



Office of the Mayor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: July 30, 2024

Item Number: #6d

Item Description: Ballot Measure Amending Chapter 7.52 of the Berkeley Municipal Code to Increase and Extend the General Real Property Transfer Tax

Supplemental/Revision Submitted By: Mayor Arreguin and Councilmember Hahn

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

We are proposing two substantive revisions to the proposed ballot measure amending Chapter 7.52 to increase and extend the increase in the Real Property Transfer Tax.

Based on conversations with stakeholders and City staff the attached version makes the following changes to the ordinance and ballot question to reflect:

1) Including specific dollar thresholds for each increment (67th percentile, 80th percentile and 95th percentile. These numeric thresholds would be adjusted annually to ensure they remain reflective of these percentiles, but could not be adjusted below \$1,600,000, \$1,900,000 and \$3,000,000, respectively.

The dollar thresholds would be as follows:

Figure 1: Proposed Real Property Transfer Tax

Tax Rate	Property Value	Percentile of Transactions
1.5%*	Less than \$1,600,000,	Below 67 th percentile
2.5%	\$1,600,000, - \$1,900,000	67 th percentile – 80 th percentile
3%	\$1,900,000 - \$3,000,000	80 th percentile – 95 th percentile
3.5%	Greater than \$3,000,000	Above 95 th percentile

2. Delaying the effective date of any increases in the Real Property Transfer Tax to January 1, 2027 to provide time for market conditions to improve. The current Measure P transfer tax of an additional 1% would still be in effect during that time.

Internal

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



ACTION CALENDAR
July 30, 2024

To: Honorable Mayor and Members of the City Council
From: Farimah Brown, City Attorney
Submitted by: LaTanya Bellow, Interim City Manager
Farimah Brown, City Attorney
Subject: Ballot Measure Amending Chapter 7.52 of the Berkeley Municipal Code to Increase and Extend the General Real Property Transfer Tax

RECOMMENDATION

1. Adopt a Resolution placing the attached measure to increase and extend the City's Real Property Transfer Tax on the ballot at the November 5, 2024 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action to place the measure on the ballot. In general, election services have seen a steep increase since 2018, with the City's first million-dollar election in 2020. In addition, the number of measures placed on the ballot, and the length of the measures, are the primary driving factors in the fluctuation of election costs.

If adopted by the voters, the tax is estimated to generate approximately \$5,000,000 to \$9,000,000 annually (dependent on market conditions) for the City's general fund.

CURRENT SITUATION AND ITS EFFECTS

This measure is presented to the Council for placement on the November 5, 2024 ballot pursuant to Council direction on May 24, 2024.

Berkeley Municipal Code Chapter 7.52 imposes a real property transfer tax at a rate of one-and-one-half percent the value of consideration for transactions less than \$1,500,000, and of two-and-one-half percent the value of consideration for transactions worth greater than \$1,500,000. The tax assessed at two-and-one-half percent generates an estimated \$15,000,000 annually (revenues, which have ranged from ~\$9,000,000 to ~\$20,000,000, fluctuate greatly with market conditions). Currently, the two-and-one-half percent tax rate is set to expire on January 1, 2029.

This measure would expand upon the existing tiered real property transfer tax by imposing a transfer tax rate of two-and-one-half percent the value of consideration for transactions equal to or greater than \$1,650,000 and below \$1,980,000, and a rate of three percent the value of consideration for transactions equal to or greater than \$1,890,000 and below \$2,43,000,000, and a rate of three-and-one-half percent the value of consideration for transactions equal to or greater than below \$2,43,000,000. For transactions worth less than \$1,650,000, the tax rate would remain one-and-one-half percent the value of consideration.

These numeric thresholds correspond to the 607th, 7580th, and 950th percentile of transactions from calendar year 2024. These numeric thresholds would be adjusted annually to ensure they remain reflective of these percentiles, but could not be adjusted below \$1,650,000, \$1,890,000 and \$2,43,000,000, respectively.

Figure 1: Proposed Real Property Transfer Tax

Tax Rate	Property Value	Percentile of Transactions
1.5%*	Less than \$1,650,000,	Below 607 th percentile
2.5%	\$1,650,000, - \$1,890,000	607 th percentile – 7580 th percentile
3%	\$1,890,000 - \$2,43,000,000	7580 th percentile – 950 th percentile
3.5%	Greater than \$2,43,000,000	Above 950 th percentile

*The new measure would not change this tax rate, and revenues associated with its collection are not considered Measure P revenues.

