein. The City of Berkeley may make improvements and/or changes to the document at any time.



Office of Economic Development

# about Berkeley

**Incorporated:** 1878  
**Encompasses:** 10.47 mi<sup>2</sup>  
**Average Annual Temperature:** 58° F (48° F low, 68° F high)

Berkeley is an iconic city, with a diversity of culture, cuisine, art, neighborhoods, innovation. It is a community that engages citizens and visitors alike every day. Berkeley is alive with a terrific quality of life including walkable streets, bike routes, access to transit, excellent schools, and thriving commercial districts. Come discover Berkeley's signature elements, events, and style.

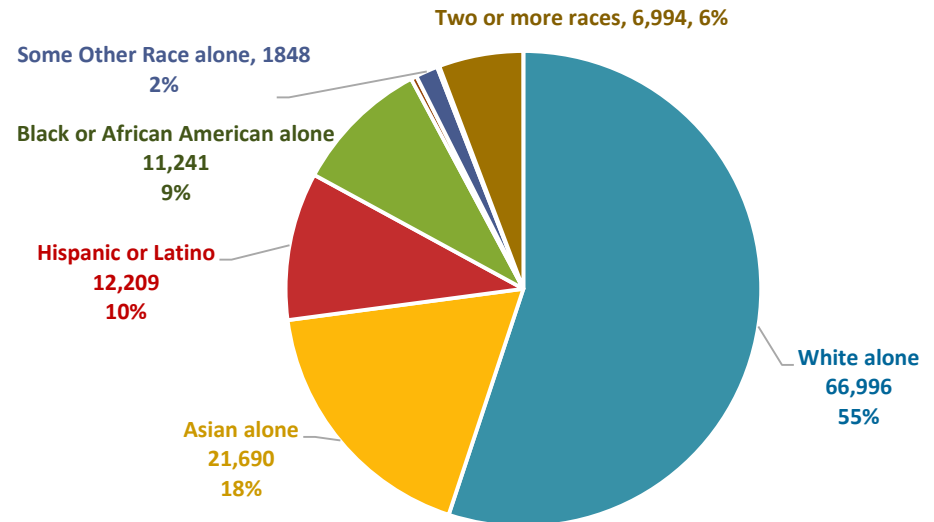
| Demographic Snapshot                  |             |
|---------------------------------------|-------------|
| Population                            | 121,643     |
| Median Age                            | 31          |
| Housing Units                         | 49,137      |
| Owner-Occupied Units                  | 18,846      |
| Median Home Sales Price (2019)        | \$1,240,000 |
| Average HH Income                     | \$75,709    |
| Bachelor's Degree or Higher (age 25+) | 72.3%       |

Sources: US Census Bureau, 2018 ACS Estimates  
 2015-2023 City of Berkeley Housing Element, Redfin.com

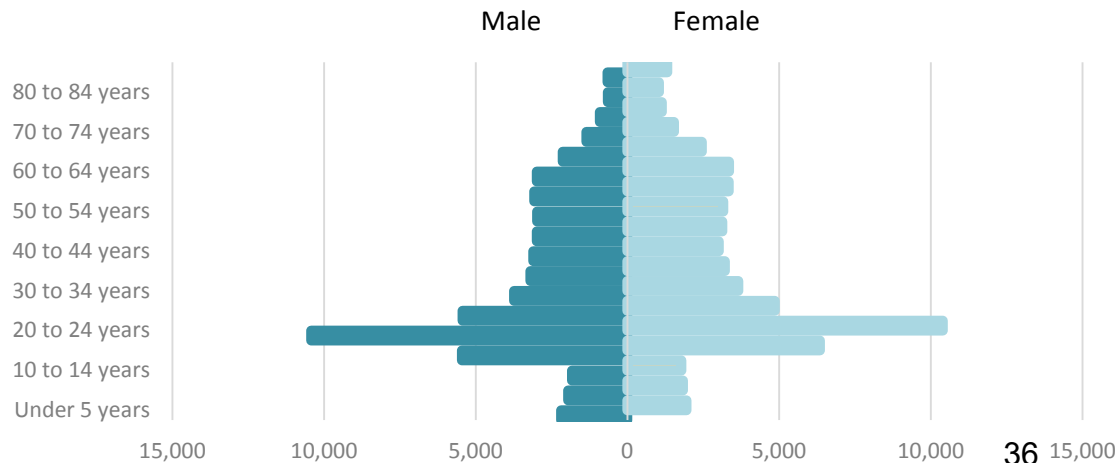
**125,000** students  
**15,292** companies  
**1.65 million** visitors per year  
**\$4.04 billion** total spending power

Sources: Downtown Berkeley Association; California Employment Development Department

## Race & Ethnicity



## Age & Gender



Source: US Census Bureau, 2017 ACS Estimate



# an Accessible Regional Hub

**BERKELEY** is centrally located within the Bay Area, which is the nation's fifth-largest metro region and home to 8.4 million people. Downtown Berkeley is just a direct 22-minute train ride and a 24-minute drive from San Francisco's Financial District.

**Ideal location for business:** With two interstate highways and a transcontinental rail line passing through the city limits, two major airports and three principal shipping ports close by, few places are as accessibly located for business as Berkeley.

**Year-round foot traffic:** Downtown Berkeley enjoys some of the highest pedestrian volumes in the Bay Area outside of San Francisco. As a major visitor destination, over 1.65 million people visit the City of Berkeley each year, and the new Downtown BART Plaza, and the Center Street Parking Garage put visitor estimates to nearly two million by 2025.



*Nearly 11,450 riders pass through the Downtown Berkeley BART station per weekday, making it one of the **busiest stations** in the entire BART system.*

**THE DOWNTOWN BART PLAZA** reopened in October of 2018 after major infrastructure, public art, and cultural programming reinvestment. The Metropolitan Transportation Commission granted **\$7.6 million** to the transportation improvement project, bolstered by an additional **\$400,000** for local arts including a rotating sculpture installation, contemporary sound pieces, and outdoor performances.

Source: Bay Area Rapid Transit



## Transit Access

- Bus:** AC Transit , 28+ lines
- Auto:** 5,000+ parking spaces in downtown, with 2,777 in off-street lots and garages
- Airports:** Oakland International (12 mi), San Francisco International (20 mi), San Jose International (45 mi)
- Deep Water Ports:** Oakland (6 mi), Richmond (8 mi), San Francisco (12 mi)
- Rail:** Bay Area Rapid Transit and Amtrak



# A jewel in the heart of a booming region, Downtown Berkeley

Downtown Berkeley has nearly doubled in population since 2000<sup>1</sup>, and its population is expected to double again to 5,500 by 2020. More than \$400 million in construction investment are driving a boom in real estate development. This growth is supported by ongoing investments in public infrastructure that improve safety, walkability, automobile access and parking.

<sup>1</sup> Source: *Downtown Berkeley Retail Brochure, Downtown Berkeley Association, August 2016*

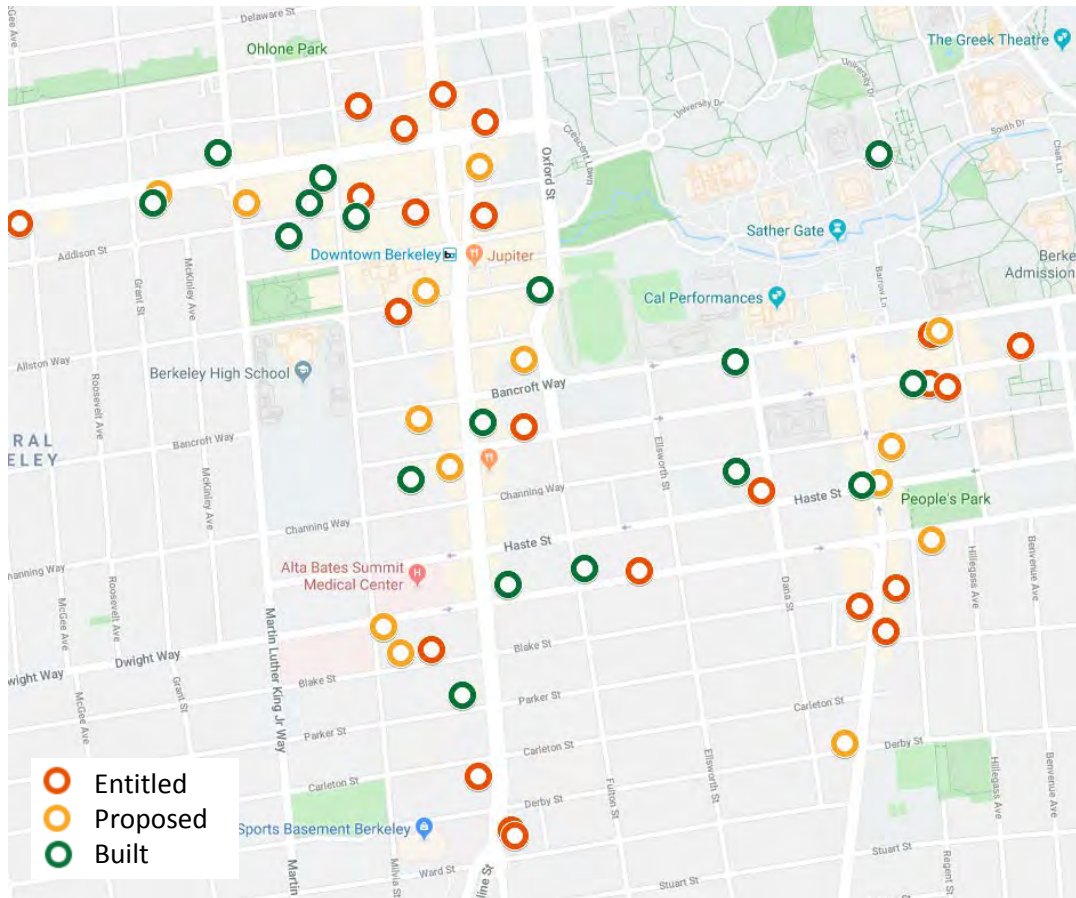


## Future Development at a Glance

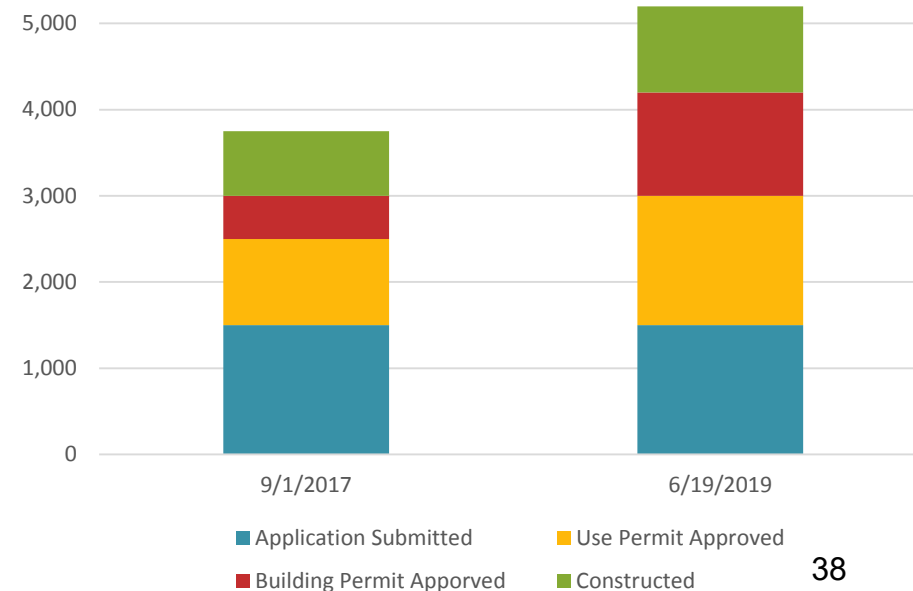
### Recent Downtown Growth & Amenities include:

- Approximately 2,185 new housing units currently slated for development in or near the Downtown.
- New 720-space parking garage opened in Downtown in 2018.
- A new hotel will add 334 additional hotel rooms to the city, attracting new tourists and additional city-wide income.

Multi-Unit Projects (5+ Units), 2005 to Present



Permit Volume, 2017 to 2019





# Berkeley's Employment Base

Berkeley's Largest 25 Employers, by Number of Employees

|                                  |                                       |
|----------------------------------|---------------------------------------|
| Ansys, Inc.                      | Lawrence Berkeley Laboratory          |
| Backroads Inc.                   | Lifelong Medical Care                 |
| Bayer Healthcare LLC             | OC Jones & Sons                       |
| Berkeley Bowl Produce            | Recreational Equipment Inc. (REI)     |
| Berkeley Cement Inc.             | Rigetti Quantum Computing             |
| Berkeley City College            | Siemens Corporation                   |
| Berkeley Marina Doubletree       | Solar Mosaic Inc.                     |
| Berkeley Repertory Theatre       | Sutter Bay Hospitals                  |
| Berkeley Unified School District | Target Corporation                    |
| City of Berkeley                 | University of California, Berkeley    |
| Genji Pacific                    | Whole Foods Market California Inc.    |
| Kaiser Permanente                | YMCA of the Central Bay Area          |
| Meyer Sound Laboratories         | <i>Source: EDD, QCEW Data Q4 2018</i> |

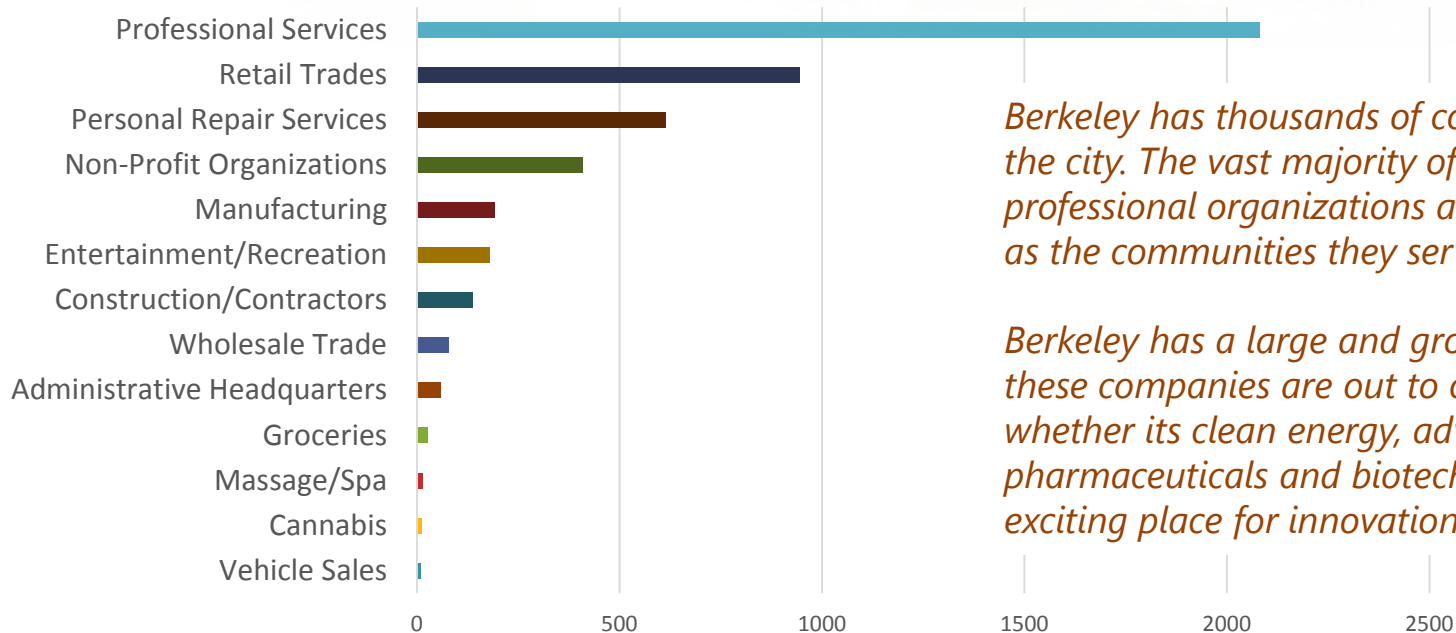
## Berkeley Businesses Highlights

- 15,292 business licenses
- 2,500 brick and mortar businesses\*
- **97%** are 'small businesses' (50 or less employees)
- Only 1.2% businesses employ more than 100 people
- Small businesses account for 41% of jobs in Berkeley

Source: City of Berkeley

\* 2,100 records in Ground Floor Commercial Database

Count of Firms by Type



*Berkeley has thousands of companies throughout the city. The vast majority of these firms are professional organizations and they are as diverse as the communities they serve.*

*Berkeley has a large and growing tech sector, and these companies are out to change the world – whether its clean energy, advances in pharmaceuticals and biotech or new apps. It's an exciting place for innovation.*

# A **THRIVING** Innovation Ecosystem

When it comes to successful startups, Berkeley has a distinct edge:

**capital, talent,** and **brilliant** thinking. The City is home to over 320 startup companies, along with more than 100 organizations in the innovation ecosystem, from UC Berkeley institutes and private research labs, to student entrepreneurship groups, incubators and venture investors. In 2019 alone, Berkeley startups pulled in more than \$200 million in venture investment.

