



Office of the Mayor

ACTION CALENDAR
March 10, 2020

To: Members of the City Council
From: Mayor Jesse Arreguín
Subject: Tenant Opportunity to Purchase Act (TOPA) Ordinance

RECOMMENDATION

Adopt a first reading of the ordinance entitled: Tenant Opportunity to Purchase Act that will take effect immediately with an implementation start upon completion of the development of Administrative Regulations and funding of related program costs; and,

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 budget process.

SUMMARY

TOPA is a policy that empowers tenants to determine the future of their housing when the 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 home owners 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 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 displacements 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 Property Transfer Tax (.75%) not including the proportional amount attributed to Measure P (Homeless Services). 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, the Housing Trust Fund, and Measure O or through another funding mechanism including grants.

BACKGROUND

Since 2015, community-based organizations such as the East Bay Community Law Center have been researching TOPA's effectiveness as an anti-displacement strategy in Berkeley and discussing this potential with City staff and elected officials. On November 28, 2017, The City Council adopted the Housing Action Plan which included a referral to staff to develop a Tenant Opportunity to Purchase Ordinance (TOPA) modeled after a Washington DC that was enacted in 1980. On June 11, 2019, City Staff returned to Council with an information item 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 date of Council action, the Mayor's Office has been working to develop this 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 (BACLt), 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 Planning Department, HHCS 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 for the Bay's Challenge Grant. 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.¹

¹ <https://sff.org/partnership-for-the-bays-future-marks-one-year-anniversary/>

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 \$1,300,000.²

Rents in Berkeley and the greater Bay Area continue to rise, with low vacancy rates.³ 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).⁴

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.⁵ 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 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

² [Housing for a Diverse, Equitable and Creative Berkeley, July 16, 2019](#)

³ <https://www.huduser.gov/portal/publications/pdf/OaklandCA-comp-17.pdf>

⁴ <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>

⁵ <https://www.fool.com/millionacres/real-estate-market/articles/8-real-estate-market-predictions-2020/>

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 fair 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.⁶

National Research on Ownership

While today’s economy is good and job growth high, there is a growing difference 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 essentials due to rising costs – especially in housing. These lower 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.⁷

Providing ownership options for tenants is a mechanism to sustain affordability. According to the Urban Institute’s Opportunity and Ownership Project, creating opportunities for ownership within existing rental units provides opportunities for low income renters that will keep their housing costs stable over many years. They suggest

⁶ <http://www.acgov.org/cda/hcd/documents/Draft-AI-Combined2019-10-24.pdf>

⁷ <http://wbur.org/hereandnow/2020/02/10/job-economy-middle-class>

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).⁸

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”.⁹

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 RHNA requirements for above moderate incomes by 141%, affordable housing development is well below the regional goals. The following table shows Berkeley’s progress toward its RHNA goals through December 2018.¹⁰

Progress towards 2014-2022 RHNA: Approved Building Permits January 1, 2014 – December 31, 2018							
Building Permit Action Year	Ext Low <30% AMI	VLI 31% -50% AMI	LI 51% -80% AMI	MOD 81-120% AMI	BMR Total	Above 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 income, and outlines a number of actions to achieve this goal, including encouraging incentives for affordable housing development.¹¹

The Berkeley City Council, in the referenced Housing Action Plan (HAP), stated support

⁸ <https://www.urban.org/sites/default/files/publication/46626/411523-Promoting-Homeownership-among-Low-Income-Households.PDF>

⁹ <https://www.jchs.harvard.edu/sites/default/files/hbtl-08.pdf>

¹⁰ [Item 13 Annual Housing Pipeline Report](#)

¹¹ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Housing_Element.aspx

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 10th 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 U1 resources with an option of also utilizing Housing Trust Fund resources.

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

TOPA Team 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 TOPA process. Since 2002, this policy has helped preserve over 3,500 units of affordable housing, 2,000 of which have been preserved since 2013.¹² 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.¹³ 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

¹² https://www.dcfpi.org/wp-content/uploads/2013/09/9-24-13-First_Right_Purchase_Paper-Final.pdf

¹³ <https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/Greysteel-%20D.C.%20Multifamily%20Market%20Statistics.pdf>

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 2019.¹⁴ The 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 COPA¹⁵

In April 2019, the San Francisco Board of Supervisors passed, in 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 nonprofit organizations a right of first offer prior to the property going on the market and a right of first refusal on 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.¹⁶ While a seller is not required to accept the 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.

¹⁴ <https://www.streetsensemedia.org/article/dc-residents-launch-a-city-wide-tenant-union-in-hopes-to-foster-solidarity-across-the-district/#.XjSX3i2ZOt8>

¹⁵ <https://sfmohcd.org/community-opportunity-purchase-act-copa>

¹⁶ <https://www.sfchronicle.com/bayarea/article/City-officials-want-landlord-to-delay-sale-of-76-15002958.php>

Richmond TOPA

In September of 2019, the Richmond City Council requested that their staff develop a TOPA ordinance for the city with the intention to prevent displacement of longtime tenants.

This request was premature, as City Council and staff had not had time to research TOPA and there was relatively no community backing for the policy. At subsequent City Council meetings the Association for United Richmond Housing Providers (AURHP) opposed the policy, and the Richmond City Council unanimously halted its pursuit of the TOPA ordinance on November 19, 2019.

