



Kate Harrison  
Vice Mayor, District 4

ACTION CALENDAR  
June 14, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Kate Harrison

Subject: Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

RECOMMENDATION

Refer to the City Attorney and City Manager to prepare and submit a resolution submitting an Ordinance adding Chapter 7.54 to the Berkeley Municipal Code taxing housing units that 1) have remained vacant for more than six months, 2) are not under permitted renovation and 3) are in multi-unit buildings or are single family homes or condominiums whose owners are not natural persons or family trusts to a vote of the electors at the November 8, 2022 General Municipal Election.

CURRENT SITUATION AND RATIONALE FOR RECOMMENDATION

The City of Berkeley is experiencing a historic housing crisis. Between 2005 and 2019 gross median rent increased by over 50%. This has been particularly burdensome in a city where 58% of residents are renters.<sup>1</sup> While in recent years Berkeley has met its RHNA goals for those earning above 120% Area Median Income (AMI), it has failed to build sufficient housing for everyone else. Further, housing at the >120% AMI category has not significantly improved affordability for lower income residents and has increased displacement in low-income neighborhoods.<sup>2</sup> The extraordinary gap between the housing needs of residents and the availability of housing can only be bridged through the use of numerous policy interventions, including a vacancy tax intended to incentivize owners of housing property to bring units back on the market and discourage speculation.

In a recent poll of top policy priorities among Berkeley voters, increasing affordable housing for low-income and homeless residents received by far the most support, at 58%.<sup>3</sup> While Berkeley is actively building new affordable units, siting and constructing

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<sup>1</sup> Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> City of Berkeley Community Survey, Live Phone and Text to Online, April 28-May 3, 2022, <https://berkeleyca.gov/sites/default/files/documents/2022-05-31%20Item%2037%20Discussion%20and%20Direction%20Regarding.pdf>.

new units is a longer-term process, and it is incumbent on the City to maximize the availability of *existing units* that are already built and could be available for rent or sale.

Unfortunately, Alameda County's housing remains unaffordable for many of its residents, and this burden does not fall evenly across income and racial groups. While 47% of renters in Alameda County are rent burdened, the rate is 58% for Black renters and 87% for extremely low-income renters.<sup>4</sup> Meanwhile, as this crisis continues to unfold, 9% of Berkeley's housing sits vacant, according to the 2020 Decennial Census.<sup>5</sup> There are 4,725 existing housing units in Berkeley that nobody lives in—a tragic waste of resources and our housing stock. Of the total vacant units, the Berkeley Rent Stabilization Board data indicates that 1,128 fully or partially regulated<sup>6</sup> units have been classified by their owners as not available to rent (NAR).<sup>7</sup> A few of these are actively being renovated but the majority are not and have not been occupied for some time or actually are rented but not reported as being so to the Rent Board.

Oakland and Vancouver, both experiencing their own challenges with housing unaffordability, use a vacant housing tax to encourage owners of vacant units to find tenants or sell to those who will. In 2016, Vancouver passed a measure that placed a surcharge on the assessed value of vacant units. Within two years of its implementation, 21.2% of vacant units returned to occupancy and the city generated \$46 million Canadian dollars. Oakland enacted a vacant property tax of \$3,000 to \$6,000, varying based on property type. In its first year of implementation, the city collected over \$7 million in revenue.<sup>8</sup> San Francisco is actively considering placing a vacant housing tax measure on the November ballot.

Addressing vacant units is a critical part of addressing Berkeley's housing crisis. Every year that a significant percentage of Berkeley's housing stock remains vacant exacerbates the housing affordability and displacement crises. This item includes a modified version of San Francisco's proposed tax adapted for Berkeley's municipal code. It is in the public interest to refer to the City Attorney and City Manager to prepare

<sup>4</sup> California Housing Partnership Housing Needs Dashboard, 2019, <https://chpc.net/housingneeds/?view=37.405074,-119.26758,5&county=California,Alameda&group=housingneed&chart=shortfall|current,cost-burden|current,cost-burden-re|current,homelessness,historical-rents,vacancy,asking-rents|2022,budgets|2021,funding|current,state-funding,lihtc|2010:2021:historical,rhna-progress,multifamily-production>

<sup>5</sup> 2020 Decennial Census

<sup>6</sup> Partially regulated units are only partially covered by the rent ordinance, while fully regulated are completely covered by the ordinance

<sup>7</sup> Berkeley Rent Stabilization Board. There are also units classified as "vacant", for which property owners are actively seeking tenants.

