



Kate Harrison
Councilmember, District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: July 24, 2018

Item Number: 63

Item Description: **Placing a Measure on the November 6, 2018 Ballot to Increase the Transfer Tax on Property Sales to Pay for General Municipal Services Including Funding Homeless Services**

Submitted by: Councilmember Harrison

Remove amendment to Section 7.52.060 of the Berkeley Municipal Code expanding the seismic rebate program.



Office of the City Manager

ACTION CALENDAR

July 10, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a Measure on the November 6, 2018 Ballot to Increase the Transfer Tax on Property Sales to Pay for General Municipal Services Including Funding Homeless Services

RECOMMENDATION

1. Adopt a Resolution submitting a general tax ordinance measure on the November 6, 2018 general municipal ballot to make the following adjustments to the transfer tax:

- For properties with a sales value between \$1 million and \$1.49 million, an increase from 1.5% to 2%;
- For properties with a sales value between \$1.5 million and \$2.49 million, an increase from 1.5% to 2.5%
- For properties with a sales value over \$2.5 million, an increase from 1.5% to 3%

These increases will pay for general municipal services, including homeless services, including shelters, rental subsidies, and supportive services, and staffing to implement these programs.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

The table below shows the year-by-year costs for elections since 2008. The dramatic cost increase that occurred in 2012 and 2014 is due primarily to general year-over-year increases, and the addition of two more required languages (Vietnamese and Tagalog). The cost increase in 2016 is due to a surcharge from the Registrar of Voters to pay for replacement of the voting machines in 2020 or 2022. This surcharge will continue for several more election cycles.

City of Berkeley Election Costs by Year							
	Nov. 2008	Jun. 2010	Nov. 2010	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017
No. of Measures	7	1	3	10	7	11	0
No. of Candidates	25	0	31	26	23	29	2
General Costs	\$224,576	\$191,732	\$164,816	\$367,884	\$392,331	\$706,901	-
RCV Costs	N/A	N/A	\$257,956*	\$101,041	\$189,148	\$181,954	-
Total Costs	\$224,576	\$191,732	\$422,772	\$468,925	\$581,479	\$888,855	\$85,628

The following chart shows data compiled from all residential property sales in the City of Berkeley in 2017 and the additional revenue that would have been obtained under the proposed new rates. This data does not include commercial properties, which would also be taxed at the new progressive rate.

Impact of Proposed Residential Property Sales - 2017						
Sale Value in Millions	# of Properties Sold	Total Value Sold in 2017	Tax @ Current Rate	Proposed % Increase	Tax @ New Rate	Increase
<\$1	270	\$201,373,100	\$3,020,596.50	0.00%	\$3,020,596.50	\$0.00
\$1 to <\$1.5	287	\$352,127,600	\$5,281,914.00	0.50%	\$7,042,552.00	\$1,760,638.00
\$1.5 to <\$2.5	150	\$266,250,000	\$3,993,750.00	1.00%	\$6,656,250.00	\$2,662,500.00
\$2.5 or Greater	30	\$116,798,000	\$1,751,970.00	1.50%	\$3,503,940.00	\$1,751,970.00
Total	737	\$936,548,700	\$14,048,230.50	N/A	\$20,223,338.50	\$6,175,108.00

Median Home Price = \$1,150,000
Average Home Price = \$1,287,719

CURRENT SITUATION AND ITS EFFECTS

At the May 29, 2018 City Council meeting, the City Council acted to move forward with placing a measure on the ballot to introduce an increase on a sliding scale of the transfer tax on properties that sell for over \$1 million.

If adopted, the attached resolution will request that the Registrar of Voters place the matter on the ballot for consideration by Berkeley voters.

BACKGROUND

This item is being presented based on the previous discussions and direction by the City Council.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the May 29, 2018 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE MEASURE ON THE NOVEMBER 6, 2018 BALLOT TO INCREASE THE TRANSFER TAX ON PROPERTIES THAT SELL FOR OVER \$1 MILLION TO PAY FOR GENERAL MUNICIPAL SERVICES, INCLUDING HOMELESS SERVICES, INCLUDING SHELTERS, AND SUPPORTIVE SERVICES.

