

# **Measure L**

## **Bond Measure**

Shall the measure to create affordable housing; repair streets and sidewalks; underground utilities; and enhance buildings, infrastructure, and safety, authorizing the issuance of \$650 million in general obligation bonds, subject to independent oversight and audits, be adopted?

Financial Implications

Median annual cost over the projected 48-year period bonds are outstanding is approximately \$40.91 for every \$100,000 or \$265 for the average assessed home value of \$647,000; raising approximately \$25,000,000/year.

MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO ISSUE GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION OR IMPROVEMENT OF REAL PROPERTY FOR AFFORDABLE HOUSING, STREET AND SIDEWALK REPAIR, TRAFFIC SAFETY, UNDERGROUNDING OF UTILITIES, CLIMATE CHANGE RESILIENCE, AND OTHER PUBLIC INFRASTRUCTURE AND FACILITIES

**Section 1. Title**

This measure shall be known as the Affordable, Safe and Sustainable Berkeley Bond Act.

**Section 2. Findings.**

WHEREAS, the City of Berkeley (the “City”) is committed to creating and maintaining an equitable, affordable, and resilient City with housing opportunities for all, safe and well-maintained infrastructure, and a public commons that welcomes and supports people of all ages, abilities, and backgrounds; and

WHEREAS, the urgent need for affordable housing and preventing homelessness, the accelerating impacts of climate change, and aging public buildings and infrastructure create challenges for safety, equity, sustainability, and resilience; and

WHEREAS, the Berkeley City Council (the “City Council”) has identified critically needed investments in affordable housing; improved streets and sidewalks; green, vibrant, and well-maintained parks, streetscapes and other open spaces; pedestrian and bicycle safety improvements; public and historic buildings; recreational facilities, pools, and the waterfront; and above- and below-ground infrastructure as integral to protecting the quality of life for all Berkeleyans and to the City’s long-term vitality; and

WHEREAS, the City Council recognizes the existence of an acute housing crisis that has caused housing to become increasingly scarce, expensive, and out of reach for teachers, seniors, people with disabilities, students, veterans, the homeless, and for families and individuals with incomes at extremely low-, very low-, low-, and middle-income levels; and

WHEREAS, successful programs initiated in recent years have decreased overall homelessness in Berkeley, but estimates project there are still roughly 1,000 homeless people in the City on any given night; and

WHEREAS, providing affordable housing for low-income and unhoused persons is important to alleviate the housing crisis and reduce the impacts of unsheltered homelessness on our streets, parks, and other public spaces; and

WHEREAS, in November 2018, Berkeley voters overwhelmingly approved Measure O, authorizing the City to issue \$135 million dollars in general obligation bonds for the purpose of building and preserving affordable housing; and

WHEREAS, leveraging Measure O funds with County, State, and Federal dollars, the City has provided 20 affordable housing projects with pre-development or development funding, supporting the construction and rehabilitation of approximately 800 affordable housing units citywide; and

WHEREAS, in 2022 Berkeley's first Measure O-funded affordable housing projects opened their doors at 1601 Oxford Street in North Berkeley and 2012 Berkeley Way in the Downtown, welcoming seniors, working families, veterans, and formerly homeless individuals into new homes with on-site supportive services; and

WHEREAS, the pace of affordable housing production has exceeded expectations and all Measure O funds have been allocated through commitments to existing and pending affordable housing projects; and

WHEREAS, the Regional Housing Needs Allocation for the San Francisco Bay Area requires that Berkeley plan for and incentivize the production of over 3,800 affordable housing units over the next eight years, and current funding is insufficient to finance this volume of affordable homes; and

WHEREAS, funds available through this bond measure can support production of over 1,000 additional affordable housing units citywide, providing urgently needed housing for extremely low-, very low-, low-, and middle-income families and individuals, and helping the City achieve its goal of at least 10% reserved affordable housing citywide by 2030; and

WHEREAS, the City's *Vision 2050 Framework* and *Program Plan* are comprehensive plans to build, upgrade, and repair Berkeley's infrastructure and facilities to be more sustainable, safe, and resilient and to meet the needs of future generations, including addressing climate and environmental challenges; and

