

1. Exemptions:
  - a. Additional clarity that owner occupied SFR, ADUs or Jr ADUs are exempt if property is a primary residence
  - b. Added coming "out of" a revocable trust
  - c. Increased the number of units from no more than 4 to no more than 5 that could be exempt in the case of a medical emergency of the owner and added spouse, domestic partner and children to the provision
2. Added clarity to statement of interest, right of first offer and right of first refusal, specifically around Qualified Organization and Tenant Organizations.
3. Removed the requirement of 3 year occupancy for properties that use public funds.
4. Added a provision that rents could increase to incorporate capital improvements, amortized of the life of the improvement, as per rent stabilization definitions.
5. Excluded stock or limited equity cooperatives from having to pay housing mitigation fees if they have affordability deed restrictions.
6. Increased closing time for SFR if a tenant organization (multiple owners) was formed that required a commercial mortgage.

ORDINANCE NO. -N.S.

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

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

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

**Chapter 13.89**

**TENANT OPPORTUNITY TO PURCHASE ACT**

- 13.89.010 Title and Purpose**
- 13.89.020 Findings**
- 13.89.030 Definitions**
- 13.89.040 Applicability**
- 13.89.050 Exemptions**
- 13.89.060 Qualified Nonprofits**
- 13.89.070 Supportive Partners**
- 13.89.080 Notice of Intent to Sell; Statement of Interest**
- 13.89.090 Right of First Offer**
- 13.89.100 Right of First Refusal**
- 13.89.110 Incentive to Accept Offer from Qualified Organization**
- 13.89.120 Confidential Information Protected**
- 13.89.130 Prohibited Conduct**
- 13.89.140 Financial Assistance**
- 13.89.150 Price Stabilization; Tenant Protections**
- 13.89.160 Implementation**
- 13.89.170 Enforcement**
- 13.89.180 Severability**

**13.89.010 Title and Purpose.**

- A. This Chapter shall be referred to as the Tenant Opportunity to Purchase Act.
- B. The purpose of this Chapter is to confer upon Tenants of Rental Properties as defined herein a right of first offer and a right of first refusal upon the transfer or sale of Rental Property, and to create an incentive for Owners of Rental Properties to offer their property for sale to Tenants residing there.

**13.89.020 Findings.**

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

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

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

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

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

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

**13.89.030 Definitions.**

A. "Dwelling Unit," "Accessory Dwelling Unit," and "Single Family Dwelling" are defined in Section 23F.04.010.

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

C. "Qualified Nonprofit" means a nonprofit, which is either exempt from federal income tax under 26 U.S.C. § 501(c)(3) or a California cooperative corporation, that has the capacity to acquire, provide, and manage affordable housing for moderate, low, very low, and extremely low income households, and is certified by the City Manager pursuant to Section 13.89.060.A.

D. "Qualified Organization" means either a Tenant Organization or a Qualified Nonprofit.

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

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

G. "Rental Unit" means any Dwelling Unit sleeping quarters occupied by one or more Tenants in the City of Berkeley.

H. "Supportive Partner" means any person or organization certified by the City Manager pursuant to Section 13.89.070.A to provide Tenant counseling and technical support services pursuant to this Chapter.

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

J. "Tenant Organization" means any legal entity or unincorporated and/or informal association that is authorized to act on behalf of a majority of Tenants of a Rental Property. A Tenant residing on a property with no more than one Rental Unit may exercise the rights of a Tenant Organization under this Chapter. For purposes of this Paragraph only, any and all lessees of a Dwelling Unit are collectively considered to be one Tenant, and each such lessee of a Dwelling Unit must consent to representation by the Tenant Organization.

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

**13.89.040 Applicability.**

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

**13.89.050 Exemptions.**

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

1. Rental Properties at which all Rental Units are vacant on the date of the transfer or sale of the Rental Property.

2. Any Rental Property comprised entirely of owner-occupied Rental Units,

including any owner-occupied Single-Family Dwelling.

3. Any Accessory Dwelling Unit (inclusive of any junior Accessory Dwelling Unit) located on the same parcel as ~~an owner-occupied a~~ Single Family Dwelling occupied by the Owner as their principal residence or ~~owner-occupied an~~ Accessory Dwelling Unit accessory to a Single Family Dwelling occupied by the Owner as their principal residence.

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

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

6. Group Living Accommodations.

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

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

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

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

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

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

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

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

6. A transfer pursuant to court order or court-approved settlement.
7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.
8. Any transfer of a fractional interest in a Rental Property that is less 50% of an undivided interest in the Rental Property.
9. Any transfer in which the transferee receives a low-income housing credit under 28 U.S.C. § 42.
10. A transfer of a Rental Property having no more than ~~four~~ five Rental Units made for the purpose of paying for imminently necessary health care expenses of an Owner of the Rental Property, or any such expenses incurred by a spouse, domestic partner, or child of any Owner. For purposes of this subparagraph only, "Owner" shall be limited to a natural person having an undivided interest in the Rental Property of at least 50%.