This measure would also remove the January 1, 2029 sunset provision such that the new tiered tax scheme does not expire. [The measure would take effect January 1, 2027 and would remain in effect until repealed by the voters.](#)

The resulting revenues would be placed in the general fund to be used for various municipal services which could include navigation centers, mental health support, rehousing, and other services for the homeless.

Additionally, according to California Elections Code 9282 (b), measures placed on the ballot by the legislative body, or a member or members of the legislative body authorized by that body, or an individual voter who is eligible to vote on the measure, or bona fide

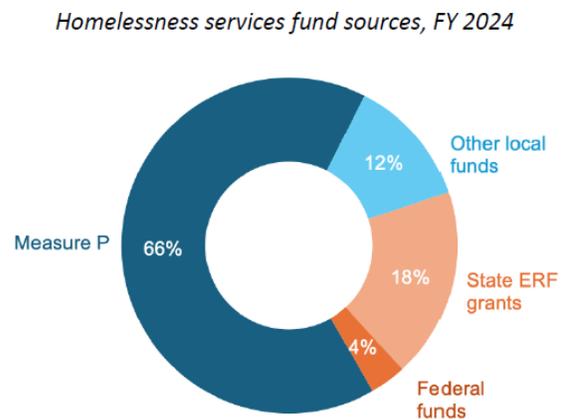
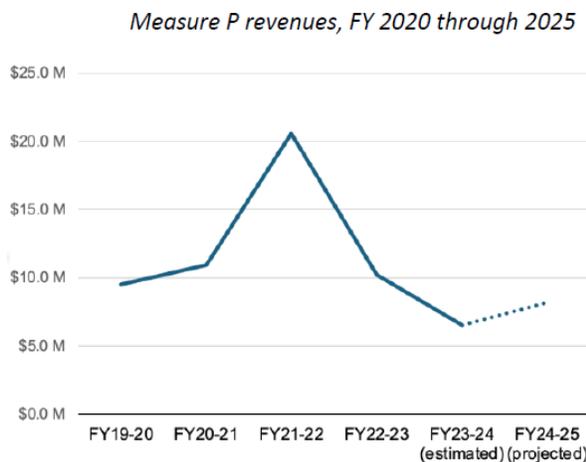
association of citizens, or a combination of voters and associations, may file a written argument for or against any city measure.

BACKGROUND

On November 6, 2018, the voters approved Measure P with 72.4% approval. Measure P increased the City’s Real Property Transfer Tax such that for transactions of greater than \$1,500,000 the tax rate was two-and-one-half percent the value of consideration. For transactions at \$1,500,000 or less, the tax rate remained one-and-one-half percent the value of consideration. The two-and-one-half percent tax rate was set to expire on January 1, 2029, unless reauthorized by the voters prior to such date. Measure P also established a homeless services panel of experts who makes recommendations on how and to what extent the City should establish and/or fund programs to end or prevent homelessness in Berkeley and provide humane services and support.

The City uses funding from Measure P to establish new permanent housing, address immediate street conditions and hygiene, prevent households from becoming homeless and provide emergency shelter and temporary accommodation. However, Measure P is not the City’s only funding for homeless services; while a significant source, it leverages millions of dollars in other State and Federal resources: for example, \$10M in State Encampment Resolution Funding and over \$30M in Homekey funding, which together have helped Berkeley create 177 new units of noncongregate interim and permanent housing units for persons experiencing homelessness. However, Measure P made up by far the largest part (66%) of the more than \$35 million the City allocated to affordable housing, homelessness services, and tenant supports in the 2023–24 fiscal year.

Measure P is Berkeley’s Dominant Funding Source for Homeless Services



The latest Point in Time Count data from January 2024 indicates that Berkeley’s homeless system is performing the way a system that has received a sustained influx in recent spending, both directly from Measure P and in Measure P’s direct leverage of State

resources, would expect it to: fewer people are on our streets (45% reduction in street homelessness), more are in shelter (54% increase in sheltered homelessness), and more of them are being connected to solutions that permanently resolve their homelessness (21% reduction overall).

On July 9, 2024, the City Manager presented a comprehensive analysis of the City's homeless services system to the City Council, in response to a Council referral.¹ The analyses found that the biggest obstacle Berkeley faces to sustaining and increasing this recent progress in reducing homelessness is an imminent "fiscal cliff," stemming from the potential loss of key resources in the future (including the sunset of Measure P).