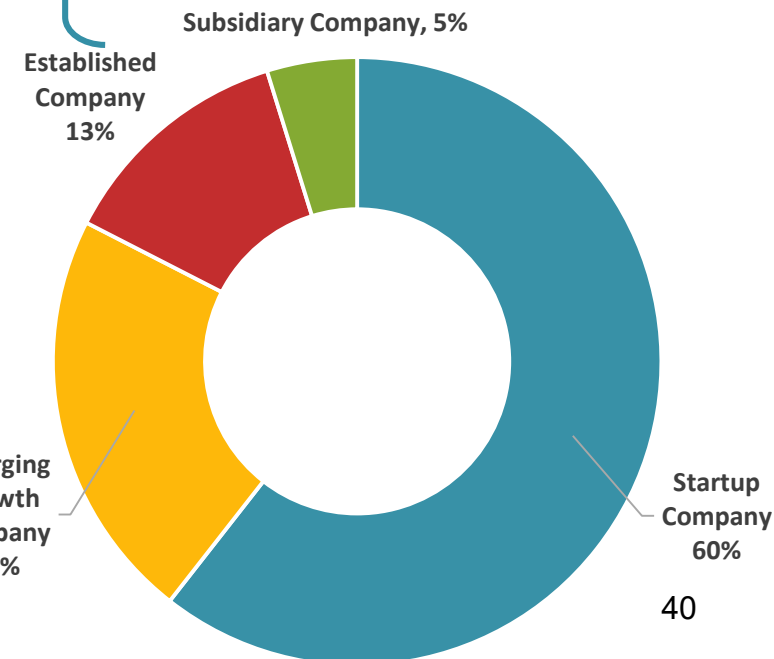
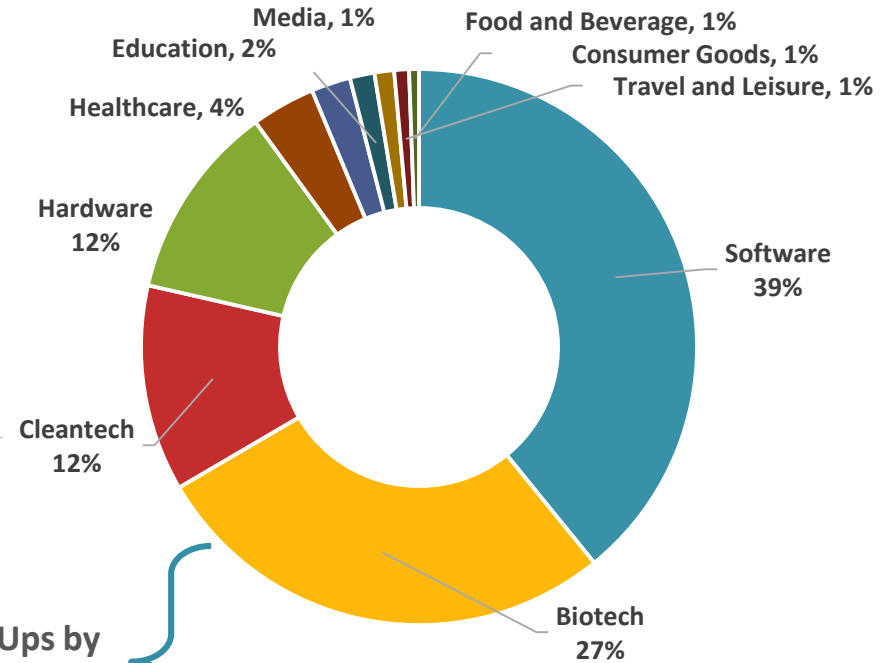
## The Role of Incubators

Incubators such as **SkyDeck**, **Cyclotron Road**, and **The Foundry @ CITRIS** are an invaluable resource to Berkeley's innovation sector - not only because they help startups get off the ground, but because they act as connectors for more mature companies and give founders a place to recruit new talent, share ideas, and find new sources of funding.

From right to left: Kiwi Bot out of SkyDeck; Elysian Lab's cannabis products out of CITRIS Foundry; and Noble Thermodynamic' emission-free engine out of Cyclotron Road.



Berkeley Start-Ups by Type and Stage, 2018



## Berkeley's Women Founders

The lack of representation for women and people of color is a frequent topic of discussion in STEM fields and innovation sector companies. Currently, 15% of founders in Berkeley identify as women, and programs such as the **Women Entrepreneurs of Berkeley** aim to increase that number.



# Berkeley's Downtown Arts District

Berkeley's creative scene engages at every turn. Wander through an artist's open studio, experience cutting-edge theater or tap your toes to rock n' roll -- there are many ways to spark Berkeley's creative side. With more than **150 cultural arts organizations**, including the Berkeley Art Museum & Pacific Film Archive, Berkeley Art Center, Berkeley Repertory Theatre, and Aurora Theatre Company, Berkeley is filled with world-class productions applauded by audiences and acclaimed by critics.



"Berkeley - The City and Its People", Romare Bearden, 1973

## Public Art and Sound at BART Plaza

Recent major investments in the Berkeley art scene have focused on the Downtown Berkeley BART Plaza, currently showcasing contemporary sound pieces and outdoor performances; a rotating sculpture installation; and ongoing cultural event programming. Currently, the Downtown BART Plaza features a new sound installation called, "Histories of the Present" by composers Yann Novak and Robert Crouch which is a multichannel site specific sound created specifically for this spot.

## Downtown Arts Venues



### Cinema

- California Theatres
- East Bay Media Center
- Shattuck Cinemas
- United Artists Berkeley 7

### Theater

- Aurora Theatre Company
- Berkeley Community Theater
- Berkeley Repertory Theatre
- UC Theatre

### Music

- California Jazz Conservatory
- Freight & Salvage Coffeehouse
- The Back Room
- Cornerstone

### Visual Art

- Berkeley Art Museum/PFA
- D King Gallery Rock Posters
- David Brower Center
- Habitot Children's Museum
- Lumbini Buddhist Art Gallery
- Magnes Collection of Jewish Art & Life

# BERKELEY DISTRICTS

## 4th Street **Page 32 of 33**

Berkeley's Fourth Street is a premier shopping destination, featuring fine dining and more than 80 unique retailers offering creative merchandise and contemporary design. With tree-lined sidewalks, live music every weekend, and a calendar of special events free to the public, Fourth Street is the perfect place to enjoy the Bay Area with authentic restaurants and classy shopping.



## Downtown

Downtown Berkeley is a rich urban environment of innovation and creativity. It is home to cultural icons such as Berkeley Repertory Theatre, Freight and Salvage, and BAMPFA. It's also home to vibrant start-up business scene with a half-dozen incubators and co-working spaces, as well as office space to grow. The beautiful new Downtown BART Plaza and major hotels greet visitors, residents, and entrepreneurs alike. Nearby campuses of UC Berkeley and Berkeley City College, plus a bounty of dining and night life options, keep the district buzzing with youthful energy.



## Elmwood

The Elmwood is a charming commercial district with the character of a classic "Main Street" and a shopping atmosphere unlike any other. Specialty shops, restaurants and a theater span the blocks along College and Ashby Avenue, serving local residents and visitors from around the world. The surrounding neighborhood is packed with attractive older homes, parks, and architectural gems like the Elmwood Theater and the Claremont Public Library.



## Lorin District

With historic commercial buildings surrounded by charming residential neighborhoods, the Lorin is one of the most diverse, artistic and easy-access districts in Berkeley. It is home to the Berkeley Flea Market, South Berkeley Farmers Market, a thriving antiques and home furnishing cluster, and cultural icons including the Shotgun Players and Black Repertory Theater. This registered historic district has long been a center of the local Black community, and is also fast becoming a food scene with an impressive assortment of eating and drinking establishments like Hoi Polloi and Lemat.



## Gilman

The Gilman District is a thriving medley of the creativity, craftsmanship and eclectic community that makes Berkeley such a unique and vibrant city. A hub of craft brewing, dining, live music, arts and more is available in Northwest Berkeley.



Berkeley's twists and turns of terrain give its neighborhoods room to establish independent personas, moods and mantras. Each of Berkeley's commercial districts has hyper-local authenticity; Berkeley's neighborhoods range from sophisticated and urbane to cozy and intimate.



## North Shattuck

North Shattuck is a culinary wonderland, home to world famous foodie destinations like Chez Panisse, Cheeseboard, and the original Peet's Coffee, along with a vibrant scene of new innovators. This area is celebrated as the birthplace of the California farm-to-table movement. North Shattuck is a walkable business district near Downtown and UC Berkeley campus, filled with independent boutiques and a bustling café culture.



## West Berkeley Design Loop

The industrial warehouses of West Berkeley are home to traditional manufacturers, artisan businesses, and a thriving community of R&D companies. West Berkeley overflows with hidden gems. It's a place where bakers and glass blowers rub shoulders with researchers creating everything from plant-based meats to cures for infectious diseases. The up-and-coming SoU District along 4th and 5th Street features experimental and handcrafted food, crafts and fine art. The Aquatic Park research zone is a world class hub of biology and technology innovation. The Design Loop along San Pablo Avenue is a hub for sustainable interior design and furnishings.



## Telegraph Avenue

Telegraph Avenue serves as a conduit and amplifier for Berkeley's unceasing energy. Its tree-lined sidewalks host a mix of specialty stores, vintage boutiques, international cuisine cafés, and national retailers. In a city known for its openness, political activism, and unparalleled academia, Telegraph offers more of all those things. Bordering the core of the UC Berkeley campus, Telegraph is home to a collection of historical 'legacy' businesses, including one of the best bookstores in America and iconic music establishments. It also features world class people-watching.



## University Avenue

University Avenue is Berkeley's main East/West artery, spanning from the Bay to the entrance to UC Berkeley's campus. More than 200 merchants line this vibrant corridor, and each block has a unique personality. The International Marketplace district where University crosses San Pablo provides a concentration of cultural and ethnic businesses, rich with Indian and South Asian flavors, fine fabrics and regional foods from around the world.



## Solano Avenue

Solano Avenue provides a shopping experience unlike any other, with an abundance of local, independently-owned shops, and restaurants. Family-friendly spirit and local flavor are on display throughout this mile-long shopping district, as it passes through Berkeley and the neighboring town of Albany. The famous Solano Avenue Stroll, one of the largest and most festive street fairs in California, takes place here each September.







Berkeley Homeless Commission

3a

ACTION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council  
From: Homeless Commission  
Submitted by: Carole Marasovic, Chairperson, Homeless Commission  
Subject: Amending Source of Income Discrimination Ordinance to Establish  
Administrative Enforcement Procedure

RECOMMENDATION

The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

Stage 1 of enforcement in the complaints procedure shall involve the taking of the complaint which shall be investigated by the designated department expeditiously, within a reasonable period of time no longer than ten days. Upon completion of the investigation, a finding shall be made of substantial evidence of discrimination or no evidence of discrimination.

In the process of the investigation, the investigator shall concurrently, while identifying the facts, attempt to resolve the complaint by seeking to bring the parties to agreement that the complaining party be permitted to rent the premises in question or alternatively, if the premises has otherwise been rented prior to the investigation, be provided the first option for the next available vacancy at the premises.

Where the complaint has not otherwise been resolved through this procedure, and there is a finding of substantial evidence, the complaining party shall be offered the opportunity to have its complaint heard by an administrative hearing officer mirroring a procedure or similar to a procedure afforded by BMC 1.28. If the complainant files for such an administrative hearing, and the rental property remains available, the filing for an administrative hearing, shall constitute a stay of the property being otherwise rented to another applicant.

If at the administrative hearing, the administrative law judge, or hearing officer, finds in favor of the complainant, the administrative hearing officer can order that housing be provided to the complainant and/or direct a fine of no more than five thousand dollars (\$5,000) to be paid to the complainant with an additional penalty to the City of Berkeley for the costs of the administrative appeal. This procedure will be a final administrative decision subject to litigation to be brought in a court of law by a complainant through any legal entity, private or public as the complainant can identify.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

#### SUMMARY

The current source of income anti-discrimination ordinance has not been enforced because the enforcement provisions are impractical. Amendments to the ordinance will provide for a means of enforcement, through administrative procedures, that will open up housing in Berkeley to persons with Section 8 vouchers, Shelter Plus certificates, VASH vouchers and other subsidies.

Establishing an investigative procedure, prior to an administrative hearing, encourages early resolution of the complaint avoiding additional expense to the landlord/property owner and provides for a timely rental for the complainant.

#### FISCAL IMPACTS OF RECOMMENDATION

The costs to implement such a program will be substantial and are best calculated by staff. However, implementing an administrative procedure is the only means of enforcing a law critical to protecting access to rental housing by persons with vouchers and other subsidies.

#### CURRENT SITUATION AND ITS EFFECTS

On July 25, 2017, Council unanimously passed an ordinance to prohibit discrimination in property rental based on source of income. Since that time, discrimination based on source of income remains pervasive throughout the Berkeley community. The current enforcement provisions in the ordinance are impractical.

The complaining party currently must seek legal redress in court, through a protracted process, when they are only seeking to rent an apartment in a timely manner. An administrative procedure, commencing with an investigation of their complaint, is far more likely to result in an expeditious resolution, concluding in rental.

Even if the complainant wanted to proceed through an untimely litigation route, they would be hard-pressed to identify an attorney to represent them. County counsel or the district attorney, as stated in the current ordinance, would not prioritize such cases. The reference to any other person or entity, in the current ordinance, could include the City Attorney but that undertaking would be excessively burdensome to the City of Berkeley City Attorney, already overstretched with competing demands. This ordinance has not substantially caught fire so as to interest the private bar in bringing these claims.

#### BACKGROUND

On November 13, 2019, the Homeless Commission voted to pass the recommendation as earlier stated in the recommendation section of this report and herein incorporated by reference.

**Action:** M/S/C Marasovic/Hill to submit the report on enforcement of source income discrimination to Council as written.

**Vote:** Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara.

Noes: Mulligan, Behm-Steinberg, Hollyman. *Abstain:* None. *Absent:* None.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects.

#### RATIONALE FOR RECOMMENDATION

As source of income discrimination continues in Berkeley two years following the adoption of an ordinance prohibiting such, it is clear that the current ordinance is insufficient as to enforcement. An administrative procedure is best in terms of an expeditious resolution.

An increase in a fine, through the administrative procedure, is an incentive for property manager/landlord resolution. The order of an application received is critical because otherwise, denial is easily justified through a pool of applicants which favors those without vouchers or subsidies. Lack of credit or bad credit can be a basis for denial to a Section 8 voucher/subsidy holder. However, that credit is irrelevant when the voucher or subsidy holder's rent will be largely paid by the funding source.

#### ALTERNATIVE ACTIONS CONSIDERED

The Commission considered not taking action which would mean that the ordinance is meaningless without lack of enforcement.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Brittany Carnegie, Commission Secretary, HHCS, 510-981-5415







Office of the City Manager

3b

ACTION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services

Subject: Companion Report: Amending Source of Income Discrimination Ordinance to Establish Administrative Enforcement Procedure

RECOMMENDATION

The City Manager thanks the Homeless Commission for their concern regarding potential discrimination against residents trying to utilize rental assistance vouchers in Berkeley. She recommends, however, taking no action on the Homeless Commission recommendation since the City already funds legal assistance for low-income residents that may be used to obtain relief under BMC Chapter 13.31.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On November 13, 2019, the Homeless Commission voted to submit a report which recommends that City Council amend BMC Chapter 13.31 “to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income.”

**Action:** M/S/C Marasovic/Hill to submit the report on enforcement of source income discrimination to Council as written.

**Vote:** Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara.

Noes: Mulligan, Behm-Steinberg, Hollyman. *Abstain:* None. *Absent:* None.

The City of Berkeley provides over \$580,000 each year to non-profit providers of legal assistance to provide free legal advice and representation for low-income residents who may experience the type of discrimination covered under BMC 13.31.

BACKGROUND

BMC Chapter 13.31, passed by Council on July 25, 2017, prohibits discrimination in property rentals based on source of income. Injured parties may file a civil action to enforce the Ordinance. Violations of the ordinance may also be prosecuted as a misdemeanor and may be subject to enforcement through the administration citation

process. However, at this time, no funding is has been appropriated for administrative or criminal enforcement of the Ordinance.

ENVIRONMENTAL SUSTAINABILITY

There are no known environmental opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Amending the Ordinance and adopting administrative procedures which would include investigating complaints and assessing fines are activities that would likely be located within the City's Code Enforcement Unit. This unit does not have the capacity to absorb these duties.

ALTERNATIVE ACTIONS CONSIDERED

City Council could consider creating a fund to reimburse landlords renting to Section 8 or Shelter Plus Care tenants for any damages that exceed the value of the deposit or another incentive program that would encourage landlords to participate in the Section 8 or Shelter Plus Care rental assistance programs.

CONTACT PERSON

Kristen Lee, Manager, Housing & Community Services, HHCS, 981-5427



Kate Harrison  
Councilmember District 4

04

ACTION CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.<sup>1</sup> The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

**1) Regulatory burden shifted to the Host Platform**

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

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<sup>1</sup> *Homeaway.com v Santa Monica*. United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

## **2) Hosts can have only one residence**

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

## **3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years**

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

## **4) Closing 14/30 day loophole**

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

## **5) Remedies**

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new

Resolution in Support of Senate Bill 54 and Assembly Bill 1080:  
The California Circular Economy and Plastic Pollution Reduction Act

ACTION CALENDAR  
July 28, 2020

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

**CONTACT PERSON**

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

**ATTACHMENTS**

Ordinance

## 100Chapter 23C.22 Short-Term Rentals

### 23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

### 23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

### 23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.



H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

L. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City, and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, [for 14 or fewer consecutive days](#).

P. ["Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.](#)

### **23C.22.040 Permit And License Required**

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate [and a Business License](#) for [a Short-Term Rental](#) shall be required for each Host to operate a Short-Term Rental. [A Host must provide the Uniform Resource Locator \(URL\) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.](#)

[No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.](#)

### **23C.22.050 Operating Standards and Requirements**

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, [and the Host complies with all Host Responsibilities set forth in this Ordinance](#).

#### A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined [above](#).

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section [23C.22.030](#). In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

#### B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter [19.40](#)).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by [Zoning Certificate](#) and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host [or Local Contact information](#).

(ii) In any advertisement for the STR, a Host must include the [Zoning Certificate number](#).

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. (“TOT”). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter [19.40](#)).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. [100](#)

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter [9.04](#), and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

### **23C.22.060 Remedies**

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter [13.48](#)). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters [1.24](#), [1.26](#) and [23B.64](#).

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section [38773.5](#), attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter [13.48](#) to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section [23C.22.060](#). (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.







Office of the Mayor

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ACTION CALENDAR

March 10, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguín  
Subject: Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

RECOMMENDATION

1. Adopt a first reading of an ordinance adding Berkeley Municipal Code Chapter 13.89, the Tenant Opportunity to Purchase Act (TOPA), that will take effect on final adoption with an implementation start upon completion of Administrative Regulations and funding of related program costs; and
2. Direct the City Manager to take all necessary steps to implement this chapter including, but not limited to:
  1. Developing Administrative Regulations;
  2. Preparing an implementation strategy;
  3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
  4. Determining necessary staffing for program administration and hearing officers for adjudication;
  5. Timelines for project “roll-out”;
  6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
  7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

SUMMARY

TOPA is a policy that empowers tenants to determine the future of their housing when an Owner is ready to sell, by giving tenants the opportunity to collectively purchase the property they live in. It does this by creating legal rights for tenants to purchase or assign rights to an affordable housing developer, and providing technical assistance, education, and financing to help make these purchases possible. TOPA provides a way to stabilize existing housing for tenants and preserve affordable housing in Berkeley. It

also creates pathways for tenants to become first-time homeowners and facilitates democratic residential ownership. TOPA will apply to all rental properties in Berkeley, subject to a number of exemptions, including owner-occupied Single Family/Owner Occupied properties, including those with an Accessory Dwelling Unit (ADU) or other secondary dwelling unit, that do not have a homeowner exemption registered with the County Tax Assessor.

The first right to purchase is conferred to tenants, and includes a right of first offer, right of first refusal, and a right for tenants to assign rights to a qualified affordable housing organization. If tenants waive their rights, the list of qualified affordable housing organizations have a second opportunity to purchase the property within shorter timelines. Qualified affordable housing organizations must be committed to permanent affordability and democratic residential control. Assigning rights in this manner also benefits the affordable housing developers, especially community land trusts, as the tenant buy-in is often critical to the successful management of the property.