WHEREAS, much of Berkeley's public infrastructure was built over 75 years ago and is in need of refurbishment, modernization, and repair; and

WHEREAS, over \$1 billion dollars in infrastructure needs have been identified citywide, including improvements needed for street pavement, sidewalks, paths, and bikeways; bike, pedestrian and other traffic safety projects; undergrounding of utilities on evacuation routes; measures to reduce the risk and impacts of climate change, including flooding through stormwater and sea level rise; improvements to City parks, camps and pools, including a proposed pool at San Pablo Park; revitalization of Berkeley's historic Civic Center as a cultural and civic hub for the community; improvements to the Berkeley waterfront and pier; improvements to public buildings; measures to make the City's streetscapes and other public spaces more attractive, vibrant, and green; and other improvements to the City's infrastructure to make it more sustainable, enjoyable, and resilient; and

WHEREAS, in addition to hundreds of millions in infrastructure needs, the City has identified approximately \$248 million in necessary street repairs; and Berkeley's pavement condition is currently classified as "at risk" condition by the Metropolitan Transportation Commission; and failure to make urgently needed street repairs in a timely manner will result in the need for more costly repairs in the future; and

WHEREAS, building climate-resilient infrastructure, including undergrounding of utilities on evacuation routes and managing stormwater runoff and sea level rise, will reduce the risk of flooding, earthquakes and wildfires and make Berkeley a safer and more sustainable place to live; and

WHEREAS, in 2016 Berkeley voters overwhelmingly approved Measure T1, a \$100 million general obligation bond whose proceeds are being used to rehabilitate parks, infrastructure, and facilities citywide, including at the Frances Albrier Community Center, Live Oak Community Center, Strawberry Creek Park, Tom Bates Regional Sports Complex, Willard Park, George Florence Park, North Berkeley Senior Center, the Rose Garden, San Pablo Park, Harrison Park, the Marina, Aquatic Park, John Hinkel Park, King Pool, Grove Park, Civic Center Park, Ohlone Park, and Cazadero Camp; and at streets, sidewalks, storm drains, and other infrastructure; and

WHEREAS, the full \$100 million of Measure T1 bond monies has already been allocated or committed to identified projects and the City has successfully leveraged regional, County, State, and Federal funds for these improvements, representing a significant gain for Berkeley; and

WHEREAS, to build on the success of projects funded through Measures O and T1 and to continue financing affordable housing and necessary improvements to facilities and infrastructure citywide, the City requires additional funds, which may be leveraged with regional, County, State, and Federal funds; and

WHEREAS, Section 7.64 of the Berkeley Municipal Code authorizes the City to issue general obligation bonds to finance the acquisition, construction, or completion of any municipal improvements and the acquisition, rehabilitation, preservation or construction of affordable housing; and

WHEREAS, the City is authorized to issue general obligation bonds pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (each, the "Bond Law"); and

WHEREAS, under the Bond Law and Chapter 7.64, the City intends to issue general obligation bonds (the "Bonds") to finance the acquisition or improvement of real property for affordable and social housing ("Affordable Housing Improvements"), including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships,

associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable and social housing, or to construct, rehabilitate or preserve affordable and social housing; including but not limited to newly constructed non-profit rental and ownership housing, supportive housing, and limited-equity housing cooperatives affiliated with community land trusts; and

WHEREAS, under the Bond Law and Chapter 7.64, the City further intends to issue the Bonds to finance the acquisition or improvement of real property for public infrastructure and facilities (“Infrastructure Improvements”; together with Affordable Housing Improvements, “Improvements”), including but not limited to the City’s streets (including pavement, traffic safety, pedestrian, accessibility, bicycle, and streetscape improvements), sidewalks and paths; public utilities, including the undergrounding of utilities on evacuation routes; parks, the waterfront and pier, and other natural and landscaped areas; pools, recreation, and senior facilities; camps; buildings; storm drains, streetscapes, and green infrastructure; civic, historic, and cultural sites; and other public open spaces, buildings, infrastructure, facilities, and amenities, including construction, repair, renovation, replacement, or reconstruction, so that the public can continue to benefit from safe, more sustainable, resilient, and enjoyable Infrastructure Improvements, and the Infrastructure Improvements will include any public art integrated into the Infrastructure Improvements consistent with Berkeley Municipal Code Chapter 6.13; and