In a Council meeting on May 24, 2024, the Council directed the City Attorney to prepare a measure introducing a tiered real property transfer tax, removing the sunset date, and reauthorizing the tax beyond the January 1, 2029 expiration date until such time as it is repealed or modified by the voters of the City of Berkeley. The method of collection, method of implementation, exemptions, homeless service panel of experts, and other provisions in Chapter 7.52 of the Municipal Code would remain unchanged.

The tax assessed at two-and-one-half percent generates an estimated \$15,000,000 annually (revenues, which have ranged from ~\$9,000,000 to ~\$20,000,000, fluctuate greatly with market conditions). If the tax is updated and extended by voters, it is expected to generate \$5,000,000 to \$9,000,000 annually, depending on market conditions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental and climate effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This measure is presented to the Council for placement on the November 5, 2024 ballot pursuant to Council direction on May 24, 2024.

ALTERNATIVE ACTIONS CONSIDERED

Council may decide to not place the measure on the 2024 ballot, or request that staff resubmit the item for a future election.

CONTACT PERSON

LaTanya Bellow, Interim City Manager, (510) 981-7000
Farimah Brown, City Attorney, (510) 981-6998

¹ See: <https://berkeleyca.gov/sites/default/files/documents/2024-07-09%20Item%2016%20Referral%20Response%20%20Gap%20Analysis%20of%20Berkeley%E2%80%99s%20Homelessness.pdf>

Ballot Measure Amending Chapter 7.52
of the Berkeley Municipal Code to Increase
and Extend the General Real Property Transfer Tax.

ACTION CALENDAR
July 30, 2024

Attachments:

1: Resolution

Exhibit A: Text of Measure

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE AMENDING
CHAPTER 7.52 OF THE BERKELEY MUNICIPAL CODE TO INCREASE AND
EXTEND THE GENERAL REAL PROPERTY TRANSFER TAX

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 5, 2024 General Municipal Election, a measure amending Chapter 7.52 of the Berkeley Municipal Code increasing the general real property transfer tax; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at the November 5, 2024 Statewide General Election, consistent with the Council's Resolution No. 71,289-N.S., adopted on May 7, 2024, calling for a General Municipal Election to be consolidated with said statewide election; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that this resolution is hereby adopted and a ballot measure amending Chapter 7.52 to the Berkeley Municipal Code increasing the general real property transfer tax shall be placed before the voters at the election on November 5, 2024.

BE IT FURTHER RESOLVED 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, pursuant to California Elections Code sections 10002 and 10403, this City Council does hereby call an election on Tuesday, November 5, 2024, and requests that the Alameda County Board of Supervisors consolidate said election with the Statewide General Election on that same date in the manner and schedule established by Resolution No. 71,289-N.S., adopted on May 7, 2024, and submit the Measure to the qualified voters of the City at said consolidated election.

BE IT FURTHER RESOLVED that the City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.

BE IT FURTHER RESOLVED that 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

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 simple 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 the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

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 the measure effective January 1, 2027, setting the existing general tax on transfers of real property at 2.5% of a property's value for properties valued \$1.6M or higher, and increasing the rate from 2.5% to 3% for properties valued \$1.9M or higher and from 3% to 3.5% for properties valued \$3.0M or higher, adjusted annually for increases in value; removing January 1, 2029 expiration date; generating an estimated additional \$2M - \$4M annually, until repealed, be adopted?	YES
	NO

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

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of this resolution to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure to the existing law and the operation of the measure, and transmit the impartial analysis to the City Clerk.

BE IT FURTHER RESOLVED that arguments for and against, not to exceed 300 words in length, may be filed consistent with Election Code Section 9282 requirements. The City Council, or any members of the City Council authorized by the City Council, may file a direct argument for the measure.

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 the measure, impartial analysis, any arguments for and against, and any rebuttal arguments filed under the authority of the Elections Code shall be available for public examination in the City Clerk's office pursuant to Elections Code Section 9295 for 10 calendar days, a period that shall begin immediately following the last filing deadline for the submission of such materials.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to file a certified copy of this resolution with the Alameda County Board of Supervisors and the Alameda County Registrar of Voters.

