

CITY OF BERKELEY MEASURE U1

U1	Shall an ordinance permanently increasing the gross receipts tax on owners of five or more residential rental units from 1.081% to 2.880%, with certain exceptions, 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
	Financial Implications: This amendment is estimated to raise approximately \$2.98 to \$3.45 million annually, increasing with rents.	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE U1

This measure was placed on the ballot by the City Council. This measure amends the City's business license tax ordinance (Berkeley Municipal Code Chapter 9.04) to permanently increase the gross receipts tax on owners of five or more residential rental units from 1.081% to 2.880%. Owners of five or more units would include persons with indirect interests in five or more units, such as through LLCs or partnerships. Tax proceeds would be placed in the City's general fund and could be used for any governmental purpose.

The tax increase would not apply to

- units owned by a nonprofit corporation whose primary purpose is the provision of affordable housing;
- 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;
- units subject to rent control that are occupied by a tenant who resided in that unit prior to January 1, 1999; and
- 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.

In addition, all new units would be exempt from the increased tax for the first 12 years after the issuance of a certificate of occupancy.

Property owners would be able to seek 1-year hardship exemptions due to exceptional circumstances, which may be approved by the City Manager for good cause.

The City Council could reduce the tax increase, and may terminate any such reductions, without further voter approval.

The measure would prohibit landlords from passing the tax on to sitting tenants, even if otherwise permitted by law.

The measure would direct the Housing Advisory

Commission to make recommendations on funding and programs to increase affordable housing and protect Berkeley residents from homelessness, either 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 would be promptly published on the City's web site and transmitted to the City Council. The City would be required to consider the Commission's recommendations and annually inform the Commission as to the extent to which it has implemented the recommendations.

The measure provides that in the event any other measure relating to taxation of income from rental units passes, the measures shall be deemed to be in conflict, and the measure with the most votes will prevail over the other measure.

Financial Implications

The tax increase is expected to raise approximately \$2.98 to \$3.45 million annually, increasing with rents and each year as rents from buildings that become more than 12 years old become taxable. Additional costs for administration and collection could be as much as \$350,000.

s/ZACH COWAN
Berkeley City Attorney

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ARGUMENT IN FAVOR OF MEASURE U1

FUND AFFORDABLE HOUSING, VOTE YES ON MEASURE U1

The affordability crisis in rental housing is clear to everyone. Rising rents create hardship for tenants but give large landlords unprecedented profits.

Measure U1 increases the business license tax that larger landlords already pay, by an average of just \$30 per unit per month. This should raise up to **\$3½ million annually**. This is enough for the City of Berkeley to create a substantial amount of affordable housing every year and really do something to provide affordable housing and prevent homelessness. Landlords can easily afford to pay this tax. This year landlords will collect \$82 million more in rent than they did five years ago.

In almost all cases, landlords are **prohibited by law from passing this tax on to tenants**.

Measure U1 has the unanimous endorsement of the entire City Council, which placed it on the ballot after extensive public input. It is backed by a broad community coalition: affordable housing and homeless services providers including East Bay Housing Organizations and the Berkeley Food and Housing Project; environmental groups including the Sierra Club, student organizations including the ASUC, the Berkeley Tenants Union, labor unions, senior and disability advocates and many more (see www.fundaffordablehousing.org).

Berkeley's big landlords saw the tremendous community support for taxing them to create revenue that can be used for affordable housing, so they created the fake Measure DD, that lets the landlords get away with paying much less and provides far too little money to make serious progress.

Don't be fooled by the big landlords. **Measure U1 is the real affordable housing measure** – a fair effort that will bring in more than double the revenue of the competing Measure DD bankrolled by the big landlords.

Vote YES on U1 and NO on DD.

s/LAURIE CAPITELLI
Berkeley City Councilmember

s/JESSE ARREGUIN
Berkeley City Councilmember

s/LINDA MAIO
Vice Mayor

s/LORI DROSTE
Berkeley City Councilmember

s/RICK LEWIS
Executive Director, Bay Area Community Land Trust

NO ARGUMENT AGAINST MEASURE U1 WAS SUBMITTED

FULL TEXT OF MEASURE U1

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 and 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 Not applicable; see section 9.04.305	0.60 Not applicable; see section 9.04.305	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
Rental of five or more dwelling units	Gross receipts	<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.