WHEREAS, funding from the Bonds should be guided by the City Council’s plans and policies, as may be amended from time to time, including the *Vision 2050 Framework and Program Plan* whose vision for a renewed City includes safe and enjoyable community facilities; safe and sustainable streets; resilient and climate-friendly infrastructure; and open space, parks, and recreation facilities that improve Berkeley’s quality of life; and

WHEREAS, the City Council recognizes the importance of ensuring adequate maintenance funding from existing sources for Infrastructure Improvements financed by the Bonds and not supplanting existing City infrastructure funding with proceeds of the Bonds; and

WHEREAS, the City Council through Resolution No. 70,456-N.S. has adopted a fiscal policy to allocate \$8 million annually in General Fund monies for street maintenance (the “Street Maintenance Funding Policy”), to be adjusted annually for inflation. The allocation is intended to augment the existing street paving budget of \$7.3 million, for a total street maintenance commitment of \$15.3 million annually, adjusted for inflation; and

WHEREAS, the Street Maintenance Funding Policy will help ensure that street maintenance is supported by adequate ongoing General Fund contributions as one-time infusions of paving resources provide only temporary improvement to pavement conditions, which deteriorate again without appropriate funding for maintenance; and

WHEREAS, the City’s plans and policies, including but not limited to the Vision 2050 Program Plan; pavement management system; and Transportation, Vision Zero, Bicycle,

and Pedestrian plans, as adopted or amended by the City Council from time to time, will guide how proceeds of the Bonds are spent; and

WHEREAS, fiscal accountability protections including public disclosure of all spending and annual independent audits and oversight will help ensure funds will be spent as promised; and

WHEREAS, by law, all funds must remain under local control in the City and cannot be taken away by the State, County, or Federal governments or used for other purposes; and

WHEREAS, this measure is adopted pursuant to and in conformance with Chapter 7.64 of the Berkeley Municipal Code; and

WHEREAS, the City Council has therefore determined that the public interest requires additional funding for the Improvements; and

WHEREAS, the People of the City of Berkeley find that the public interest requires the issuance of the Bonds in the amount of \$650,000,000 to fund the Improvements.

### **Section 3. Object and Purpose of Bonds.**

This measure (the “Measure”) authorizes the issuance of general obligation bonds (the “Bonds”), the object and purpose of which is to finance, by the City of Berkeley or a third party, as applicable, the acquisition or improvement of real property for the Improvements.

The Improvements will be completed as needed, and each is assumed to include its share of costs, including planning, program management and construction costs. The final cost of each Improvement will be determined as real property is purchased, plans are finalized, construction bids are awarded, or projects are completed. In addition, certain acquisition or improvement funds are expected from sources other than proceeds of the Bonds, including funds which have not yet been secured. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.

For the Affordable Housing Improvements, proceeds of the Bonds shall be used to finance the acquisition or improvement of real property for affordable and social housing, including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to newly constructed non-profit rental and ownership housing, supportive housing, and limited-equity housing cooperatives affiliated with community land trusts.

Proceeds of the Bonds may be used to reimburse the City for expenditures on the Improvements that are paid before the date of execution, delivery or issuance of the Bonds.

#### **Section 4. Estimated Cost of Improvements.**

The estimated cost of the Affordable Housing Improvements to be funded by the Bonds is \$200 million. The estimated cost for the Infrastructure Improvements is \$450 million, of which \$300 million may be allocated to Infrastructure Improvements related to street, sidewalk and traffic safety and \$150 million may be allocated to other Infrastructure Improvements, including those related to public safety and climate resiliency. These dollar amounts are estimates and are not a commitment or guarantee that any specific amounts will be spent on particular projects or categories of projects.

The estimated cost includes legal and other fees and the cost of printing the Bonds and other costs and expenses incidental to or connected with the authorization, issuance or sale of the Bonds. The cost of the Improvements includes planning, programs management and construction costs.