The policy is designed to maintain properties purchased under TOPA as permanently affordable for future generations. Any TOPA property that receives City investment would be deed restricted to ensure that the property remains permanently affordable. TOPA properties that are purchased without City investment would also have a deed restricted upper limit for property appreciation. This would result in the accessibility of those properties to serve tenants around 80% AMI.

Multi-tenant buildings that include a mix of TOPA buyers and tenants who wish to continue renting will be required to ensure tenant protections and the enforcement of tenant's rights. This will prevent any internal displacement caused by the exercising of TOPA rights.

TOPA sales have longer escrow periods in order to provide tenants time to organize, engage technical assistance, form an organization that would qualify for financing, and obtain the necessary financing to close a transaction. In order to incentivize owners to participate in a TOPA sale, since it may potentially take more time, upon close of escrow the City would refund to the seller the City's portion of the Real Property Transfer Tax (.75%) not including the proportional amount attributed to Measure P. Recent transactions, including asking vs. sales price and days on the market were gathered from *Zillow* and provided in Attachment 2.

Moving forward a TOPA policy will require detailed Administrative Regulations and a well-funded infrastructure to administer and enforce the policy. There is also a vital need to provide adequate education, legal and technical assistance to tenants as part of the implementation. Finally, a more robust and vibrant acquisition fund will be required that can work efficiently with the TOPA ordinance. This funding could be accommodated through the Small Sites Program with potential funding coming from

Measure U1 tax receipts, the Housing Trust Fund, and Measure O or through another funding mechanism including grants.

### BACKGROUND

Since 2015, Mayor Arreguin and community-based organizations such as the East Bay Community Law Center (EBCLC) and Northern California Land Trust (NCLT) have been researching TOPA's effectiveness as an anti-displacement strategy in Berkeley, to be paired with a robust Small Sites acquisition program.

On February 14, 2017, Mayor Arreguin introduced a Council item entitled "*Small Sites Acquisition Program and Tenant Opportunity to Purchase Act*"<sup>1</sup> which among other provisions, referred to the City Manager to:

Review and develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

On May 30 and November 28, 2017, the Berkeley City Council adopted the "*Affordable Housing Action Plan*"<sup>2</sup> which included a referral to staff to develop a Tenant Opportunity to Purchase Ordinance (TOPA) modeled after a Washington DC law that was enacted in 1980. On June 11, 2019, City staff returned to Council with an Information item<sup>3</sup> that outlined its research and discussed the administration and implementation requirements. This item was referred to the Agenda & Rules Committee for scheduling at a future Council meeting. On September 24, 2019, the information item was included on the Consent Calendar with an action of "received and filed".

Since the last date of Council action, the Mayor's Office has been working to develop a TOPA ordinance, which has been drafted by the East Bay Community Law Center (EBCLC), with a diverse group of stakeholders including EBCLC, the Northern California Community Land Trust (NCLT), Bay Area Community Land Trust (BACL), tenant advocates, legal professionals that specialize in tenant rights, experts familiar with the Washington DC policy and its implementation history, and City of Berkeley staff from the City Attorney's Office, Planning Department, HHCS, Finance and the Rent Board.

Additionally, in September 2019, City Planning staff and the East Bay Community Law Center applied for a grant from the San Francisco Foundation as part of the Partnership

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<sup>1</sup> [https://www.cityofberkeley.info/.../2017-02-14\\_Item\\_18b\\_Small\\_Sites\\_Acquisition.aspx](https://www.cityofberkeley.info/.../2017-02-14_Item_18b_Small_Sites_Acquisition.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/.../2017-11-14\\_Item\\_26\\_Implementation\\_Plan\\_for\\_Affordable\\_Housing.aspx](https://www.cityofberkeley.info/.../2017-11-14_Item_26_Implementation_Plan_for_Affordable_Housing.aspx)

<sup>3</sup> [https://www.cityofberkeley.info/.../2019-06-11\\_Item\\_50\\_Referral\\_Response\\_Tenant\\_Opportunity\\_to\\_Purchase.aspx](https://www.cityofberkeley.info/.../2019-06-11_Item_50_Referral_Response_Tenant_Opportunity_to_Purchase.aspx)

for the Bay's Future initiative. The Grant purpose was to be used for technical assistance to jurisdictions for projects focused on protection and preservation of affordable housing that result in measurable benefits for tenants. Staff applied for the grant in response to the Berkeley City Council directive, in part, to develop a TOPA policy as part of the City's Housing Action Plan (HAP), adopted in 2017.

On February 4, 2020 the San Francisco Foundation officially announced the awards, one being the City of Berkeley and the East Bay Community Law Center, for the purposes of developing a Tenant Opportunity to Purchase ordinance and a Local Housing Preference Policy.<sup>4</sup>

## CURRENT SITUATION AND ITS EFFECTS

### ***Housing Affordability and Regional Impacts***

At the end of 1998, just before State-mandated vacancy decontrol took effect, the average rent in Berkeley's 20,000 apartments built before 1980 was \$720 a month. Twenty years later the average rent for these same units is \$1,956. If rents had risen only by the rate of inflation, they would average \$1,150 a month. In the last five years alone, rents have increased by 50 percent. Similarly, in 2000 the median home price in Berkeley was \$380,000, rising to \$704,000 in 2013 and by 2019 it had reached \$1,300,000.<sup>5</sup>

Rents in Berkeley and the greater Bay Area continue to rise, with low vacancy rates.<sup>6</sup> Future trends are indicating additional loss of naturally occurring affordable housing, according to the County of Alameda Regional Analysis of Impediments to Fair Housing Choice (IFHC). As an example: for decades, a 13-unit complex on Solano Ave. housed a mix of residents — including, teachers, business owners and a 96-year-old woman. The property is rent-controlled and subject to Berkeley's eviction protections, but the owners invoked the Ellis Act that permits full-building evictions if the property is removed from the rental market altogether (the owners intend to convert the building to a "tenancy-in-common" and sell the units at market rates).<sup>7</sup>

Anecdotal research, received from local real estate brokers over the past two months, indicate a desire to increase returns on investment as well as concerns about buyers moving away from the multi-unit property market.<sup>8</sup> Due to rent control, tenant protections and eviction laws some owners are looking to sell multi-unit properties, however existing tenant rents impact the sales price. Some of the methods being utilized to raise rents, and therefore increase the property value for sale, include paying

<sup>4</sup> <https://sff.org/partnership-for-the-bays-future-marks-one-year-anniversary/>

<sup>5</sup> [Housing for a Diverse, Equitable and Creative Berkeley, July 16, 2019](#)

<sup>6</sup> <https://www.huduser.gov/portal/publications/pdf/OaklandCA-comp-17.pdf>

<sup>7</sup> <https://www.berkeleyside.com/2019/12/10/theyve-been-evicted-from-a-north-berkeley-building-now-they-want-to-buy-it-with-help-from-a-land-trust>

<sup>8</sup> <https://www.fool.com/millionaires/real-estate-market/articles/8-real-estate-market-predictions-2020/>



tenants to move out of the building, evictions for cause (when a case can be made), owner-move-in evictions, and Condo/Tenants-in-Common conversions.

### ***Economic Factors***

As the Bay Area region experiences increased economic growth and a high demand for housing, this growth is causing housing prices to rise that then displaces low-income residents. As seen throughout the IFHC report, low-income residents tend to also be minority residents. Therefore, continued growth of the region could lead to more displacement of minority residents and increased segregation unless certain actions are taken to encourage economic and racial/ethnic integration and access to stable affordable units in a range of sizes. Contributing factors affecting disproportionate housing needs include:

- Lack of private investments in specific neighborhoods
- The availability of affordable units in a range of sizes
- Displacement of residents due to economic pressures
- Limited supply of affordable housing within neighborhoods
- Lack of economic support for low income home ownership

The National Low-Income Housing Coalition (NLIHC) *2018 Out of Reach Study* listed the Bay Area region as one of the least affordable areas in the United States. To be able to afford a two-bedroom market rate unit in Alameda County, a household would need to earn \$44.79 per hour or \$93,163 annually (“housing wage”). Comparatively, the average housing wage for California is \$32.68 per hour or \$67,974 annually.

Regional Policy 6, as recommended by the IFHC, is to:

Increase homeownership among low- and moderate-income households by allocating funds for homeownership programs that support low- and moderate-income households. This would include down payment assistance, first time home buyer programs, Mortgage Credit Certificate, below market rate (BMR) homeownership programs and financial literacy and homebuyer education classes. There is also a requirement to promote the programs and any other existing programs through marketing efforts.<sup>9</sup>

### ***National Research on Ownership***

While today’s economy is strong and job growth high, there is a growing gap between rates of economic growth and the levels of income. Wages can be growing but not at the same rate as the economy. Many low to middle income people do not have enough money to cover the basic needs due to rising costs – especially in housing. These lower

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<sup>9</sup> <http://www.acgov.org/cda/hcd/documents/Draft-AI-Combined2019-10-24.pdf>

earnings lead to fewer assets and less wealth. For most Americans the greatest source of their wealth is their home, but home ownership is considerably lower than in past decades. Among African Americans, home ownership has decreased to a 60-year low.<sup>10</sup>

Providing ownership options for tenants is a mechanism to sustain affordability. According to the *Urban Institute's Opportunity and Ownership Project*, creating ownership within existing rental units provides opportunities for low income renters that will keep their housing costs stable over many years. They suggest that, rather than providing housing subsidies at the Federal and State level for new construction, investing in existing housing would provide many more units at an affordable level (new construction – especially in a good economy – is increasingly expensive).<sup>11</sup>

Further academic analysis from the *Joint Center for Housing Studies, Harvard University* states: “Public policies attempt to subsidize these barriers to home buying for low-income people through tax policies, grants and other strategies. Current policies are, at best, inefficient and inequitable, and, at worst, ineffective. A more systematic approach would adhere to a set of operating principles including achieving scale, focusing on moving renters to ownership, targeting subsidies to underserved populations, creating incentives for repayment, and maximizing efficiency”.<sup>12</sup>

### ***City of Berkeley Housing Policies and TOPA Opportunity***

Housing development has accelerated in Berkeley and while new permits issued from January 1, 2017 through December 31, 2018 exceed Regional Housing Needs Allocation (RHNA) requirements for above moderate incomes by 141%, affordable housing development is well below regional goals. The following table shows Berkeley's progress toward its RHNA goals through December 2018.<sup>13</sup>

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<sup>10</sup> <http://wbur.org/hereandnow/2020/02/10/job-economy-middle-class>

<sup>11</sup> <https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF>

<sup>12</sup> <https://www.jchs.harvard.edu/sites/default/files/hbtl-08.pdf>

<sup>13</sup> [Item 13 Annual Housing Pipeline Report](#)

| Progress towards 2014-2022 RHNA: Approved Building Permits<br>January 1, 2014 – December 31, 2018 |                        |                       |                      |                       |              |              |       |
|---------------------------------------------------------------------------------------------------|------------------------|-----------------------|----------------------|-----------------------|--------------|--------------|-------|
| Building Permit Action Year                                                                       | Ext Low<br><30%<br>AMI | VLI<br>31%-50%<br>AMI | LI<br>51%-80%<br>AMI | MOD<br>81-120%<br>AMI | BMR<br>Total | Above<br>MOD | Total |
| January 1, 2014 – December 31, 2018                                                               | 0                      | 174                   | 66                   | 0                     | 240          | 1,975        | 2,215 |
| RHNA                                                                                              | 266                    | 266                   | 442                  | 584                   | 1,558        | 1,401        | 2,959 |
| Remaining RHNA Capacity Requirement                                                               | 266                    | 92                    | 376                  | 584                   |              | -574         |       |
| Percent of Goal Achieved                                                                          | 0%                     | 65%                   | 15%                  | 0%                    |              | 141%         |       |
| The current RHNA is for an 8.8-year period, from January 1, 2014 through October 31, 2022.        |                        |                       |                      |                       |              |              |       |

Housing affordability is the first objective of the *Housing Element of the City of Berkeley General Plan*. Policy H-1 - Extremely Low, Very Low, Low, and Moderate-Income Housing sets the goal of increasing housing affordable to residents with lower incomes and outlines a number of actions to achieve this goal, including encouraging incentives for affordable housing development.<sup>14</sup>

The Berkeley City Council, in the referenced *Housing Action Plan* (HAP), stated support for Non-profit housing developers and Community Land Trust acquisition of property to stabilize rents through a Small Sites Program. Two such recent transactions, at 2321-2323 Tenth Street and 1640 Stuart Street, have resulted in maintaining 16 units at below-market rates. This policy also stated consideration for the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. This program was initially funded through Measure U1 tax receipts with an option of also utilizing Housing Trust Fund resources.

Until 1996, Berkeley condominium conversions provided the tenants a first right to purchase their unit, as did policies in Santa Monica whose policy was more far reaching.

TOPA working group members estimate that approximately 42% of all Berkeley residential properties would fall under TOPA. This estimate was based on an analysis of the property type, homeowner exemption and number of units from the 2018/2019 Alameda Property Tax roll. It is not reflective of the total **number** of units that would benefit from a TOPA Ordinance. (See Attachment 3).

### **Washington D.C. TOPA**

Washington D.C. passed the Tenant Opportunity to Purchase Act (TOPA) in 1980. This policy regulates the conversion of use, sale and transfer of rental housing. Tenants have the first right of refusal to purchase their buildings and also can assign their rights to third parties, such as affordable housing developers. The impact of this policy has been immense with approximately 30% of annual multi-unit sales going through the

<sup>14</sup> [https://www.cityofberkeley.info/Planning\\_and\\_Development/Home/General\\_Plan\\_-\\_Housing\\_Element.aspx](https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx)

TOPA process. Since 2002, this policy has helped preserve over 3,500 units of affordable housing, 2,000 of which have been preserved since 2013.<sup>15</sup> The growing impact of TOPA is due to massive and sustained increases in DC's Housing Production Trust Fund, collaborative efforts to identify and harness other funding/financing, as well as sustained support for the community based organizations that help tenants understand and exercise their TOPA rights.

In order to fund the program, Washington DC dedicates \$10M per year in Housing Trust Fund (HTF) allocations directly to TOPA and the Housing Production Trust Fund which has \$40M for affordable housing preservation.

TOPA has also helped to create many limited equity cooperatives (LECs) in DC, which currently number 4,400 units across 99 buildings.<sup>16</sup> The DC Limited Equity Cooperative Task Force, formed in 2018, came out with recommendations in October 2019 to increase the number of LEC units in DC by 45% by 2025 (additional 2000 units). TOPA will be a major vehicle to create these additional units. The task force has also identified how to improve/expand existing policy, financing and technical assistance to support the health of existing and future LECs.

Finally, TOPA has led to the creation of hundreds of tenant associations across Washington, DC. Many of these tenant associations were the main leaders and organizers in creating the DC Tenants Union in 2019.<sup>17</sup> The Tenants Union is focused on supporting rent control and other tenant protection policies and plans to build power and solidarity across tenant associations from different parts of the city. (See Attachment 4)

### ***San Francisco COPA***<sup>18</sup>

In April 2019, the San Francisco Board of Supervisors passed, by a unanimous vote, the Community Opportunity to Purchase Act (COPA). COPA is designed to stabilize communities by preventing displacement and preserving affordable housing and applies to the sale of any non-condo residential building of 3 or more units. It gives qualified non-profit organizations a right of first offer prior to the property going on the market and a right of first refusal when the owner has a bona fide offer from a potential buyer.

Nonprofit buyers have a limited time (25 days) to work with tenants, exercise their rights under COPA and enter into a Purchase-Sale agreement. Recent articles are indicating challenges to the prescribed timeframes.<sup>19</sup> While a seller is not required to accept the

<sup>15</sup> [https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First\\_Right\\_Purchase\\_Paper-Final.pdf](https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf)

<sup>16</sup> <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

<sup>17</sup> <https://www.streetsemmedia.org/article/dc-residents-launch-a-city-wide-tenant-union-in-hopes-to-foster-solidarity-across-the-district/#.XjSX3i2ZOt8>

<sup>18</sup> <https://sfmohcd.org/community-opportunity-purchase-act-copa>

<sup>19</sup> <https://www.sfchronicle.com/bayarea/article/City-officials-want-landlord-to-delay-sale-of-76-15002958.php>

offer, the qualified nonprofit also has a right of first refusal to match a competing offer. At closing, deed restrictions are placed on the building restricting the building to affordable housing for the life of the building with a mean value of rents not to exceed 80% AMI.

The building could eventually be transferred to tenant ownership under a Limited Equity Cooperative or other model, as long as permanent affordability deed restrictions are maintained. The ordinance includes incentives, including partial exemption from the City's transfer tax and the potential for qualified nonprofits to facilitate sellers' efforts to obtain federal tax benefits.

San Francisco will set aside \$40M – 90M in a specific MOHCD fund to support first time home buyers and its Small Sites Program that could also support the COPA ordinance. This fund provides resources for deposits, down payments and bridge loans until permanent financing is in place.

### ***Oakland TOPA***

Inspired by the Moms-for-Housing advocates, on January 30, 2020 at the Oakland City Council's Rules and Legislation Committee meeting, a TOPA ordinance was introduced and is scheduled for a vote in the Community and Economic Development Committee in March 2020. From there it could go to a full City Council vote.<sup>20</sup> Oakland Mayor Libby Schaaf has already expressed support for the ordinance.

The Oakland ordinance has been developed since 2018 by a group of community land trusts, tenant advocacy organizations, and the East Bay Community Law Center, whose draft ordinance for Berkeley provided a foundation for Oakland's ordinance. The Oakland ordinance largely mirrors this proposal but will also reportedly include a COPA option for non-profits to buy vacant properties.

The political will for TOPA in Oakland was prompted by Moms 4 Housing — a group of homeless women who took over an empty, investor-owned house in West Oakland for two months before they were evicted and arrested. Their actions garnered national attention and symbolize the Bay Area's housing and homelessness crisis.

Since the eviction of the Moms 4 Housing, the property owner has agreed to negotiate to sell the house to the nonprofit Oakland Community Land Trust. They have also agreed to give the land trust or other nonprofits a chance to buy dozens of other single-family homes it owns in Oakland.

