



Housing Advisory Commission

## HOUSING ADVISORY COMMISSION

# AGENDA

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### Regular Meeting

Thursday, March 5, 2020  
7:00 pm

### South Berkeley Senior Center

2939 Ellis Street  
Secretary Mike Uberti  
*HAC@cityofberkeley.info*

### All agenda items are for discussion and possible action.

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**Public comment policy:** Members of the public may speak on any items on the Agenda and items not on the Agenda during the initial Public Comment period. Members of the public may also comment on any item listed on the agenda as the item is taken up. Members of the public may not speak more than once on any given item. The Chair may limit public comments to 3 minutes or less.

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1. Roll Call
2. Agenda Approval
3. Public Comment
4. Approval of the February 6, 2020 Regular Meeting Minutes (*Attachment 1*)
5. **Update from Chair on the State of Commission** – Commissioner Johnson
6. **Discussion and Possible Action to Recommend Reducing the Interest Rate of the 1601 Oxford Street Housing Trust Fund Loan** – Jenny Wyant, HHCS (*Attachment 2*)
7. **Presentation on Tenant Opportunity to Purchase Act (TOPA)** – East Bay Community Law Center
8. **Discussion and Possible Action to Recommend the Adoption of a Tenant Opportunity to Purchase Act (TOPA) Ordinance** – Commissioner Simon-Weisberg
9. **Discussion and Possible Action regarding the Social Housing Subcommittee** – Commissioner Lord
10. **Discussion and Possible Action to Recommend Reserving Funding for the Bay Area Community Land Trust to Acquire 1685 Solano Avenue** – Commissioner Simon-Weisberg
11. **Discussion and Possible Action regarding the Climate Emergency Subcommittee** – Commissioner Lord (*Attachment 3*)
12. **Discussion and Possible Action regarding the Joint Subcommittee for the Implementation of State Housing Laws** – Commissioner Lord (*Attachment 4*)

**13. Update on Council Items (Future Dates Subject to Change) – All/Staff**

- a. 1654 Fifth Street RFP Recommendations (TBD)

**14. Announcements/Information Items**

- a. Strategic Plan Update
- b. BART Community Advisory Group

**15. Future Items**

**16. Adjourn**

Attachments

1. Draft February 6, 2020 Regular Meeting Minutes
2. Jenny Wyant, HHCS, 1601 Oxford Interest Rate Reduction Request
3. Lord, Check-In from Housing Impacts of the Climate Emergency Subcommittee
4. Lord, Struggles at the Joint Subcommittee for the Implementation of State Housing Law

Correspondence

5. UC Berkeley Capital Strategies, Announcement: People's Park Housing - March 4 Open House

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**HOUSING ADVISORY COMMISSION**  
**Regular Meeting**  
**Thursday, February 6, 2020**

Housing Advisory Commission

**Time: 7:05 pm**

**South Berkeley Senior Center**  
**2939 Ellis Street – Berkeley**  
**Secretary – Mike Uberti, (510) 981-5114**

## **DRAFT MINUTES**

### **1. Roll Call**

Present: Xavier Johnson, Thomas Lord, Mari Mendonca, Maryann Sargent, Alex Sharenko, Leah Simon-Weisberg, Marian Wolfe, and Amir Wright.

Absent: Darrell Owens (unapproved).

Commissioners in attendance: 8 of 9

Staff Present: Rhianna Babka, Mike Uberti, and Jenny Wyant

Members of the public in attendance: 7

Public Speakers: 5

### **2. Agenda Approval**

Action: M/S/C (Mendonca/Wright) to approve the agenda.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Owens (unapproved).

### **3. Public Comment**

There were no speakers during public comment.

### **4. Approval of the January 9, 2020 Regular Meeting Minutes**

Action: M/S/C (Lord/Mendonca) to approve the minutes.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, and Wolfe.

Noes: None. Abstain: Wright. Absent: Owens (unapproved).

### **5. Officer Elections**

Action: M/S/C (Lord/Mendonca) to elect Commissioner Johnson as Chair.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Owens (unapproved).

Action: M/S/C (Lord/Mendonca) to elect Commissioner Simon-Weisberg as Vice-Chair.

Vote: Ayes: Johnson, Mendonca, Sargent, Simon-Weisberg, and Wright. Noes: None. Abstain: Lord, Sharenko, and Wolfe. Absent: Owens (unapproved).

**6. Discussion and Possible Action on the Draft 2020-2025 Consolidated Plan, including the First Year Annual Action Plan and Final Regional Analysis of Impediments**

Action: M/S/C (Sharenko/Wright) to recommend to City Council to adopt the Draft 2020-2025 Consolidated Plan, including the first year Annual Action Plan and Final Regional Analysis of Impediments.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Owens (unapproved).

**7. Discussion and Possible Action to Appoint A Representative and Alternate to the AB2923/Ashby and North Berkeley BART Community Advisory Group**

Public Speakers: 4

Action: M/S/C (Sargent/Simon-Weisberg) to appoint Commissioner Mendonca to the AB2923/Ashby and North Berkeley BART Community Advisory Group.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Simon-Weisberg, and Wright. Noes: Sharenko. Abstain: Wolfe. Absent: Owens (unapproved).

Action: M/S/F (Sargent/Simon-Weisberg) to appoint Commissioner Simon-Weisberg as Alternate to the AB2923/Ashby and North Berkeley BART Community Advisory Group.

Vote: Ayes: Mendonca, Sargent, Simon-Weisberg, and Wright. Noes: Lord, Sharenko, and Wolfe. Abstain: Johnson. Absent: Owens (unapproved).

Action: M/S/F (Sharenko/Lord) to appoint Commissioner Owens as Alternate to the AB2923/Ashby and North Berkeley BART Community Advisory Group.

Vote: Ayes: Lord, Sharenko, and Wolfe. Noes: Sargent and Simon-Weisberg. Abstain: Johnson, Mendonca, and Wright. Absent: Owens (unapproved).

**8. Discussion and Possible Action on 1654 Fifth Street RFP Subcommittee Recommendations**

Public Speakers: 3

Action: M/S/C (Simon-Weisberg/Sargent) to recommend to Council to:

1. Accept the proposal from Bay Area Community Services Housing Corporation/Bay Area Community Services (BACS) for the disposition of 1654 5<sup>th</sup> Street, subject to the following conditions:
  - a. City would maintain ownership of the land, and enter into a long-term ground lease with BACS; and
  - b. BACS provide a status report on the operation of the property after one year.
2. Consider re-issuing the Request for Proposals (RFP) to include a provision for the City maintaining ownership of the land and entering into a long-term ground lease with a homeless services operator, if the City is unable to change the disposition strategy through the current RFP.

Vote: Ayes: Johnson, Mendonca, Sargent, Simon-Weisberg, Wolfe, and Wright. Noes: Lord. Abstain: Sharenko. Absent: Owens (unapproved).

Action: M/S/C (Wright/Simon-Weisberg) to extend the meeting five minutes to 9:05pm.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Owens (unapproved).

**9. Discussion and Possible Action Regarding the Climate Emergency Subcommittee**

**10. Discussion and Possible Action Regarding the Social Housing Subcommittee**

**11. Update, Discussion, and Possible Action for Recommendations to the Joint Subcommittee for the Implementation of State Housing Law**

**12. Update on Council Items**

**13. Announcements/Information Items**

**14. Future Items**

**15. Adjourn**

Action: M/S/C (Sharenko/Johnson) to adjourn the meeting at 9:03 pm.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, Simon-Weisberg, Wolfe, and Wright. Noes: None. Abstain: None. Absent: Owens (unapproved).

Approved on March 5, 2020

\_\_\_\_\_, Mike Uberti, Secretary



Health Housing and  
Community Services Department  
**Housing & Community Services Division**

**To:** Housing Advisory Commission  
**From:** Jenny Wyant, Community Development Project Coordinator  
**Date:** February 27, 2020  
**Subject:** 1601 Oxford Interest Rate Reduction Request

### RECOMMENDATION

Recommend that City Council reduce Satellite Affordable Housing Associates' 1601 Oxford development loan interest rate to 1%.

### FISCAL IMPACTS OF RECOMMENDATION

City Housing Trust Fund (HTF) program funds are provided in the form of a loan consistent with the HTF Guidelines. The loans are structured to be repaid with any residual receipts, meaning cash flow left over after operating costs and senior debts (like banks and the State) are paid. If no cash flow is available, no payments are made until the end of the term (55 years from project completion). Reducing the City's interest rate from 3% to 1% reduces the interest the City will earn.

### CURRENT SITUATION AND ITS EFFECTS

On February 27, 2020, the HTF Subcommittee made the following recommendation:

M/S/C: Simon-Weisberg/Johnson to recommend the Housing Advisory Commission adopt a recommendation to the City Council to reduce SAHA's 1601 Oxford development loan interest rate to 1%. Vote: Ayes: Johnson and Simon-Weisberg. Noes: None. Abstain: None. Absent: Wright.

Council approved \$6M in HTF funding for 1601 Oxford on October 16, 2018. The project's sponsor, Satellite Affordable Housing Associates (SAHA), has secured financing, with one grant application pending, and is preparing to close all financing and start construction by mid-June.

Satellite Affordable Housing Associates (SAHA) requested a reduction in 1601 Oxford's development loan interest rate from 3% to 1%. Without the reduction, the project will not be able to attract a low income housing tax credit investor and will be infeasible. Since the interest rate is set in the HTF Guidelines this matter is coming before the HAC and would need to be approved by Council. Prompt consideration is needed given the project's timeline.