#### **Section 5. Principal Amount of Bonds.**

The aggregate principal amount of Bonds to be issued shall not exceed \$650 million.

#### **Section 6. Maximum Interest Rate.**

The maximum rate of interest to be paid on the Bonds shall not exceed the maximum interest rate permitted by law, in accordance with Government Code Section 53531.

#### **Section 7. Accountability Requirements.**

The following accountability measures apply to the issuance of Bonds pursuant to this Measure:

- A. The specific purpose of the Bonds is to finance the acquisition or improvement of real property for the Improvements; and
- B. The proceeds from the sale of the Bonds will be used only for the purposes specified in this Measure, and not for any other purpose; and
- C. The proceeds of the Bonds will be deposited into an account to be created and held by the City; and
- D. The proceeds from the sale of the Bonds may be used to reimburse the City for amounts advanced from the general fund or other funds or accounts to acquire real property for Improvements, when such purchases are made prior to the availability of Bond proceeds; and



- E. All funds received from any Bonds authorized by this Measure are subject to review, allocation, and approval by the City Council. At least annually, as part of the process to adopt a budget and any budget updates, the City Manager shall provide to the City Council a comprehensive report of funds received from any Bonds authorized by this Measure, of previous appropriations and expenditures of such funds, the status of the Improvements, and a proposal for expenditure of funds expected to be received from Bonds, if any, for review and approval by the City Council.
- F. The City Council shall appoint an Affordable Housing and Infrastructure Bond Oversight Committee which will provide oversight by reporting to the City Council on an annual basis regarding projects funded by the Bonds (as determined by the City Council) and whether those bond expenditures are consistent with the purposes of the Bonds set forth in this Measure.
- G. The following commissions or their successors shall make recommendations to the City Council on projects proposed to be funded by the Bonds and proposed expenditures of the proceeds of the Bonds:
  - 1. The Housing Advisory Commission shall be advisory to the City Council and shall provide recommendations on projects and expenditures for the Affordable Housing Improvements.
  - 2. The Parks, Recreation, and Waterfront Commission shall be advisory to the City Council and shall provide recommendations on projects and expenditures for Infrastructure Improvements related to properties and facilities identified in Municipal Code Section 3.26.040.A, including all parks, recreation, and waterfront improvements.
  - 3. The Transportation and Infrastructure Commission shall be advisory to the City Council and shall provide recommendations on projects and expenditures for the Infrastructure Improvements related to transportation, traffic safety and other public infrastructure.
- H. All expenditures will be subject to an annual independent financial audit to confirm that Bond expenditures are consistent with the intent of this Measure.

## TAX RATE STATEMENT

An election will be held in the City of Berkeley (the "City") on November 8, 2022, to authorize the sale of up to \$650 million in bonds of the City to finance the specific projects listed in the measure. If such bonds are authorized, the City expects to sell the bonds in one or more series. Principal and interest on the bonds will be payable solely from the proceeds of ad valorem tax levies made upon the taxable property in the City. The following information is provided in compliance with Sections 9400-9404 of the California Elections Code. Such information is based upon the best estimates and projections presently available from official sources, upon experience within the City, and other demonstrable factors.

Based upon the foregoing and projections of the City's assessed valuation:

1. The best estimate of the average annual tax rate that would be required to be levied to fund the bond issue over the entire duration of the bond debt service, based on a projection of assessed valuations available at the time of filing of this statement is 39 cents per \$100 (or \$39.00 per \$100,000) of assessed valuation of all property to be taxed. The best estimate of the final fiscal year in which the tax is anticipated to be collected is 2070/71. For purposes of this paragraph, the term "average annual tax rate" refers to the mean annual tax rate.
2. The best estimate of the highest tax rate that would be required to be levied to fund the bond issue, based on a projection of assessed valuations available at the time of filing this statement is 71 cents per \$100 (or \$71.00 per \$100,000) of assessed valuation of all property to be taxed. The best estimate of the first year in which the highest tax rate will apply is 2041/42.
3. The best estimate of the total debt service, including the principal and interest, that would be required to be repaid if all the bonds are issued and sold is \$1,125,000,000.