<sup>8</sup> San Francisco Budget and Legislative Analyst's Office: Residential Vacancies in San Francisco, 2022, [https://56a418ca-94d2-476c-9a45-f491ca4a0387.usrfiles.com/ugd/56a418\\_74b82803e4fb434bb1b13010828a4c01.pdf](https://56a418ca-94d2-476c-9a45-f491ca4a0387.usrfiles.com/ugd/56a418_74b82803e4fb434bb1b13010828a4c01.pdf)

Refer to the City Attorney and City Manager an Empty Homes Tax Ordinance for the November 8, 2022 Ballot

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and submit a resolution taxing empty homes that would be submitted to a vote of the electors at the November 8, 2022 General Municipal Election.

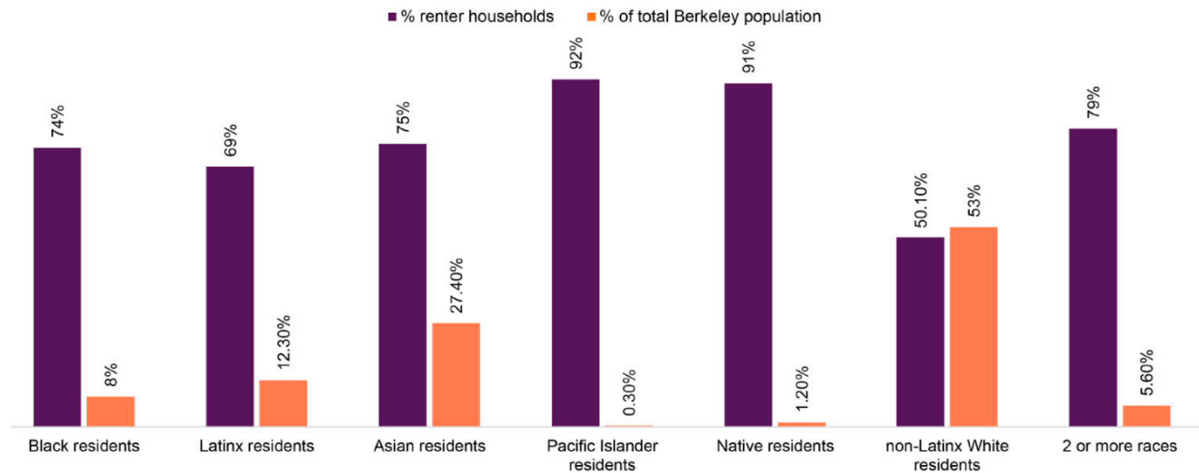
**BACKGROUND**

Berkeley’s housing challenges are significant, requiring numerous policy interventions across many years to remediate. However, of the units that were built as part of the 2023 RHNA goals, the majority have been unaffordable to most residents.<sup>9</sup>

Income Category	Total RHNA (2014- 2023)	Net Units Created (2015- 2020)	Balance Remaining	Percent of RHNA Achieved
Very Low Income	532	173	359	32.5%
Low Income	442	60	382	13.6%
Moderate Income	584	0	584	0%
Above Moderate Income	1,401	2,476	0	176.7%
<b>Total</b>	<b>2,959</b>	<b>2,709</b>	<b>1,325</b>	<b>55.2%</b>

In 2019 the City’s median rent was \$3,165, making it affordable to only individuals earning over \$130k annually. Median rents have also increased by greater than 50% between 2005 and 2019. Rising rents in the city are of particular concern given that the City has a high renter population, and the impact of high rents falls disproportionately on BIPOC residents<sup>10</sup>.