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

AUTHORIZING AND ADOPTING AMENDMENTS TO THE REAL PROPERTY
TRANSFER TAX

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

Section 1. Code Amendment. Chapter 7.52 of the Berkeley Municipal Code is hereby amended as follows (additions denoted by underlined text and deletions denoted by *strike through*):

Chapter 7.52
REAL PROPERTY TRANSFER TAX

Sections:

- 7.52.010 Title.**
- 7.52.020 Purpose.**
- 7.52.030 Definitions.**
- 7.52.040 Imposed.**
- 7.52.045 Unrecorded contracts for sale not taxable transfers.**
- 7.52.050 Applicability.**
- 7.52.060 Exceptions.**
- 7.52.070 Due date and penalty for delinquency.**
- 7.52.080 Declaration may be required.**
- 7.52.090 Determination of deficiency.**
- 7.52.100 Notice of determination.**
- 7.52.110 Notice serving.**
- 7.52.120 Petition for redetermination.**
- 7.52.130 Consideration of petition.**
- 7.52.140 Determination of petition.**
- 7.52.150 Finality of determination.**
- 7.52.170 Tax a debt to City.**
- 7.52.180 Administration.**
- 7.52.190 Homeless services panel of experts.**
- 7.52.200 Increase appropriations limit.**

7.52.010 Title.

The ordinance codified in this chapter may be cited as the "real property transfer tax ordinance of the City of Berkeley."

7.52.020 Purpose.

The tax imposed under this chapter is solely for the purpose of raising income and revenue which is necessary to pay the usual and current expenses of conducting the municipal government of the City.

7.52.030 Definitions.

As used in this chapter:

A. "Real property" and "realty" mean real property as defined by and under the laws of the state.

B. "Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust, or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrance after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer. Value of the consideration also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are

hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the value of the consideration cannot be definitely determined, or is left open to be fixed by future contingencies, value of consideration shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the value of the consideration pursuant to the above provisions of this section.

7.52.040 Imposed.

A. There is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rates set forth below. ~~of one and one-half percent of the value of consideration, for transfers with a value at or below the threshold established in paragraph (C).~~ Except as set forth in Section 7.52.060, this tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer. For purposes of this paragraph, the tax reduction available under Section 7.52.060.K shall be limited to the rebate that would be available based on the tax rate imposed pursuant to Paragraph A(1) of this section.

1. For properties where the value of consideration is below the first threshold, as established in Paragraph B of this section, the rate shall be one and one-half percent of the value of consideration;

2. For properties where the value of consideration is equal to or higher than the first threshold, as established in Paragraph B of this section, but below the second threshold, as established in Paragraph C of this section, the rate shall be two-and-one-half percent of the value of consideration;

3. For properties where the value of consideration is equal to or higher than the second threshold, as established in Paragraph C of this section, but below than the third threshold, as established in Paragraph D of this section, the rate shall be three percent of the value of consideration;

4. For properties where the value of consideration is equal to or greater than the third threshold, as established in Paragraph D of this section, the rate shall be three-and-one-half percent the value of consideration.

~~B.—There is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rate of two-and-one-half percent of the value of consideration, for transfers with a value above the threshold established in paragraph (C). Except as set forth in Section 7.52.060, this tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer. For purposes of this paragraph, the tax reduction available under Section 7.52.060.K shall be limited to the rebate that would be available based on the tax rate imposed pursuant to Paragraph A.~~

~~B. C.~~ For purposes of the real property transfer tax imposed by this Section, the threshold is \$1,5600,000, adjusted annually by the City of Berkeley on January 1 of every subsequent year to a number equal to the value of consideration for the transaction at the 60⁷th percentile of transactions during the 12 months preceding September 1 of the preceding year, as recorded by the Alameda County Assessor, rounded to the nearest \$100,000 increment; provided, that in no case shall any adjustment lower the threshold below \$1,5600,000.

C. For purposes of the real property transfer tax imposed by this Section, the second threshold is \$1,900,000 adjusted annually by the City of Berkeley on January 1 of every subsequent year to a number equal to the value of consideration for the transaction at the 80th percentile of transactions during the 12 months preceding September 1 of the preceding year, as recorded by the Alameda County Assessor, rounded to the nearest \$100,000 increment; provided, that in no case shall any adjustment lower the threshold below \$1,900,000.

D. For purposes of the real property transfer tax imposed by this Section, the third threshold is \$3,000,000 adjusted annually by the City of Berkeley on January 1 of every subsequent year to a number equal to the value of consideration for the transaction at 95th percentile of transactions during the 12 months preceding September 1 of the preceding year, as recorded by the Alameda County Assessor, rounded to the nearest \$100,000 increment; provided, that in no case shall any adjustment lower the threshold below \$3,000,000.