Voters should note that such estimated tax rates are specific to the repayment of bonds issued under this authorization and will be in addition to tax rates levied in connection with other bond authorizations approved or to be approved by the City or any other overlapping public agency.

Voters should note that the estimated tax rate is based on the ASSESSED VALUE of taxable property on Alameda County's official tax rolls, not on the property's market value. In addition, taxpayers eligible for a property tax exemption, such as the homeowner's exemption, will be taxed at a lower effective tax rate than described above. Property owners should consult their own property tax bills to determine their property's assessed value and any applicable tax exemptions.

Attention of all voters is directed to the fact that the foregoing information is based upon projections and estimates only, which amounts are not maximum amounts or durations and are not binding upon the City. The actual debt service amounts, tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the time of each sale, and actual assessed valuations over the term of repayment of the bonds. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on need for funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined by the Alameda County assessor in the annual assessment and the equalization process.

Dated: August 4, 2022

/s/ DEE WILLIAMS-RIDLEY  
City Manager, City of Berkeley

# **Measure M**

# **Vacancy Tax**

Shall the measure to tax property owners who keep residential units vacant more than 182 days per year, \$3,000 for each nonexempt condominium, duplex, single family dwelling, or townhouse vacant unit in the first year, increasing to \$6,000 for each subsequent year, and \$6,000 for all other residential units vacant in the first year, increasing to \$12,000 for each subsequent year, with exceptions, from January 1, 2024 to December 31, 2034, generating between \$3,900,000 and \$5,900,000 annually, be adopted?

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

ADDING CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TO IMPOSE AN  
EXCISE TAX ON KEEPING RESIDENTIAL PROPERTY VACANT TO FUND GENERAL  
MUNICIPAL SERVICES

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

Section 1. That Chapter 7.54 of the Berkeley Municipal Code is added to read as follows:

**Chapter 7.54**

**Empty Homes Tax**

**Sections:**

**7.54.010 Short Title.**

**7.54.020 Findings and Purpose.**

**7.54.030 Definitions.**

**7.54.040 Imposition of Tax.**

**7.54.050 Returns; Presumption of Vacancy.**

**7.54.060 Exemptions.**

**7.54.070 Administration; Penalties.**

**7.54.080 Use of Funds for General Municipal Purposes.**

**7.54.090 Technical Assistance to the City Manager; Annual Reports.**

**7.54.100 Authorization and Limitation on Issuance of Bonds.**

**7.54.110 Severability.**

**7.54.120 Savings Clause.**

**7.54.130 Liberal Construction.**

**7.54.010 Short Title.**

This Chapter shall be known as the "Empty Homes Tax Ordinance," and the tax it imposes shall be known as the "Empty Homes Tax."

**7.54.020 Findings and purpose.**

The People of the City of Berkeley find and declare as follows:

- A. Residential vacancies are an ongoing concern in Berkeley.
- B. Of total vacancies, the Berkeley Rent Stabilization Board data from 2022 indicates that 1,128 fully or partially regulated units in buildings with more than two units have been classified by their owners as not available to rent. Returning these and other vacant units to the housing market is a key strategy for ensuring long-term affordability.
- C. Prolonged vacancy restricts the supply of available housing units, is often the result of housing speculation and runs counter to the City's housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight.
- D. The housing affordability crisis has created an urgent need to pay for additional services and programs including, but not limited to, construction of new affordable housing for households with a household income of 80% or less of Area Median Income,

including by providing pre-development funding to non-profit affordable housing developers, and the acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated.

E. The City is also working to ensure all public funds available to build affordable housing are being maximized, from the City, Alameda County, State and Federal governments.

F. Even with the addition of City, County, State, and Federal resources, the City is unable to house all of its residents.

G. The increased costs of meeting the challenges of the housing crisis have impacted the City's General Fund.

H. The City needs new funds to pay for municipal services. The Empty Homes Tax is intended to disincentivize prolonged vacancies and housing speculation, thereby increasing the number of housing units available for occupancy, while also raising funds for municipal services, including but not limited to constructing, acquiring, and rehabilitating affordable housing.

