



Igor Tregub
Councilmember, District 4

CONSENT CALENDAR

MARCH 11, 2025

To: Honorable Mayor Adena Ishii and Members of the City Council

From: Councilmember Tregub (Author), Councilmember Bartlett (Co-Sponsor) and Councilmember O’Keefe (Co-Sponsor)

Subject: A Referral to the City Manager to make a recommendation for further Council action: Transfer Tax Exemption for 100% Affordable Housing Projects

RECOMMENDATION

Adopt a referral to the City Manager to study the fiscal impacts and feasibility of a transfer tax exemption for 100% affordable housing projects owned and operated by non-profit entities or community land trusts, including but not limited to: the rehabilitation of existing projects; acquisition, rehabilitation, and conversion of market-rate housing complexes into deed-restricted affordable housing; and land donated for the purpose of constructing deed-restricted affordable housing and make a recommendation for further Council action.

POLICY COMMITTEE RECOMMENDATION

On February 3, 2025 the Land Use, Housing & Economic Development Policy Committee adopted the following action: M/S/C (Tregub/Lunaparra) to forward item to Council with a Qualified Positive Recommendation that the Council:

1. Clarify that the rehabilitation of the restricted properties, would be included as part of the 100% affordable [housing projects].
2. Bolster the rationale section of the report with greater detail and analysis.

Vote: All Ayes.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley, and the entire Bay Area region, is experiencing a housing unaffordability crisis. As the cost of housing has risen, more people have found themselves unable to afford a place to live. People on a fixed income, including seniors,

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people with disabilities, and other marginalized communities, bear the brunt of these impacts. Deed-restricted affordable housing, in which resident rents are capped based on their income level, is a critical component of the solution to this housing crisis. Affordable housing provides the foundation for better health, economic and educational opportunities, and stable neighborhoods.

There are currently around 2,000 affordable housing units in Berkeley. Nearly 40% of these units were constructed more than 30 years ago. Mission-driven non-profit owners and the City of Berkeley are jointly invested in ensuring that these existing affordable properties remain safe, well-maintained, and beautiful places to live. This commitment is evidenced in the City's recent release of a Request for Proposals (RFP) to support the rehabilitation of existing affordable projects.

While some rehabilitations may be able to proceed with only City funding, other rehabilitation projects require larger amounts of money. To raise capital for more substantial rehabilitation projects, affordable housing developers will typically pursue an additional allocation of tax credits through the Low-Income Housing Tax Credit (LIHTC) program. This requires a new tax credit equity investor to enter the ownership structure for the project. The most efficient way to execute this complex transaction is to have a new limited partnership purchase the property from the prior ownership entity. While the property experiences a technical change of ownership, the non-profit affordable housing organization remains the controlling and managing partner after the transaction.

The City of Berkeley charges a transfer tax any time real estate changes ownership. The City's transfer tax was established in 1978 at the rate of 1.5% for all transactions. Measure P (2018) increased the real property transfer tax for ten years to 2.5% for transactions of \$1.6M or more. Measure W (2024) again increased the real property transfer tax to 3.5% for transactions \$3M or greater and removed the expiration date. Measure W will take effect on January 1, 2027.¹

Currently, the sale and transfer of ownership completed as part of an affordable housing rehabilitation project is subject to the property transfer tax. This is despite being essentially a refinancing event.

Resources for Community Development (RCD)², a reputable nonprofit affordable housing developer with several sites in Berkeley, is exploring rehabilitation projects at a handful of Berkeley developments over the next several years. RCD estimates that they would pay approximately \$6,000 to \$8,000 per unit in transfer tax on these properties

¹ [BMC Chapter 7.52, Real Property Transfer Tax](#)

² <https://rcdhousing.org/>

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under the current Measure P rates, or \$8,000 to \$11,000 per unit under the recently adopted Measure W rates.

Property	Units	Est. Valuation ³	Transfer Tax, total 2.5%	Transfer Tax, per unit 2.5%	Transfer Tax, total 3.5%	Transfer Tax, per unit 3.5%
Oxford	97	\$ 27,602,978	\$690,074	\$7,114	\$ 966,104	\$ 9,960
Margaret Breland	28	\$ 6,507,333	\$162,683	\$5,810	\$ 227,757	\$ 8,134
Mable Howard	40	\$ 13,073,900	\$326,848	\$8,171	\$ 457,587	\$ 11,440

While the estimates above are specific to RCD’s use case, RCD’s experiences are generally applicable to other affordable housing developers seeking to rehabilitate their affordable housing holdings in Berkeley.