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 6, 2018 General Municipal Election, a general tax measure to introduce the following adjustments to the transfer tax:

- For properties with a sales value between \$1 million and \$1.49 million, an increase from 1.5% to 2%;
- For properties with a sales value between \$1.5 million and \$2.49 million, an increase from 1.5% to 2.5%
- For properties with a sales value over \$2.5 million, an increase from 1.5% to 3%

These adjustments will fund general municipal services, shelters, and rental subsidies for homeless people, including but not limited to seniors, transition age youth, the long-term homeless, and disabled homeless; and services for homeless persons including but not limited to mental health support, emergency transports, and crisis response; and staffing costs associated with implementing these programs, ; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 6, 2018; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY GENERAL TAX ORDINANCE MEASURE	
<p>Shall an ordinance permanently increasing the real property transfer tax for taxable property sold for over \$1,000,000, with increases depending on the following sales values:</p> <ul style="list-style-type: none"> • For properties with a sales value between \$1 million and \$1.49 million, an increase from 1.5% to 2%; • For properties with a sales value between \$1.5 million and \$2.49 million, an increase from 1.5% to 2.5% • For properties with a sales value over \$2.5 million, an increase from 1.5% to 3% <p>These increases, with certain exceptions, can be spent for unrestricted general revenue purposes, including, but not limited to, homeless services, including shelters, rental subsidies, supportive services, mental health support, emergency transports, crisis response, and implementation costs be adopted?</p> <p><u>Financial Implications:</u> This ordinance is estimated to raise approximately \$6 to \$8 million annually.</p>	YES
	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

ORDINANCE NO. #,###-N.S.

**INCREASING THE REAL PROPERTY TRANSFER TAX TO FUND GENERAL
MUNICIPAL SERVICES**

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

Section 1. Findings and declarations.

The people of Berkeley find and declare as follows:

A. Berkeley is facing an emergency, with homelessness rising by 17% from 2015 to 2017.

B. Approximately 1000 individuals experience homelessness every day in Berkeley, with almost 70% unsheltered.

C. Increases in the scope and duration of homelessness in Berkeley, and throughout the State of California, have provided a new sense of urgency to address the crisis.

D. The Berkeley City Council is implementing the Pathways Project, a comprehensive plan to address homelessness, focused on prevention, access to permanent and supportive housing, and creating an unbroken path from homelessness to housing and rebuilt lives.

E. In 2016, Berkeley declared a Homeless Shelter Crisis (Res. No. 67,357-N.S.), which allowed the City to explore a wide variety of response options to address the crisis, and to remove obstacles to their implementation, and recently extended the crisis until January 19th, 2020 (Res. No. 68,206–N.S.); and

F. It is estimated that Berkeley spends \$72 per resident, per year on homeless services and housing; and

G. Even with the addition of Alameda County resources, Berkeley is unable to shelter all of its homeless residents, or to meet the complex and costly challenges of providing affordable housing, health and mental health services, job training, housing counselling and other desperately needed services to those in need.

H. The increased costs of the homeless crisis has impacted the City's General Fund and created an urgent need to fund additional services, provide shelter, rental subsidies for homeless people, including but not limited to seniors, transition age youth, the long term homeless, and disabled homeless, and services for homeless persons including but not limited to mental health support, emergency transport, and crisis response.

Section 2. Section 7.52.040 of the Berkeley Municipal Code is hereby amended to read as follows:

7.52.040 Imposed.

A. For all taxable property sold for \$1,000,000 or less, there is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rate of one-and one-half percent of the value of consideration. Except as set forth in section 7.52.060, this tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer.

B. For all taxable property sold for between \$1,000,000 and \$1,499,999, there is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rate of two percent of the value of consideration. For all taxable property sold for between \$1,500,000 and \$2,499,999, there is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rate of two and one-half percent of the value of consideration. For all taxable property sold for over \$2,500,000, there is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rate of three percent of the value of consideration. Except as set forth in section 7.52.060, this tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer.