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.¹⁷

The Oakland ordinance was being 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 political will for TOPA in Oakland was prompted by Moms 4 Housing — a group of women who squatted in 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 crisis.

Since the arrest of the Moms, 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 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,"

¹⁷ <https://www.mercurynews.com/2020/01/30/oakland-councilwoman-to-introduce-moms-4-housing-inspired-ordinance/>

This Tenant Opportunity to Purchase Act is said to be modeled after right-of-first-refusal statutes in Washington D.C.¹⁸

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.¹⁹

Subsidies

In order to make TOPA effective and responsive to the full scale of anticipated community needs²⁰, the City will need to enlarge the current Small Sites Project fund (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 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

¹⁸ <https://therealdeal.com/2020/01/31/bill-make-landlords-give-tenants-first-shot-to-buy-buildings/>

¹⁹ 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.

²⁰ 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.

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).²¹ However, even mainstream primary lenders have told community partners (NCLT & BACLT) that there is no inherent obstacle to lending to resale restricted properties such as a community land trust (CLT)²² 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.²³ 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 public²⁴ or mutual benefit²⁵ corporation, the legal entity that is the basis of the limited equity housing cooperative, which have been successful in acquiring loans.²⁶

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

²¹ [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 \(LISC\).](#)

²² https://www.lisc.org/media/filer_public/f0/e0/f0e07be0-1ca5-4720-b78c-3a0d7a0181dd/022519_white_paper_community_land_trusts.pdf

²³ http://www.freddiemac.com/singlefamily/land_trust_mortgages_faq.html, <https://groundedsolutions.org/tools-for-success/resource-library/mortgage-financing-options>

²⁴ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CORP§ionNum=5151.

²⁵ https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CORP&division=2.&title=1.&part=3.&chapter=&article=

²⁶ [For example: Derby Walker House in Berkeley, California and Columbus United in San Francisco CA.](#)

the entity will be owner-occupants of the property), which means they are for a shorter term of years between 10-15 yrs. 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 LEHCs²⁷) 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

²⁷ <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 CLT, 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 will, over time, further reduce naturally occurring affordable housing and continue to place tenants at the whim of the landlord and at risk of losing their homes. 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.²⁸

No Action would direct Housing Trust Fund, U1 and other assets primarily to the construction of affordable housing. 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 has impacted California renters. A special-interest 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 from landlords:

- 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 however much they want for the new tenant.
- Cities can't extend rent control to any condos, single-family homes, and any housing built after 1995.

Since Costa-Hawkins passed in 1995, tenants have paid ever increasing rents and been forced from their communities or into homelessness due to high housing costs.

²⁸ <https://www.cato.org/publications/policy-analysis/exploring-wealth-inequality#poverty-matters-not-inequality>

Additionally, since the 2008 great recession, up tens of thousands of single-family home rentals have been purchased by investors all across the state and nationwide.

Costa Hawkins was also a key part of a 2009 court decision that struck down the requirement that developers include affordable units in many new apartment buildings by mandating lower rents for newly constructed units. A bill signed by former Gov. Jerry Brown in 2017, however, restored the ability of California cities to make developers include affordable units in new rental projects.

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.²⁹

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 escalations would be allowed and more. 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 affordable units in Alameda County is 52,591 according to California Housing Partnership.³⁰ Much work is being done on the regional level to address this crisis. The Association of Bay Area Governments (ABAG) is currently developing Plan Bay Area 2050 that will take into account the number of affordable housing units for which each community is responsible and the number of units required for each income level.

Measure A-1, the affordable housing bond approved by voters in 2016, has provided resources for many new affordable housing 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.

²⁹ <https://la.curbed.com/2018/1/12/16883276/rent-control-california-costa-hawkins-explained>

³⁰ <https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2019/05/Alameda-HNR-2019-Final.pdf>

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 a 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.³¹ Incentives that are available to sellers that participate in the SF COPA have been used as a model for the TOPA Ordinance in Berkeley.

³¹ [SF Chronicle, City Officials Want Landlord to Delay Sale](#)

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% lower 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.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

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 are 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. 100% 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 BACLTL 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 U1, BMR 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 administrating 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 administrating body.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

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

Strategic Plan

Create affordable housing and housing support services for our most vulnerable community members

Campion and demonstrate social and racial equity

Foster a dynamic, sustainable and locally-based economy

General Plan – Housing Element

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 28th, 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

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

Submitted to the Agenda Committee for the July 9th meeting the intent of this item is to take a comprehensive look at all the funding pools for development of affordable housing. This framework is being revised and has been circulating through City Commissions and being reviewed in the relevant City Council Committees. Multi-unit projects that, historically, have been similar to TOPA (e.g. projects that have been purchase by Land Trust or other nonprofit housing providers) were funded through these same funding pools. TOPA would be incorporated into the framework policy when enacted.

Regional Policies

The Association of Bay Area Governments (ABAG) is developing a plan to address the region's affordable 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 1/3 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, U1 revenues, 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 the one in San Francisco. Acquisition support could include, but not be limited to, purchase deposits, appraisals, down payment, 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" (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.

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/yr 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-gong)

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. 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.