State and federal funding for rehabilitation projects is extremely competitive. Projects are scored on many different characteristics, and one of the most influential characteristics is cost efficiency. Berkeley projects are scored against projects across the region and state, many of which do not have a transfer tax or explicitly exempt affordable housing rehabilitations from the transfer tax. The additional cost of the transfer tax makes Berkeley’s applications for these state and federal funding sources less competitive. In turn, developers face pressure to reduce the scope of their rehabilitation work by a corresponding \$6,000 to \$8,000 per unit to improve their ability to win funds.

Precedent in Other Jurisdictions: San Francisco offers a [transfer tax exemption](#) for deed-restricted affordable housing. San Francisco’s ordinance text can be found [here](#).

³ The estimated valuation is based on the previous tax roll valuation from the time of construction, multiplied by a factor of 2.5. This is the typical 15-year tax roll valuation increase that have been observed on other recent resyndications.

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Alternative Pathways: In collaboration with our affordable housing providers, we have identified two possible avenues for this policy change:

1. The City Council could add an exemption to BMC 7.52.060 for the transfer of ownership associated with rehabilitation at any property with a recorded agreement requiring that it be maintained as 100% rent-restricted affordable housing, with the exception of staff units, for at least 55 years from the date of the transfer event.
2. The City Council could pass a resolution establishing a time-limited waiver of the transfer tax for any transfer of ownership associated with rehabilitation at a property with a recorded agreement requiring that it be maintained as 100% rent-restricted affordable housing, with the exception of staff units, for at least 55 years from the date of the transfer event.

The former strategy would provide more certainty and permanence. The latter strategy would provide greater flexibility for the City Council if, at a future date, the City decides that the City could no longer forego the lost revenue from providing a waiver or exemption. The referral requests the study of both strategies as well as any other recommendations by April 15, 2025 City Council Meeting.

Additionally, at the Land Use, Housing, and Economic Development Committee meeting on February 3, 2025, exploring a transfer tax exemption for other types of affordable housing work was contemplated. These projects include transfer tax exemption for acquisition and rehabilitation projects, which involve a non-profit or community land trust purchasing an existing market-rate housing complex and converting it into deed-restricted affordable housing, as well as land donated for the purpose of constructing deed-restricted affordable housing. This referral recommends that staff additionally study these inclusions and their potential fiscal implications.

BACKGROUND

The Berkeley City Council has granted transfer tax refunds or waivers to three known affordable housing projects:

- 2014: Refund given to RCD for Oxford Plaza re-financing
- 2019: Waiver given to BACLT for 1638 Stuart Street acquisition
- 2021: Refund given to BACLT for 1685 Solano Avenue acquisition

These waivers and refunds have been granted on a case-by-case basis via a City Council resolution. We are not aware of any waivers and/or refunds that have been denied by City Council.

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On February 3, 2025, this item was heard at the Land Use, Housing, and Economic Development Committee meeting. Some of the following questions have been asked and we provided replies to the best of our knowledge.

Why is this needed right now, on a quick timeframe?

Rehabilitation projects have historically not scored as highly as new construction projects in the competition for state resources. While funding is available for new construction of affordable housing, it is incredibly challenging to receive the resources needed to do substantial rehabilitations. Right now, there is very little local and state funding for new construction affordable housing. This creates a brief window in which rehabilitation projects will likely be competitive for state resources in 2025. By passing a transfer tax exemption now, the City can assist non-profit organizations in accessing those state resources for affordable housing rehabilitation.

How many waivers or refunds were previously requested?

We are aware of one previous waiver and two previous refunds, as detailed in the staff report.

Have any waiver requests previously been denied by Council?

We are not aware of any requests being denied by Council.

Why is the current process not working?

- Due to the timing and lack of certainty, the current process does not enable non-profits to remove the transfer tax from the financial documentation associated with their request for state financing resources. This makes Berkeley rehabilitation projects less competitive for state resources.
- The current process takes substantial staff time from both City staff and non-profit developers to prepare materials for the Council report.
- The current process is not equitable. Not all developers know about the opportunity to receive a transfer tax refund or waiver from City Council.

RATIONALE FOR RECOMMENDATION

The complexities of federal, state, and local policies—along with private sector dynamics—continue to make affordable housing extraordinarily difficult to build and even more challenging to maintain in a livable, healthy condition.