Affordable housing development often relies on low income housing tax credit, which are effectively purchased by investors who have tax liabilities they want to offset. Under IRS rules, a tax credit investor is only able to claim tax credits and deductions while it maintains a positive balance in its “capital account” for the project. The capital account is reduced over time by the amount of tax losses allocated to the investor (99.99% of the project’s losses). Accruing interest on loans contributes to the amount of losses, and reduces the capital account.

In order to keep the capital account positive for 15 years, SAHA requested a reduction in the City’s loan interest rate. SAHA requested similar interest rate reductions from Alameda County and California Housing and Community Development (HCD) from 3% to 1% and 0%, respectively. SAHA’s tax credit financing consultants strategized and ran scenarios, and determined the project would need these reduced interest rates in order to be viable.

The City previously approved reductions in interest rates for other tax credit projects for similar reasons, and expects more requests in the future. Recent federal tax reform exacerbated the issue with capital accounts. The reduction of the marginal corporate tax rate reduced the overall equity contributions of tax credit investors. Tax reform also requires projects to depreciate property over 30 years rather than 40 years, which means depreciation losses are accelerated and the investor’s capital account reaches zero more quickly. Reducing interest rates is a key solution to this problem.

It’s important that City funding work with tax credit projects and program requirements, since that is an essential funding source for affordable housing developments. Supporting 1601 Oxford is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

Staff are considering recommending an amendment to the HTF guidelines that would allow the City Manager to adjust the interest rate as needed so the City could respond more quickly when this issue arises.

#### BACKGROUND

1601 Oxford is a 35-unit affordable housing development that will serve seniors earning up to 60% of the area median income.

Since Council’s October 2018 funding reservation, SAHA has pursued various sources, and successfully secured A1 bond funding (from Alameda County), No Place Like Home funding (from HCD), and state 4% tax credits. The reservation of tax credits and tax exempt bond started a 180-day window during which SAHA must close its construction financing and start construction.

The City has not historically prioritized earning interest from its HTF investments, instead prioritizing the creation and preservation of affordable housing opportunities consistent with local priorities and the purpose of the HTF program. Two reasons for providing funds in the form of a loan are (1) loans work with tax credit financing requirements, which grants do not and (2) the loans help secure long term affordability and City involvement in any future proposed changes.



Housing Advisory Commission

March 5, 2020

To: Housing Advisory Commission  
From: Commissioner Thomas Lord  
Subject: **Checkin from Housing Impacts of the Climate Emergency Subcommittee**

Commissioners,

Thank you for helping us to establish a subcommittee to consider the housing impacts of the climate emergency. I am certain that this is an issue of life-critical importance and pressing urgency. I hope that we will do a good job. Time is truly of the essence.

At our March meeting, we will be open for possible action: there is opportunity to appoint a new member. Today we are three members, only two of which have been able to meet so far. By the rules governing subcommittees there is room for one more.

We will also report back from our first meeting, which will occur between the time this agenda item is due, and our March meeting. For your convenience, I have attached the memo I created to launch the subcommittee. I hope you will take some time to read and consider it.

We will also have an opportunity at our March meeting for the Commission as a whole to discuss the issues before this subcommittee, and to (in that discussion) offer suggestions or recommendations.

Regarding the attached agenda for the subcommittee, there is a noteworthy mistake. In some places, I wrote “cement” which, while not strictly wrong, was supposed to have more accurately said “concrete”. Please read the memo with that understanding.



Housing Advisory Commission

**HOUSING ADVISORY COMMISSION  
HOUSING IMPACTS OF THE  
CLIMATE EMERGENCY  
SUBCOMMITTEE**

## AGENDA

**Monday February 24, 2020  
11:15 AM**

**Berkeley City Hall, Cottonwood Room  
(First Floor)**  
2180 Milvia Street  
Secretary Mike Uberti  
*HAC@cityofberkeley.info*

**All agenda items are for discussion and possible action.**

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1. Roll Call
2. Agenda Approval
3. Public Comment
4. **Discussion and Possible Action of Draft Report** – *Commissioner Lord (Attached)*

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information to be made public, you may deliver communications via U.S. Postal Service or in person to the Secretary of the commission. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary for further information.

Housing Advisory Commission

February 14, 2020

To: DRAFT for subcommittee consideration  
From: Commissioner Thomas Lord  
Subject: **Housing Policy in a Climate Emergency: A New Approach**

## Contents

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## Introduction

The climate emergency requires that our society rapidly cease burning fossil fuels and oxidizing limestone to make cement. Housing and other buildings are major contributors to emissions globally, in California, and here in Berkeley. This memo explores some policy implications of these two facts.

The purpose of this memo is to present a novel approach to thinking about housing-related emissions reduction, and to argue for its application in Berkeley. The arguments presented can be generalized and, we think, should be taken up in other jurisdictions and communities as well.

## What is our novel approach to policy formation?

Traditional policy formation aimed at ending carbon emissions has worked something like this: First, a schedule for eliminating emissions is determined (e.g. “zero emissions by 2045”). Next, technologies and processes are identified that it appears would, if diligently applied, reduce emissions in time. From this step emerges goals such as a schedule for electrifying all kitchen appliances in a given jurisdiction. Finally, policy makers seek politically and fiscally viable strategies to induce the application of those technologies and processes under a more-or-less *life as usual* scenario.

*Our novel approach turns that policy formation process on its head.* Our starting point is to *assume* that the emissions reduction schedule will be met in time<sup>1</sup>, though we make no attempt to plan *how* the emissions reduction schedule will be met. For example, we assume that the natural gas supply to businesses and homes will stop, according to schedule, but we do not assume all homes and businesses will have been electrified by then. Similarly, we do not assume that the electrical power supply will have been made fully sustainable by then, so the end of fossil fuel burning may result in losses of power supply.

With that assumption, we ask how existing housing stock and plans for future housing stock must change to adapt to a world with no fossil fuel burning or carbon-intensive cement. We inquire as to whether or not the required adaptations and changes to housing and housing production can plausibly be achieved in the time available. Finally, should it then become clear that existing stock can not be adapted in time or that housing production can not proceed as hoped, we turn to the question of how to adapt to *that* reality, wherein *life as usual* must be abandoned as a social strategy and policy assumption.

The flip here can be summarized this way: Rather than taking the needed reduction of emissions as a goal, we take it as a constraint - something that will happen with or without our cooperation. This change in perspective reveals new and pressing challenges to resolving the climate emergency.

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<sup>1</sup>We argue in a separate note, “TKTKTK”, why we think this is a plausible and necessary assumption.

## Summary: procedure, findings, and recommendations

Our procedure begins by assuming that fossil fuel burning and emissions-intensive cement manufacturing will stop sometime between 2030 and 2045. We assume that the total emissions between now and then will not exceed a carbon budget consistent with the international goal of keeping warming significantly below 2°C, with limited overshoot.<sup>2</sup> We make no assumptions as to exactly *how* those emissions will be curtailed, or about whether emissions steadily and quickly decline, or whether they abruptly stop. (see section *Starting assumption: we successfully end our carbon emissions*)

Next, we make an initial enumeration of ways in which existing housing stock and housing production currently depend on fossil fuel burning and carbon-intensive cement production. Our list is likely incomplete but it gives a starting point for consideration. We are particularly concerned about Berkeley homes that rely on natural gas for home heating and cooking. We are also concerned about the emissions costs of the demolition and construction process. We also suspect that the economic impacts of the climate emergency will increase housing precarity and displacement. (see section *Ending emissions will challenge Berkeley's housing supply*)

In the third step we assess the likelihood that adaptations to existing housing and housing production can be made in time. We find it quite unlikely that the adaptations can be made quickly enough. In other words, we predict that the needed response to the climate emergency will, as an unfortunate side effect, create in Berkeley a housing emergency related to loss of heating and cooking facilities in existing stock, and difficult building material, labor supply, and energy barriers to creating new housing stock. (see section *Can housing be adapted in time? (probably not)*)

We conclude the analytic portion of this work with concessions. We do not believe our work is definitive proof. We point out what we know of that needs further investigation. We do think our preliminary investigation raises sufficient cause for alarm to merit action. (see section *Are we wrong? (concessions)*)

We end the essay with recommendations for next steps. In particular, we think the City and additional Commissions should dedicate some resources to assessing this troubling *new* housing predicament that appears to be rapidly approaching. If confidence in our findings grows, an emergency effort to prepare adaptations is needed. We propose that this effort is a short term priority for the City. (see section *Next steps*)

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<sup>2</sup>We rely on chapter two of the *IPCC Special Report on Global Warming of 1.5°C* for our carbon budget estimates.

## Starting assumption: we successfully end our carbon emissions

It is still likely to be possible for humanity to achieve the goal of limiting warming to below 2°C relative to historically recent pre-industrial time.<sup>3</sup>

It is also probable that failing to achieve that goal would be profoundly destabilizing to all of human society. It would bring losses of biodiversity vaster than that we already see happening. It would cost many millions of human lives. There would be global crises related to falling crop yields, loss of arable land, losses of human settlements to sea level rise, and refugee crises of enormous scale. Today we can already see these processes beginning to unfold. It is unclear whether or not existing social orders can withstand such challenges. We must treat our climate predicament as an emergency.

As the IPCC put it: “Limiting temperature increase requires unprecedented changes in society, but will have huge benefits. Every half a degree of warming matters.”<sup>4</sup> The burning of fossil fuels and oxygenation of limestone for concrete must end rapidly. We cheerfully assume that they *will* end rapidly enough - we simply don’t know *how*.

However these emissions end, it must happen quite soon, in historic time. The amount of warming is roughly proportionate to the total amount of carbon emitted. Estimates of the number of years remaining before we have gone well past even the 2°C limit vary, but fall generally within the next 20 to 30 years at current emissions rates. We are on track to sail past the 1.5°C limit in the present decade, just a few years from now. Only rapid, steep declines in human caused carbon emissions can prevent these catastrophes.