#### **7.54.030 Definitions.**

Unless otherwise defined in this Chapter, the terms used in this Chapter shall have the meanings given to them in Chapters 2.44 and 9.04 of the Municipal Code, as amended from time to time. For purposes of this Chapter, the following definitions shall apply:

A. "Affiliate" means an entity under common majority ownership or common control, whether that ownership or control is direct or indirect, with any other person or entity, including but not limited to a person or entity that majority owns or controls, or is majority owned or controlled by, any other person or entity.

B. "Building Permit Application Period" means the period following the date that an application for a building permit for repair, rehabilitation, or construction with respect to a Residential Unit is filed with the City through the date the Planning Department or its successor agency grants or denies that application, not to exceed one year.

Notwithstanding the preceding sentence, if more than one building permit application is filed by or on behalf of one or more persons in the Owner's Group for the same Residential Unit, the Building Permit Application Period shall mean only the applicable period following the date the first application is filed with the City by or on behalf of anyone in the Owner's Group. In the case of an owner qualifying for the Disaster Period in subsection D, the Building Permit Application Period may be extended beyond one year if the owner makes a good faith effort, as determined by the building official, to obtain a building permit.

C. "Disaster Period" means the two-year period following the date that a Residential Unit was made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event, except where a negligent, reckless or willful act or omission by the owner or agent of the owner contributed to or caused the Residential Unit to become uninhabitable or unusable due to fire, natural disaster or other catastrophic event.

D. "Homeowners' Exemption Period" means the period during which a Residential Unit is the principal place of residence of any owner of that Residential Unit and for which

such owner validly has claimed either the homeowners' property tax exemption under Section 218 of the California Revenue and Taxation Code or the disabled veterans' exemption under Section 205.5 of that Code, as those sections may be amended from time to time.

E. "Hotel" means any property registered under Section 7.36.060 of the Municipal Code and excludes any properties regulated under Chapter 23.314 of the Municipal Code.

F. "Lease Period" means the period during which any owner of a Residential Unit or any person in the Owner's Group of that owner leases that Residential Unit to one or more tenants under a bona fide lease intended for occupancy, but not including any lease or rental of that Residential Unit to anyone in the Owner's Group or to travelers, vacationers, or other transient occupants.

G. "Owner Death Period" means, with respect to a co-owner or decedent's estate, heirs, or beneficiaries, the period during which a Residential Unit is unoccupied, uninhabited, or unused because of the death of any owner of a Residential Unit who was the sole occupant of that Residential Unit immediately prior to such owner's death, provided that such period shall not exceed the longer of two years or the period during which the Residential Unit is subject to the authority of a probate court.

H. "Owner In Care Period" means the period during which a Residential Unit is unoccupied, uninhabited, or unused because the occupant of the Residential Unit who used that Residential Unit as their principal residence is residing in a hospital, long term or supportive care facility, medical care or treatment facility, or other similar facility.

I. "Owner's Group" means for each owner of a Residential Unit, with respect to each Residential Unit, the owner, any current or former co-owner, and any Related Person or Affiliate of the owner or any current or former co-owner.

J. "Rehabilitation Period" means the two-year period following the date that the City issues a building permit for repair, or rehabilitation, with respect to a Residential Unit, provided that if the City issues multiple building permits to or for the benefit of one or more persons in the Owner's Group for the same Residential Unit, the Rehabilitation Period shall mean only the two-year period following the issuance of the first building permit to or for the benefit of anyone in the Owner's Group.

K. "Related Person" means a spouse, domestic partner, child, parent, or sibling.

L. "Residential Unit" means a house, an apartment, a group of rooms, or a single room that is designed as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have a kitchen and direct access from the outside of the building or through a common hall. For purposes of this Chapter, a Residential Unit shall not include a unit in a Hotel, a currently operational nursing home, residential care facility, or other similar facility, or any unit that is fully exempt from property tax under the welfare exemption under Section 214(g) of the California Revenue and Taxation Code, as may be amended from time to time.

M. "Vacancy Exclusion Period" means the Building Permit Application Period, Rehabilitation Period, Disaster Period, Homeowners' Exemption Period, Lease Period, Owner Death Period, or Owner In Care Period.



