

RESOLUTION NO. 67,616–N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE MEASURE INCREASING BUSINESS LICENSE TAX ON RESIDENTIAL RENTALS AND AUTHORIZING THE CITY COUNCIL TO ESTABLISH A NEW LEGISLATIVE BODY TO ADVISE THE COUNCIL ON AFFORDABLE HOUSING AND HOMELESSNESS

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2016 General Municipal Election, an initiative measure increasing business license tax on residential rentals and authorizing the city council to establish a new legislative body to advise the council on affordable housing and homelessness; 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 8, 2016; 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 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 initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY INITIATIVE ORDINANCE	
<p>Shall an ordinance permanently increasing the gross receipts tax on owners of three or more residential rental units from 1.081% to 1.5%, prohibiting landlords from passing the tax on to sitting tenants except as allowed by law, and authorizing the Council to create a citizen panel to make recommendations on increasing affordable housing and protecting residents from homelessness be adopted?</p>	YES
<p>Financial Implications: This amendment is estimated to raise approximately \$1,400,000 annually, increasing with rents.</p>	NO

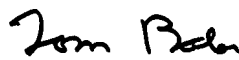
BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

The foregoing Resolution was adopted by the Berkeley City Council on July 12, 2016 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Bates.

Noes: None.

Absent: None.



 Tom Bates, Mayor

Attest: 

 Mark Numairville, City Clerk

The Fair & Equitable Residential Rental Income Business License Tax Act

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.

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

Section 1. Title.

This measure shall be known and may be cited as “The Fair & Equitable Residential Rental Income Business License Tax Act.”

Section 2. Findings and Purpose

Whereas, the fairest and most equitable way of increasing revenue to the General Fund from the business license tax on rental residential property is to ask that all individuals and entities already required to pay the tax agree to share the burden of a business license tax increase equally; and

Whereas, the cost of housing and access to affordable housing is one of our city, county and region's greatest challenges; and

Whereas, the failure of government at all levels to respond effectively to the housing affordability challenge risks increased homelessness, displacement, loss of community diversity, and heightened economic insecurity; and

Whereas, the City of Berkeley has long had a municipal commitment to address housing affordability, most notably with the adoption of municipal rent control and eviction protection legislation; and

Whereas, the City, recognizing that regulating the terms of tenancies is just one housing affordability strategy, must continue to explore multiple policy approaches that increase the supply of housing and provide access to rent or buy; and

Whereas, the City’s General Fund is one source of municipal support for affordable housing development and preservation, rent subsidies, and homeless shelter and care services; and

Whereas, the City’s business license tax as applied to owners and operators of rental housing is one source of General Fund revenue that, at the discretion of the City Council, can be used to support municipal affordable housing and shelter and care programs; and

Whereas, it is reasonable to increase the business license tax on individuals and entities engaged in the business of renting housing;

Now, therefore, the City institutes a fair and equitable increase on the business license tax for

rental properties within the City.

Section 3. That Section 9.04.195 of the Berkeley Municipal Code is amended to read as follows:

9.04.195 Rental of real property.

A. Every person engaged in the business of renting or letting a building structure or other property, or a portion of such building, structure or property, within the City for residential use~~any purpose~~, except property designated for and used exclusively for residential use which contains fewer than three dwelling units, shall pay an annual license fee as provided in Section 9.04.240 for “Rental of residential real property” for each thousand dollars of gross receipts.

B. Every person engaged in the business of renting or letting a building structure or other property, or a portion of such building, structure or property, within the City for any purpose other than for residential use shall pay an annual license fee as provided in Section 9.04.240 for “Rental of non-residential real property” for each thousand dollars of gross receipts.

BC. Every person engaged in the business of providing lodging for five or more persons, for direct or indirect compensation, shall pay an annual license fee as provided in Section 9.04.240 for “Rental of residential real property” for each thousand dollars of gross receipts.

CD. A lessor may exclude from gross receipts any receipts received which represent rent for the use of space by the lessor, by a partner, when the lessor is a partnership, or by an affiliated corporation, as defined in Section 9.04.025(I).

DE. A lessor may not combine returns, or include income derived from real property rental with income from other business activities taxed under other provisions of this chapter. A separate license is required for each building or structure or lodging property, subject to business license taxation, as provided in this section.

F. The City Council may establish a hardship exemption program for property owners subject to the provisions of this section, including specific criteria for hardship and regulations implementing the program.

G. Residential property owners may not pass on to tenants part or all of any increase in the business license tax through an increase in rent, except as otherwise allowed by law.

Section 4. That Section 9.04.240 of the Berkeley Municipal Code is amended to read as follows:

9.04.240 Rates--General.

The base rate for gross receipts business license taxes is established at one dollar and twenty cents for each one thousand dollars gross receipts per year.