#### **13.89.060 Qualified Nonprofits.**

A. Certification, Term, and Renewal. The City Manager shall certify Qualified Nonprofits that meet the requirements of this Chapter and any other requirements necessary to effectuate the purpose of this Chapter that the City Manager shall proscribe by Administrative Regulation. A nonprofit organization's certification as a Qualified Nonprofit shall be valid for four years. The City Manager shall solicit new applications for Qualified Nonprofit status at least once each calendar year, at which time existing Qualified Nonprofits shall be eligible to apply for renewed certification. A list of Qualifying Nonprofits shall be published on the City's website and made available by the City Manager upon request.

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

C. A Qualified Nonprofit is conferred a right of first ~~refusal-offer~~ and right of first ~~purchase-refusal~~ as a Qualified Organization under this Chapter only if a Tenant Organization qualified to act on behalf of Tenants of a Rental Property (1) assigns in writing the Tenants' rights of first refusal under this Chapter to the Qualified Nonprofit; ~~or~~ (2) executes a written waiver of the Tenants' rights of first refusal under this Chapter; or (3) no Tenant ~~Organization~~ submits a statement of interest pursuant to Section 13.89.080.C. If no Tenant Organization has been formed to act on behalf of Tenants of a Rental Property, an assignment or waiver of rights pursuant to this Paragraph executed

after the expiration of the Notice Period shall be valid if signed by all Tenants who submitted a Statement of Interest pursuant to Section 13.89.080.C.

**13.89.070 Supportive Partners.**

A. Certification of Supportive Partners. The City Manager shall establish criteria for the identification and selection of persons or organizations who may serve as Supportive Partners under this Chapter. Supportive Partners shall be selected based on their expertise and ability to counsel Tenants on first-time homeownership, obtaining financing for the purchase of Rental Properties, and the formation and governance of collective ownership structures, and to otherwise provide support for Tenants who seek to exercise their rights under this Chapter. The certification as a Supportive Partner shall be valid for four years. The City Manager shall solicit new applications for Supportive Partner status at least once each calendar year, at which time existing Supportive Partners shall be eligible to apply for renewed certification. A list of Supportive Partners shall be published on the City's website and made available by the City Manager upon request.

B. Requirement to Select Supportive Partner. A Tenant Organization seeking to exercise a right of first offer under Section 13.89.090 or right of first refusal under Section 13.89.100 must select a Supportive Partner and disclose the Supportive Partner to the Owner of the Rental Property within the time set forth in Sections 13.89.080.D and 13.89.090.A. The requirement to select a Supportive Partner shall not apply if there are no certified Supportive Partners on the list maintained by the City Manager pursuant to Paragraph A.

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

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

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

1. A statement that the Owner intends to sell the Rental Property.
2. A statement describing the rights of Tenants under this Chapter and stating

the deadlines for exercising those rights.

3. A list of units by address and the rent due for each unit, if occupied, and any available contract information for each occupant.

4. An itemized list of annual income and expenses for each of the two preceding calendar years, including but not limited to rent and other income collected and costs of management, insurance, utilities, and maintenance.

5. Instructions for submitting a Statement of Interest pursuant to Paragraph C.

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

C. Statement of Interest. Prior to the expiration of the Notice Period set forth in Paragraph A, any Tenant or Qualified Organization may deliver a statement of interest to the Owner of the Rental Property ("Statement of Interest"). The Statement of Interest shall notify the Owner of the Tenant's (or Tenants') or Qualified Organization's interest in exercising ~~the right of first offer and/or right of refusal~~their rights under this Chapter. In the event that any Tenant submits a Statement of Interest in response to a Notice of Intent to Sell, the right of first offer conferred by Section 13.89.090 may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J.~~any Statement of Interest submitted by a Qualified Nonprofit in response to said Notice shall be rendered null, void, and invalid;~~ provided, however, nothing in this Paragraph shall prohibit a Tenant Organization from assigning the Tenants' right of first offer or right of first refusal to a Qualified Nonprofit after one or more Tenant submits a Statement of Interest.

D. Formation of Tenant Organization; Selection of Supportive Partner. If one or more Tenants submits a Statement of Interest, the Tenants of the Rental Property must identify or form a Tenant Organization as defined in Section 13.89.030.J and select a Supportive Partner, subject to Section 13.89.070.B. Any Tenants of a Rental Property having only one Rental Unit may exercise the rights of a Tenant Organization under this Chapter and shall be exempt from the requirement to select a Supportive Partner. A Tenant Organization identified or formed pursuant to this Paragraph shall be entitled to exercise the rights of a Qualified Organization set forth in Sections 13.89.090 and 13.89.100.