We take as guideposts Berkeley’s aspirational goal of ending emissions in our City by 2030<sup>5</sup> and Governor Newsom’s call to end emissions in California by 2045. We make no assumption as to how emissions are stopped, or whether they are stopped by an orderly or messy process.<sup>6</sup> An orderly process would require a smooth but steep descent in present emissions. A messy process would entail abrupt and permanent losses of access to fossil fuel supplies and cement (as well as products made using those things).

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<sup>3</sup>Although the science it reports is no longer the latest, the book *Dire predictions: understanding climate change* by climate scientist Michael E. Mann and geoscientist Lee R. Kump provides an accessible introduction.

<sup>4</sup>Quote taken from the IPCC’s official twitter account, dated October 8, 2018. The full message: “The @IPCC\_CH report on #GlobalWarming of 1.5°C is one of the most important #climatechange reports ever published. Limiting temperature increase requires unprecedented changes in society, but will have huge benefits. Every half a degree of warming matters. <http://ipcc.ch/report/sr15/>”

<sup>5</sup>See *Declaration of a Climate Emergency* passed by Berkeley City Council, June 12, 2018. Item 49 on the Council agenda: <https://www.cityofberkeley.info>

<sup>6</sup>See “TKTKTK”

## **Ending emissions will challenge Berkeley's housing supply**

A scheduled end to fossil fuel and carbon-intensive concrete use in the next 10 to 25 years presents some sharp challenges:

We crudely estimate the number of Berkeley residential units that currently rely natural gas to be 30,000. Based on experience, we tried to make a conservative guess that 3/4 of all housing units in Berkeley have such a reliance, and we rounded down to 30,000 to have a convenient number to contemplate. Each such unit, to remain fully functional, requires some combination of retrofits to heating, hot water, and cooking systems.

The end of fossil fuel burning on such a short timescale also means that the supply of electricity from the grid may become less reliable. That loss of reliability would come atop the existing unreliability associated with both extreme weather and California's Residential Safety Shutoff Program. Thus, even fully electrified homes that are grid reliant are at risk of suffering losses in essential function.

If less carbon intensive cement does not become widely available within 10 to 25 years, in sync with other emissions reductions, construction of many types of project will be restrained by building material shortages. Similarly, it seems unlikely that steel production will be made fully sustainable within a scant 25 years.

Since constraints like these will (under our assumptions be generalized across all economic activity, there is significant risk of deep falls in household and commercial revenue. This suggests that housing insecurity may also sharply increase due to purely economic reasons.

Loss of fossil fuel supplies will also, on this time scale, present a significant challenge to most Berkeley homes for meeting transport-dependent needs like basic shopping and commuting.

The point of this "parade of horrors" is not to inspire fear but to try to make much more intuitive the extremity of the climate predicament we are in: To not end carbon emissions very rapidly would be madness; ending carbon emissions rapidly will present its own adaptation challenges that are currently widely underappreciated.



## Can housing be adapted in time? (probably not)

Our assumptions include a plausible guess that 30,000 housing units in Berkeley are dependent on natural gas service for one or more essential functions. Is it practical to retrofit these in time? We think not.

Even if we assume that natural gas supply is not cut off until 2045, to retrofit 30,000 units in only 25 years, working 6 days per week and 50 weeks per year, retrofits would need to be completed at a rate of 4 per day. And if retrofits are to complete by 2030 instead, they would need to be occurring at 10 per day.

Similar arithmetic applies to the entire Bay Area. The organized financing and suitably skilled labor supply for such retrofits - some of which will be quite involved - is nowhere in sight.

If we end emissions on time, we conclude, a significant number of homes will likely be stranded without some combination of heating, hot water, and cooking facilities, at least for some significant amount of time.

Other challenges are not as clear cut, but are still alarming. For example, it is technologically plausible that steel production at global scale can be adapted so as to not rely on fossil fuels, but it is not so clear this adaptation will occur in as few as 10 and certainly not more than 25 years. A negative steel-supply shock therefore seems a significant risk if carbon emissions from fossil fuel burning are to be ended in time. A similar argument applies to cement. If this is correct, it appears that policy plans for robust, sustained housing stock growth over the next 10 to 25 years are likely to fail.

If we are even in the ballpark of correct about such dire predictions, then in our most optimistic scenario wherein emissions from fossil fuel and concrete are stopped in time, we will at the same time experience a serious crisis arising from the loss of functionality of housing stock!

All of that within the next 10 to 25 years.

If we're lucky.

## **Are we wrong? (concessions)**

Our argumentation has relied on what we hope are reasonable guesses in a few areas.

We could be badly over-estimating the number of homes needing retrofit, or the cost and difficulty of retrofits.

We could be greatly underestimating the rate at which housing retrofits can take place.

We could be greatly overestimating the threat to supplies of cement and steel. Or suitable substitutes for them may take their place in time.

It is certainly hard to predict the 10-25 year future of transit systems.

The uncertainties in our analysis can be narrowed through additional fact gathering. To the extent that more robust numbers are consistent with our estimates, our logic is sound: the best outcome for the climate emergency will be, at the same time, a foreseeable crisis in both the utility of our existing housing stock and the prospects of our systems of housing production.

Given the stakes inherent to the problems we've pointed out, we think it is important that the City of Berkeley take note of these threats, swiftly investigate them, and then take action to prepare for what's likely coming.

## Next steps

This section is left blank in this draft. The summary of this section reads:

*We end the essay with recommendations for next steps. In particular, we think the City and additional Commissions should dedicate some resources to assessing this troubling **new** housing predicament that appears to be rapidly approaching. If confidence in our findings grows, an emergency effort to prepare adaptations is needed. We propose that this effort is a short term priority for the City. (see section **Next steps**)*

Housing Advisory Commission

To: Housing Advisory Commission  
From: Commissioner Thomas Lord  
Subject: **Struggles at the Joint Subcommittee for the Implementation of State Housing Law**

Commissioners,

As you might recall, I am one of two members of the Housing Advisory Commission who were appointed to the Joint Subcommittee for the Implementation of State Housing Law (aka “JSISHL”, pronounced “jay-sizzle”).

Recent developments in state land-use law led to the creation of the Joint Subcommittee, which is comprised of members of the Housing Advisory Commission, the Zoning Adjustments Board, and the Planning Commission. These are the three commissions with quasi-judicial power with respect to housing in Berkeley. Each of the three commissions also plays an important advisory role to the City Manager (via our respective Commission Secretaries) and to the City Council.

I hope to present to the Commission a brief overview of how JSISHL stands in its process, and to point out what from my perspective seem like systemic problems with the way the Planning Department has approached our project. I’ll describe what I know, so far, about what will be the outcome of our work on the subcommittee. If other Housing Advisory Commissioners offer feedback, I will try to convey that feedback to JSISHL at the next JSISHL meeting.

I will also speak up against some rumors and innuendo that arose recently, accusing our subcommittee of ignoring ongoing housing crises and attempting something like a “stealth downzoning”. These offensive and obstructive rumors were spread by one member of City Council and by employees of a lobbyist organization. I have attached an open letter on the matter that I sent to the Council member, the full Council, and some community groups with whom I am in contact.

*My open letter:*

Subject: Please stop defaming JSISHL

Council member Droste, Mayor, and other members of Council.

On Saturday, February 22, 2020, Council member Droste “took to the airwaves” of social media - Twitter in particular - choosing to defame the entirety of the volunteer citizens appointed to the Joint Subcommittee for the Implementation of State Housing Law. She wrote:

*In the midst of an unprecedented housing and homeless crisis, the Joint Subcommittee on the Implementation (?) of State Laws is proposing setting “objective” standards on shadows, design and density. 1/16 at 7:00 at 2180 Milvia in Berkeley.*

Her subsequent online interactions about the tweet make it clear that it was Council member Droste’s intent to provoke a kind of public protest premised on her false characterization of what the subcommittee does.

Our subcommittee is charged with, among other things, advising the Planning Department and the City Council on how best to update our code to conform to recent developments in state housing law. How does this relate to “shadowing” considerations? I will try to explain:

Several state laws seek to streamline the property entitlement process by cutting out, under some circumstances, so called “discretionary” review. The express intent of the state laws that do this is not upzoning (an expansion of the zoned capacity) but streamlining (an elimination of certain delays from the entitlement process). State law expressly allows and even encourages code reforms which remove ambiguity and assist this shift to streamlined process.

At JSISHL we have been consistently clear that our aim is neither to upzone or downzone - to not add to or remove the City’s zoned capacity. If there are any JSISHL members who are unclear on this concept, I would be happy to refer them to our past meetings and discussions.

Council member Droste, it seems, would prefer that we perform a stealth, unplanned upzoning, inconsistent with our mandated duty. She has chosen to intimate to the public that we are conspiring to downzone. She should retract her statements and apologize for defaming the Committee members and their efforts. Shame on you, Council member.

It is absolutely true that there is considerable controversy over the kinds of land use policy Council member Droste promotes. There are important debates to be had there. Her dirty trick prevents such debates and poisons the public discussion. I am ashamed to be associated with a City government where such tactics prevail. I hope

that the Council member - and all of you - will begin to approach these issues in a more honest, fair, and deliberative way. Until then, I must simply strenuously object to the great disservice Council member Droste has done the City and its people with her callous mischaracterization of the situation.