~~*D.—The two-and-one-half percent rate imposed in Paragraph B of this Section shall expire on January 1, 2029, unless reauthorized by the voters prior to such date.*~~

7.52.045 Unrecorded contracts for sale not taxable transfers.

Contracts for the sale of real property which do not require immediate conveyance of legal title to the buyer, and installment sales contracts do not constitute taxable transfers under this chapter unless and until they are recorded.

7.52.050 Applicability.

Any person who makes a transfer which is subject to the tax imposed under Section 17.52.040 of this chapter, and any persons to whom such transfer is made, shall be jointly and severally liable for payment of the tax imposed under said Section 17.52.040.

7.52.060 Exceptions.

- A. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.
- B. Any deed, instrument or writing to which the United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.
- C. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:
 - 1. Confirmed under the Federal Bankruptcy Act, as amended;
 - 2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;

3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

Subdivisions 1 to 4, inclusive, of this section shall only apply if the making, delivering or filing of instruments of transfer of conveyance occurs within five years from the date of such confirmation, approval or change.

D. Any tax imposed pursuant to this chapter shall not apply to the making or delivering of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
2. Such order specifies the property which is ordered to be conveyed;
3. Such conveyance is made in obedience to such order.

E.

1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:
 - (a) Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
 - (b) Such continuing partnership continues to hold the realty concerned.
2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for

fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

3. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subdivision 2, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

F.

1. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse or domestic partner to the other in order to create a joint tenancy or tenancy in common of their common residence.

2. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Any tax imposed pursuant to this chapter also shall not apply to any transfer from one domestic partner, as that term is used in the City of Berkeley's policy establishing domestic partnership registration, to another, where (1) prior to such transfer an affidavit of domestic partnership has been filed with the City Clerk pursuant to Section IV of the City of Berkeley's policy establishing domestic partnership registration; (2) subsequent to the filing of such affidavit of domestic partnership, either or both domestic partner(s) files a statement of termination with the City Clerk pursuant to Section V of the domestic partnership policy; (3) such transfer of real property is made pursuant to a written agreement between the domestic partners upon the termination of their domestic partnership; and (4) the real property was acquired by either or both domestic partner(s) prior to the filing of the statement of termination.

G. Any tax imposed pursuant to this chapter shall not apply to transfers, conveyance, lease or sub-lease without consideration which confirm or correct a deed previously recorded or filed.

H. Any tax imposed pursuant to this chapter shall not apply to transfers recorded prior to the effective date of the ordinance codified in this chapter.

I. The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

J. Reserved.

K.

1. Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to "seismically retrofit" either any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units.

2. The term "seismically retrofit" within the meaning of this chapter means any of the following:

(a) That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;

(b) Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;

(c) Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

(d) Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

3. The work to seismically retrofit structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to seismically retrofit the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or their designee may refund such expenses not to exceed one-third of the tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one year to complete all seismic retrofit work and submit a seismic retrofit verification application to the codes and inspection division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited to the applicant upon submission of a seismic retrofit verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or their designee may grant such an extension only for good cause. The decision of the City Manager or their designee shall be entirely within their discretion and shall be final.

(a) "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic retrofit work.

(b) "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.

7.52.070 Due date and penalty for delinquency.

The tax imposed under this chapter is due and payable at the time the deed, instrument, or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of ten percent shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one-half of one percent a month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax.

7.52.080 Declaration may be required.

The tax imposed by this chapter shall be paid to the director by the persons referred to in Section 17.52.050. The director shall have the authority as part of any rules and regulations promulgated by them as provided for herein to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by their agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which the purchaser or the transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The director may require delivery to them of a copy of such deed, instrument or writing whenever

they deem such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The director may rely on the declaration as to the amount of the tax due provided they have no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the director has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, they may, by notice served upon any person liable for the tax, require the person to furnish a true copy of their records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument or writing which transfers such property.

7.52.090 Determination of deficiency.

If on the basis of such information as the director receives pursuant to the last paragraph of Section 17.52.080, and/or on the basis of such other relevant information that comes into their possession, they determine that the amount of tax due as set forth in the declaration, or as paid, is insufficient, they may recompute the tax due on the basis of such information.

If the declaration required by Section 17.52.080, is not submitted, the director may make an estimate of the value of the consideration for the property conveyed and determine the amount of tax to be paid on the basis of any information in their possession or that may come into their possession.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

7.52.100 Notice of determination.

The director shall give written notice to a person liable for payment of the tax imposed under this chapter of their determination made under Section 17.52.090. Such notice shall be given within three years after the recordation of the deed, instrument, or writing effecting the transfer on which the tax deficiency determination was made.