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



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

#### **13.89.090 Right of First Offer.**

A. Right of First Offer. A Qualified Organization that submits a valid Statement of Interest shall have the right to make an offer to purchase a Rental Property prior to the sale of the Rental Property to a Third-Party Purchaser; provided, however, that in the event that any Tenant submits a Statement of Interest pursuant to Section 13.89.080.C, the right of first offer conferred by this Section may be exercised solely by a Tenant Organization that satisfies the requirements of Section 13.89.030.J unless an assignment or waiver of rights have been executed pursuant to Section 13.89.060.C.

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

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

C.D. Termination of Right of First Offer. Upon (1) rejection of all offers to purchase made within the Notice Period, (2) the expiration of the Notice Period, or (3) the failure to close the transaction within the time period set forth in Paragraph B, the Owner may list and market for sale the Rental Property and may solicit and conditionally except offers from a Third-Party Purchaser, subject to the requirements of Section 13.89.100. The requirements of Section 13.89.100 shall not apply if no Qualified Organization submits an offer to purchase the Rental Property under this Section.

#### **13.89.100 Right of First Refusal.**

A. Disclosure of Offer of Sale. The Owner shall disclose any Offer of Sale received

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

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

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

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

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

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

**13.89.110 Incentive to Accept Offer from Qualified Organization.**

A. Transfer Tax Refund. An Owner that accepts an offer to purchase Rental Property from a Qualified Organization submitted pursuant to Section 13.89.090 and transfers title to a Rental Property to said Qualified Organization shall be entitled to reimbursement of any real property transfer tax imposed under Section 7.52.040.A. Said reimbursement shall not include the amount of any voter-approved transfer tax assessed pursuant to Section 7.52.040.B-C.

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

**13.89.120 Confidential Information Protected.**

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

**13.89.130 Prohibited Conduct.**

A. The sale or transfer of any Rental Property subject to this Chapter and not exempt pursuant to Section 13.89.050 is prohibited unless the Owner complies with Sections 13.89.090 and 13.89.100. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c) shall be considered a sale or transfer of Real Property for purposes of this Chapter.

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

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

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

**13.89.140 Financial Assistance.**

The City Manager shall develop guidelines for providing financial assistance to allow for

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

~~A. The provision of financial assistance under Paragraph A to any Tenant who acquires an interest in a Rental Property pursuant to this Chapter (either directly or through a Tenant Organization) must be conditioned on the Tenant's agreement to reside at the Rental Property for at least three years. The City Manager is authorized to impose a lien on said Rental Property to enforce the requirements of this Paragraph.~~

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### **13.89.150 Price Stabilization; Tenant Protections.**

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

B. Exemptions from Affordability Restriction.

1. Any Rental Property purchased by a Tenant Organization that exercises its rights under this Chapter is exempt from the requirements of Paragraph A unless any Tenant or the Tenant Organization receives financial assistance pursuant to the guidelines established under Section 13.89.140.A.

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

C. The sale of a Rental Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 13.76 or any other applicable state law or local ordinance. Further, any Tenant who resides in any Rental Unit at the time of the sale of a Rental Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this Section. If the sale of the Rental Property under this Chapter to a Tenant Organization results in the exemption of any Rental Unit from the requirements of Chapter 13.76, the Tenant Organization and any subsequent Owner of the Rental Property shall, unless and to the extent prohibited by state law, limit the increase in rent for any such Rental Unit to the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the twelve month period ending the previous June 30, as published by the United States Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-Hayward metropolitan area; provided, however, the Owner may further increase the rent for any such Rental Unit to cover the cost or planned cost of a reasonable, pro rata share of capital improvements for common areas and of any other capital improvements that are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, where such capital improvement costs are properly amortized

over the life of the improvement.

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

#### **13.89.160 Implementation**

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

B. The provision of Sections 13.89.080 through 13.89.130 shall take effect 90 days after the City Manager adopts Administrative Regulations pursuant to Paragraph A.

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

#### **13.89.170 Enforcement**

A. Any violation of this Chapter or the Administrative Regulations promulgated under Section 13.89.150.A shall be subject to administrative citation under Chapter 1.28.

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

C. Any violation of the requirements of this Chapter shall be subject to a civil penalty not to exceed \$1,000 per day of violation. Each failure to provide the required notice or disclosure under Section 13.89.090 shall be considered a separate violation for each Rental Unit on a Rental Property.

D. A prevailing plaintiff in any action to enforce this Chapter shall be entitled to damages according to proof and reasonable attorneys’ fees and costs. Any court of competent jurisdiction may order that any transfer or sale of Rental Property made without complying with the requirements of this Chapter be enjoined or rescinded, and may order that an Owner of Rental Property comply with the requirements of this Chapter.

**13.89.180 Severability**

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

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