Industry Classification Category	Tax Basis	Base Rate Factor	Per Year Tax Rate for \$1,000	Section Reference
Administration headquarters	Gross payroll	1.0	1.20	9.04.190
Business personnel and repair services	Gross receipts	1.5	1.80	9.04.160
Medical Cannabis Business	Gross receipts	20.83	25.00	9.04.136
Non-Medical Cannabis Business	Gross receipts	83.25	100.00	9.04.136
Construction contractor	Gross receipts	1.5	1.80	9.04.180
Firearms and firearm ammunition	Gross receipts	125.0	150.00	9.04.177
Grocer (retail or wholesale)	Gross receipts	0.5	0.60	9.04.140
Manufacturing	Value added	1.0	1.20	9.04.185
Miscellaneous business	Gross receipts	2.0	2.40	9.04.220
Motor vehicle sales	Gross receipts	1.0	1.20	9.04.145
Nonprofit organizations	Gross receipts	0.5	0.60	9.04.305
Private rubbish haulers	Gross receipts	125.0	150.00	9.04.176
Private franchised/recycling rubbish haulers	Gross receipts	1.5	1.80	9.04.176
Professional-Semiprofessional	Gross receipts	3.0	3.60	9.04.165
Professional sports events	Gross receipts	83.33	100.00	9.04.175
Recreation and entertainment	Gross receipts	3.75	4.50	9.04.170
Rental of <u>residential real property</u>	Gross receipts	9.0 <u>12.5</u>	10.81 <u>15.00</u>	9.04.195
Rental of <u>non-residential real property</u>	Gross receipts	<u>9.0</u>	<u>10.81</u>	<u>9.04.195</u>
Retail trade	Gross receipts	1.0	1.20	9.04.135
Wholesale trade	Gross receipts	1.0	1.20	9.04.150

Section 5. That Chapter 3.82, “The Citizens Advisory and Oversight Panel on Safe Affordable Housing and Homelessness Prevention,” is added to the Berkeley Municipal Code and reads as follows:

- 3.82.010 Establishment. The City Council may establish a Citizens Advisory and Oversight Panel on Safe Affordable Housing and Homelessness Prevention to make non-binding 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.
- 3.82.020 Membership. Appointments to the Panel shall be made in accordance with Sections 2.04.030 through 2.04.130 of this Code. The Panel shall be composed of nine (9) members who live or work in the City, all of whom shall be appointed by the City Council. The City Manager shall identify a City employee to provide clerical assistance and administrative support to the Panel. Each member shall have experience in: (i) the production or preservation of affordable housing; or (ii) the provision of services to prevent homelessness; or (iii) the research on or evaluation of affordable housing or homelessness prevention programs.
- 3.82.030 Terms. Terms shall expire and vacancies shall be filled in accordance with the provisions of Sections 2.04.030 through 2.04.130. In accordance with Section 3.02.040, members of the Panel may be reappointed, but shall not serve more than eight (8) consecutive years.
- 3.82.040 Officers, meetings and procedures.
- A. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded.
- B. The Panel shall annually and by majority vote: (i) appoint one of its members as Chair and one of its members as Vice-Chair; (ii) approve bylaws to facilitate the proper functioning of the Panel; and (iii) establish a regular time and place of meeting.
- 3.82.050 Functions.
- A. The Panel shall annually and by majority vote publish an annual report that includes recommendations to the City Council on how to allocate the City's general funds to increase its stock of permanently affordable housing and prevent and reduce homelessness, as well as any additional information that the Panel deems appropriate.
- B. The City Manager shall, within 15 days of receipt of the publication of the Panel's annual report, publish the report on the City's website and transmit the report to the City Council.

C. The City Council may consider, and need not follow, the Panel's recommendations, and may consider annually informing the Panel as to the extent that the Panel's recommendations are implemented.

Section 6. Effective Date.

This Ordinance shall be effective pursuant to applicable law, and shall become operative on January 1, 2017.

Section 7. Severability.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The voters hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

Section 8. Conflicting Measures.

This measure is intended to be comprehensive. It is the intent of the people of the City of Berkeley that in the event this measure and one or more measures relating to the business license tax applicable to the rental of real property shall appear on the same ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure appearing on the same ballot relating to the business license tax applicable to the rental of real property, then this measure shall take effect to the extent not in conflict with said other measure or measures.

Section 9 Liberal Construction.

This measure is an exercise of the initiative power of the people of the City of Berkeley for the taxation of rental property within the City, and shall be liberally construed to effectuate its purposes.

Section 10. Election

Pursuant to Article XIIC of the Constitution of the State of California, this measure shall be submitted to the qualified electors of the City of Berkeley at the November 8, 2016 consolidated general election or, if this measure does not qualify for the November 8, 2016 election, then at the next soonest election permitted by law.