~~Section 3.— Section 7.52.060 of the Berkeley Municipal Code is hereby amended to read as follows:~~

~~A.— Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.~~

~~B.— Any deed, instrument or writing to which the United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.~~

~~C.— Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:~~

~~1.— Confirmed under the Federal Bankruptcy Act, as amended;~~

~~2.— Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;~~

~~3.— Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or~~

~~4.—Whereby a mere change in identity, form or place of organization is effected.~~

~~Subdivisions 1 to 4, inclusive, of this section shall only apply if the making, delivering or filing of instruments of transfer of conveyance occurs within five years from the date of such confirmation, approval or change.~~

~~D.—Any tax imposed pursuant to this chapter shall not apply to the making or delivering of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:~~

~~1.—The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;~~

~~2.—Such order specifies the property which is ordered to be conveyed;~~

~~3.—Such conveyance is made in obedience to such order.~~

~~E.—1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:~~

~~a.—Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and~~

~~b.—Such continuing partnership continues to hold the realty concerned.~~

~~2.—If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.~~

~~3.—Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subdivision 2, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.~~

~~F.—1. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse or domestic partner to the other in order to create a joint tenancy or tenancy in common of their common residence.~~

~~2.—Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Any tax imposed pursuant to this chapter also shall not apply to any transfer from one domestic partner, as that term is used in the City of Berkeley's policy establishing domestic partnership registration, to another, where (1) prior to such transfer an affidavit of domestic partnership has been filed with the City Clerk pursuant to Section IV of the City of Berkeley's policy establishing domestic partnership registration; (2) subsequent to the filing of such affidavit of domestic partnership, either or both domestic partner(s) files a statement of termination with the City Clerk pursuant to Section V of the domestic partnership policy; (3) such transfer of real property is made pursuant to a written agreement between the domestic partners upon the termination of their domestic partnership; and (4) the real property was acquired by either or both domestic partner(s) prior to the filing of the statement of termination.~~

~~G.—Any tax imposed pursuant to this chapter shall not apply to transfers, conveyance, lease or sub-lease without consideration which confirm or correct a deed previously recorded or filed.~~

~~H.—Any tax imposed pursuant to this chapter shall not apply to transfers recorded prior to the effective date of the ordinance codified in this chapter.~~

~~I.—The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.~~

~~J.—Reserved.~~

~~K.—1. Up to one-third of the 1992 tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to perform a resiliency retrofit to either any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units.~~

~~2.—The term "resiliency retrofit" within the meaning of this chapter means any of the following:~~

~~a.—That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;~~

~~b.— Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;~~

~~c.— Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;~~

~~d.— Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.~~

~~e.— Any work that significantly increases the resiliency of the structures and the property to natural disasters and climate change.~~

~~f.— Any work that significantly reduces energy and water usage at the property and furthers progress toward zero-net energy, zero-waste, and net-zero water usage of this property.~~

~~3.— The work to improve the resiliency of the structures and property as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.~~

~~4.— If the work to improve the resiliency of the structures and property provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or his/her designee may refund such expenses not to exceed one-third of the tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.~~

~~5.— From the date of the recordation of the transfer document, the applicant shall have one year to complete all the resilience work and submit a resilience verification application to the codes and inspection division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited to the applicant upon submission of a seismic retrofit verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.~~

~~6.—Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or his/her designee may grant such an extension only for good cause. The decision of the City Manager or his/her designee shall be entirely within his or her discretion and shall be final.~~

~~a.—"Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic retrofit work.~~

~~b.—"Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant. (Ord. 6971-NS § 1, 2007; Ord. 6741-NS § 1, 2003; Ord. 6539-NS § 1, 2000; Ord. 6262-NS § 1, 1994; Ord. 6146-NS §§ 1, 2, 1992; Ord. 6072-NS § 2, 1991; Ord. 6069-NS § 1, 1991; Ord. 5061-NS § 5, 1978)~~

Section 34. Use of Tax Revenues.

The additional tax above the one-and-one-half percent for taxable property sold for over \$1,000,000 that would be imposed by this ordinance may be spent for unrestricted general revenue purposes.

Section 45. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, 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 People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.