### ***New York State TOPA***

At the end of January 2020, New York State Sen. Zellnor Myrie, who represents Central Brooklyn, announced that he is in the process of drafting new legislation that would give

<sup>20</sup> <https://www.mercurynews.com/2020/01/30/oakland-councilwoman-to-introduce-moms-4-housing-inspired-ordinance/>

tenants the first right to buy their landlord's property should it come up for sale. Myrie stated that "Landlords who claim they will be unable to keep their buildings in good repair or cover the cost of capital improvements" would have an opportunity, in the New York rent-regulated market, to "keep tenants in their homes, create a path to ownership and maintain buildings,"

This Tenant Opportunity to Purchase Act is said to be modeled after right-of-first-refusal statutes in Washington D.C.<sup>21</sup>

### ***Financing for TOPA projects***

Financing for TOPA projects is expected to be provided from a combination of city subsidies, the private capital of tenants, and loans from community-oriented banks and lending institutions like credit unions, CDFIs, local banks, future public banks and others. In this sense, TOPA effectively leverages both private and public financing in advancing permanent affordability.<sup>22</sup>

#### Subsidies

In order to make TOPA effective and responsive to the full scale of anticipated community needs<sup>23</sup>, the City will need to enlarge the current Small Sites Program (SSP), or create a new fund, to a minimum of \$10-15 million dollars per year and reconfigure SSP guidelines to align with TOPA. While TOPA projects can benefit from existing streams of affordable housing funding, the scale of community need far outweighs the existing funding sources. As demonstrated by the case of the D.C. TOPA, it was only with substantial financing added to its Housing Production Trust Fund that the ordinance became an effective way to prevent and fight displacement - DC has an annual \$116M for their Housing Production Trust Fund (HPTF), with a minimum of \$10M set aside for TOPA projects. However, D.C. typically spends more out of its HPTF on TOPA - in FY2018, DC spent close to \$22.5M on TOPA acquisition projects with additional funds for rehab in some instances (449 units over 9 projects). Without similar enhancement of SSP, or another funding source, TOPA will not be able to produce the necessary impactful levels of affordability needed to meet the crisis, particularly for those

<sup>21</sup> <https://therealdeal.com/2020/01/31/bill-make-landlords-give-tenants-first-shot-to-buy-buildings/>

<sup>22</sup> While financing percentages of each project may vary substantially according to building costs, tenant resources, and subsidy availability a combination of these financing streams is expected to be a part of most if not all TOPA projects.

<sup>23</sup> 2019 real estate transaction data for Berkeley show that approximately 250 multi-unit buildings (duplexes and up) sold. Assuming similar sales volume and that a similar percentage (32%) of tenant groups exercise their right to purchase as under the D.C. ordinance we anticipate potentially 80 projects annually, with a greater number of smaller unit buildings participating than occur in DC.



of very-low, low and moderate income who may not be able to leverage their own private capital to get a loan.

#### Private Capital of Tenants

Single family home households and tenants of multi-unit buildings with mixed income units would be able to purchase buildings on their own or with smaller amounts of subsidy involved because these tenants will most likely be able to pay a higher debt service coverage ratio in order to obtain a mortgage from an institutional lender to acquire a property. This could allow higher income tenants with private capital to assist lower income tenants with less capital by securing a blanket mortgage to purchase the building for mutual benefit. This would also benefit “missing middle” income tenants who may not be able to purchase homes on their own, in the current market, but might have enough private capital saved to contribute to the purchase of their building.

#### Loans from Institutional Lenders

Many banks are willing to work with re-sale restricted properties such as those created by TOPA, the majority of which are local commercial lenders, credit unions, cooperative banks, and Community Development Finance Institutions (CDFIs).<sup>24</sup> However, even mainstream primary lenders have told community partners (NCLT & BACL) that there is no inherent obstacle to lending to resale restricted properties such as a community land trust (CLT)<sup>25</sup> or limited equity housing cooperative (and LEHC) since they are valid forms of California non-profit corporation. In fact, many mainstream primary lenders have provided CLT loans for single family homes.<sup>26</sup> Additionally, there is nothing to prevent newly formed tenant organizations from acquiring property collectively as it is not uncommon for lenders to process and begin underwriting loan applications from newly formed corporate entities during the acquisition phase. While the most common form of ownership is an LLC, there have also been many instances of newly created 501(c)3 non-profit corporations like the non-profit public<sup>27</sup> or mutual benefit<sup>28</sup> corporation, the legal entity that is the basis of the limited equity housing cooperative, which have been successful in acquiring loans.<sup>29</sup>

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<sup>24</sup> For example Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC).

<sup>25</sup> [https://www.lisc.org/media/filer\\_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519\\_white\\_paper\\_community\\_land\\_trusts.pdf](https://www.lisc.org/media/filer_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519_white_paper_community_land_trusts.pdf)

<sup>26</sup> [http://www.freddiemac.com/singlefamily/land\\_trust\\_mortgages\\_faq.html](http://www.freddiemac.com/singlefamily/land_trust_mortgages_faq.html), <https://groundedsolutions.org/tools-for-success/resource-library/mortgage-financing-options>

<sup>27</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CORP&sectionNum=5151](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP&sectionNum=5151).

<sup>28</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=)

<sup>29</sup> For example: Derby Walker House in Berkeley, California and Columbus United in San Francisco CA.

An important factor to note is that the loans that would be provided to TOPA tenants are commercial loans, not consumer loans, because the borrower is not a natural person, but rather a corporate entity (even though the owners of the entity will be owner-occupants of the property), which means they are for a shorter term of 10-15 years. The loan approval process for such commercial loans, from lenders willing to loan on such re-sale restricted properties, tends to range from 90 to 120 days depending on the lender & lender type (e.g. CDFIs tend to take longer). The most limiting factor in this estimate is the ability of the borrowing entity (the tenant group) to timely respond to lender's underwriting requests. This variable can be dramatically improved and streamlined with a robust technical assistance program through the City and Supportive Partners.

The most important considerations for an institutional lender in underwriting a loan for a tenant organized entity (including LEHCs<sup>30</sup>) will be:

**Repayment of the Loan:** First and foremost, the lender will look at the fair market value of the underlying property (that there is adequate loan to value ratio); and secondly, they look at net operating income of the property, and that there is adequate debt service coverage ratio. In other words, the primary underwriting is of the property itself, similar to how a lender would look at a residential rental property.

**Viability & Validity of the Borrowing Entity:** As stated above, the lender can start the loan review and underwriting process while the entity is still being formed. However, they will require that the Articles of Incorporation have been filed to start the process. A condition of loan closing will be that the entity is duly formed (i.e. that the Secretary of State has approved the Articles, typically a 30-day process; and that all other governing docs, such as by-laws, have been finalized). This condition being met will also be necessary for the entity to properly take title.

**Stability of Property/Asset Management:** This is determined by the capacity of the tenants to manage and maintain the property, fill vacancies, properly budget income & expenses for the property. In self-managed properties, banks will look to the experience of the individuals, their internal property management plan, and any partnerships/alliances with outside property management firms or organizations. A second option is for the tenant organization to hire a professional property management firm, which can be an expedient way to get loan approval

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<sup>30</sup> <https://groundedsolutions.org/sites/default/files/2018-11/Limited%20Equity%20Co-ops%20by%20Community%20Land%20Trusts.pdf>

and through the acquisition process, while a tenant group develops the skills and leadership necessary to self-manage in the future.

Credit enhancements, supporting partners and other backstop mechanisms: Many existing resident initiated purchases that were structured in models such as LEHC's and limited equity condominiums overcame underwriting challenges through backstop mechanisms such as a Community Land Trust, other organizational partner and/or municipality providing a credit enhancement such as a loan guarantee or co-signature on the primary mortgage.

### ALTERNATIVE ACTIONS CONSIDERED

#### *No Action*

Taking no action could, over time, further reduce naturally occurring affordable housing. It would also take away an opportunity for lower income tenants to participate in the ownership of their residence and increase their personal wealth – the historic driver of lower to middle class wealth creation.<sup>31</sup>

No Action would direct Housing Trust Fund, Measure U1 and other assets primarily to the construction of new affordable housing projects. It would also require no investment of other City General Fund/Other Resources in administrative implementation and oversight.

#### ***Support the Repeal of Costa Hawkins***

For over twenty years, the Costa-Hawkins Rental Housing Act (*California Civil Code Sections 1954.50-1954.535*) has impacted California renters and the affordability of housing. A statewide law backed by the real estate industry that passed in 1995, Costa-Hawkins ties the hands of cities when it comes to protecting tenants and stabilizing rents:

- Cities can't pass vacancy control; if a tenant leaves or is forced out of a rent-controlled unit, a landlord can raise the rent to whatever the market will bear upon new tenancy;
- Cities can't extend rent control to any rented condominiums, single-family homes, and any new housing built after 1995.

Since Costa-Hawkins passed, tenants have paid ever increasing rents and been forced from their communities or into homelessness due to high housing costs. Additionally,

<sup>31</sup> <https://www.cato.org/publications/policy-analysis/exploring-wealth-inequality#poverty-matters-not-inequality>

since the Great Recession, roughly tens of thousands of single-family home rentals have been purchased by investors all across the state and nationwide.

On October 27, 2015, the Berkeley City Council unanimously adopted a resolution calling on the Governor and State Legislature to repeal the Costa-Hawkins Rental Housing Act.<sup>32</sup>

Costa-Hawkins was also a key part of a 2009 court decision, *Palmer v. the City of Los Angeles*, that found that the imposition of local inclusionary housing requirements for rental housing was in conflict with Costa-Hawkins. In 2017, former Governor Jerry Brown signed AB 1505 to restore the ability for California cities to require developers include affordable units in new rental projects. Additionally, in 2019 the State passed historic legislation, AB 1482, which implemented a cap on rents for non-controlled units of 5% plus CPI, and just cause for eviction statewide. These protections will apply to most housing units not currently deed restricted or controlled, including those exempt from rent control under Costa-Hawkins.

There has been movement among tenant rights advocates to repeal Costa Hawkins to give cities the option to expand and strengthen rent control policies. The latest effort is a statewide ballot measure similar to Proposition 10, which California voters rejected in 2018. Should this new measure succeed, cities would still need to go through the process of passing new legislation before the repeal would have any effect.<sup>33</sup>

While new statewide rent control legislation might provide some relief to tenants, it is still unknown as to what properties would be included in the legislation, what level of rent increases would be allowed. It would not give tenants an option to participate in the ownership of their properties nor would there be deeded restrictions to provide rent stabilization for years into the future.

### ***Rely on Regional Policy***

The current need for deed restricted affordable units in Alameda County is 52,591 according to California Housing Partnership.<sup>34</sup> Much work is being done on the regional level to address this crisis. In January 2019, the Metropolitan Transportation Commission (MTC) released the *CASA Compact: A 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area*.<sup>35</sup> This report was the product of over two years of stakeholder meetings with elected officials, builders, affordable housing developers and other housing professionals to study the root causes and develop solutions to the region's housing crisis. The CASA Compact

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<sup>32</sup> [https://ci.berkeley.ca.us/.../2015-10-27\\_Item\\_16\\_Urging\\_the\\_State\\_Legislature.aspx](https://ci.berkeley.ca.us/.../2015-10-27_Item_16_Urging_the_State_Legislature.aspx)

<sup>33</sup> <https://la.curbed.com/2018/1/12/16883276/rent-control-california-costa-hawkins-explained>

<sup>34</sup> <https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Alameda-HNR-2019-Final.pdf>

<sup>35</sup> [https://mtc.ca.gov/sites/default/files/CASA\\_Compact.pdf](https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf)

provides a roadmap for regional action on housing affordability. It recommends a series of policies and programs to Produce, Preserve and Protect housing and renters in the Bay Area. Preservation of existing naturally occurring affordable housing as a key strategy and the plan recommended a variety of regional funding sources to help acquire and rehabilitate existing housing to preserve affordability. This year, the Association of Bay Area Governments (ABAG) and MTC are considering the placement of a regional housing finance measure on the November 2020 ballot.

In addition, ABAG and MTC are currently developing *Plan Bay Area 2050*, the region's Transportation Plan and Sustainable Communities Strategy, which will identify where growth should be concentrated and how to ensure that the Bay Area is affordable, equitable, sustainable and resilient for the future. The Plan will be aligned with the Regional Housing Needs Allocation (RHNA) which will take into account the number of affordable housing units for which each community is responsible for and the number of units required for each income level. Preservation of existing housing is a policy strategy already proposed in the draft Blueprint.

Alameda County Measure A1, the county affordable housing bond approved by voters in 2016, has provided new resources to create new affordable units. Approximately 1,000 new units are in some stage of development. The bond could yield approximately 3,500 affordable units countywide.

While this work is promising, it has a long horizon and the need to maintaining existing affordable housing units is immediate.

### ***Investor Only TOPA Application***

An "investor only" approach would craft a TOPA ordinance that would apply to owners with a 50% or greater ownership position in 3 or more rental units within the City of Berkeley.

There is great difficulty in identifying what properties would fall under this approach. Many investors create Limited Liability Companies (LLCs) for legal protection. Without review of the underlying documents, the City would not know the make-up of ownership and whether one or more owners own greater than 50% in each individual property in an LLC or LLCs. There are also many properties that are owned in Trust. The beneficiaries of these trusts could own different percentages of each property and in this situation trust documents would need to be obtained and analyzed for each property owned. While it might be possible to create a database that would identify all rented properties in Berkeley and the ownership entities, the ownership participation and owner names associated with properties could be impossible and could change from property to property.

This approach would require significant resources for enforcement, for a City agency to determine who has a 50% or more ownership interest in every rental property, and to count up the number of rental units owned by each owner to determine which properties TOPA applies to. This could cause confusion by tenants and owners as to the basic question of whether TOPA applies to a given property and could undermine TOPA's effectiveness and usefulness overall.

When analyzing the number of properties that would fall under an Investor Only TOPA, recent property tax rolls were reviewed and sorted by ownership name/entity. The applicability standard with this approach would yield approximately 1/3 the potential properties that would fall under a TOPA ordinance. (See Attachment 2)

### ***San Francisco COPA Model***

The San Francisco COPA model would provide a first right to purchase to nonprofit qualified organizations. Tenants do not have a say in the nonprofit provider that will own their building and there are no pathways for tenant ownership or democratic control by the tenants once the property changed hands. SF COPA does not provide the facilitated resident ownership models as does the Berkeley TOPA Ordinance.

Timeframes to respond to exercise the COPA are short and have resulted in lost opportunities.<sup>36</sup> Incentives that are available to sellers that participate in the SF COPA have been used as a model for the TOPA Ordinance in Berkeley.

SF COPA does have some valuable elements which have been incorporated into the TOPA ordinance in Berkeley, such as a right of first offer and accompanying incentives to sellers who accept the initial offer, as well as a vetting process for qualified affordable housing organizations who can purchase.

The SF COPA makes more sense given the rental housing stock in San Francisco is generally larger buildings. Utilizing a SF COPA Model for Berkeley would result in 50% fewer TOPA opportunities than the Investor Only TOPA application.

At a time when investor ownership is the greatest percentage of the multi-unit property ownership TOPA, when exercised by tenant organizations, is in keeping with the value Berkeley incorporates into its equity policies.

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<sup>36</sup> [SF Chronicle, City Officials Want Landlord to Delay Sale](#)



## CONSULTATION/OUTREACH OVERVIEW AND RESULTS

### ***City Staff Research***

As part of the 2017 referral to the City Manager to create a TOPA policy, City staff in the Health, Housing and Community Services Department (HHCS) conducted research and interviews with a variety of stakeholders about TOPA policy and implementation including:

- Apartment and Office Building Association of Metropolitan Washington
- City of Los Angeles, Office of the Chief Legislative Analyst
- City of San Francisco, Office of Supervisor Sandra Lee Fewer
- DC Association of Realtors
- East Bay Community Law Center
- Housing Counseling Services (City-funded technical assistance provider)
- Latino Economic Development Corporation (City-funded technical assistance provider)
- Washington, DC Department of Housing and Community Development, Rental and Sales Division

The research staff presented the Council informed the development of this ordinance.

### ***Tenant Outreach and Focus Groups***

In addition to a number of TOPA workshops conducted for Berkeley community members over the years, EBCLC designed and conducted tenant-centered focus groups for the purpose of eliciting feedback on key provisions of the TOPA Ordinance to inform policy proposals. EBCLC identified key questions, had a purposeful recruitment strategy during which they reached out to a number of tenant organizations to gauge interest in participating, and prepared participants via orientations beforehand to provide background on TOPA and answer any questions. Two focus groups were held with a total of nine participants, and there was a post-focus group survey with additional questions.

With the exception of one homeowner participant, all focus group participants were Berkeley tenants and included three Section 8 voucher holders and almost all were low-income, with varying levels including 80% of AMI, 50% of AMI, and 30% of AMI and below. Participants lived in property types ranging from multi-family to single family, an ADU and senior housing. Out of the four people of color, two identified as Latino/Hispanic, one as Black/African American, and one as Asian/Pacific Islander. An even spread of ages from 25 to 60+ years of age were represented with five participants identifying as female, three as male, and one as non-binary. All participants had some form of high school education, six having at least a bachelor's degree.

Tenants were engaged through presentations, simulations, and written feedback on two core provisions of TOPA: timelines and permanent affordability restrictions. The decision points for the timelines included eliciting feedback on the amount of time it would take to submit a statement of interest and submit an offer. To perform these milestones, tenants were advised that they would need to organize a tenant meeting, gather financial information, and decide on ownership type. The results showed that tenants needed more time across all property types. Considerations for timelines that were raised during focus groups included the time necessary for tenants to build consensus, gather financial information, receive guidance on options of assigning rights vs. purchasing, and learning about first-time homeownership, including a cost-benefit analysis.

Participants identified the following supportive service needs: City-sponsored workshops, financial assistance in the form of subsidy and financial advising, centralized forms and documents regarding a clear articulation of TOPA rights and process, legal assistance, and mediation services especially for multi-family homes. Overall, tenants were excited about the prospect of being able to purchase or assign their rights to an affordable housing organization. However, tenants would like to ensure that non-profits are held to a high standard of care.

Permanent affordability requirements for all TOPA projects were presented, as well as the major trade-offs of equity building and future affordability. Participants were asked for their impressions on the fairness of permanent affordability in exchange for the bundle of rights that TOPA provides to tenants. Overall, there was a strong sense from participants that they would want to use the TOPA rights to buy the property they live in primarily for the purpose of staying there, and that keeping the property affordability for future generations was more important than individual profit gain or reaping a high appreciation on the property. All of the participants agreed that permanent affordability needs to be a part of any TOPA transaction.

General feedback from the focus groups demonstrated that there is support for a TOPA policy, although it is contingent on resources such as financial and technical assistance. There is a strong sense among low-income tenants that technical and financial assistance are necessary for them to exercise their TOPA rights.

The focus groups, despite the small sample size, provided useful feedback to inform the policy. Nonetheless, EBCLC, NCLT, and BACLT intend to continue reaching out to more residents and groups, especially those representing low-income people of color and particularly groups most impacted by the displacement crisis, to do outreach and solicit feedback as necessary.

