

ORDINANCE NO. -N.S.

ADOPTING CHAPTER 13.89 OF THE BERKELEY MUNICIPAL CODE  
TENANT OPPORTUNITY TO PURCHASE ACT

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

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

**Chapter 13.89**

**TENANT OPPORTUNITY TO PURCHASE ACT**

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- 13.89.030** Definitions
- 13.89.040** Applicability
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**13.89.010** Title and Purpose.

- A. This Chapter shall be referred to as the Tenant Opportunity to Purchase Act.
- B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as

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

**13.89.020 Findings.**

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

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

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

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

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

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

**13.89.030 Definitions.**

A. "Dwelling Unit," "Accessory Dwelling Unit," "Single Family Dwelling," and "[Group Living Accommodations](#)" are defined in Section 23F.04.010.

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

C. "Qualified Nonprofit" means a nonprofit, which is either exempt from federal

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

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

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

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

G. “Rental Unit” means any Dwelling Unit or Group Living Accommodations sleeping quarters occupied by one or more Tenants in the City of Berkeley.

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

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

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

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

Organization, as furthered defined in Administrative Regulations.

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

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

M.N. “City Manager” means the City Manager or their designee.

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

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

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

#### **13.89.040 Applicability.**

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

#### **13.89.050 Sale Defined.**

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

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

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

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

#### **13.89.060 Exemptions.**

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

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

2. Any Rental Property having no more than one Single Family Dwelling (inclusive of an Accessory Dwelling Unit or a junior Accessory Dwelling Unit) and such Rental Property is the Owners only Rental Property in the City of Berkeley. For purposes of this subparagraph only, the "Owner" of such Rental Property must not be any of the following set forth under California Civil Code Section 1947.12(d)(5)(A)(i)-(iii) ("AB 1482"): a real estate investment trust, as defined in Section 856 of the Internal Revenue Code; a corporation; or a limited liability company in which at least one member is a corporation.

2.3. Any Rental Property having no more than one Single Family Dwelling where the Owner occupies (or intends to reoccupy) as their principal residence either the Single Family Dwelling or an Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) on the same parcel as the Single Family Dwelling.

4. Any Rental Property having no more than one Duplex where the Owner occupies (or intends to reoccupy) as their principal residence one of the units and such Rental Property is the Owners only Rental Property in the City of Berkeley.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Burden of Proof. The burden of proof to establish that a property or transfer is exempt from the requirements of this Chapter shall be on the Owner.

2. The Owner of a property exempt from the requirements of this chapter or claiming an exemption pursuant to this Section must provide written notice to all Tenants of the Rental Property at time of listing or marketing property for sale. The notice shall inform the Tenants of the Owners intent to sell the Rental Property and must state whether the property is exempt from the requirements of this Chapter and specify the specific exemption claimed.

3. An Owner who believes that they should be granted an exemption under this Section shall comply with procedures that the City shall create for claiming an exemption in its Administrative Regulations.

**13.89.070 Qualified Nonprofits.**

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

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

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

**13.89.080 Supportive Partners.**

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

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

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

**13.89.090 Notice of Intent to Sell; Statement of Interest.**

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



following:

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

B. Notice to Qualified Nonprofits. On the same date as notice is provided to [any](#) Tenants pursuant to Paragraph A, the Owner shall provide a copy of the Notice of Intent to Sell the Rental Property via email to each Qualified Nonprofit certified by the City Manager. The City Manager shall maintain a list of email addresses for distribution of the Notice of Intent to Sell and shall make that list available on the City's website and upon request.

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, [the majority of Tenants](#) may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"), [unless the Tenants execute a written waiver of rights or assign rights to a Qualified Nonprofit pursuant to Section 13.89.060.C](#). The Statement of Interest shall notify the Owner of the [Tenants'](#) or Qualified [Nonprofit's](#) interest in exercising [their rights](#) under this Chapter. In the event that [the majority of Tenants](#) submit a Statement of Interest in response to a Notice of Intent to Sell, [the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J.](#); provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit [prior to the expiration of the Notice Period](#).

D. Formation of Tenant Organization; Selection of Supportive Partner. If [the majority of](#) Tenants submit a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.[K](#) and select a Supportive Partner, subject to Section 13.89.080.B. [If there is only one](#) Tenant of a Rental Property [who seeks to exercise the right of first offer conferred by Section 13.89.100, subject to the majority consent of any other existing Tenants, the one Tenant](#) may exercise the rights of a Tenant Organization under this Chapter [but](#) shall [not](#) be exempt from the requirement to select a Supportive Partner. A Tenant Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.[100](#) and 13.89.[110](#).

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

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

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

### **13.89.100 Right of First Offer.**

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

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

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

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

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

**13.89.110 Right of First Refusal.**

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

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

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

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

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

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

### **13.89.120** Contract Negotiation

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

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

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

### **13.89.130** Incentive to Accept Offer from Qualified Organization.

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

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

### **13.89.140** Confidential Information Protected.

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

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

**13.89.150 Prohibited Conduct.**

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

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

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

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

**13.89.160 Complying Anew with the Right of First Offer.**

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

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

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

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

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

**13.89.170 Financial Assistance.**

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

**13.89.180 Price Stabilization; Tenant Protections.**

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

B. Exemptions from Affordability Restriction.

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

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

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

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

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

### **13.89.190 Implementation**

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

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

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

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

### **13.89.200 Enforcement**

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.190.A shall be subject to administrative citation under Chapter 1.28.

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

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

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

**13.89.210 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.

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