

**RESOLUTION NO. 67,523-N.S.**

**SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE MEASURE ON THE NOVEMBER 8, 2016 BALLOT TO INCREASE THE BUSINESS LICENSE TAX ON OWNERS OF FIVE OR MORE RESIDENTIAL RENTAL UNITS FROM 1.081% TO 2.880%, PROHIBITING THE PASS-THROUGH OF THE TAX TO MOST TENANTS, AND DIRECTING THE HOUSING ADVISORY COMMISSION TO MAKE RECOMMENDATIONS FOR ADDITIONAL EXPENDITURES FOR AFFORDABLE HOUSING**

**WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2016 General Municipal Election, a general tax measure to increase the business license tax on owners of five or more residential rental units from 1.081% to 2.880%, prohibiting the pass-through of the tax to most tenants, and directing the Housing Advisory Commission to make recommendations for additional expenditures for affordable housing; 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 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	
Shall an ordinance permanently increasing the gross receipts tax on owners of five or more residential rental units be increased from 1.081% to 2.880%, prohibiting landlords from passing the tax on to sitting tenants, and directing the Housing Advisory Commission to make recommendations on funding and programs to increase affordable housing and protect Berkeley residents from homelessness, be adopted?	YES
	NO
<u>Financial Implications</u> This amendment is estimated to raise approximately \$3,900,000 annually, increasing with rents.	

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

The foregoing Resolution was adopted by the Berkeley City Council on May 31, 2016 by the following vote:

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

Noes: None.

Absent: None.

Attest:

  
Mark Numainville, City Clerk

  
Tom Bates, Mayor

ORDINANCE NO. -N.S.

AN ORDINANCE OF THE CITY OF BERKELEY INCREASING THE BUSINESS LICENSE TAX ON OWNERS OF FIVE OR MORE RESIDENTIAL RENTAL UNITS FROM 1.081% to 2.880%, PROHIBITING THE PASS-THROUGH OF THE TAX TO MOST TENANTS, AND DIRECTING THE HOUSING ADVISORY COMMISSION TO MAKE RECOMMENDATIONS REGARDING ADDITIONAL EXPENDITURES FOR AFFORDABLE HOUSING

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN AS FOLLOWS:

Section 1. Findings and declarations.

The people of Berkeley find and declare as follows:

- a. Business license taxes for the rental of residential property can be increased by a vote of the people.
- b. Any increase in this tax cannot be passed on to the 97% of tenants currently protected by the City's rent ordinances and regulations and will not be passed on to the other 3% since those owners already raise rents to the maximum the market will bear.
- c. Residential rents in Berkeley have increased *dramatically* primarily due to high demand due to Berkeley's location in the center of the San Francisco Bay Area, expansion of the University of California, and major public investments in schools, parks, culture, and the many public services provided by the City.
- d. In 1980 the citizens of Berkeley passed a strong rent control system that allowed a fair return to owner investment while not permitting large increases to the residents. In 1999 the State legislature weakened Berkeley's system by imposing "vacancy decontrol" on Berkeley's rent stabilized apartments. This allows owners to raise rents without limitation whenever a new renter moves in. Over 85% of Berkeley's older rental apartments have now had vacancy increases. Newer buildings are entirely exempt from rent stabilization.
- e. As a result of "vacancy decontrol" and unprecedented market forces, real (inflation-adjusted) rents in Berkeley have gone up by more than 50%. Renters are paying more than \$100 million annually in additional rents, over and above the inflation adjustment for what is necessary for a fair return.
- f. Dramatically increased rents transfer income from Berkeley residents to owners of large rental properties, the majority of whom live outside of Berkeley. This transfer creates hardships for low and moderate-income tenants, drains the

economic health of the community (less money for families to spend on local shopping and services) and increases the need for public services of all kinds, including affordable housing and homelessness prevention.

- g. By increasing the business license tax on high residential rents, this measure will recapture a small part of this income stream for the benefit of the entire community.
- h. The increase will only apply to investors who own five or more residential rental units. In addition, those units with historically low rents will be exempt from the increased business license tax and an appeal process will be established for unusual circumstances where the tax is unduly burdensome to an owner.