***Lender/financing overview***

The TOPA working group has contacted the following banks and lending institutions in recent months: Clearinghouse CDFI, Community Bank of the Bay, National Housing Trust, Capital Impact Partners, Heritage Bank (formerly Presidio Bank), and the Local Initiatives Support Corporation (LISC). Early conversations with these lenders, as reflected previously, indicate that there is interest in funding TOPA projects so long as they meet the necessary requirements. Again, in the case of most lenders, they do not offer 30-year consumer loans for these types of projects, but instead offer the more typical 10-15 year term commercial acquisition loans. However, TOPA working group members have been in conversation with several of these lenders who have interest in creating a new/hybrid type of consumer/commercial loan geared towards the owner-occupants of LEHC properties. This would ideally be a fully amortized 30 year loan, backed by the types of investments which offer the more favorable interest rates typical of consumer (owner-occupied) mortgages. With a solid potential demand for more of these types of loans through TOPA, there could be the momentum needed to persuade lenders to advance this concept.

***Research of rental sales professionals***

Real estate professionals from four different organizations were interviewed and asked about asking vs. sales price and also length of time the properties were on the market, including escrow time. Additionally, several online resources and articles were reviewed to greater understand buyers of multi-tenant properties and market speculation expectations for 2020. Comments gathered directly from real estate professionals included:

- Berkeley/Oakland property is seen as a safe investment because selling prices don't usually go below asking prices
- Due to rent control, tenant protections and eviction laws investors are looking to move out of property ownership in Berkeley/Oakland
- It is difficult to make improvements on properties due to inability to raise rents and recoup improvement investment costs
- Property desirability depends on tenant occupation, property condition, cash flow, location and zoning (depending on buyers intended use)
- Selling time is longer and price is lower for multi-unit properties with rent-controlled units because it is difficult to make profitable returns on investment
- Larger companies that buy multi-unit properties are often looking to redevelop

Property sale and time on the market, gathered from *Zillow*, is included in Attachment 2.

In order to ensure that TOPA ordinance development would align with the work of the San Francisco Foundation grant, additional outreach will continue during the City

Council Committee process. Feedback from proposed meetings with Berkeley Property Owners Association and BRIDGE Association of Realtors will be included as Attachment 5.

### RATIONALE FOR RECOMMENDATION

Taking no action or waiting for significant changes in state rental laws or for more affordable housing production will continue to exacerbate the housing affordability crisis. The need to provide more options for low income tenants is immediate.

Increasing affordable housing is a policy priority for Berkeley. The most cost-effective way to do so is creating sustained affordability within existing housing stock. The recommendation to apply TOPA to all properties with the exception of Single Family/Owner Occupied Residences including those with ADUs, will at least **triple** the number of units that could be made available to tenants under TOPA (compared to other options that were considered). This policy would provide ownership opportunity for low income tenants or stabilize rents, keeping their housing cost affordable for generations. Furthermore, maximizing the number of units that could invoke the TOPA policy would justify the City's investment of resources for purchase, administration and enforcement.

Legislation of a Tenant Opportunity to Purchase Act (TOPA) has inherent and significant benefits for tenants, including:

- Effective anti-displacement tool by giving tenants options to stay in their home
- Creates pathways to homeownership for tenants, thereby helping low-income families of color to have permanency in Berkeley and build equity
- Stabilizes rents and keeps rental properties from converting to market-rate
- Levels the playing field for tenants and affordable housing developers by providing an opportunity for them to purchase properties, and incentivizing owners to sell to them when the owner is ready
- Provides Tenants empowerment and control of their housing
- Preserves existing, naturally occurring affordable units
- Creates more affordable housing by converting rental properties to deed-restricted permanently affordable properties
- Provides an opportunity for tenants to stay in their homes without fear of eviction

Future regional housing policy will require greater accountability for housing production and more requirements to provide affordable units. Converting existing housing stock to affordable units could help Berkeley meet these required housing goals.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

Optimally, the goal for the TOPA policy to be in full force and effect would be following funding in the June 2020 Budget process. In order to meet that goal, additional work must be completed:

- Develop Administrative Regulations. The fellow awarded to the Planning Department by the San Francisco Foundation for the Bay's Challenge Grant will be working with the East Bay Community Law Center in developing the Administrative Regulations and Implementation Plan for the TOPA Ordinance.
- Database development. A consultant should be hired to create an accurate database of all rental properties that will support many other existing programs, such as the Rental Housing Safety Program, Measure U1, Below Market Rate units and measuring RHNA goals. This could be accomplished in much the same manner as the database for short term rentals.
- Program administration, oversight and enforcement. Adequate funding to support the administration, oversight and enforcement must be identified. The Rent Board is willing to assume the role as the administering body and will also adjudicate any claims of noncompliance through their hearing officer processes.
- Funding for Program Costs. Quantifying adequate project costs, that would be included in a budget referral, are a component of the required actions contained herein. The City must be prepared to fully fund the program however, future State housing incentives and regional philanthropy could help offset City investment and such opportunities should be followed and pursued by the City Manager and the administering body.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

TOPA aligns with the Berkeley plans, programs, policies and laws in the following way:

City of Berkeley 2019-2020 Strategic Plan

- Create affordable housing and housing support services for our most vulnerable community members
- Champion and demonstrate social and racial equity
- Foster a dynamic, sustainable and locally based economy

Housing Element of the General Plan*Objectives*

- **Housing Affordability.** Berkeley residents should have access to quality housing at a range of prices and rents. Housing is least affordable for people at the lowest income levels, and City resources should focus on this area of need.
- **Maintenance of Existing Housing.** Existing housing should be maintained and improved.
- **Fair and Accessible Housing.** The City should continue to enforce fair housing laws and encourage housing that is universally accessible.
- **Public Participation.** Berkeley should continue to improve the role of the neighborhood residents and community organizations in housing and community development decision making.

*Policies and Actions*

- **Policy H-1 Affordable Housing.** Increase the number of housing units affordable to Berkeley residents with lower income levels.
- **Policy H-2 Funding Sources.** Aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs.
- **Policy H-3 Permanent Affordability.** Ensure that below market rate rental housing remains affordable for the longest period that is economically and legally feasible.
- **Policy H-4 Economic Diversity.** Encourage inclusion of households with a range of incomes in housing developments through both regulatory requirements and incentives.
- **Policy H-5 Rent Stabilization.** Protect tenants from large rent increases, arbitrary evictions, hardship from relocation and the loss of their homes.
- **Policy H-6 Rental Housing Conservation and Condominium Conversion.** Preserve existing rental housing by limiting conversion of rental properties to condominiums.
- **Policy H-7 Low-Income Homebuyers.** Support efforts that provide opportunities for successful home ownership for residents and workers in the City of Berkeley.
- **Policy H-8 Maintain Housing.** Maintain and preserve the existing supply of housing in the City.

Affordable Housing Action Plan adopted November 28, 2017:

High Priority #2: Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of



refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.

#### Rent Stabilization and Eviction for Good Cause Ordinance

In June 1980, Berkeley residents passed the City's comprehensive rent stabilization law known as the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76). The Ordinance regulated most residential rents in Berkeley and provided tenants with increased protection against unwarranted evictions and is intended to maintain affordable housing and preserve community diversity. However, in 1995, the California Legislature enacted Costa-Hawkins Rental Housing Act. Since that time owners may now set a market rent for most tenancies once a new tenant occupies a unit. While there are some tenants that remain in previous units under the Berkeley Rent Stabilization Ordinance, their rents increase by a set percentage annually. Landlords of rent stabilized units are motivated to get their long tenants to move out, therefore putting these tenants at risk of eviction. TOPA aligns with the spirit of the 1980 law in that it would stabilize the rents in TOPA acquired properties.

#### Housing for a Diverse, Equitable and Creative Berkeley: Proposing a Framework for Berkeley's Affordable Housing

Referred to the Housing Advisory Commission, Measure O Committee, and Homeless Services Panel of Experts in July 2019, the proposed Framework presents a vision for affordable housing policy and proposes aligning funding streams with existing and new programs. It is intended to guide the work of City Commissions and the Council in implementing Measure U1, Measure O and Measure P and City housing policies. The Framework also sets an ambitious goal of 30% of all housing being dedicated as subsidized affordable housing. Among the many policies and programs recommended, it specifically calls out the acquisition and preservation of existing housing and democratic ownership and control. These strategies are identified as key to preventing displacement, preserving affordability and building wealth. TOPA is also called out as a policy strategy. The Framework is under review by Commissions and has not been adopted by the City Council.

#### Regional Policies

ABAG and MTC are developing a regional transportation and land use plan to address the region's housing crisis through 2050. Along with determining the allocation by city, it is also looking at revenue generation and financing methods to support the need for low income housing. TOPA could help Berkeley meet its low-income regional allocation and there is also a possibility that funds generated through ABAG policy could help fund some TOPA projects in the future.

FINANCIAL IMPLICATIONS

*Revenue impact of Incentive to Sellers*

Based on transactions from November 1, 2018 to November 30, 2019, 245 multi-unit residential (including mixed use) properties transferred hands for a total of \$9.65M in base transfer tax revenue. Half of the base transfer tax from these properties is approximately \$4.825M; this would be the amount the City would forgo with the TOPA program.

|                                                                                                    |          |
|----------------------------------------------------------------------------------------------------|----------|
| Total Base Transfer Tax from November 2018 to November 2019 from multi-unit residential properties | \$ 9.65M |
| Eligible amount for TOPA rebate (1/2 of transfer tax)                                              | \$ 4.83M |

| % participation in TOPA | Revenue Loss in Millions |
|-------------------------|--------------------------|
| 100%                    | \$ 4.83                  |
| 50%                     | \$ 2.41                  |
| 25%                     | \$ 1.21                  |
| 10%                     | \$ 0.48                  |

The City currently has a Seismic Retrofit Refund Program which provides refunds for voluntary seismic upgrades to residential properties. Up to one-third of the base 1.5% transfer tax may be refunded on a dollar-for-dollar basis. This program applies to structures that are used exclusively for residential purposes, or any mixed-use structure that contains two or more dwelling units.

If half of the base transfer tax is given to sellers via the TOPA program, this will have a negative impact on the Seismic Retrofit Refund Program. It should be noted that the Planning Department is making an effort to enhance the seismic program to include other qualifying measures (regarding energy efficiency) that require a permit. The amount available for rebate would significantly be reduced due to the lower base amount once TOPA is implemented.

*Cost for Administration, Education, Outreach and Purchase Support*

Council can consider additional policies to support TOPA acquisitions that would supplement current funding sources such as: Small Sites Program, Measure U1 tax

receipts, Housing Trust Fund and other government resources that might come in the future. One consideration would be the establishment of a Housing Accelerator Fund similar to that established in San Francisco. Acquisition support could include, but not be limited to, purchase deposits, appraisals, down payment assistance, capital improvements and capital reserves.

Additional resources for implementation, administration, enforcement and adjudication are being referred to the City Manager to determine the appropriate level of funding to support the program:

- Cost of administration (including notices, database management, rental cost history and adjustments for non-ownership units)
- Cost of tenant education/outreach/purchase support/adjudication

The estimates below draw on D.C.'s workload experience and tenant participation rate to generate expected staffing needs. Berkeley and D.C. could have a comparable number of sales each year covered under TOPA, but D.C.'s housing stock features much larger buildings that require more organizing and technical assistance support.

Budget estimates are broken down into 2 priorities:

1. Ongoing staffing support for Supportive Partners
2. Pre-development and project management needs for Qualified Organizations

Staff for "Supportive Partners" (i.e. technical assistance, on-going)

Berkeley's TOPA requires tenants to work with a Supportive Partner in order to exercise their rights to purchase under the policy. Supportive partners function in a supportive role to assist tenants in exercising their rights. This may include education, outreach, organizing, supporting tenants through the purchase, connecting tenants to resources, and counseling tenants on first-time homeownership and collective ownership structures.

Washington D.C. funds the equivalent of 8 FTE staff to provide direct outreach and resident organizing support under TOPA, which is broadly comparable to the scope of work envisioned for the Supportive Partners. This level of staffing support provides assistance for 30 transactions per year. Given the slightly reduced organizing workload with smaller buildings, we anticipate a need going forward for 6 FTE staff in order to adequately and professionally support the anticipated number of tenant groups exploring their TOPA rights and either purchasing or assigning their rights. Expected costs for 6 FTE staff positions for Supportive Partners. Salary costs vary but an anticipated average cost of \$125,000/year per FTE assuming a salary of

between \$60,000 to \$75,000 plus taxes, benefits and insurance was assumed for estimating.

Total: 6 FTE at \$125,000 each = \$750,000

Costs for pre-development work and project management needs of Qualified Organizations (on-going)

An essential part of the program is sufficient project management capacity at the Qualified Organizations to support the development of TOPA projects. Again, referring to the D.C. model, the City helps support the project management capacity via developer fees. Since this capacity was built up over 40 years of TOPA implementation, it is anticipated that Berkeley will need to support start-up capacity and allow for ongoing support through pre-development funds related to specific TOPA projects.

For the first year of TOPA, Qualified Organizations will need to be able to request pre-development funds of ~\$25,000 per project from the City. The City's existing pre-development loan process provides an excellent model for covering the out of pocket costs of projects, but typically does not cover the staffing and project management costs at that phase.

Due to the unique nature of TOPA project staffing, close work with residents is expected to be a substantial portion of the development workload. If there is a large volume of TOPA projects at once, the Qualified Organizations will likely need a mechanism to advance a portion of developer's fees to cover early-stage project management. This could mean that Qualified Organizations serving Berkeley may each need a project manager staff to support the volume of projects.

ENVIRONMENTAL SUSTAINABILITY

Creating and preserving affordable housing in Berkeley will allow lower income individuals and families to live closer to transit and to their workplaces, reducing greenhouse gas emissions. Preserving and refurbishing existing housing stock is an important environmental strategy, as reuse/repair/refurbishment of materials avoids spending resources on a new building construction, and the disposal of construction debris. Finally, increasing affordable housing in Berkeley will make the City more economically and racially equitable, which is a goal in Berkeley's *Resilience Strategy*.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

1. Ordinance
2. Zillow Multi Unit Property Sale Information
3. Berkeley Properties and TOPA Applicability
4. DC Apartment Buildings and TOPA
5. [Future feedback from BRIDGE and BPOA]

ORDINANCE NO. -N.S.

TENANT OPPORTUNITY TO PURCHASE ACT

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

Section 1. Title

This Ordinance shall be known as the “Tenant Opportunity to Purchase Act”.

Section 2. That Berkeley Municipal Code Chapter 13.89 is created to read as follows:

**Chapter 13.89**

**TENANT OPPORTUNITY TO PURCHASE ACT**

**Sections**

- 13.89.010 Findings**
- 13.89.020 Definitions**
- 13.89.030 “Sale” Defined**
- 13.89.040 Authority**
- 13.89.050 Applicability**
- 13.89.060 Exemptions**
- 13.89.070 First Right to Purchase**
- 13.89.080 Tenant Decision-Making; Tenant Organizations**
- 13.89.090 Qualified Organizations**
- 13.89.100 Supportive Partners**
- 13.89.110 Assignment of Rights**
- 13.89.120 Waiver of Rights**
- 13.89.130 Notice Requirements**



- 13.89.140 Right of First Offer**
- 13.89.150 Right of First Refusal**
- 13.89.160 Third Party Rights**
- 13.89.170 Right to Appraisal**
  - 13.89.180 Contract Negotiations**
  - 13.89.190 No Selling of Rights**
  - 13.89.200 Tenant Protections**
  - 13.89.210 Price Stabilization**
  - 13.89.220 Incentives**
  - 13.89.230 Enforcement**
  - 13.89.240 Statutory Construction**
  - 13.89.250 Administration and Reports**
  - 13.89.260 Severability**

**13.89.010 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. In April 2019, the average rent for an apartment was \$3,191. To be able to afford a two-bedroom fair market rate unit, a household would need to earn \$44.79/hour or \$93,163 annually. Comparatively, the average for California is \$32.68/hour or \$67,974 annually.
- C. The Department of Housing and Urban Development (“HUD”) sets the income standards for housing vouchers based on the Area Median Income (“AMI”). In 2019, for a Berkeley family of four to qualify as extremely low income at 30% AMI, their income could not exceed \$37,150, very low income at 50% AMI could not exceed \$61,950 and low income at 80% AMI could not exceed \$98,550.
- D. Housing production in Berkeley has accelerated but there remains a significant unmet need for affordable housing for low-income people. Between January 1, 2014 and December 31, 2018, Berkeley permitted 141% above moderate income units (+120% AMI), 0% moderate income units (81-120% AMI), 15% low income units (51 - 80% AMI),

65% very low income units (31 - 50% AMI) and 0% extremely low income units (less than 30% AMI) toward meeting the Association of Bay Area Governments' ("ABAG") RHNA goals.

- E. The current need for affordable housing units in Alameda County is 52,591 units. Approximately 20% of residents in Berkeley are living in poverty.
- F. 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.
- G. 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.
- H. This program 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 the first opportunity to purchase and, in some cases defined herein, Qualified Organizations the second opportunity to purchase the property before it may be sold on the market to a third-party purchaser.
- I. The purpose of this chapter is to promote the health, safety, and general welfare of the residents of the City of Berkeley and the economic stability and viability of neighborhoods and ensure protection of the socioeconomic diversity and social fabric of the City.

### 13.89.020 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings set forth below. **Unless the context clearly indicates otherwise, the singular term includes the plural and the plural term includes the singular.**

- A. "Accessory Dwelling Unit" (ADU) has the same meaning as in Chapter 23C.24 and includes a Junior ADU.
- B. "Administrative Regulation" means such rules and regulations the City shall issue to further the purposes of this Chapter.
- C. "AMI" means Area Median Income established by the U.S. Department of Housing and Urban Development (HUD), pursuant to 42 U.S.C. Chapter 1427 et seq., to establish local income classification levels.

- D. "Appraised value" means the value of the Rental Housing Accommodation as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.
- E. "Bona fide offer of sale" means an offer of sale for a Rental Housing Accommodation:
  - 1. For a price and other material terms at least as favorable to a Tenant, Tenant Organization, and Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Purchaser in an arm's length third-party contract; or
  - 2. In the absence of an arm's length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.
- F. "The City" means the City of Berkeley, including any departments within the City that are assigned any responsibilities under this Chapter.
- G. "City Manager" is defined as the City Manager or his or her delegate
- H. "CPI" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward metropolitan area. If publication of the Consumer Price Index ceases, or if it is otherwise unavailable or is altered in a way as to be unusable, the City shall determine the use of an appropriate substitute index published by the United States Department of Labor, Bureau of Labor Statistics or any successor agency.
- I. "Days" means calendar days unless otherwise stated.
- J. "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.
- K. "Governing Principles" means the governance and management principles stated in a Tenant Organization's Governing Documents.
- L. "Highest and best use" means the reasonably probable legal use of a property that is physically possible, appropriately supported, and financially feasible and that results in the highest value of the property.
- M. "Limited Equity Housing Cooperative" means the form of ownership defined in Section 11003.4(a) of the Business and Professions Code, which limits the increase of share values to below 10 percent annually, as well as prohibits more than 10 percent of the

total development cost of the cooperative housing units to be provided by share purchasers pursuant to Sections 11003.4 and Section 11003.2 of the Business and Professions Code, and that also meets the criteria of Sections 817 and 817.1 of the Civil Code.