7.52.110 Notice serving.

Any notice required to be given by the director under this chapter may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at their address as it appears in the records of the City or as ascertained by the director. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

7.52.120 Petition for redetermination.

Any person against whom a determination is made under this chapter or any person directly interested may petition the director for a redetermination within sixty days after service upon the person of notice thereof. If a petition for redetermination is not filed in writing with the Director, City Hall, Berkeley, California 94704, within the sixty-day period, the determination becomes final at the expiration of the period.

7.52.130 Consideration of petition.

If a petition for redetermination is filed within the sixty-day period, the director shall reconsider the determination and, if the person has so requested in their petition, shall grant the person an oral hearing, and shall give the person ten days' notice of the time and place of hearing. The director may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

7.52.140 Determination of petition.

The director may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the director at or before the hearing.

7.52.150 Finality of determination.

The order or decision of the director upon a petition for redetermination becomes final thirty days after service upon the petitioner of notice thereof.

7.52.170 Tax a debt to City.

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt 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.

7.52.180 Administration.

The Director of Finance of the City (in this chapter referred to as the director) shall collect the tax imposed under this chapter and shall otherwise administer this chapter. They may make such rules and regulations, not inconsistent with this chapter, as they may deem reasonably necessary or desirable to administer this chapter, as well as necessary forms and receipts.

7.52.190 Homeless services panel of experts.

- A. There shall be established the Homeless Services Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to end or prevent homelessness in Berkeley and provide humane services and support.
- B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel.
- C. In accordance with Chapter 2.04, the Panel shall be composed of nine members appointed by the City Council.
- D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section 2.04.030 through 2.04.145 of this Code.

E. Each member of the Panel must:

1. Have experience in the development, administration, provision and/or evaluation of homeless programs in a government or non-profit capacity; or
2. Have current or past lived experience with homelessness; or
3. Have experience in researching the causes, impacts and solutions to homelessness; or
4. Have experience with state and/or local homeless policy, funding or programs; or
5. Have experience with federal homeless policy and funding administration such as the Continuum of Care Program; or
6. Have experience in the development and financing of affordable housing for formerly homeless persons; or
7. Have experience in the provision of mental health and/or substance use programs for homeless persons.

F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.

1. For purposes of determining term limits under Section 3.02.040, a commissioner's service on the Homeless Commission shall be counted toward their service upon their appointment to the Homeless Services Panel of Experts.

G. The Panel shall, by majority vote, do each of the following:

1. Annually appoint one of its members as chair and one of its members as vice-chair;
2. Approve bylaws to facilitate the proper functioning of the Panel;
3. Establish a regular time and place of meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and

4. Publish an annual report that includes the following:
 - (a) Recommendations on how to allocate the City's general funds to fund homeless services programs in Berkeley;
 - (b) Information, if available, concerning the impact of funded programs on the residents of the City; and
 - (c) Any additional information that the Panel deems appropriate.

H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be transmitted to the City Council.

I. The revenue raised by the tax imposed by Section 7.52.040 is available to pay the usual and current expenses of conducting the municipal government of the City, as determined by the City Council. The City Council shall consider, but need not follow, the Panel's recommendations on how and to what extent to use this revenue to establish and/or fund programs to pay for homeless services and shall annually inform the Panel as to the extent to which it has implemented the Panel's recommendations.

J. The Homeless Services Panel of Experts shall also perform the following functions:

1. Continue the ongoing function previously performed by the Homeless Commission of monitoring and assisting in the City's progress in implementing needed homeless services and facilities;
2. Invite service providers and other interested members of the community to attend its meetings;
3. Report its recommendations concerning homeless services and facilities to the City Council;
4. Perform the federally mandated role of advising Council in the development and implementation of the Continuum of Care Plan;
5. Continue making annual funding recommendations to Council regarding the disbursement of Measure O and other related funds; and

6. Operate for an indefinite period of time.

7.52.200 Increase appropriations limit.

Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this general tax for each of the four fiscal years from 2026 (July 1, 2025 – June 30, 2026) through 2029 (July 1, 2028 – June 30, 2029).

Section 2. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

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; Simple Majority Vote Requirement. This Ordinance imposes a general tax and shall be effective if approved by a simple majority of the voters voting thereon.

Section 5. Effective Date. This ordinance shall become effective on January 1, 2027.