**Section 2.** A new section 9.04.196 is added to the Berkeley Municipal Code to read as follows:

**Section 9.04.196 Rental of five or more units of residential real property.**

- A. Notwithstanding Section 9.04.195, this Section shall govern the taxation of gross receipts from the rental of five or more residential rental units in the city of Berkeley.
- B. Every person engaged, directly or indirectly, including through an interest in another entity, in the business of renting or leasing dwelling units in the City of Berkeley shall pay an annual tax as provided in Section 9.04.240 for each thousand dollars of gross receipts.
- C. Gross receipts from the following categories of dwelling units shall not be subject to this Section, but shall be subject to section 9.04.195:
  - 1. dwelling units owned by a nonprofit corporation whose primary purpose is the provision of affordable housing, as provided in Section 9.04.300;
  - 2. dwelling units whose rents are controlled under state or federal law, deed restrictions, or agreements with public agencies, at rental rates that are affordable to households earning no more than 80% of AMI and whose tenants must be income-qualified;
  - 3. any unit subject to rent control under Chapter 13.76 that are occupied by a tenant who resided in that unit prior to January 1, 1999;
  - 4. units occupied by tenants receiving monthly rental assistance (such as Section 8 vouchers or Shelter + Care) from the Berkeley Housing Authority or City of Berkeley; and
  - 5. any dwelling unit during the first 12 years after the issuance of a certificate of occupancy.
- D. Any person who would otherwise be subject to the tax imposed under this Section may seek a 1 year hardship exemption due to exceptional circumstances. The City Manager may approve such applications for good cause. Such approvals shall be in writing and specifically state the factors that constitute good cause. Any hardship

exemption shall be effective for one tax year only, after which it will expire. Taxpayers who seek hardship exemptions must reapply every year.

E. The City Council may reduce the tax rate set forth in Section 9.04.240 under this Section for rental of five or more dwelling units, and may terminate any such reductions, without further voter approval.

F. The tax imposed by this Chapter shall not be passed on to sitting tenants in the form of rent increases or in any manner, even if permitted under Chapter 13.76.

Section 3. Section 9.04.240 of the Berkeley Municipal Code is amended to read as follows:

**Section 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	1.2	9.04.190
Business, personal repair services	Gross receipts	1.5	1.8	9.04.160
Medical Cannabis Businesses	Gross receipts	25.00	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 Per square foot	0.5 <u>Not applicable; see section 9.04.305</u>	0.60 <u>Not applicable; see section 9.04.305</u>	9.04.305

Private rubbish haulers	Gross receipts	125.0	150.00	9.04.176
Private franchised/recycling rubbish haulers	Gross receipts	1.50	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 real property (except five or more dwelling units)	Gross receipts	9.0	10.81	9.04.195
<u>Rental of five or more dwelling units</u>	<u>Gross receipts</u>	<u>24</u>	<u>28.80</u>	<u>9.04.196</u>
Retail trade	Gross receipts	1.0	1.20	9.04.135
Wholesale trade	Gross receipts	1.0	1.20	9.04.150

**Section 4.** Section 19.44.020.B.10 of the Berkeley Municipal Code is amended to read as follows:

10. The Housing Advisory Commission shall review and advise the City Council on housing policy, housing programs, and related issues. In particular, the Commission shall 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. These recommendations may be made annually or biannually, as the Commission deems appropriate in light of the City's budget cycle and other relevant funding cycles. The Commission's recommendations shall be promptly published on the City's web site and transmitted to the City Council. The City Council shall consider, but need not follow, the Commission's recommendations, and shall annually inform the Commission as to the extent to which it has implemented the recommendations.

**Section 5. Conflicting Measures.**

This measure is intended to be comprehensive and fully address and occupy the field of taxation of receipts from the rental of dwelling units, and real property and buildings in general. It is the intent of the people of the City of Berkeley that in the event this measure and any other measure relating to taxation of receipts from the rental of dwelling units, or real property and buildings in general, appear on the same ballot, the provisions of the other measure shall be deemed in their entirety to be in conflict with this measure. If this measure receives a greater number of affirmative votes than any conflicting measure or measures, this measure shall prevail in its entirety, and all

provisions of such other measure or measures shall be null and void in their entirety. If this measure is approved by the voters but does not receive a greater number of affirmative votes than any other measure(s) appearing on the same ballot relating to taxation of receipts from the rental of dwelling units, or real property and buildings in general, then this measure shall take effect to the extent not in conflict with said other measure(s).

**Section 6. 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.