Sincerely,

Thomas Lord, Housing Advisory Commission and JSISHL appointee for District 2\*

\* (for identification purposes only)

**Uberti, Mike**

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**From:** Housing Advisory Commission  
**Sent:** Thursday, February 20, 2020 3:34 PM  
**Subject:** FW: Announcement: People's Park Housing - March 4 Open House

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**From:** UC Berkeley Capital Strategies [<mailto:capitalstrategies@berkeley.edu>]  
**Sent:** Thursday, February 20, 2020 1:25 PM  
**To:** Lee, Kristen S. <[KSLee@cityofberkeley.info](mailto:KSLee@cityofberkeley.info)>  
**Subject:** Announcement: People's Park Housing - March 4 Open House



## ANNOUNCEMENT

Join us for the second of three open houses that will provide information about, and opportunity for discussion of, UC Berkeley's plans for the proposed housing project at People's Park. The project architects and campus planners will host conversations about various aspects of the project at stations around the room. Open houses are formatted as drop-in events. There is no formal arrival time. Open houses are open to all members of the campus and the community.

**Open House #2:**

Date: Wednesday, March 4, 2020  
Time: 3:30 p.m. to 6:30 p.m.  
Location: [Krutch Theatre, Clark Kerr Campus \(Building 14\)](#)  
Address: 2601 Warring Street, Berkeley, CA 94720  
[UC Berkeley Visitor Parking and Alternative Transportation](#)

Open House #2 Focus: Feedback on site plan concepts, receive input on commemoration themes and ideas, and share information about UC Berkeley student housing and supportive housing in the Bay Area.

Upcoming:  
*Open House #3 – To be announced (April/May 2020)*  
*Focus: Feedback on the refined site plan.*

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## **About This Project**

The shortage of available and affordable housing for Berkeley’s students is a matter of urgent concern for the campus and the community. At present, Berkeley has the lowest percentage of beds for its student body of any campus in the UC System, which is exacerbated by the fact that the campus is situated in one of the tightest housing markets in the country. As part of a comprehensive effort to address student needs, and the challenges facing the campus and its urban neighbors, in May 2018 the University announced plans to redevelop and revitalize People’s Park.

The proposed [People’s Park Housing](#) project will include three components: 1) student housing, 2) supportive housing with onsite services that help formerly homeless and lower-income persons live in dignity in the community and would be developed and managed by a non-profit partner under a ground lease with the University, and 3) open landscaped spaces. The new student housing would help mitigate UC Berkeley’s severe student housing shortage, while the supportive housing will provide safe and supervised living that is affordable and permanent. The project design will also commemorate the legacy of People’s Park.

Following a public submissions process, in July 2019 the University chose two firms as partners in this effort. [Resources for Community Development](#), a Berkeley based firm with over 35 years of experience, was selected to develop and operate the supportive housing component. The Bay Area architecture firm [LMS \(Leddy Maytum Stacy\)](#) has also been selected as Executive Architect to master plan the entire site and to design the student housing component.

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## **About UC Berkeley Capital Strategies**

The integrated teams of Capital Strategies work together to bring planning, design, construction and development services to the UC Berkeley campus. We are architects,



landscape architects, planners, engineers, construction specialists, and administrative personnel, all of whom work together to serve the campus community.

Inquiries:

[UC Berkeley Capital Strategies - Communications](#)  
[capitalstrategies@berkeley.edu](mailto:capitalstrategies@berkeley.edu)



UC Berkeley Capital Strategies | Architects & Engineers Building, Berkeley, CA 94720

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# Handouts

**Materials and correspondence received after the packet was published on 2/27/20 and distributed at the meeting.**

As one of the many Berkeley owners of a single, small rental property in which we also live, I may simply be unable to afford the time or stress of dealing with your proposed new law. A great many of us are elderly. We may need to sell our property quickly to move near family or pay for senior living with care. We are in our final years. You cannot burden us by removing our financial resources for a year or so and instead force us to deal with offering our property to multiple parties before being able to sell it and take care of our own immediate health needs and move.

I am 75 and have owned and lived in my Berkeley triplex for 35 years. I know what it means to be suddenly unable to take care of myself or find that the simplest tasks can, at times, take all day.

I live in an upstairs unit and have had four falls in the last ten years resulting in a surgery and broken bones. I have osteoarthritis which can make climbing stairs difficult on some days and calcium pyrophosphate deposition disease which results, in my case, in painful flare ups and swollen hands. In between falls and flare ups--and mostly--I live a normal life. However, the reality of my future is clear; as is the fact that my health is not going to improve

The city worries about tenants 60 years old and considers them elderly and in need of protection. However, I am not allowed to move into my ground level unit, for example, if someone is 60 and has lived there for five years. The stress of that became a daily reality less than two years ago when I could not leave my apartment because of a multi-fractured knee and had tenants living downstairs for four years with one age 58. Yet at 75, with 35 years of living here, I need to consider that I may need to move rather than a tenant of 60 with five years residency. According to the COB, moving off the property would be a hardship for them, but not for me. And not only do I have no rights as an owner, I have no rights as a far more elderly and far more long-term resident. One with medical problems while they have none.

Sixty is not old enough for social security payments or Medicare. It is not too old, however, to take a new job, as the now 59 year old did recently, complete with a commute she didn't have before and now a more than 40 hour work week due to added job responsibilities. Something I know was not financially necessary.

Your laws raise serious questions: Where is the city's concern for its aging landlords? How does it now dare propose to basically totally take away ownership rights and instead saddle them with a new, drawn out process for selling their property when they are themselves in need of care and with little time left and possibly inadequate resources to perform what the city suddenly demands? Can the COB have laws discriminating against that segment of their elderly population while basically giving their ownership rights to another segment of the population?

As a single mother I bought the triplex as a means of helping afford to move to Berkeley and have my children attend its schools. I remained here with the understanding *and laws* that would not strip me of the right to move into a unit that would allow me to remain here when I was old. I remained here with the understanding that I would retain ownership of my property until the time that *I determine I cannot continue in that role*. Now the city wants to decimate my careful and thoughtful plans even further when I have limited options and no ability or time to recover from what you propose. You want to accelerate my need to sell based on my best guess as to when it will be two years before I can no longer handle a far more time and energy consuming process in the future. Studies and statistics demonstrate that moving is, for the truly elderly, stressful and life-shortening.

Sasha Futran

1743 Delaware St., 510-383-0955

To: Members of the Housing Advisory Commission

From: Marian Wolfe

Subject: Proposal to Adopt a TOPA Pilot Program

Date: March 3, 2020

\*\*\*\*\*

I have reviewed Mayor Arreguin’s proposed TOPA Program Ordinance and want to provide some suggestions for your consideration. I am concerned that the proposed ordinance is not realistic. My main suggestion is that the City should adopt a pilot program first, operate the program for two years, decide what needs to be modified in the draft Ordinance, and then proceed from there.

Using other cities’ experiences in operating a TOPA program is useful, but until the City implements its own program, it is difficult to make too many generalizations. What I would like a pilot program to consider is the following:

- 1) Do we believe that owners of these apartment buildings and single family rental units will list their properties at higher than what they might settle for, since the initial offer price would be used to establish the sales price, rather than letting the market determine the price?

I understand that an appraiser (from the City’s list of appraisers) could undertake an independent appraisal. Appraisals are used by lenders to be certain that a sales price is not above market value. However, an appraised value could be below a competitive sales price.

- 2) What about the cost of repairs that might be needed? Often when owners sell their properties, they will “fix up” their properties in order to attract more potential buyers. If a seller knows that the “market” will not be involved initially, these repairs may not be made. The repair costs will add to the amount of funds that need to be raised by the future tenant-owners.
- 3) The size of the building (number of units) will have a major influence on the price that will be set. The greater the number of units, the more funding that will be needed. So, if the City wants to understand how effective its projected funding level will be, it would be good to know more about likely sizes of properties that will appeal to tenants to purchase.
- 4) Are available funds really sufficient? What happens if demand exceeds financial capability of the City or other organizations to assist tenant buyers? This is just not

addressed. This could result in higher expectations than can be fulfilled.

- 5) What are the income levels of the specific tenants in properties that could be purchased? There is an assumption that the average income level will eventually be around 80% AMI, but until there are actual properties that will be proposed for purchase, the City does not really know the incomes of current tenants. One recent example of not understanding income levels was Byron Rumford. Incomes of some of the residents exceeded maximum incomes for public subsidies, which made funding improvements at Byron Rumford more difficult.
- 6) One idea included is that qualified housing organizations could help residents. Some non-profits are not organized and funded to assist with small properties. Have the qualified organizations been contacted to see if they could provide assistance on an ongoing basis?
- 7) Staff time for this program will be significant. Perhaps the City should not include single family rentals initially to be more cost-effective, since only one household will be benefitted at a time in comparison to several households who occupy small multiple unit properties.
- 8) As stated in the draft Ordinance, sellers of three or more units could wait as long as 300 days before the sale could be completed. What if these sellers really need the funds? Many sellers of small rental properties are “mom and pop” owners, and may need funds for a variety of reasons. The seller’s needs are not considered.
- 9) Workshops have been conducted with some groups, but as far as I can tell, there have not been meetings with property owners. This seems like an oversight. Before adopting this Ordinance it would seem appropriate to discuss the process to see if there are any aspects of the proposed Ordinance that should be revised in order to gain their buy-in.



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

**Thursday, March 5, 2020  
10:30 AM**

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

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

**AGENDA**

**Roll Call**

**Public Comment on Non-Agenda Matters**

**Minutes for Approval**

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

**1. Minutes - February 20, 2020**

**Committee Action Items**

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

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

## Committee Action Items

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

**From: Mayor Arreguin (Primary Author)**

**Referred: February 24, 2020**

**Due: July 13, 2020**

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

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

1. Developing Administrative Regulations;
2. Preparing an implementation strategy;
3. Identifying resources to align databases from Finance, Planning, and the Rent Board to accurately reflect the properties that would be subject to TOPA;
4. Determining necessary staffing for program administration and hearing officers for adjudication;
5. Timelines for project “roll-out”;
6. Determining appropriate amount of funding needed to support the acquisition of TOPA properties and recommending possible funding sources;
7. Quantifying an annual program budget and referring such program costs to the June 2020 Budget process.