**Percent Renter Occupancy vs. Percent Berkeley Population, 2019<sup>11</sup>**



<sup>9</sup> 2020 General Plan APR: City of Berkeley, Table 2

<sup>10</sup> Anti-Eviction Mapping Project: Densifying Berkeley: Potential Impacts on Displacement and Equity, 2022, <https://www.berkeleyside.org/wp-content/uploads/2022/04/AEMP-UpzoningReport-Draft4-3.pdf>

<sup>11</sup> Ibid.

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Fortunately, the City of Berkeley has taken numerous steps in recent years to tackle its affordable housing crisis, including issuing a \$100 million affordable housing bond, permitting Berkeley residents (outside of the fire zones) to receive near-automatic approval to build certain types of ADUs, and extensive plans to rezone BART stations to allow significant affordable housing, and a potential 2022 affordable housing bond.

While these efforts will likely dramatically increase the supply of housing in Berkeley, it will take years for the City to reap the benefits. Developments still need to be proposed, approved, and then constructed. Berkeley's large supply of vacant homes presents a unique opportunity for the City to immediately provide new units to renters, as there are no approval processes or lengthy construction timelines.

Additionally, hot housing markets often attract real estate speculation. In Berkeley, it is likely that some vacant units are in buildings purchased for the sole purpose of accruing more wealth, with no intention of acquiring tenants. While the extent of this is unknown, applying a tax on vacant homes will discourage this practice that, in aggregate, raises rents and home prices for everyone else. The Measure fulfills one of the key anti-speculation recommendations of the 2022 report by the Anti-Eviction Mapping Project entitled *Densifying Berkeley: Potential Impacts on Displacement and Equity*, and could be used to fund Berkeley's prospective Tenant Opportunity to Purchase Act.

Using the assumptions made in the San Francisco Budget Analyst report on a prospective vacancy tax, and Berkeley Rent Board data, it is estimated that Berkeley will generate between \$2,740,500 and \$5,481,000 in revenue annually and that upwards of 1,000 vacant units could become occupied within two years.<sup>12</sup>

Berkeley's proposed vacancy tax is built off of San Francisco's 2022 proposed Empty Home Tax proposal. The San Francisco vacancy tax applies only to owners of buildings with three or more units when at least one has been unoccupied for more than 182 days in a year. Single family homes and two-unit properties are exempt, and the vacancy tax increases for larger properties and units that have been empty for longer. The proposed vacancy tax for Berkeley is simpler, in that it does not distinguish between the number of units owned (beyond the first two single family homes owned by an individual or family trust) or the length of vacancy beyond the initial 182 days. It will also exempt owners of up to two single family homes (inclusive of an Accessory Dwelling Unit or a junior Accessory Dwelling Unit) so long as they are owned by natural persons or family trusts. Single family homes owned by corporations, real estate trusts, and LLCs would not be exempt. The tax rate would vary between \$3,000 and \$6,000 depending on the type of unit. Condos, duplexes, townhomes and Single Family Homes not exempt as

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<sup>12</sup> The low-end estimate is calculated by multiplying a \$3,000/unit tax by total NAR (less 10% assumed to be exempt) minus operating expenses. The high-end estimate is calculated using a \$6,000/unit tax. Is expected the revenue will be towards the high-end as most rental units are located in multi-family buildings.

described above would pay \$3,000 per year. Remaining units would pay \$6,000 annually.

The vacancy tax in Berkeley has numerous benefits. It will almost immediately increase the City's housing stock while complimenting more time-consuming approval and construction processes. Further, the tax has the potential to bring hundreds of units online within a year and generate millions in affordable housing revenue as a byproduct. A vacancy tax will also disincentivize property owners from engaging in real estate speculation, which will help limit rent and housing price increases across the City. Finally, units that are actually occupied will be brought in line with the city's housing regulations.

The draft Measure is currently drafted as a special tax meaning that, if passed, Council and City would be required to spend proceeds as specified. While the primary purpose of the proposed tax is to bring vacant units back into the housing market, the proposed Measure includes a Housing Trust Fund supporting the following activities:

- Construction of new affordable housing, including by providing pre-development to non-profit affordable housing developers, for households with an income of 80% or less of Area Median Income;
- The acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated for households with an income of 80% or less of Area Median Income;
- Rental subsidies for individuals age 60 or older and rental subsidies for households with a household income of not more than 80% of Area Median Income;
- The administration of the Empty Homes Tax and administration of the Housing Trust Fund.