N. "Vacant" means unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a calendar year.

**7.54.040 Imposition of Tax.**

A. Except as otherwise provided in this Chapter, the City imposes an annual Empty Homes Tax on each person that owns a Residential Unit for keeping that Residential Unit Vacant for more than 182 days, whether consecutive or nonconsecutive, in a calendar year except for those periods defined as a Vacancy Exclusion Period.

B. The Empty Homes Tax on an owner keeping a Residential Unit Vacant shall be as follows:

1. For the first calendar year that the Residential Unit is Vacant, the tax shall be \$3,000 per Residential Unit in a vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership and \$6,000 per any other vacant Residential Unit.
2. For the second consecutive calendar year and each subsequent calendar year thereafter that the Residential Unit is Vacant, the tax shall be \$6,000 per Residential Unit in a vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership and \$12,000 per any other vacant Residential Unit.

C. The rates set forth in subsection B. of this Section shall be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31st of the preceding year, beginning with the 2025 calendar year.

D. The Empty Homes Tax shall be payable by the owner or owners of the Residential Unit kept Vacant. Not more than one tax per Residential Unit shall be imposed under this Section for a calendar year by reason of multiple liable owners. If there are multiple liable owners, each owner shall be jointly and severally liable for the tax, which shall be the highest amount of tax payable by any owner for that Residential Unit for that calendar year.

E. In determining whether an owner has kept a Residential Unit Vacant during a calendar year, days within any Vacancy Exclusion Period shall be disregarded if that Vacancy Exclusion Period applies to that owner for that Residential Unit, as shall days in which the Residential Unit was not owned by the owner, but the owner shall be deemed to have kept the Residential Unit unoccupied, uninhabited, or unused on all other days that such Residential Unit is unoccupied, uninhabited, or unused during the calendar year.

F. The Empty Homes Tax shall take effect on January 1, 2024. The Empty Homes Tax shall expire on December 31, 2034, unless reauthorized by the voters prior to such date.

G. The Empty Homes Tax shall be suspended for as long as the Berkeley COVID-19 Residential Eviction Moratorium is in effect pursuant to BMC 13.110 and the tax shall resume upon expiration.

H. Upon declaring a citywide emergency, the Council may suspend the tax in whole or part by a supermajority vote of two-thirds of the entire City Council upon a finding that a declared emergency has undermined the ability of owners to fill vacancies in their Residential Units. Such a suspension shall last for no more than 60 days from its enactment by the Council, but may be extended on or before its expiration by a two-thirds supermajority vote of the Council so long as the emergency continues and the required findings can be made. The Empty Homes Tax shall resume upon the expiration of the emergency.

I. The Council may, by majority vote of the entire City Council, amend this Chapter in furtherance of its purposes or to correct ambiguities or errors in language, provided that such amendments do not alter the dollar amounts of the tax as provided in Section 7.54.040 B, or expand the applicability of the exemptions in Section 7.54.060, or amend subsection H. or this subsection I. of Section 7.54.040.

#### **7.54.050 Returns; Presumption of Vacancy.**

A. Each person that is required to pay the Empty Homes Tax shall file a return in the form and manner prescribed by the City Manager or their designee.

B. Each person that owns a Residential Unit at any time during a calendar year and that is not exempt from the Empty Homes Tax with respect to that Residential Unit under any one of subsections A. through D. of Section 7.54.060 shall file a return for that calendar year in the form and manner prescribed by the City Manager or their designee. A person that fails to file the return required by this subsection B. for a Residential Unit shall be presumed to have kept that Residential Unit Vacant for the calendar year for which such return is required. The person who fails to file the required return may rebut the presumption by producing satisfactory evidence that such person did not keep the Residential Unit Vacant during the calendar year for which the return is required.

#### **7.54.060 Exemptions.**

A. For only so long as and to the extent that the City is prohibited by the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Empty Homes Tax on any person that person shall be exempt from the Empty Homes Tax.