- N. "Majority" means an affirmative vote of more than fifty percent (50%) required for decision-making under this Chapter.
- O. "Matter-of-right" means a land use, development density, or structural dimension to which a property owner is entitled by current zoning regulations or law.
- P. "Owner" means one or more persons, corporation, partnership, limited liability company, trustee, or any other entity, who is the owner of record of the Rental Housing Accommodation at the time of giving notice of intention to sell, and each person, corporation, partnership, limited liability company, trustee, or any other entity, who, directly or indirectly, owns 50 percent or more of the equity interests in the Rental Housing Accommodation at the time of giving notice of intention to sell. For purposes of complying with the notice requirements described in this Chapter, "Owner" may refer to any person acting as an authorized agent of the Owner.
- Q. "Qualified Organization" is defined in Section [Qualified Organizations].
- R. "Rent" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.E). It means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of an Owner under the Rental Agreement.
- S. "Rental Agreement" has the same meaning as in the Rent Stabilization and Eviction for Good Cause Ordinance (section 13.76.040.F). It means an agreement, oral, written or implied, between an Owner and a Tenant for use or occupancy of a unit and for housing services.
- T. "Rental Housing Accommodation" means any real property, including the land appurtenant thereto, containing one or more Rental Units and located in the City of Berkeley.
- U. "Rental Unit" or "unit" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (Chapter 13.76) and accompanying regulation 403. It means any unit in any real property, including the land appurtenant thereto, that is available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with the use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.

- V. "Rent Board" or "Board" has the same meaning as in the Rent Stabilization and Good Cause Ordinance (section 13.76.040.A).
- W. "Rent Stabilization and Eviction for Good Cause Ordinance" means Chapter 13.76 of the Berkeley Municipal Code.
- X. "Sale" or "sell" is defined in Section ["Sale" Defined].
- Y. "Single Family Home" means any Rental Housing Accommodation comprised of no more than one Rental Unit, whether or not the Rental Unit has one or more Tenant Households. A Single Family Home includes a condominium dwelling.
- Z. "Supportive Partner" is defined in Section [Supportive Partner].
- AA. "Tenant" means one or more renter, tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or benefits of a Rental Unit within a Rental Housing Accommodation. "Tenant" does not include transient guests who use or occupy a unit for less than fourteen consecutive days.
- BB. "Tenant Household" means one or more Tenants, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or Rental Agreement for all members of the household and other similar characteristics indicative of a single household.
- CC. "Tenant-occupied unit" means any Rental Unit currently occupied by one or more Tenants.
- DD. "Tenant Organization" means Tenants who have organized themselves as a legal entity that:
1. Can acquire an interest in real property;
  2. Represents at least a majority of the Tenant-occupied Rental Units in a Rental Housing Accommodation as of the date of the Owner's notice of intent to sell pursuant to Section [Right of First Offer];
  3. Has adopted a Governing Document and Governing Principles; and
  4. Has appointed officers and any other authorized agents specifically designated to execute contracts act on its behalf.
- EE. "Third-party Purchaser" means any person or entity other than a Tenant, Tenant Organization, or Qualified Organization, engaged or seeking to engage, in purchasing a Rental Housing Accommodation from an Owner under this Chapter.

FF. "TOPA Buyer" means a Tenant, Tenant Organization, or Qualified Organization who is purchasing or has purchased a Rental Housing Accommodation from an Owner under this Chapter.

GG. "Under threat of eminent domain" refers to the commencement of the process of eminent domain, including but not limited to, any formal or informal contact with the owner by the government or government agents regarding the potential or ongoing assertion of eminent domain, and any hearings or court proceedings regarding the same.

**13.89.030 "Sale" Defined.**

A. "Sale" or "sell" includes, but is not limited to:

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

For purposes of this Section ["Sale" Defined], a transfer may include those completed in one transaction or a series of transactions over a period of time.

**13.89.040 Authority.**

The City Manager and their designees are authorized to enforce the provisions of this Chapter, and for such purposes, shall have the powers of a law enforcement officer. The City Manager is authorized to establish standards, policies, and procedures for the implementation of the provisions of this chapter to further the purpose set forth herein.

**13.89.050 Applicability.**

TOPA shall apply to all Rental Housing Accommodations unless exempted herein.

**13.89.060 Exemptions.**

A. Residential Property Types Exempted. The following properties are not Covered Properties for purposes of this Chapter:

1. Properties owned by the local, state, or federal government.
2. Properties owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.
3. A Single Family Home that an Owner occupies as their principal residence as defined in Administrative Regulations.



4. A Single Family Home with an ADU or other secondary dwelling unit, where an Owner occupies either the Single Family Home or the secondary unit as their principal residence as defined in Administrative Regulations.
5. Properties owned by cooperative corporations, owned, occupied, and controlled by a majority of residents.
6. 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.
7. Properties properly licensed as a hotel or motel.

#### B. Transfers Exempted

1. An inter-vivos transfer, even though for consideration, between spouses, domestic partners, parent and child, siblings, grandparent and grandchild.
2. A transfer for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from the transfer will pass from the decedent’s estate to, or solely for the benefit of, charity.
  - a. For the purposes of (this subsection X), the term “members of the decedent’s family” includes:
    - i. A spouse, domestic partner, parent, child, grandparent, grandchild
    - ii. A trust for the primary benefit of a spouse, domestic partner, parent, child, grandparent, or grandchild
3. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust.
4. A transfer to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust.
5. A transfer pursuant to court order or court-approved settlement.
6. A transfer by eminent domain or under threat of eminent domain.

#### C. Exemption Procedures and Burden of Proof.

1. Burden of Proof. The burden of proof to establish that a property type or planned transaction is exempt under this Chapter is on the Owner of the Rental Housing Accommodation.

2. The Owner of a Rental Housing Accommodation who believes that they should be granted an exemption under this Section [Exemptions] shall comply with procedures that the City shall create for claiming an exemption.

D. Voluntary Election to Participate. An Owner whose property or planned transaction is exempt from this Chapter pursuant to Sections [Applicability and Exemptions] may elect to subject their property to this Chapter by complying with procedures that the City shall create through Administrative Regulations, provided that the Owner who voluntarily subjects their property to this Chapter shall comply with this Chapter in its entirety. Each Tenant living in such property shall be granted all of the rights described in this Chapter, including the opportunity to decide whether to exercise their First Right of Purchase. No Owner shall be eligible for incentives described in Section [Incentives] without complying with this Chapter in its entirety.

### **13.89.70 First Right to Purchase.**

This Chapter shall be construed to confer upon each Tenant a First Right to Purchase a Rental Housing Accommodation, subject to the exemptions in Section [Exemptions], in a manner consistent with this Chapter. The First Right to Purchase shall consist of both a Right of First Offer, as set forth in Section [Right of First Offer], and a Right of First Refusal, as set forth in Section [Right of First Refusal]. The First Right to Purchase is conferred to each Tenant but shall be exercised collectively pursuant to Section [Tenant Decision-Making]. The First Right to Purchase shall include the right to assign these rights to a Qualified Organization as set forth in Section [Assignment]. The First Right to Purchase shall be conferred where the Owner intends to sell the Rental Housing Accommodation. This Chapter shall not be construed to limit the right of first offer provided under Chapter 21.28.

### **13.89.080 Tenant Decision-Making; Tenant Organizations.**

- A. **Tenant Decision-Making.** Except in the case of a duly formed Tenant Organization with its own adopted Governing Document, any action required of Tenants under this Chapter shall be approved by one of the following decision-making standards:
1. At least a Majority of Tenant-occupied units, in the case of a Rental Housing Accommodation with more than one Tenant-occupied unit.
  2. At least a Majority of Tenant Households, in the case of a Rental Housing Accommodation with only one Tenant-occupied unit but multiple Tenant Households.
  3. The Tenant Household, in the case of a Rental Housing Accommodation with only one Tenant Household.

## B. Tenant Organizations.

1. In order to submit an offer of purchase pursuant to Section [Right of First Offer to Purchase] and respond to the Owner's Offer of Sale pursuant to Section [Right of First Refusal], Tenants shall:
  - a. Form a Tenant Organization, approved by the requirements described in subsection [Tenant Decision-Making], unless such a Tenant Organization already exists in a form desired by the Tenants.
    - i. Exception to Form Tenant Organization. If there is only one Tenant Household in a Rental Housing Accommodation, the Tenant Household may exercise the Right of First Offer and Right of First Refusal without forming a Tenant Organization pursuant to subsection [Formation Requirement]; however, the Tenant Household shall still comply with subsections [Supportive Partner] and [TO Registration].
  - b. Select a Supportive Partner, as defined in Section [Supportive Partner].
  - c. Deliver an application for registration of the Tenant Organization, or the Tenant Household, if applicable, to the City, and a copy to the Owner, by hand or by certified mail by the deadline of submitting an offer of purchase pursuant to Section [Right of First Offer]. The application shall include: the name, address, and phone number of Tenant officers and the Supportive Partner; a copy of the Formation Document, as filed; a copy of the Governing Document; documented approval that the Tenant Organization represents subsection [Tenant Decision-Making, A1 or A2) as of the time of registration; and such other information as the City may reasonably require. Tenants may form and register the Tenant Organization with the City pursuant to this subsection [Tenant Organizations], at any time; provided that this Section [Tenant Decision-Making; TO] shall not be construed to alter the time periods within which a Tenant Organization may exercise the rights afforded by this Chapter.
2. Upon registration with the City, the Tenant Organization shall constitute the sole representative of the Tenants.

### 13.89.090 Qualified Organizations

A. The City Manager shall establish an administrative process for certifying organizations that meet the following minimum criteria:

1. The organization is a bona fide nonprofit, as evidenced by the fact that it is exempt from federal income tax under 26 U.S.C. § 501(c)(3), or a California cooperative corporation, as evidenced by its articles of incorporation;
2. The organization has demonstrated a commitment to democratic residential control, as evidenced by its ownership and governance structure and relationship with residents;
3. The organization has agreed to transfer ownership of the Rental Housing Accommodation to the Tenants when feasible if Tenants so wish;
4. The organization has demonstrated a commitment to the provision of affordable housing for low, very low, and extremely low income City residents, and to prevent the displacement of such residents;
5. The organization has agreed to obligate itself and any successors in interest to maintain the permanent affordability of the Rental Housing Accommodation, in accordance with Section [Price Stabilization];
6. The organization has demonstrated a commitment to community engagement, as evidenced by relationships with neighborhood-based organizations or tenant counseling organizations;
7. The organization has demonstrated the capacity (including, but not limited to, the legal and financial capacity) to effectively acquire and manage residential real property at multiple locations within the Bay Area's nine counties;
8. The organization has acquired or partnered with another housing development organization to acquire at least one residential building using any public or community funding, or has acquired or partnered with another nonprofit organization to acquire any residential buildings; and
9. The organization has agreed to attend mandatory training to be determined, from time to time, by the City.

Notwithstanding any other requirement of this section, the Berkeley Housing Authority shall be deemed a Qualified Organization for purposes of this Chapter.

**B. Certification, Term, and Renewal.** Organizations that the City Manager certifies as having met the criteria in subsection [QO Criteria] shall be known as "Qualified Organizations." An organization's certification as a Qualified Organization shall be valid for four years. The City Manager shall solicit new applications for Qualified Organization status at least once each calendar year, at which time existing Qualified Organizations shall be eligible to apply for renewed certification as Qualified Organizations.

**C. Existence and Publication of Qualified Organizations List.** The City Manager shall publish on its website, and make available upon request, a list of Qualified Organizations. In addition to such other information as the City Manager may include, this list shall include contact information for each Qualified Organization. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Qualified Organization monitors regularly, and a telephone number.

**D. Disqualification of Qualified Organization and Conflicts of Interest.** The City Manager shall promptly investigate any complaint alleging that a Qualified Organization has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Qualified Organization with notice and opportunity to be heard, the City Manager determines that an organization listed as a Qualified Organization has failed to comply with this Chapter, the City Manager may suspend or revoke that organization's certification as a Qualified Organization. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

### **13.89.100 Supportive Partners**

A. The City Manager shall establish an administrative process for certifying individuals or organizations that meet the following minimum criteria:

1. The individual or organization has demonstrated ability and capacity to guide and support Tenants in forming a Tenant Organization;
2. The individual or organization has demonstrated ability and capacity to assist Tenants in understanding and exercising their rights under this Chapter;
3. The individual or organization has demonstrated expertise, or existing partnerships with other organizations with demonstrated expertise, to counsel Tenants on first-time homeownership and collective ownership structures;
4. The individual or organization has a demonstrated commitment to creating democratic resident-controlled housing; and
5. The individual or organization has agreed to attend mandatory trainings, to be determined, from time to time, by the City.

**B. Certification, Term, and Renewal.** Individuals and organizations that the City Manager certifies as having met the criteria in subsection [SP Criteria] shall be known as "Supportive Partners." An individual or organization's 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 as Supportive Partners.

**C. Purpose of Supportive Partner.** A Supportive Partner functions in a supportive role to assist Tenants in exercising their rights under this Chapter. This Chapter does not confer any rights to a Supportive Partner. A Supportive Partner is distinct from a Qualified Organization who is conferred subordinated rights under this Chapter as described in Section 13.89.070. The City Manager may determine that a Qualified Organization described in Section 13.89.090 who meets the criteria in subsection 13.89.100A is also eligible to serve as a Supportive Partner. The City may also serve as a Supportive Partner.

**D. Existence and Publication of Supportive Partners List.** The City Manager shall publish on its website, and make available upon request, a list of Supportive Partners. In addition to such other information as the City Manager may include, this list shall include contact information for each Supportive Partner. This contact information shall include, but need not be limited to, a mailing address, an e-mail address that the Supportive Partner monitors regularly, and a telephone number.

**E. Disqualification of Supportive Partner and Conflicts of Interest.** The City Manager shall promptly investigate any complaint alleging that a Supportive Partner has failed to comply with this Chapter. Subject to Administrative Regulations, if, after providing the Supportive Partner with notice and opportunity to be heard, the City Manager determines that an individual or organization listed as a Supportive Partner has failed to comply with this Chapter, the City Manager may suspend or revoke that individual or organization's certification as a Supportive Partner. The City Manager shall establish a process for addressing potential and actual conflicts of interests that may arise among Supportive Partners, Qualified Organizations, and Tenants through Administrative Regulations.

### **13.89.110 Assignment of Rights**

- A. A Tenant or Tenant Organization may assign rights under this Chapter in compliance with subsection [Tenant Decision-Making] to a Qualified Organization of their choice.
- B. Subject to Administrative Regulations, the assignment of rights described in this Section shall occur prior to the Tenant or Tenant Organization waiving their rights pursuant to Section [Waiver of Rights] ], and only during the process provided in Section [Statement of Interest] and Section [Right of First Offer]. Except as provided in section 13.89.120, the waiver and assignment of rights shall made in a written agreement executed by the Tenant or Tenant Organization and the Qualified Organization.
- C. Qualified Organizations shall not accept any payment, consideration, or reward in exchange for the assignment of rights under this Section.



### 13.89.120 Waiver of Rights

- A. Tenants may affirmatively waive their rights before the time periods specified in Sections [Right of First Offer] and [Right of First Refusal] elapse by notifying the Owner in writing, signed by the Tenants and in compliance with Section [Tenant Decision-Making; Tenant Organizations].
- B. Tenants' failure to complete actions required under Sections [Right of First Offer] and [Right of First Refusal] within the allotted time periods and any extensions thereof shall be deemed a waiver of Tenants' rights.

### 13.89.130 Notice Requirements

Any notices required or permitted by this Chapter shall also comply with Administrative Regulations.

### 13.89.140 Right of First Offer

- A. **General Construction.** Before an Owner of a Rental Housing Accommodation may offer it for sale to, solicit any offer to purchase from, or accept any unsolicited offer to purchase from, any Third Party Purchaser, the Owner shall give the Tenant of the Rental Housing Accommodation the first opportunity to make an offer as set forth in this Section.
- B. **Joint Notification.** In accordance with Section [Notice Requirements]], the Owner shall:
  - a) Notify each Tenant of the Owner's intent to Sell the Rental Housing Accommodation by certified mail and by posting a copy of the notice in a conspicuous place in common areas of the Rental Housing Accommodation.
  - i) The notice shall include, at a minimum:
    - (1) A statement that the Owner intends to sell the Rental Housing Accommodation.
    - (2) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
    - (3) A statement of the rights of Tenants and Qualified Organizations and the accompanying timelines described in this Chapter.
    - (4) A statement that the Owner shall make the related disclosures described in this Chapter available to the Tenant.
    - (5) A statement in English, Chinese, and Spanish stating that if the Tenant requires the notice in a language other than English, they can contact the City and request the notice in their language and/or the assistance of an interpreter.
  - b) Notify each Qualified Organization, at the same time as notifying Tenants, of the Owner's intent to Sell the Rental Housing Accommodation, by sending an e-mail to each of the e-mail addresses included on the City's list

of Qualified Organizations described in Section [Qualified Organizations, subsection B “Existence and Publication of Qualified Organizations List”].

- c) File a copy of the notices with proof that they have been sent to the Tenants and Qualified Organizations with the City or its designated agency, at the same time notice is sent to Tenants and Qualified Organizations.

**C. Related Disclosures.** When the Owner, pursuant to [this Section], notifies each Tenant and Qualified Organization of its intent to sell a Rental Housing Accommodation, the Owner shall also provide each Tenant and Qualified Organization with the following information, at minimum:

1. A floor plan of the property;
2. An itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the two preceding calendar years;
3. A list of any known defects and hazards, and any related costs for repair;
4. The most recent rent roll: a list of occupied units and list of vacant units, including the rate of rent for each unit and any escalations and lease expirations.
5. Covenants, Conditions, & Restrictions and reserves, in the case of a condominium dwelling;
6. Any other disclosures required by California state law.

**D. Time to Submit a Statement of Interest.**

1. Upon receipt of the notice and disclosures described in subsections [Joint Notification and Related Disclosures], Tenants shall deliver one statement of interest to the Owner on behalf of the Rental Housing Accommodation.
2. Tenants shall have 20 days in a Rental Housing Accommodation comprised of 1 or 2 units, and 30 days in a Rental Housing Accommodation with 3 or more units, to deliver the statement of interest. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted one extension of up to 15 days upon request, for a total of 45 days. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver a statement of interest to the Owner.
  - a) The statement of interest shall be a clear expression from the Tenants that they intend to further consider making an offer to purchase the Rental Housing Accommodation or further consider assigning their rights to a Qualified Organization.
  - b) The statement of interest shall also include documentation demonstrating that the Tenants’ decision was supported by the standard described in Section [Tenant Decision-Making].
  - c) If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, on the same day that Tenants waive their rights, of the right of each Qualified Organization to submit a statement of interest to the Owner.