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This referral takes a modest step toward addressing that challenge by directing city staff to explore potential strategies for preserving our affordable housing stock. It does not propose any immediate changes to Berkeley's Transfer Tax for Affordable Housing; rather, it initiates an analysis of possible opportunities for such a measure.

Given the current economic environment, any financial decision must be approached with diligence. The Transfer Tax serves as a crucial funding mechanism for municipal services, including homeless shelters, navigation centers, mental health support, rehousing, rental subsidies, and other essential programs for those experiencing homelessness. Ensuring fiscal responsibility while supporting affordable housing is key, which is why this proposal is structured as a referral for further study.

Here are some considerations that make the Transfer Tax exemption for Affordable Housing a sound policy:

Intention of the Transfer Tax

The Transfer Tax is intended to fund homelessness response and housing programs. If Transfer Taxes are meant to support affordable housing, it raises the question: why are we taxing affordable housing providers on their projects while simultaneously funding them from a different City source? This redundancy not only creates unnecessary bureaucratic hurdles for City staff but also places an added burden on affordable housing nonprofits, which already operate with limited resources.

Fictitious Transfer Process

The City's Transfer Tax was intended to apply to actual transfers of real property. Yet, affordable housing nonprofits are forced to navigate a complicated fictitious transfer process just to secure affordable credits that help them build, rehabilitate, and maintain affordable housing. In reality, ownership of these properties remains with the same nonprofit entity.

The irony is stark: under Proposition 13, private real estate owners can transfer actual ownership of properties without triggering a reassessment, allowing them to avoid higher tax payments. Meanwhile, affordable housing nonprofits—whose mission is to provide stable housing—must undergo this convoluted process just to access essential funding.

An Anti-Displacement Measure

Preserving and rehabilitating existing affordable housing is essential to preventing displacement and homelessness. The shortage of healthy, affordable housing in Berkeley is well-documented. The City itself does not directly produce affordable

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housing. Instead, it relies almost entirely on nonprofit affordable housing providers to build, maintain, and meet its affordable housing obligations.

If these nonprofits are unable to access the funding needed for their projects, affordable housing is not being built, rehabilitated, or maintained at the pace required to meet growing demand. Ensuring that funding mechanisms support—not hinder—affordable housing efforts is essential to keeping people housed and strengthening the City’s ability to address its housing crisis.

Saving City Staff’s Time

As discussed in the “Background” section of this report, affordable housing rehabilitation projects may currently apply to receive a case-by-case refund of the transfer tax from City Council. All previous waivers submitted for City Council consideration have been approved. A formal exemption or waiver would simply save time and simplify the City’s procedures.

Positive Impact for Housing Rehabilitation

Affordable housing providers have no alternative revenue sources for making necessary improvements.

Establishing a formal exemption or universal waiver would have a significant project-level impact. It would provide more certainty to affordable housing developers pursuing rehabilitation projects. Unlike a case-by-case refund, it would allow affordable housing developers and community land trusts to remove the transfer tax as a line item in project budget, improving the development’s cost efficiency and enabling them to be more competitive for state and federal funding sources. This would translate into direct benefits for residents, as it would open up more room in project budgets for additional amenities to be included in the scope of the rehabilitation.

Good Governance Measure

This measure is not about helping developers – it is about ensuring that the City can build and preserve the affordable housing that we and our residents urgently need. It also has the potential to eliminate inefficiencies and redundancies that currently waste resources and slow down progress.

When the system functions as intended, nonprofits recover their costs. When it does not, funding gaps arise, leading to missed opportunities for affordable housing rehabilitation, acquisition and development. Additionally, affordable housing developers and land trusts are required to pay into the Transfer Tax while also relying on city funds for their projects. This creates a cost-neutral cycle but adds unnecessary administrative burdens.

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FISCAL IMPACTS OF RECOMMENDATION

Affordable housing rehabilitations requiring a transfer of ownership are relatively rare events. Initial conversations with affordable housing developers identified 4-5 potential transfer events over the next 5-10 years. Potential financial impacts from forgone Measure P/W funds during transfers associated with the rehabilitation of 100% affordable housing projects, would be somewhat offset by the elimination of staff time required to submit case-by-case recommendations for waivers and refunds to the City Council.

ENVIRONMENTAL SUSTAINABILITY

The preservation of affordable housing supports Berkeley's broader greenhouse gas reduction goals.

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