B. Any organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, shall be exempt from the Empty Homes Tax.

C. The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Empty Homes Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

D. A natural person or trust who is the owner of a single property of four or fewer Residential Units, inclusive of accessory dwelling units and junior accessory dwelling units, that is their principal residence shall be exempt provided that they own no other Residential Units in the City. Additionally, for the purposes of this subsection D. only, the

“owner” of such Rental Property shall not be any of the following set forth under California Civil Code Section 1947.12(d)(5)(A)(i)-(iii) (“AB 1482”): a real estate investment trust, as defined in Section 856 of the Internal Revenue Code; a corporation; or a limited liability company.

E. Any taxpayer seeking an exemption under this Section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee.

#### **7.54.070 Administration; Penalties**

A. The City Manager or their designee shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter.

B. The tax required by this Chapter is delinquent if not received by the tax administrator on or before February 28 of each year.

C. Any person who fails to pay the tax required by this Chapter to the City or any amount of tax required to be collected and paid to the City within the time required shall pay a penalty of ten percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of one percent per month from the date on which the tax or the amount of tax required to be collected became due and payable to the City until the date of payment.

D. Transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be disregarded for purposes of determining the amount of the Empty Homes Tax and whether the Empty Homes Tax is due. Any owner determined to have engaged in one or more transactions with the principal purpose of avoiding or evading all or a portion of the Empty Homes Tax shall be liable for the Empty Homes Tax and also liable for a penalty in an amount equal to the Empty Homes Tax.

E. Any tax required to be paid by an owner under the provisions of this chapter shall be deemed a debt owed by the owner to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount, along with any collection costs incurred by the City as a result of the person’s noncompliance with this chapter, including, but not limited to, reasonable attorneys’ fees, plus interest and penalties as herein provided.

#### **7.54.080 Use of Funds for General Municipal Purposes.**

A. The Council may deposit any portion of the proceeds generated by the Empty Homes Tax into the Housing Trust Fund, subject to its operating rules, or it may use any of the proceeds to fund any general municipal services designated by the Council.

#### **7.54.090 Annual Reports.**

Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the City Manager shall file annually with the Council, by February 15 of each year, a report containing the amount of monies collected from the tax during the prior fiscal year.

**7.54.100 Authorization and Limitation on Issuance of Bonds.**

The City shall be authorized to pledge revenues generated by the Empty Homes Tax to the repayment of limited tax bonds or other forms of indebtedness authorized under this Section. The Council shall by ordinance or resolution, as applicable, establish the terms of any limited tax bonds or other forms of indebtedness authorized hereby, including but not limited to, the amount of the issue, date, covenants, denominations, interest rate or rates, maturity or maturities, redemption rights, tax status, manner of sale, and such other particulars as are necessary or desirable.

**7.54.110 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.

**7.54.120 Savings Clause.**

No section, clause, part, or provision of this Chapter shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States or of the Constitution or laws of the State of California.

**7.54.130 Liberal Construction.**

This Chapter shall be liberally construed to effectuate its purpose.

Section 2. Increase Appropriations Limit. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2022, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the general tax imposed under this ordinance.

Section 3. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065

and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 4. General Tax; Majority Vote Requirement. This Ordinance imposes a general tax for general revenue purposes and shall be effective only if approved by a majority of the voters voting thereon.

**Measure N**  
**Article 34**  
**Low-Income**  
**Housing**

Shall any federal, state or local public entity be empowered to develop, construct or acquire an additional 3,000 units of low-rent housing in the City of Berkeley for persons of low income?

Financial Implications:

Uncertain, dependent on means of financing used.

RESOLUTION NO. ##,###-N.S.

AUTHORIZING PUBLIC ENTITIES TO DEVELOP, CONSTRUCT, OR ACQUIRE NO MORE THAN 3,000 UNITS OF LOW RENT HOUSING IN THE CITY OF BERKELEY

WHEREAS, Article XXXIV of the Constitution of California requires that a majority of qualified voters of the City of Berkeley determine whether or not any public entity should be empowered to develop, construct, or acquire low rent housing projects in the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the People of the City of Berkeley that any public entity shall be empowered to develop, construct or acquire up to 3,000 additional units of low-rent housing for persons of low income in the City of Berkeley.

BE IT FURTHER RESOLVED that the terms of the authorization contained in this measure shall be construed in the same manner as Article XXXIV of the Constitution of California and any laws or cases interpreting that section.