- d) Upon receipt of this notice, a Qualified Organization that intends to further consider making an offer to purchase the Rental Housing Accommodation shall deliver a statement of interest to the Owner and every other Qualified Organization via e-mail within the time periods in subsection [description of remaining time for QOs in this subsection above].
- e) The statement of interest shall be a clear expression that the Qualified Organization intends to further consider making an offer to purchase the Rental Housing Accommodation.
- f) If a Qualified Organization has delivered a statement of interest consistent with subsection [above], the Owner shall, subject to seeking Tenant approval for disclosure of any confidential or personal information, disclose to each such Qualified Organization, via e-mail, the names of Tenants in each occupied unit of the Rental Housing Accommodation, as well as any available contact information for each Tenant.
- g) If Tenants and Qualified Organizations do not deliver a statement of interest within the time periods specified in [this subsection], the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal in Section [Right of First Refusal].

**E. Time to Submit Offer.**

- 1. **Rental Housing Accommodation with only one Tenant Household.** The following procedures apply to offers to purchase a Rental Housing Accommodation with only one Tenant Household.
  - a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit a Statement of Interest], an Owner shall afford the Tenants an additional 21 days to select a Supportive Partner and submit an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to submit an offer to the Owner.
  - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall submit an offer to the Owner within the time period specified in subsection [description of remaining time for QOs in this subsection above].
- 2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households, unless subject to subsection [Rental Housing Accommodations with one Tenant Household].

- a. Upon receipt of a statement of interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford the Tenants an additional 45 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. If the Tenants waive their rights in accordance with Section [Waiver of Rights], Qualified Organizations shall have the remaining time or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
  - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via e-mail, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
3. **3 or more unit properties.** The following procedures apply to offers to purchase a Rental Housing Accommodation with 3 or more units, unless subject to subsection [Rental Housing Accommodation with one Tenant Household].
  - a. Upon receipt of a Statement of Interest from Tenants consistent with Section [Time to Submit Statement of Interest], an Owner shall afford Tenants an additional 60 days to form a Tenant Organization, select a Supportive Partner, and deliver an offer to purchase the Rental Housing Accommodation. Tenants in a Rental Housing Accommodation with 10-29 units shall be granted one extension of up to 30 days upon request, for a total of 90 days to submit an offer to the Owner. Tenants in a Rental Housing Accommodation with 30 or more units shall be granted two extensions of up to 30 days each, for a total of 120 days to deliver an offer to the Owner. If the Tenants waive their rights in accordance with Section [Waiver of Rights] Qualified Organizations shall have the remaining time within these time periods and any extensions thereof, or a minimum of 5 days, whichever is greater, to deliver an offer to the Owner.
  - b. If the Tenants waive their rights in accordance with Section [Waiver of Rights], the Owner shall notify all Qualified Organizations, via email, of their rights to submit an offer. Upon receipt of this notice, each Qualified Organization that intends to purchase the Rental Housing Accommodation shall deliver an offer within the time period specified in subsection [description of remaining time for QOs in this subsection above].
4. **Price Stabilization Agreement.** Within these timeframes for submitting an offer, the Tenant, Tenant Organization, or Qualified Organization that submits an offer to the Owner shall also submit an agreement to the City pursuant to Section [Price Stabilization subsection B] agreeing to be bound by requirements of Section [Price Stabilization].

F. **Owner Free to Accept or Reject Offer.** The Owner is free to accept or reject any offer of purchase from a Tenant, Tenant Organization or Qualified Organization. Any such acceptance or rejection shall be communicated in writing.

1. **Incentives to Accept Offer.** If the Owner accepts any such offer of purchase from a Tenant, Tenant Organization or a Qualified Organization, the Owner may be eligible to receive incentives pursuant to Section [Incentives].
2. **Rejection of Offer.** If the Owner rejects all such offers of purchase, the Owner may immediately offer the Rental Housing Accommodation for sale to, and solicit offers of purchase from, prospective Third Party Purchasers, subject to the Right of First Refusal described in Section [Right of First Refusal].
3. **Lapse of Time.** If 90 days elapse from the date of an Owner's rejection of an offer from a Tenant, Tenant Organization or a Qualified Organization, and the Owner has not provided an offer of sale as described in Section [Right of First Refusal], the Owner shall comply anew with this Section [Right of First Offer].

G. **Time to Secure Financing.**

1. **Single Family Home with a one Tenant Household.** The following procedures apply to a purchase of a Single Family Home with only one Tenant Household.
  - a. The Owner shall afford the Tenant or Qualified Organization 30 days after the date of the entering into contract to secure financing.
  - b. If, within 30 days after the date of contracting, the Tenant or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 45 days after the date of contracting, the Owner shall afford the Tenant or Qualified Organization an extension of time consistent with the written estimate.
  - c. If the Tenant or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third Party Purchasers other than the Tenant or Qualified Organization.
2. **2-unit property and Single Family Home with multiple Tenant Households.** The following procedures apply to a purchase of a Rental Housing Accommodation with 2 units or a Single Family Home with multiple Tenant Households.

- a. The Owner shall afford the Tenant Organization or Qualified Organization 90 days after the date of entering into contract to secure financing.
  - b. If, within 90 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
  - c. If the Tenant Organization or Qualified Organization do not secure financing and close the transaction within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
3. **3 or more unit properties.** The following procedures apply to purchases of Rental Housing Accommodations with 3 or more units.
- a. The Owner shall afford the Tenant Organization or Qualified Organization 120 days after the date of entering into contract to secure financing.
  - b. If, within 120 days after the date of contracting, the Tenant Organization or Qualified Organization presents the Owner with the written decision of a lending institution or agency that states that the institution or agency estimates that a decision with respect to financing or financial assistance will be made within 160 days after the date of contracting, the Owner shall afford the Tenant Organization or Qualified Organization an extension of time consistent with the written estimate.
  - c. If the Tenant Organization or Qualified Organization do not secure financing and close the deal within the timeframes described in subsections [Time to Secure Financing and Time to Close] and any extensions thereof, the Owner may immediately proceed to offer the Rental Housing Accommodation for sale to, and to solicit offers of purchase from prospective Third-Party Purchasers other than the Tenant Organization or Qualified Organization.
- H. **Time to Close.** In addition to the time periods in subsection [Time to Secure Financing], the Owner shall afford each Tenant, Tenant Organization, or Qualified Organization with an additional 14 days to close. So long as the Tenant, Tenant



Organization, or Qualified Organization is diligently pursuing the close, the Owner shall afford them a reasonable extension beyond this 14-day period to close.

**13.89.150 Right of First Refusal**

**A. General Construction.** This Section [Right of First Refusal] shall be construed to confer a Right of First Refusal only upon each Tenant, Tenant Organization, and Qualified Organization that exercised the Right of First Offer pursuant to Section [Right of First Offer].

**B. Offer of sale to Tenant, Tenant Organizations, and Qualified Organizations.** Before an Owner of a Rental Housing Accommodation may sell a Rental Housing Accommodation, the Owner shall give each Tenant, Tenant Organization, or Qualified Organization that previously made an offer to purchase that Rental Housing Accommodation pursuant to Section [Right of First Offer], an opportunity to purchase the Rental Housing Accommodation at a price and terms that represent a Bona Fide Offer of Sale.

1. The Owner's offer of sale shall include, at minimum:
  - a. The asking price and terms of the sale. The terms and conditions shall be consistent with the applicable timeframes described in Sections [Time to Accept Offer, Time to Secure Financing, and Time to Close];
  - b. A statement as to whether a contract with a Third-party Purchaser exists for the sale of the Rental Housing Accommodation, and if so, a copy of such contract; and
  - c. A statement in English, Chinese, and Spanish stating that if the Tenant requires the offer of sale in a language other than English, they may contact the City and request the offer of sale in their language and/or the assistance of an interpreter.
2. If a Tenant or Tenant Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Tenant or Tenant Organization by providing a written copy of the offer of sale by certified mail.
3. If a Qualified Organization is receiving the offer of sale, the Owner shall deliver the items in subsection [Offer of sale, subsection a] to each Qualified Organization that previously made an offer to purchase the Rental Housing Accommodation. The Owner shall submit an offer of sale to each such Qualified Organization on the same day, and to the extent possible, at the same time, by e-mail.
4. If the Owner has a contract with a Third-Party Purchaser for the sale of the Rental Housing Accommodation, the Owner shall deliver all of the items in

subsection [Offer of sale, part a] to each Tenant, Tenant Organization or Qualified Organization within 2 days of entering into contract with the Third-Party Purchaser.

5. The Owner shall also provide the City with a written copy of the offer of sale and a statement certifying that the items in subsection [Offer of sale, subsection a] were delivered to each Tenant, Tenant Organization, or Qualified Organization.

### **C. Bona Fide Offer of Sale.**

1. For purposes of this section, a “Bona Fide Offer of Sale” means an offer of sale for a Rental Housing Accommodation that is either:
  - a. For a price and other material terms at least as favorable to a Tenant, Tenant Organization or Qualified Organization as those that the Owner has offered, accepted, or is considering offering or accepting, from a Third Party Purchaser in an arm’s length third-party contract; or
  - b. In the absence of an arm’s length third-party contract, an offer of sale containing a sales price less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the Rental Housing Accommodation, or an appraised value.

### **D. Time to Accept Offer.**

1. **Rental Housing Accommodation with one Tenant Household.** The following procedures apply to a Rental Housing Accommodation with only one Tenant Household.
  - a. Upon receipt of the offer of sale from the Owner, a Tenant or Qualified Organization shall have 10 days to accept the offer of sale, provided, however, that the deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.
2. **Rental Housing Accommodation with multiple Tenant Households.** The following procedures apply to a Rental Housing Accommodation with multiple Tenant Households.
  - a. Upon receipt of the offer of sale from the Owner, a Tenant Organization shall have 30 days to accept the offer of sale.
  - b. Upon receipt of the offer of sale from the Owner, a Qualified Organization shall have 14 days to accept the offer of sale.
  - c. The deadline to accept any offer of sale shall be extended to allow the Tenant or Qualified Organization to exercise their Right to an

Appraisal pursuant to Section [Right to an Appraisal], if they believe that the offer of sale is not a Bona Fide Offer of Sale.

3. If, during these time periods, any Qualified Organization that has received such offer of sale decides to accept the Owner's offer of sale, that Qualified Organization shall notify the Owner and every other Qualified Organization of that decision by e-mail. After a Qualified Organization notifies the Owner of its decision to accept the Owner's offer of sale (that is, before any other Qualified Organization so noticed the Owner), that Qualified Organization shall be deemed to have accepted the offer of sale, and no other Qualified Organization may accept the Owner's offer of sale, whether or not the time periods in this subsection have elapsed.

**E. Time to Secure Financing and Close.** If a Tenant, Tenant Organization, or Qualified Organization accept an Owner's offer of sale in accordance with this Section [Right of First Refusal], the Owner shall afford such Tenant, Tenant Organization, or Qualified Organization time to secure financing and close, consistent with Sections [Time to Secure Financing and Time to Close].

**F. Rejection of Offer.** If each Tenant, Tenant Organization, and Qualified Organization that received an offer of sale consistent with this Section [Right of First Refusal] rejects that offer of sale or fails to respond within the timelines described in this Section, the Owner may immediately proceed with the sale of the Rental Housing Accommodation to a Third-Party Purchaser consistent with the price and material terms of that offer of sale.

### **13.89.160 Third-Party Rights**

The right of a third party to purchase a Rental Housing Accommodation is conditional upon the exercise of Tenant, Tenant Organization, and Qualified Organization rights under this Chapter. The time periods for submitting and accepting an offer, securing financing, and closing under this Chapter are minimum periods, and the Owner may afford any Tenant, Tenant Organization, and Qualified Organization a reasonable extension of such period, without liability under a third party contract. Third Party Purchasers are presumed to act with full knowledge of the rights of Tenants, Tenant Organizations, and Qualified Organizations and public policy under this Chapter.

### **13.89.170 Right to Appraisal**

- A. This Section shall apply whenever an offer of sale is made to a Tenant, Tenant Organization, or Qualified Organizations as required by this Chapter and the offer is made in the absence of an arm's-length third-party contract.
- B. **Request for Appraisal.** The Tenant, Tenant Organization, or Qualified Organization that receives an Owner's offer of sale may challenge that offer of sale as not being a Bona Fide Offer of Sale, and request an appraisal to determine the fair market value of the Rental Housing Accommodation. The party

requesting the appraisal shall be deemed the “petitioner” for purposes of this subsection. The petitioner shall deliver the written request for an appraisal to the City and the Owner by hand or by certified mail within 3 days of receiving the offer of sale.

- C. **Time for Appraisal.** Beginning with the date of receipt of a written request for an appraisal, and for each day thereafter until the petitioner receives the appraisal, the time periods described in Section [Time to Accept Offer] shall be extended by an additional day up to ten (10) business days.
- D. **Selection of Appraiser.** The petitioner shall select an appraiser from a list of independent, qualified appraisers, that the City shall maintain. City approved appraisers shall hold an active appraiser license issued by the California Bureau of Real Estate Appraiser and shall be able to conduct an objective, independent property valuation, performed according to professional industry standards. All appraisers shall undergo training organized by the City before they are approved and added to the City’s list.
- E. **Cost of Appraisal.** The petitioner, Owner, and the City, shall each be responsible for one-third of the total cost of the appraisal.
- F. **Appraisal Procedures and Standards.** The Owner shall give the appraiser full, unfettered access to the property. The Owner shall respond within 3 days to any request for information from the appraiser. The petitioner may give the appraiser information relevant to the valuation of the property. The appraisal shall be completed expeditiously according to standard industry timeframes. An appraised value shall only be based on rights an owner has as a matter-of-right as of the date of the alleged Bona Fide Offer of Sale, including any existing right an Owner may have to convert the property to another use. Within these restrictions, an appraised value may take into consideration the highest and best use of the property.
- G. **Validity of Appraisal.** The determination of the appraised value of the Rental Housing Accommodation, in accordance with this Section, shall become the sales price of the Rental Housing Accommodation in the Bona Fide Offer of Sale, unless:
  - a. The Owner and the petitioner agree upon a different sales price of the Rental Housing Accommodation; or
  - b. The Owner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
    - i. The Owner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the petitioner.
    - ii. Upon withdrawal, the Owner shall reimburse the petitioner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.
    - iii. An Owner who withdraws an offer of sale in accordance with this subsection shall be precluded from proceeding to sell the Rental Housing Accommodation to a Third-Party Purchaser without

complying with this Chapter anew and honoring the First Right of Purchase of Tenants and Qualified Organizations.

- c. The petitioner elects to withdraw the offer of sale altogether within 14 days of receipt of the appraisal.
  - i. The petitioner shall withdraw the Offer of Sale by delivering a written notice by hand or by certified mail to the City and to the Owner.
  - ii. Upon withdrawal, the petitioner shall reimburse the Owner and the City for their share of the cost of the appraisal within 14 days of delivery of written notice of withdrawal.

**13.89.180 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. Reduced price.** If the Owner sells or contracts to sell the Rental Housing Accommodation to a Third-Party Purchaser for a price less than the price offered to the Tenant, Tenant Organization, or Qualified Organization in the offer of sale, or for other terms, which would constitute bargaining without good faith, the Owner shall comply anew with all requirements of this Chapter, as applicable.

**C. 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.

**13.89.190 No Selling of Rights**

- A. A Tenant, Tenant Organization, or Qualified Organization shall not sell any rights under this Chapter.
- B. An Owner shall not coerce a Tenant or Tenant Organization to waive their rights under this Chapter.

**13.89.200 Tenant Protections**

- A. No Tenant in the Rental Housing Accommodation, including those Tenants who do not exercise rights to purchase under this Chapter, may be evicted by the TOPA Buyer, except for good cause in compliance with the City's Rent Stabilization and Eviction for Good Cause Ordinance and applicable state law.
- B. Should the maximum allowable rent provision of the City's Rent Stabilization and Eviction for Good Cause Ordinance not apply, TOPA Buyers shall adjust the rent annually to allow an increase of no more than the increase in the CPI plus a reasonable, pro rata share of capital improvements for common areas or agreed to capital improvements for the unit in accordance with Administrative Regulations and subject to Section [Price Stabilization re: rent restrictions]. These rent increase limits shall only apply to units that can be controlled in compliance with Costa-Hawkins Rental Housing Act.
- C. TOPA Buyers shall not refuse to provide Rental Housing Accommodations to any person based on the source of funds used to pay for the Rental Housing Accommodations, including but not limited to any funds provided by Berkeley Housing Authority Section 8 vouchers or any other subsidy program established by the Federal, State or County and the City of Berkeley, the City's Shelter Plus Care Program certificates or any future rent subsidy from the City or other governmental entity made available to extremely low to moderate low income households for vacant units in the purchased Rental Housing Accommodation, and shall comply with sections 13.31.010 and 13.31.020.

**13.89.210 Price Stabilization**

- A. Rental Housing Accommodation purchased by a TOPA Buyer under this Chapter shall be subject to permanent affordability restrictions as set forth in this Section and Administrative Regulations created with the intent of fulfilling the purpose of this Chapter.
- B. "Permanent affordability" means that future rents and future sales prices of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, shall be made affordable to households with targeted income levels.
- C. Term. Subject to Administrative Regulations, permanent affordability standards shall restrict the use of the Rental Housing Accommodation to require that permanent affordability restrictions remain in force for 99 years and with an option to renew at year 100. This subsection is not to be construed to apply only to community land trusts.
- D. In exchange for the rights conferred under this Chapter, each TOPA Buyer agrees to maintain the permanent affordability of the Rental Housing Accommodation. No TOPA Buyer shall be entitled to contract under this Chapter without executing an agreement with the City to limit the future appreciation of the Rental Housing Accommodation and

only sell, or rent, to income-eligible households in accordance with this Section [Price Stabilization] and relevant standards and exemptions created by the City through Administrative Regulations. Under this agreement, each TOPA Buyer shall represent to the City that they agree to be bound by the permanent affordability requirements under this Section.. The TOPA Buyer shall deliver this agreement to the City no later than the deadline for submitting an offer provided under Section [Right of First Offer].

E. For a Tenant or Tenant Organization purchasing a Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale. The City may create standards to limit the annual market appreciation at less than 25 percent through Administrative Regulation;
2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirements; and
3. At minimum, make the restricted resale price of the Rental Housing Accommodation, or ownership interests in the Rental Housing Accommodation, available only to households with income at or below the average AMIs of the initial TOPA Buyers as of the initial purchase date of the Rental Housing Accommodation, as verified and recorded by the City as of the initial purchase date.