**Financial Implications:** See report

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

## Unscheduled Items

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

- None

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment

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

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



Office of the Mayor

ACTION CALENDAR

March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Tenant Opportunity to Purchase Act, Adding BMC Chapter 13.89

RECOMMENDATION

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

SUMMARY

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



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

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

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

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

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

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

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

### BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

## CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

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

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

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

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

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

### ***Economic Factors***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

### ***Oakland TOPA***

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

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

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

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

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

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

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



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

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

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

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

#### Subsidies

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

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

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

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

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

#### Private Capital of Tenants

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

#### Loans from Institutional Lenders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ALTERNATIVE ACTIONS CONSIDERED

#### *No Action*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CONSULTATION/OUTREACH OVERVIEW AND RESULTS

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

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

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

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

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

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

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



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

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

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

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

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

***Lender/financing overview***

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

***Research of rental sales professionals***

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

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

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

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

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

### RATIONALE FOR RECOMMENDATION

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

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

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

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

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

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

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

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

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

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

City of Berkeley 2019-2020 Strategic Plan

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

Housing Element of the General Plan*Objectives*

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

*Policies and Actions*

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

Affordable Housing Action Plan adopted November 28, 2017:

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

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

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

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

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

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

#### Regional Policies

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

FINANCIAL IMPLICATIONS

*Revenue impact of Incentive to Sellers*

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

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

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

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

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

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

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

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

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

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

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

Budget estimates are broken down into 2 priorities:

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

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

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

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



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

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

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

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

ORDINANCE NO. -N.S.

TENANT OPPORTUNITY TO PURCHASE ACT

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

Section 1. Title

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

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

**Chapter 13.89**

**TENANT OPPORTUNITY TO PURCHASE ACT**

**Sections**

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

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

**13.89.010 Findings.**

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

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

- E. The current need for affordable housing units in Alameda County is 52,591 units. Approximately 20% of residents in Berkeley are living in poverty.
- F. The lack of affordable housing for Berkeley's low-income communities is resulting in Berkeley residents having no option but to leave the City entirely or risk becoming homeless. Currently, there are an estimated 2,000 people who experience homelessness in Berkeley each year, and in December 2019 the Council extended its declaration of a homeless shelter crisis to January 2022.
- G. Affordable housing preservation and anti-displacement strategies will help keep low income tenants in their homes and is codified in the Berkeley General Plan Housing Element. Furthermore, production and maintaining affordable housing, at all income levels, is a stated priority of the City Council in its Housing Action Plan.
- H. This program finds that in the interest of preventing the displacement of lower-income tenants and preserving affordable housing, it is necessary and appropriate to require that the owners of rental properties in the City offer tenants the first opportunity to purchase and, in some cases defined herein, Qualified Organizations the second opportunity to purchase the property before it may be sold on the market to a third-party purchaser.
- I. The purpose of this chapter is to promote the health, safety, and general welfare of the residents of the City of Berkeley and the economic stability and viability of neighborhoods and ensure protection of the socioeconomic diversity and social fabric of the City.

### **13.89.020 Definitions.**

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

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

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

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

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

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



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

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

**13.89.030 "Sale" Defined.**

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

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

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

**13.89.040 Authority.**

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

**13.89.050 Applicability.**

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

**13.89.060 Exemptions.**

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

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

4. A Single Family Home with an ADU or other secondary dwelling unit, where an Owner occupies either the Single Family Home or the secondary unit as their principal residence as defined in Administrative Regulations.
5. Properties owned by cooperative corporations, owned, occupied, and controlled by a majority of residents.
6. Properties defined as “assisted housing developments” pursuant to California Government Code Section 65863.10(a)(3) so long as the provisions of California Government Code Section 65863.10, 65863.11, and 65863.13 apply.
7. Properties properly licensed as a hotel or motel.

#### B. Transfers Exempted

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

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

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

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

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

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

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

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

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

**B. Tenant Organizations.**

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

**13.89.090 Qualified Organizations**

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

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

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

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

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

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

### **13.89.100 Supportive Partners**

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

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

**B. Certification, Term, and Renewal.** Individuals and organizations that the City Manager certifies as having met the criteria in subsection [SP Criteria] shall be known as "Supportive Partners." An individual or organization's certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing

Supportive Partners shall be eligible to apply for renewed certification as Supportive Partners.

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

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

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

### **13.89.110 Assignment of Rights**

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

**13.89.120 Waiver of Rights**

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

**13.89.130 Notice Requirements**

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

**13.89.140 Right of First Offer**

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



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

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

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

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

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

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

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

**E. Time to Submit Offer.**

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

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

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

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

G. **Time to Secure Financing.**

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

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

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

**13.89.150 Right of First Refusal**

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

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

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

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

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

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

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

**D. Time to Accept Offer.**

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

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

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

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

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

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

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

### **13.89.170 Right to Appraisal**

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



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

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

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

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

### **13.89.180 Contract Negotiation**

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

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

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

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

### **13.89.190 No Selling of Rights**

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

**13.89.200 Tenant Protections**

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

**13.89.210 Price Stabilization**

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

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

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

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

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

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

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

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

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

H. Required Recordings and Filings.

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

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

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

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

### **13.89.220 Incentives**

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

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

**13.89.230 Enforcement**

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

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

**B. Implementation**

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

**C. Enforcement**

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

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

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

**13.89.240 Statutory Construction.**

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



**13.89.250 Administration and Reports**

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

**13.89.260 Severability**

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

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

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

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

All data consolidated from Zillow during January 2020

### BERKELEY PROPERTIES AND TOPA APPLICABILITY

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



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## ATTACHMENT 4

### DC Apartment buildings and TOPA

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

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

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

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

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

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

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

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

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

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

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

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

## Criticisms of DC TOPA

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

Response:

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

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

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

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

Response:

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

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

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



Vice Mayor Sophie Hahn  
Councilmember District 5

CONSENT CALENDAR

March 10, 2020

To: Honorable Members of the City Council  
From: Vice Mayor & Councilmember Sophie Hahn on behalf of the  
Land Use, Housing & Economic Development Committee  
Subject: Allocation of U1 General Fund Revenues

RECOMMENDATION

Accept the Housing Advisory Commission's (HAC) recommendations, as presented in the Measure U1 Budget draft projections table, for the allocation of U1 General Fund revenues with the following amendments:

1. Allocation of \$1M for small sites;
2. Addition of \$100K in FY 2022 and FY 2023 in organizational capacity building (BACLT);
3. Add \$150K in 2021-2023 for new programs under the category of development of new housing programs;
4. Allocations for staffing to implement programs; and
5. Allocate \$2.5M in 2023 for the Housing Trust Fund.

In addition, the Committee asked City staff for clarification of Health Housing and Community Services (HHCS) Department personnel line items of \$558,214 in FY 2020, with cost of living adjustment increases to \$577,751 (FY 2021), \$597,973 (FY 2022), and \$618,902 (FY 2023). A staff memo dated January 6, 2020 providing an overview of these costs will be submitted in Supplemental 1.

POLICY COMMITTEE RECOMMENDATION

On November 21, 2019, the Land Use, Housing & Economic Development policy committee adopted the following action: M/S/C (Hahn/Droste) to move the item with a positive recommendation to accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues in the format that staff presented in the Measure U1 Budget draft projections table including the following amendments:

1. Allocation of \$1M for small sites;
2. Addition of \$100K in FY 2022 and FY 2023 in organizational capacity building (BACLT);
3. Add \$150K in 2021-2023 for new programs under the category of development of new housing programs; and

4. Allocate \$2.5M in 2023 for the Housing Trust Fund.  
Vote: All Ayes.

#### BACKGROUND

The Land Use, Housing & Economic Development policy committee considered the Housing Advisory Commission's Spring 2019 Bi-Annual Report on Funding for Housing Programs at four meetings in 2019: October 3, October 24, November 7, and November 21.

On October 3, a discussion was held on allocation of U1 General Fund revenues, and the committee requested more information on the full funding picture including allocations made, the full balance, conditions, and legal restrictions for Measure O, the Housing Trust Fund and U1 revenues. Further discussions were held on October 24 and November 7.

On November 21, the committee held a discussion and then voted unanimously to move the item with a positive recommendation to accept the Housing Advisory Commission's recommendations with amendments, as represented in the attached spreadsheet. In taking this action, the Committee carefully considered the HAC recommendations as well as materials presented by staff and worked to ensure HAC's priorities were reflected in the Committee's recommendation. At the time action was taken, the Committee was comprised of Councilmembers Ben Bartlett, Lori Droste, and Sophie Hahn.

Councilmember Hahn was asked at that time to produce this report, working with City staff. Since the November 21 meeting, there have been internal discussions among City staff and the office of Councilmember Hahn with regard to the process for presenting these materials. The attached Measure U1 Projections document is submitted exactly as approved by the Committee. Any proposed changes can be filed as a Supplemental.

#### CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, (510) 981-7150

#### ATTACHMENTS/SUPPORTING MATERIALS

1. Draft Measure U1 Projections Post Land Use Policy Committee - 12-12-19
2. Housing Advisory Commission, Spring 2019 Bi-Annual Report on Funding for Housing Programs

|                                                     | FY 2018<br>Actuals | FY 2019<br>Actuals | FY 2020<br>Estimated | FY 2021<br>Estimated | FY 2022<br>Planned | FY 2023<br>Planned |
|-----------------------------------------------------|--------------------|--------------------|----------------------|----------------------|--------------------|--------------------|
| <b>Revenues</b>                                     |                    |                    |                      |                      |                    |                    |
| <i>Beginning Fund Balance</i>                       | \$5,161,615        | \$4,161,615        | \$7,953,493          | \$6,224,483          | \$4,164,575        | \$2,097,074        |
| <b>ADD: Revenues</b>                                |                    | 5,787,158          | 5,000,000            | 5,000,000            | 5,000,000          | 5,000,000          |
| <i>Transfer In/Fr Fund</i>                          |                    |                    |                      |                      |                    |                    |
| <b>Total Revenues and Available Fund Balance</b>    | 5,161,615          | 9,948,773          | 12,953,493           | 11,224,483           | 9,164,575          | 7,097,074          |
| <b>LESS: Total Expenses</b>                         | 1,000,000          | 1,995,280          | 6,729,011            | 7,059,908            | 7,067,501          | 5,618,902          |
| <b>Personnel Costs</b>                              |                    |                    |                      |                      |                    |                    |
| <i>Rent Board</i>                                   | 350,000            | 345,280            | 908,214              | 927,751              | 947,973            | 968,902            |
| <i>HHCS (Measure O/Housing Trust Fund)</i>          |                    |                    | 558,214              | 577,751              | 597,973            | 618,902            |
| <i>Finance (Rev Dev Position &amp; Admin Costs)</i> | 350,000            | 345,280            | 350,000              | 350,000              | 350,000            | 350,000            |
| <b>Non-Personnel and Other Program Costs</b>        |                    |                    |                      |                      |                    |                    |
| <b>Small Sites/Community Land Trusts</b>            | 650,000            | 1,650,000          | 5,820,797            | 6,132,157            | 6,119,528          | 4,650,000          |
| 1638 Stuart/Small Sites predev (BACLT)              |                    | 50,000             |                      |                      |                    |                    |
| 1638 Stuart/Small Sites loan (BACLT)                |                    | 950,000            |                      |                      |                    |                    |
| 2321-2323 10th St. predev (NCLT)                    |                    |                    | 50,000               |                      |                    |                    |
| RFP: 2321-2323 10th St. loan (NCLT)                 |                    |                    | 1,570,640            |                      |                    |                    |
| Small Sites Program                                 |                    |                    |                      | 1,000,000            | 1,000,000          | 1,000,000          |
| <b>Housing Trust Fund</b>                           |                    |                    |                      |                      |                    |                    |
| 2001 Ashby predev (RCD)                             |                    |                    | 368,000              |                      |                    |                    |
| 2001 Ashby predev (RCD)                             |                    |                    | 1,200,000            |                      |                    |                    |
| 2527 San Pablo Ave predev (SAHA)                    |                    |                    | 500,000              |                      |                    |                    |
| 2012 Berkeley Way reserves (BRIDGE/BFHP)            |                    |                    | 0                    | 3,000,000            | 3,023,365          |                    |
| Housing Trust Fund Program                          |                    |                    |                      |                      |                    | 2,500,000          |
| <b>Development of New Housing Programs</b>          |                    |                    |                      |                      |                    |                    |
| Organizational Capacity Bldg (BACLT)                |                    |                    | 100,000              | 100,000              | 100,000            | 100,000            |
| Berkeley Unified School District Planning Grant     |                    |                    | 150,000              |                      |                    |                    |
| New Housing Programs/Land Trust/Coops               |                    |                    |                      | 150,000              | 150,000            | 150,000            |
| <b>Anti-Displacement</b>                            |                    |                    |                      |                      |                    |                    |
| Rent Board (EDC & EBCLC)                            | 300,000            | 300,000            |                      |                      |                    |                    |
| East Bay Community Law Center (EBCLC)               | 250,000            | 250,000            | 275,000              | 275,000              | 275,000            | 275,000            |
| Housing Retention Program (EBCLC)                   |                    |                    | 250,000              | 250,000              | 250,000            | 250,000            |
| Eviction Defense Center (EDC)                       |                    |                    | 275,000              | 275,000              | 275,000            | 275,000            |
| Flexible Housing Subsidy Pool (BACS)                | 100,000            | 100,000            | 100,000              | 100,000              | 100,000            | 100,000            |
| <b>Additional City Priorities</b>                   |                    |                    |                      |                      |                    |                    |
| 1001, 1011 University Ave. acquisition              |                    |                    | 982,157              | 982,157              | 946,163            |                    |
| Fiscal Year Surplus (Shortfall)                     | 4,161,615          | 3,791,878          | (1,729,011)          | (2,059,908)          | (2,067,501)        | (618,902)          |
| Ending Fund Balance                                 | \$4,161,615        | \$7,953,493        | \$6,224,483          | \$4,164,575          | \$2,097,074        | \$1,478,172        |





Housing Advisory Commission

CONSENT CALENDAR  
September 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
 Subject: Spring 2019 Bi-Annual Report on Funding for Housing Programs

RECOMMENDATION

Accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

SUMMARY

This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs. In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

FISCAL IMPACTS OF RECOMMENDATION

The funds to pay for these recommendations come from a special Business License tax that is charged on properties consisting of five or more units. It is estimated that the revenues will total approximately \$5 million during the upcoming fiscal year. Staff time is included within the administrative costs listed in the summary table of proposed allocations.

CURRENT SITUATION AND ITS EFFECTS

At the May 2, 2019 meeting, the HAC took the following vote to adopt the Bi-Annual Housing Policy Report Subcommittee recommendations to Council, as amended by Commissioner Johnson, to Council to allocate \$5 million in General Fund revenue as follows:

|                                                                   |                    |
|-------------------------------------------------------------------|--------------------|
| Small Sites/Community Land Trusts                                 | \$1,000,000        |
| Housing Trust Fund                                                | \$2,500,000        |
| Development of New Housing Programs (Housing Co-Ops, Land Trusts) | \$250,000          |
| Anti-Displacement                                                 | \$900,000          |
| Administrative Costs                                              | \$350,000          |
| <b>Total (2019)</b>                                               | <b>\$5,000,000</b> |

M/S/C (Wright/Tregub):

Ayes: Johnson, Lewis, Sargent, Sharenko, Tregub, Wolfe and Wright. Noes: Lord.  
Abstain: None. Absent: Owens (unexcused) and Simon-Weisberg (excused).

### BACKGROUND

Ballot Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report, since the City does not know at this time the locations of the housing units to be assisted.

### RATIONALE FOR RECOMMENDATION

The actions recommended by the HAC are consistent with Berkeley’s existing housing programs and policies. Recommended expenditures support existing programs and potential new programs to be explored, such as alternative forms of housing ownership.

### ALTERNATIVE ACTIONS CONSIDERED

Another option for the City to consider would be to deposit all U1 General Fund Revenues into the City’s Housing Trust Fund (HTF). However since one of the uses of

U1 General Fund Revenues is to protect Berkeley residents from homelessness, the HAC decided not to deposit all the funds into the HTF in order to provide revenues for anti-displacement activities. In addition, U1 General Fund Revenues are, by definition, more discretionary than other funds deposited into the HTF. This will allow the City to assist innovated programs needed given the housing affordability crisis.

CITY MANAGER

The City Manager recommends referring these recommendations to a Council Policy Committee for further discussion.

The City Council has already authorized General Fund revenue received pursuant to Measure U1 for the following projects:

- \$150,000 to the Berkeley Unified School District as a planning grant for educator housing;
- \$368,000 for Resources for Community Development predevelopment loan application for its proposed development at 2001 Ashby Avenue;
- \$900,000 for anti-displacement activities each year for FY20 and FY21; and
- \$100,000 capacity building for housing cooperatives each year for FY20 and FY21.

At the time of the writing Resources for Community Development has applied for an additional \$1.2M for a predevelopment loan for its proposed development at 2001 Ashby Avenue.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114

Attachments:

- 1: Spring 2019 Revised Draft Bi-Annual Report
- 2: Housing Revenues and Expenditures
- 3: Future Program Recommendations in Development by the HAC
- 4: Funding Summary Table as of May 2, 2019

To: Members of the Housing Advisory Commission  
From: Xavier Johnson, Chairperson, Housing Advisory Commission  
Subject: Spring 2019 Revised Draft Bi-Annual Report  
Date: April 25, 2019

RECOMMENDATION

In keeping with the Housing Advisory Commission’s (HAC) annual/biannual obligation to “make recommendations...to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness,” this Report recommends the City of Berkeley allocate \$5 million in general fund revenue as follows:

|                                                                        |                           |
|------------------------------------------------------------------------|---------------------------|
| ● Small Sites/Community Land Trusts                                    | \$1,000,000               |
| ● Housing Trust Fund                                                   | \$2,500,000               |
| ● Development of New Housing Programs<br>(Housing Co-Ops, Land Trusts) | \$250,000                 |
| ● Anti-Displacement                                                    | \$900,000                 |
| ● Administrative Costs                                                 | \$350,000                 |
| <b><u>Total (2019)</u></b>                                             | <b><u>\$5,000,000</u></b> |

Further information on how the City of Berkeley should establish programs to increase the supply of affordable housing and protect Berkeley residents from homelessness will follow in future reports to the Berkeley City Council.

SUMMARY

The City of Berkeley (City) is currently experiencing a major shortfall in funding for affordable housing for its residents, and many existing residents find that they are unable to keep up with rising rents and may face displacement from their current homes. The purpose of U1, a ballot measure that passed by a majority of Berkeley’s residents in November 2016 was to increase funding for these two vitals areas (increasing the supply of affordable housing and preventing displacement). However, since these funds are part of the General Fund, the City actually has the option of spending them on non-housing related expenditures.

Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts,

Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

### FISCAL IMPACTS OF RECOMMENDATION

This report recommends the allocation of \$5 million dollars in General Fund revenue. It is acknowledged that the City has already, in some cases temporarily and in other cases indefinitely, committed various sources of revenue to various projects. To truly be able to maximize the allocation and effectiveness of resources this recommendation suggests the City will have to take into account all available funding sources and commitments made by the City; this will ensure there are no more additional unfunded commitments moving forward.

### CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley continues to be in the midst of a major housing crisis. U1 directed the Housing Advisory Commission to look at all possible avenues and strategies the City can take to increase the supply of affordable housing and protect Berkeley residents from homelessness.

### BACKGROUND

This report provides the following information:

1. *History*  
The history of Measure U1, as well as the previous reports the Housing Advisory Commission has issued.
2. *Current Funding for Affordable Housing and Prevention of Displacement:*  
An approximate summary of expenditures and allocations for affordable housing and prevention of homelessness. While this list is subject to constant change, and the number of sources grows, this list offers some context and background on some of the many resources currently available to the City.

3. *Recommendations for 2019 Expenditures*

Recommendations for future expenditures for housing as well as potential programs and ideas, will be more thoroughly explored and evaluated by the Housing Advisory Commission as part of its regular business.

4. *Potential Future Recommendations under Consideration by the Housing Advisory Commission*

As part of our 2018 Work Plan, the HAC came up with numerous ideas for programs and funding that it is currently evaluating and reviewing. While the HAC is beginning to start the 2019 process, we thought it was important to review the ideas that are still in the works and under review.

1. *History*

Measure U1, which was passed in November 2016, authorized an increase in the Business License Tax charged on properties that consist of five or more residential units. In addition and separately, Measure U1 provided that the HAC will make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness. After the measure passed, it was incorporated into Berkeley's Municipal Code. The HAC was required under measure U1 to provide a report to the City Council and specified that HAC make annual or bi-annual recommendations to the Council. The HAC has chosen to set as its timeline April and October as reporting dates for each year.

In its first annual report to the City Council in 2018, the HAC recommended funding at these levels for the following uses:

|                                         |                 |
|-----------------------------------------|-----------------|
| ● Anti-Displacement                     | \$550,000       |
| ● Small Sites Program                   | \$1,000,000     |
| ● Housing Trust Fund                    | \$2,000,000     |
| ● Reserve for pipeline housing programs | \$400,000       |
| ● Administrative Costs                  | <u>\$50,000</u> |

|       |             |
|-------|-------------|
| Total | \$4,000,000 |
|-------|-------------|

This report is the second report to the City Council and is the first Bi-Annual Report for 2019. It provides information to the City Council to assist the Council in its decision-making regarding the allocation of funds to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

2. Current Funding for Affordable Housing and Prevention of Displacement

The City of Berkeley has a number of sources of funding available to expand the supply of affordable housing and prevent homelessness. The subcommittee decided it would be good to understand the overall level of funds designated for affordable housing and homelessness prevention. First, Table 1 provides information on the most recent commitments from General Fund revenue

Secondly, working with staff, the subcommittee obtained information on housing related expenditure and allocations from several local sources including General Funds, In-Lieu and Housing Mitigation Fees, and federal sources, such as HOME and CDBG. This information is summarized in Table 2 and more information on actual expenditures is presented in Attachment 1.<sup>1</sup> Finally Attachment 3 provides information on committed expenditures.

**Table 1: Allocations<sup>2</sup>**

|                                           | Allocation       |
|-------------------------------------------|------------------|
| <b>COMMITTED EXPENDITURES</b>             |                  |
| <i>Anti-Displacement</i>                  |                  |
| FY 2018                                   |                  |
| Eviction Defense (Rent Board)             | \$300,000        |
| Retention - East Bay Comm Law Center HHCS | \$250,000        |
| Rapid Rehousing HHCS                      | \$100,000        |
| <i>Subtotal</i>                           | <i>\$650,000</i> |
| FY 2019 EXPENDITURES                      |                  |
| Eviction Defense (Rent Board)             | \$300,000        |
| Retention - East Bay Comm Law Center HHCS | \$250,000        |
| Rapid Rehousing HHCS                      | \$100,000        |
| <i>Subtotal</i>                           | <i>\$650,000</i> |
| <i>STAFF AND ADMIN. FY 2018</i>           |                  |
| Staff Position                            | \$150,757        |
| Other Administrative Costs                | \$199,243        |

<sup>1</sup> Note: The total HOME funds listed in Table 2 do not include funding for public services projects, planning and administration, public facilities, and all ESG, since these uses do not fall directly under the policy framework for U1. ESG is primarily used to help those who are already homeless.

<sup>2</sup>As of February 2019. Also, Table 1 does not include expenditures from ESG or City's matching funds for ESG. See tables in Attachment 1  
Source: City Staff

Attachment 1: Spring 2019 Revised Draft Bi-Annual Report

|                                              |                    |
|----------------------------------------------|--------------------|
| Subtotal                                     | \$350,000          |
| <i>HOUSING</i>                               |                    |
| Future Small Sites Program Activities - HHCS | \$950,000          |
| Organizational Capacity Building (BACLT)     | \$50,000           |
| Subtotal                                     | \$1,000,000        |
| <b>TOTAL: COMMITTED AND ASSIGNED</b>         | <b>\$2,650,000</b> |

**Table 2: FY 2018-19 Committed and Reserved Funds for Housing**

| <i>Committed Housing Trust Funds</i>                     | <i>CDBG</i> | <i>Home</i> | <i>Local Funds (1)</i> | <i>Total</i> |
|----------------------------------------------------------|-------------|-------------|------------------------|--------------|
| Bridge/Berkeley Food & Housing                           |             |             | \$3,967,548            | \$3,967,548  |
| 1638 Stuart St (BACLT Small Sites)                       |             |             | \$50,000               | \$50,000     |
| SAHA (Oxford Street)                                     |             |             | \$25,000               | \$25,000     |
| SAHA/Grayson Apartments                                  | \$876,000   | \$1,020,827 | \$598,173              | \$2,495,000  |
| Subtotal                                                 |             |             |                        | \$6,537,548  |
| <i>Development - Reserved</i>                            |             |             |                        |              |
| Bridge/Berkeley Food & Housing(2)                        |             |             |                        | \$23,500,000 |
| BACLT Small Sites                                        |             |             | \$950,000              | \$950,000    |
| SAHA (2)                                                 |             |             |                        | \$6,000,000  |
| Subtotal                                                 |             |             |                        | \$30,450,000 |
| Total HOME Projects                                      |             |             |                        | \$813,509    |
| Community Allocations for Housing Development and Rehab. |             |             |                        | \$451,662    |
| <i>Prevention of Displacement</i>                        |             |             |                        |              |
| FY 2018                                                  |             |             | \$650,000              | \$650,000    |
| FY 2019                                                  |             |             | \$650,000              | \$650,000    |
| Subtotal                                                 |             |             |                        | \$1,300,000  |



Attachment 1: Spring 2019 Revised Draft Bi-Annual Report

|                                           |  |  |  |                     |
|-------------------------------------------|--|--|--|---------------------|
| <i>Staffing and Administration</i>        |  |  |  |                     |
| Subtotal                                  |  |  |  | \$350,000           |
| <b>TOTAL FUNDS COMMITTED AND RESERVED</b> |  |  |  | <b>\$39,902,719</b> |

- 1) Local funding sources include Housing Trust Funds, U1 and additional General Funds.
- 2) No sources indicated.

Finally, the City passed Measure O in Fall 2018. This measure authorized the City to issue up to \$135 million in bonds to be paid for by an increase in the property tax for 36 years. These bonds can be used “to fund housing for "low-, very low-, low-, median, and middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations," according to ballot language. These bonds have not yet been issued, so the future financial resources from this bond measure are not included in this report.3.

*Recommendations for 2019 Expenditures*

Table 3 provides the Housing Advisory Commission’s funding recommendations for 2019 designed to increase the supply of affordable housing and protect Berkeley residents from homelessness. It should be noted that there is some overlap. For example, funding for a small sites program could be provided by the Housing Trust Fund, and a small sites program could also be based on a land trust model. In addition, this is not intended to be an exhaustive list of the City’s expenditures for increasing the supply of affordable housing or for protecting residents from homelessness.

**Table 3: 2019 Funding Recommendations**

|                                                      |             | <b>% of Committed Funds</b> |
|------------------------------------------------------|-------------|-----------------------------|
| Anti-Displacement                                    | \$900,000   | 18%                         |
| Administrative Costs                                 | \$350,000   | 7%                          |
| Small Sites/Community Land Trusts                    | \$1,000,000 | 20%                         |
| Housing Trust Fund                                   | \$2,500,000 | 50%                         |
| Development of New Housing Programs (Housing Co-Ops) | \$250,000   | 5%                          |
| Total (2019)                                         | \$5,000,000 | 100%                        |

#### *4. Potential Future Recommendations under Consideration by the Housing Advisory Commission*

As part of the 2018 work plan, the Housing Advisory Commission identified numerous potential programs, which it is in the process of evaluating and designing. Moving forward, the HAC may put some of these ideas forward to the City Council. The current nine members of the Housing Commission responded to a poll regarding some of the strategies/programs included in the most recent Work Plan.<sup>3</sup> Table 4 presents poll results. The poll required a “yes” or “no” vote.