F. For Qualified Organizations purchasing the Rental Housing Accommodation, permanent affordability standards created by the City shall:

1. Restrict the resale price of the Rental Housing Accommodation, or separate ownership interests in the Rental Housing Accommodation, by limiting the annual market appreciation of the Rental Housing Accommodation, or separate ownership interest, to an increase of no more than the percentage change in the regional CPI or AMI plus credits for capital improvements, at a minimum, but in no event more than 25 percent of the appreciated value as determined by the difference between an appraisal made at the time of purchase and the appraisal made at the time of sale;



2. Ensure that a unit in which a Tenant determines to remain a renter following a purchase under this Chapter shall be maintained as a unit subject to the requirements of Section [Tenant Protections - rent control mandate], unless the City determines a valid exemption or alternative standard should apply for such unit assisted by the City or other public subsidy program which is subject to separate permanent affordability requirement; and
3. Prioritize making vacant or vacated units in the Rental Housing Accommodation available to Households with income at or below 30 percent, 50 percent, and 80 percent of AMI.

G. Mechanism. Permanent affordability restrictions shall materialize as at least one of the following:

1. A restrictive covenant placed on the recorded title deed to the Rental Housing Accommodation that runs with the land and is enforceable by the City against the TOPA Buyer and its successors, and one of the following:
  - a. Other affordability restrictions in land leases or other recorded documents not specifically listed in this subsection, so long as the City determines that such restrictions are enforceable and likely to be enforced such as a recorded mortgage promissory note and/or regulatory agreements with the City where City subsidies are involved.
2. A community land trust lease, which is a 99-year renewable land lease with affordability and owner-occupancy restrictions.
3. A Limited Equity Housing Cooperative.

H. Required Recordings and Filings.

1. All covenants created in accordance with this Section [Price Stabilization] shall be recorded before or simultaneously with the close of escrow in the office of the county recorder where the Rental Housing Accommodation is located and shall contain a legal description of the Rental Housing Accommodation, indexed to the name of the TOPA Buyer as grantee.
2. Each TOPA Buyer of the Rental Housing Accommodation will be required to file a document annually with the City in which the TOPA Buyer affirmatively states the rents and share price for each unit in the Rental Housing Accommodation. The City may engage a third party monitoring agent to monitor the compliance of this subsection [annual certification], pursuant to Administrative Regulations.

I. Exemption from the City's Affordable Housing Mitigation Fee.

Qualified Organizations and Tenant Organizations shall not be subject to the payment of the City's affordable housing mitigation fee pursuant to the

Condominium Conversion Ordinance, Chapter 21.28, if converting units in the Rental Housing Accommodation to limited equity condominiums for the purpose of providing permanently affordable housing opportunities subject to and in compliance with the requirements of this Section [Price Stabilization] and Administrative Regulations.

### **13.89.220 Incentives**

- A. Access to Buyers.** The City shall endeavor to maintain and publicize the list of Qualified Organizations described in Section XXX in a manner that, to the maximum extent feasible, promotes the existence of the Qualified Organizations as a readily accessible pool of potential buyers for Covered Properties. The City shall, to the maximum extent permitted by law and otherwise feasible, publicize the existence of this list in a manner intended to facilitate voluntary sales to Qualified Organizations in a manner that avoids or minimizes the need for a broker, other search costs, or other transactions.
- B. Partial City Transfer-Tax Exemption.** As set forth in Section XXX of the XXXX Municipal Code, the increased tax rate imposed by subsections XXX Section XXX shall not apply with respect to any deed, instrument or writing that affects a transfer under Section XXX of this Chapter, as Section XXX exists as of the effective date of the Ordinance.
- C. Potential Federal Tax Benefits.** Any Qualified Organization that purchases a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to facilitate an exchange of real property of the kind described in 26 U.S.C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.
- D. Information to Owners.** The City shall produce an information sheet describing the benefits of an Owner's decision to accept a Tenants' or Qualified Organization's offer of purchase made in connection with the first right to purchase forth in Sections [Right of First Offer] and [Right of First Refusal]. The information sheet shall further explain that, even if a Owner does not accept a Tenants' or Qualified Organizations' offer to purchase a Rental Housing Accommodation pursuant to the right of first offer set forth in Section [Right of First Offer], the Rental Housing Accommodation will still be subject to the right of first refusal set forth in Section [Right of First Refusal]. The information sheet shall contain a field in which the Owner may acknowledge, in writing, that the Owner (or the Owner's authorized representative) has read and understood the information sheet. A Tenant, Tenant Organization, or Qualified Organization that makes an offer to purchase a Rental Housing Accommodation under the right of first offer set forth in Section XXX shall include a copy of, or link to, this information sheet with that offer of Purchase, but any failure to comply with this

Section XXX shall have no effect on a Qualified Organization's exercise of the right of first offer set forth in Section XXX.

**13.89.230 Enforcement**

**A. Powers and Duties of the City.**

1. The City is authorized to take all appropriate action, including but not limited to the actions specified in Section [Authority], to implement and enforce this Chapter.

**B. Implementation**

1. The City Manager shall promulgate rules and regulations consistent with this Chapter.
2. The City shall adopt regulations to implement a petition and hearing procedure for administering the enforcement of this Chapter.
3. The City shall establish and make available standard documents to assist Owners, Tenants, Tenant Organizations, and Qualified Organizations in complying with the requirements of this Chapter through an online portal, provided that use of such documents does not necessarily establish compliance.
4. **Owner Certification and Disclosures.** Every Owner of a residential property in the City shall, within 15 days of the sale of the residential property, submit to the City a signed declaration, under penalty of perjury, affirming that the sale of that residential property complied with the requirements of this Chapter. Such declaration shall include the address of the relevant residential property and the name of each new Owner of the Rental Housing Accommodation. The City shall publish all such addresses on its website. Failure to file a declaration required by this subsection [Owner Certification] shall result in the penalty described in subsection [Civil Penalties].

**C. Enforcement**

1. **Civil Action.** Any party may seek enforcement of any right or provision under this Chapter through a civil action filed with a court of competent jurisdiction and, upon prevailing, shall be entitled to remedies, including those described in Section [Penalties and Remedies].
2. **Penalties and Remedies.**
  - a. **Civil Penalties.** An Owner who willfully or knowingly violates any provision of this Chapter shall be subject to a cumulative civil penalty imposed by the

City in the amount of up to [\$1,000] per day, per Tenant-occupied unit in a Rental Housing Accommodation, for each day from the date the violation began until the requirements of this Chapter are satisfied, payable to [the Housing Trust Fund established by the City].

- b. **Legal Remedies.** Remedies in civil action brought under this Section [Enforcement] shall include the following, which may be imposed cumulatively:
  - i. Damages in an amount sufficient to remedy the harm to the plaintiff;
  - ii. In the event that an Owner sells a Rental Housing Accommodation without complying with the requirements of this Chapter, and if the Owner's violation of this Chapter was knowing or willful, mandatory civil penalties in an amount proportional to the culpability of the Owner and the value of the Rental Housing Accommodation. There shall be a rebuttable presumption that this amount is equal to 10 percent of the sale price of the Rental Housing Accommodation for a willful or knowing violation of this Chapter, 20 percent of the sale price for a second willful or knowing violation, and 30 percent of the sale price for each subsequent willful or knowing violation. Civil penalties assessed under this subsection [Owner's knowing and willful violation] shall be payable to the Housing Trust Fund established by the City; and
  - iii. Reasonable attorneys' fees.
- b. **Equitable Remedies.** In addition to any other remedy or enforcement measure that a Tenant, Tenant Organization, Qualified Organization, or the City may seek under subsection [Legal Remedies], any court of competent jurisdiction may enjoin any Sale or other action of an Owner that would be made in violation of this Chapter.

**13.89.240 Statutory Construction.**

The purpose of this Chapter is to prevent the displacement of lower-income Tenants from the City and to preserve affordable housing by providing an opportunity for Tenants to own or remain renters in the properties in which Tenants reside as provided in this Chapter. If a court finds ambiguity and there is any reasonable interpretation of this Chapter that favors the rights of the Tenant then the court should resolve ambiguity toward the end of strengthening the legal rights of the Tenant or Tenant Organization to the maximum extent permissible under law.

**13.89.250 Administration and Reports**

- A. The City Manager shall report annually on the status of the Tenant Opportunity to Purchase Act Program to the City Council or to such City Council Committee as the City Council may designate. Such reports shall include, but shall not be limited to the following:
  - 1. Statistics on the number and types of sales of tenant occupied properties
  - 2. Statistics on the number of Tenants and Qualified Organizations that invoke action under this chapter.
  - 3. Number and types of units covered by this Chapter.
  - 4. Any other information the City Council or Committee may request.
  
- B. The City shall make available translation services in languages other than English, where requested in advance by a Tenant, Tenant Organization, Qualified Organization, Owner, or member of the public as it relates to TOPA, to interpret and translate documents and procedures as needed.

**13.89.260 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.

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.

| BERKELEY                                 |            |             |                     |             |
|------------------------------------------|------------|-------------|---------------------|-------------|
| Address                                  | Details    | Market Time | Asking Price        | Sale Price  |
| 1500 Ward St,<br>Berkeley, CA 94703      | 8 bd, 4 ba | 472 days    | \$1,354,000 (-9.1%) |             |
| 1616 Prince st                           | 5 units    | 111 Days    | \$1,500,000         |             |
| 1257 Francisco St,<br>Berkeley, CA 94702 | 6 units    | 118 days    | \$3,325,000 (-5%)   |             |
| 2326 Mckinley Ave,<br>Berkeley, CA 94703 | 4 units    | 226 days    | \$2,650,000 (-8.6%) |             |
| 1901 9th St,<br>Berkeley, CA 94710       | 2 units    | 57 days     | \$995,000 (-10%)    |             |
| 1947 Virginia St                         | 3 units    | 28 days     | \$1,300,000         | \$1,460,000 |
| 1235 Carrison St                         | 4 units    | 52 days     | \$999,000           | \$999,000   |
| 2919 Fulton st                           | 4 Units    | 112 days    | \$1,695,000         | \$1,550,000 |
| 2330 Grant st                            | 4 units    | 45 days     | \$1,225,000         | \$1,320,000 |
| 906 Channing Way                         | 4 units    | 30 days     | \$1,500,000         | \$1,710,000 |
| 1610 Russell St                          | 10 Units   | 38 days     | \$2,440,000         | \$2,500,000 |
| 1235 Carrison st                         | 4 units    | 45 days     | \$999,000           | \$999,000   |
| 1308 Hopkins st                          | 5 units    | 89 days     | \$1,795, 000        | \$1,900,000 |
| 2875 California st.                      | 8 units    | 61 days     | \$2,100,000         | \$2,178,000 |
| 2919 Fulton st.                          | 4 Units    | 106 days    | \$1,695,000         | \$1,550,000 |
| 1627 Posen Ave                           | 3 Units    | 76 days     | \$1,385,000         | \$1,660,000 |

| Oakland         |         |             |              |            |
|-----------------|---------|-------------|--------------|------------|
| Address         | Details | Market Time | Asking Price | Sale Price |
| 663 Apgar st    | 4 units | 40 days     | 1,400,000    | 1,295,000  |
| 411 Lusk st     | 2 units | 300 days    | 749,000      | 650,000    |
| 211 monte vista | 4 units | 53 days     | 1,500,000    | 1,594,000  |
| 3942 Wilda ave  | 4 units | 53 days     | 1,500,000    | 1,594,000  |
| 295 Mather st   | 3 units | 55 days     | 1,295,000    | 1,286,000  |
| 1808 90th ave   | 4 units | 250 days    | 729,000      | 899,000    |
| 1524 11th ave   | 4 units | 112 days    | 1,380,000    | 1,310,000  |

All data consolidated from Zillow during January 2020

### BERKELEY PROPERTIES AND TOPA APPLICABILITY

| BERKELEY PROPERTY TYPE & NUMBER   |               | # OF PROPERTY TYPE W/ TOPA RIGHTS                                           |                                                                                                                          |
|-----------------------------------|---------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Housing Type                      | Total Number  | <u>Previous Investor Applicability Standard:</u><br>Owner w/3+ rental units | <u>Proposed Applicability Standard:</u> All rental properties; exempt owner-occupied SF homes, including those with ADUs |
| SF/Townhouse                      | 17,131        | 323                                                                         | 3,906                                                                                                                    |
| Condo                             | 2,286         | 362                                                                         | 1,246                                                                                                                    |
| Duplex/2 units                    | 1,869         | 247                                                                         | 1,869                                                                                                                    |
| Triplex/Duplex w SF/3 units       | 725           | 429                                                                         | 725                                                                                                                      |
| Fourplex/Triplex w SF/4 units     | 683           | 679                                                                         | 683                                                                                                                      |
| 2-4 SF homes                      | 681           | 82                                                                          | 681                                                                                                                      |
| 2-4 units w/rooming house         | 44            | 12                                                                          | 44                                                                                                                       |
| 5+ homes/SF converted to 5+ units | 144           | 144                                                                         | 144                                                                                                                      |
| Multi 5+ units                    | 1,174         | 1,174                                                                       | 1,174                                                                                                                    |
|                                   |               |                                                                             |                                                                                                                          |
| <b>TOTAL</b>                      | <b>24,737</b> | <b>3452</b>                                                                 | <b>10,472</b>                                                                                                            |





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## ATTACHMENT 4

### DC Apartment buildings and TOPA

As of March 2018, at least 40% of DC's residential units (6.5% of its residential buildings) fell under TOPA; this included 7,510 apartment buildings with 120,619 units. The total number of residential housing units in the city at that time was 297,531 units, 103,250 of which were owner occupied and an unknown number of single-family homes, condominiums and cooperatives that were rented.<sup>1</sup>

From 2002-2018, at least 3,500 units were preserved through TOPA.<sup>2</sup> The city of DC does not have comprehensive TOPA data from before 2002. As of 2019, 4,400 Limited Equity Cooperative (LEC) units existed across 99 buildings; many of these LECs were created through TOPA.<sup>3</sup>

DC multifamily sales data from 2014-2015 is helpful in understanding the number of TOPA sales that happen every two years.<sup>4</sup> During that time period, 131 sales of multi-family buildings took place. 32% of these sales (42 buildings) went through the TOPA process. Another 14 sales transacted outside of TOPA but were offered directly to the tenants. Therefore, every two years it is likely that at least 0.6-0.7% of the existing DC rental stock is going through the TOPA process or being purchased by tenants.

More recent data from the DC Department of Housing and Community Development (DHCD) highlights that larger multifamily buildings are the TOPA transactions most often supported with subsidy from DC's Housing Production Trust Fund. DHCD closed funding for 13 TOPA projects of 832 units in FY17 and 9 TOPA projects of 449 units in FY18.<sup>5</sup> In FY19, DHCD funded acquisitions for 15 TOPA projects, 2 of which were sold to tenants creating an LEC.<sup>6</sup>

<sup>1</sup> *Stock of the District's Housing Stock*. Taylor, Yes Sayin. D.C. Policy Center. March 2018. [https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final\\_March25.pdf](https://www.dcpolicycenter.org/wp-content/uploads/2018/03/DC-Policy-Center-Housing-Report.final_March25.pdf)

<sup>2</sup> *DC's First Right Purchase Program Helps to Preserve Affordable Housing*. Reed, Jenny. DC Fiscal Policy Institute. September 2013. [https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First\\_Right\\_Purchase\\_Paper-Final.pdf](https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf)

*DC Multifamily Market Statistics - Multifamily Sales 2014-2015*. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

*Building a Local Housing Preservation Ecosystem*. DC Department of Housing and Community Development. November 2018. <http://oakclt.org/wp-content/uploads/2018/12/Oakland-TOPA-Final.pdf>

<sup>3</sup> *Final Report*. DC Limited Equity Cooperative Task Force. October 2019. [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page\\_content/attachments/Final%20LEC%20Recommendations\\_10.21.19.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/page_content/attachments/Final%20LEC%20Recommendations_10.21.19.pdf)

<sup>4</sup> *DC Multifamily Market Statistics - Multifamily Sales 2014-2015*. Greysteel. 2016. <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>. This data doesn't include single-family or condo sales that went through the TOPA process.

<sup>5</sup> DC DHCD Performance Oversight Hearing responses to DC Council. February 2019. <https://dccouncil.us/wp-content/uploads/2019/02/dhcd19.pdf>

<sup>6</sup> DC DHCD Performance Oversight Hearing responses to DC Council. February 2020. <https://dccouncil.us/wp-content/uploads/2020/02/dhcd.pdf>

## Criticisms of DC TOPA

Criticism 1: DC TOPA promotes tenant capitalism instead of combating displacement and preserving affordable housing.

Response:

Berkeley's TOPA ordinance is distinguishable from DC TOPA in these three ways:

- 1) Tenants cannot sell their rights.
- 2) Tenants can only assign their rights to Qualified Organizations (QOs) that the city vets. These QOs are affordable housing developers and must meet a list of criteria outlined in the ordinance, such as strict commitments to maintaining the property as affordable, tenant engagement, and other relevant experience.
- 3) All housing purchased through TOPA, whether by tenants or QOs, will have some form of permanent affordability restrictions to ensure affordability for future owners/renters.

Also, despite tenants in DC being able to sell their TOPA rights and receive buyouts from third parties, DC TOPA has still helped preserve thousands of units of housing. Since 2002, at least 3,500 units have been purchased through TOPA, most with public subsidy. The total number of units purchased/preserved through TOPA since its passage in 1980 is obviously much larger, but accurate data was not recorded until 2002. In 2002, DC established its Housing Production Trust Fund, which now has an annual allocation of \$116 million.

Criticism 2: DC TOPA attracts bad actors that hold up owners for money and add time to the sales process. This is why DC got rid of TOPA for Single Family Accommodations (SFAs).

Response:

DC TOPA covered SFAs for 39 years. In 2019, the TOPA law was amended to exempt all SFAs. Unfortunately, a couple of bad actors had convinced several tenants living in owner-occupied Single Family Homes to sell their TOPA rights and then these bad actors held up owners for additional money.

Berkeley's ordinance considered all of this. This is why Berkeley's ordinance does not allow tenants to sell their rights, and therefore prevents bad actors from being able to enter the TOPA process. In addition, Berkeley's TOPA ordinance requires tenants to work with a supportive partner after they have expressed interested in purchasing. Supportive partners will help tenants understand their TOPA rights, how to make corporate decisions, as well as the possible financial costs and support for the transaction.

Finally, Berkeley's housing stock is comprised primarily of small sites and many SFAs, which are not appropriate for most large-scale affordable housing subsidies. TOPA presents a great opportunity to bring these rental properties under permanent affordability and provide much-needed protections to tenants in SFAs who currently have little to no protections. Berkeley's TOPA ordinance also has an exemption for owner-occupied SFAs and owner-occupied SFAs with a secondary dwelling unit if either unit is owner-occupied.