- The strategies supported by all commissioners included funds for the Housing Trust Fund and Community Land Trusts.
- Those strategies supported by almost all of the Commissioners included anti-displacement services, expansion of the small sites program, and group equity/zero equity co-ops.
- Finally, home sharing and supportive mental health services received support from less than two-thirds of the Commissioners, but still a majority of the members.<sup>4</sup>

Since a majority of Commissioners supported all these activities/strategies, they represent a good starting point for recommendations on how 2019/20 housing funds could be allocated. With the exception of home sharing and supportive mental health services, three-quarters of the commissioners supported the other strategies listed in Table 4.

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<sup>3</sup> A more detailed description of these Work Plan recommendations can be found at [https://www.cityofberkeley.info/uploadedFiles/Housing/Commissions/Commission\\_for\\_Housing\\_Advisory/2018-7-11%20HAC%20Agenda%20Packet%20COMPLETE\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Commissions/Commission_for_Housing_Advisory/2018-7-11%20HAC%20Agenda%20Packet%20COMPLETE(2).pdf)

<sup>4</sup>According to two commissioners who provided comments, mental health services are outside the auspices of the HAC and Housing Division. Another member indicated that they need more information in order to assess support for these services. Additional comments included in the poll results are included in Attachment 2.

**Table 4: Commissioner Poll Results**

| Activities/Strategies                                                                    | Percent Supporting |
|------------------------------------------------------------------------------------------|--------------------|
| East Bay Community Law Center to help tenants who are at-risk of displacement (1)        | 88%                |
| Supportive Mental Health Services to assist Residents who have housing remain housed (1) | 63%                |
| Expand Supply of Affordable Housing (Small Sites Program)                                | 89%                |
| Housing Trust Fund (for leveraging of new construction)                                  | 100%               |
| ADU Development                                                                          | 78%                |
| Tenant Option to Purchase                                                                | 78%                |
| Group Equity and Zero Equity Co-ops (1)                                                  | 88%                |
| Community Land Trusts                                                                    | 100%               |
| Home Sharing                                                                             | 56%                |

(1) The percentage of HAC members supporting these three issues is based on responses from eight out of nine members of the HAC. One of the members did not vote on these three strategies, because the member indicated more information was needed to provide input.

Attachment 2: Housing Revenues and Expenditures

**Table 1.1:  
February 2019 U1 Revenues**

|                      |                    |
|----------------------|--------------------|
| FY 2018 Revenues     | \$5,161,615        |
| FY 2019 YTD Revenues | \$865,451          |
| <b>Total</b>         | <b>\$6,027,066</b> |

Source: City of Berkeley

**Table 1.2: February 2019 Committed Expenditures Preventing Homelessness**

| Use                                              | Anti-Displacement FY18 | Anti-Displacement FY19 |
|--------------------------------------------------|------------------------|------------------------|
| Eviction Defense - Rent Board                    | \$300,000              | \$300,000              |
| Retention - East Bay Community Law Center - HHCS | \$250,000              | \$250,000              |
| Rapid Rehousing - HHCS                           | \$100,000              | \$100,000              |
| <b>Total</b>                                     | <b>\$650,000</b>       | <b>\$650,000</b>       |

Source: City of Berkeley

**Table 1.3: February 2019 Committed Expenditures Increasing Housing Supply**

|                                                                 |                    |
|-----------------------------------------------------------------|--------------------|
| Future Small Sites Program Activities – HHCS (not yet provided) | \$950,000          |
| Organizational Capacity Building (BACLT Contract)               | \$50,000           |
| <b>Sub-Total</b>                                                | <b>\$1,000,000</b> |

Source: City of Berkeley

**Table 1.4: Staff and Administrative Costs Funded by the General Fund**

|                                             |                  |
|---------------------------------------------|------------------|
| Finance Development Spec II Position - FY18 | \$150,757        |
| Other Administrative Costs - Fin FY18       | \$199,243        |
| <b>Sub-total</b>                            | <b>\$350,000</b> |

**Table 1.5: HOME Projects Allocations FY 2018-2019**

|                                            |                  |
|--------------------------------------------|------------------|
| HOME Admin.                                | \$81,351         |
| CHDO Operating Funds                       | \$28,115         |
| Housing Trust Fund                         | \$704,043        |
| <b>Subtotal HOME Projects FY 2018-2019</b> | <b>\$813,509</b> |

Source: City of Berkeley Annual Action Plan. (Does not include all funding)

### Attachment 3: Future Program Recommendations in Development by the HAC

Additional comments written on the Commissioner's Poll include the following:

- Small Sites Program - Perhaps use funds for organizational/program development minor support rather than support for purchasing sites at this time. Developers that have experience in affordable housing development should only be considered given the financial risks of this type of development and the complexities of small scattered-site developments.
- Tenant Option to Purchase - This is good for apartment buildings that contain fewer than 20 units. This approach could be combined with the institutional structure of Community Land Trusts. CLTs are an important model that can be used to support these types of ownership structures.
- Group Equity and Zero Equity Co-ops - It is possible that those most interested in co-ops would be UC Berkeley students. Is this the City of Berkeley's priority given the transient nature of university students?
- Home Sharing - Assistance to a service organization like HIP Housing is a good idea, but this strategy is a service and not affordable housing development of new units. Also, the City should be very careful with supporting this type of service given potential for abuse by tenants and/or landlords.

## Attachment 4: Summary Table as of May 2, 2019

|                                                 | CDBG 2018-19     | HOME 2018-19       | Housing Trust Fund | Other           | General Fund<br>2018-19 | General Fund<br>2019-2020 | No Source           | Total               |
|-------------------------------------------------|------------------|--------------------|--------------------|-----------------|-------------------------|---------------------------|---------------------|---------------------|
| <b>Committed-New Affordable Housing</b>         |                  |                    |                    |                 |                         |                           |                     |                     |
| Bridge/Berkeley Food & Housing Project          |                  |                    | \$3,967,548        |                 |                         |                           | \$23,500,000        | \$27,467,548        |
| SAHA (Oxford Street)                            |                  |                    | \$25,000           |                 |                         |                           |                     | \$25,000            |
| SAHA (Grayson Apartments)                       | \$876,000        | \$1,020,827        | \$598,173          |                 |                         |                           |                     | \$2,495,000         |
| SAHA (Oxford Street)                            |                  |                    |                    |                 |                         |                           | \$6,000,000         |                     |
| <b>Subtotal-New Affordable Housing</b>          | <b>\$876,000</b> | <b>\$1,020,827</b> | <b>\$4,590,721</b> |                 |                         |                           | <b>\$29,500,000</b> | <b>\$35,987,548</b> |
| <b>Committed-Preservation</b>                   |                  |                    |                    |                 |                         |                           |                     |                     |
| BACLT Small Sites Program (1638 Stuart St.)     |                  |                    |                    |                 | \$950,000               |                           |                     | \$950,000           |
| BACLT Small Sites Capacity Building             |                  |                    |                    |                 | \$50,000                |                           |                     | \$50,000            |
| Housing Development & Rehabilitation            | \$380,613        |                    |                    | \$56,230        | \$14,819                |                           |                     | \$451,662           |
| <b>Subtotal-Preservation</b>                    | <b>\$380,613</b> |                    |                    | <b>\$56,230</b> | <b>\$1,014,819</b>      |                           |                     | <b>\$1,451,662</b>  |
| <b>Home Projects Allocations (FY 2018-2019)</b> |                  |                    |                    |                 |                         |                           |                     |                     |
| Administration                                  |                  | \$81,351           |                    |                 |                         |                           |                     | \$81,351            |
| CHDO Operating Funds                            |                  | \$28,115           |                    |                 |                         |                           |                     | \$28,115            |
| Housing Trust Fund                              |                  |                    | \$704,043          |                 |                         |                           |                     | \$704,043           |
| <b>Subtotal Home Projects</b>                   |                  | <b>\$109,466</b>   | <b>\$704,043</b>   |                 |                         |                           |                     | <b>\$813,509</b>    |
| <b>Committed-Anti-Displacement</b>              |                  |                    |                    |                 |                         |                           |                     |                     |
| Eviction Defense-Rent Board                     |                  |                    |                    |                 | \$300,000               | \$300,000                 |                     | \$600,000           |
| East Bay Community Law Center                   |                  |                    |                    |                 | \$250,000               | \$250,000                 |                     | \$500,000           |
| Rapid Re-Housing                                |                  |                    |                    |                 | \$100,000               | \$100,000                 |                     | \$200,000           |
| <b>Subtotal – Anti- Displacement</b>            |                  |                    |                    |                 | <b>\$650,000</b>        | <b>\$650,000</b>          |                     | <b>\$1,300,000</b>  |
| <b>Administrative Overhead</b>                  |                  |                    |                    |                 |                         |                           |                     |                     |
| Finance Development Specialist II               |                  |                    |                    |                 |                         | \$150,757                 |                     |                     |
| Other Administrative Costs                      |                  |                    |                    |                 |                         | \$199,243                 |                     |                     |
| <b>Subtotal-Administrative Overhead</b>         |                  |                    |                    |                 |                         | <b>\$350,000</b>          |                     | <b>\$350,000</b>    |

|                                           | CDBG 2018-19       | Home 2018-19       | Housing Trust Fund | Other           | General Fund<br>2018-19 | General Fund<br>2019-2020 | No Source           | Total               |
|-------------------------------------------|--------------------|--------------------|--------------------|-----------------|-------------------------|---------------------------|---------------------|---------------------|
| <b>Total Funds Committed and Reserved</b> | <b>\$1,256,613</b> | <b>\$1,130,293</b> | <b>\$5,294,764</b> | <b>\$56,230</b> | <b>\$1,664,819</b>      | <b>\$1,000,000</b>        | <b>\$29,500,000</b> | <b>\$39,902,719</b> |