As part of this referral, the Author plans to submit the measure to the City Attorney for legal review.

#### ENVIRONMENTAL SUSTAINABILITY

Existing buildings embody carbon. Maximizing utilization of existing units is a prudent use of embodied carbon.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be necessary for a legal review and to prepare a Council item placing the ordinance on the ballot. However, significant savings are anticipated as the ordinance and resolution are already drafted and included as part of this referral.

#### CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

**Attachments:**

1: Draft Resolution

Exhibit A: Draft Text of Measure

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE ADDING  
CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TAXING EMPTY HOMES ON  
THE NOVEMBER 8, 2022 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 8, 2022 General Municipal Election, a measure adding Chapter 7.54 to the Berkeley Municipal Code taxing empty homes; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 8, 2022; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services,

printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that 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:

<b>CITY OF BERKELEY ORDINANCE</b>	
Shall the measure <input type="checkbox"/>	YES
	NO

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

Exhibits

A: Text of Ordinance



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

ADDING CHAPTER 7.54 TO THE BERKELEY MUNICIPAL CODE TO TAX EMPTY HOMES

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 and Exclusions.**

**7.54.070 Administration; Penalties.**

**7.54.080 Housing Trust Fund; Deposit of Proceeds.**

**7.54.090 Expenditure of Proceeds.**

**7.54.100 Technical Assistance to the Finance Department.**

**7.54.110 Authorization and Limitation on Issuance of Bonds**

**7.54.120 Amendment of Ordinance.**

**7.54.130 Severability.**

**7.54.140 Savings Clause.**

**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 Council of the City of Berkeley finds and declares as follows:

A. Residential vacancies are an ongoing concern in Berkeley. According to the 2020 Decennial Census, 9% of Berkeley’s housing sits vacant, or a total of 4,725 units.

B. Of total vacancies, the Berkeley Rent Stabilization Board data from 2022 indicates that 1,128 fully or partially regulated units have been classified by their owners as not available to rent. Rent controlled units are a key strategy for ensuring long-term affordability.

C. Prolonged vacancy restricts the supply of available housing units and runs counter to the City’s housing objectives. Prolonged vacancies can also decrease economic activity in neighborhoods and lead to blight.

D. The Empty Homes Tax is intended to disincentivize prolonged vacancies, thereby increasing the number of housing units available for occupancy, while also raising funds for rent subsidies and 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 Chapter 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 a person under common majority ownership or common control, whether that ownership or control is direct or indirect, with any other person, including but not limited to a person that majority owns or controls, or is majority owned or controlled by, any other person.

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.

C. “Construction Period” means the one-year period following the date that the City issues a building permit for repair, rehabilitation, or construction 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 Construction Period shall mean only the one-year period following the issuance of the first building permit to or for the benefit of anyone in the Owner’s Group.

D. “Disaster Period” means the two-year period following the date that a Residential Unit was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event.

E. “Accessory Dwelling Unit,” and “Single Family Dwelling,” shall have the same meaning as defined in Section 23F.04.010.

F. "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.

G. "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.

H. "New Construction Period" means the one-year period following the date that the City issues a certificate of final completion and occupancy with respect to a Residential Unit in a newly erected building or a newly added Residential Unit in an existing building.

I. "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 one year or the period during which the Residential Unit is subject to the authority of a probate court.

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

K "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.

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

M. "Residential Unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is designed as separate living quarters, other than units occupied or intended for occupancy primarily by travelers, vacationers, or other transient occupants. 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 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.

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

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

#### **7.54.040 Imposition of Tax.**

A. Except as otherwise provided in this Chapter for the purposes described in Section 7.54.090, the City imposes an annual Empty Homes Tax on each person that owns a Residential Unit for keeping that Residential Unit Vacant.

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

(1) \$3,000 per vacant condominium, duplex, single family dwelling, or townhouse unit under separate residential unit ownership;

(2) \$6,000 per other vacant Residential Unit.

H. The rates set forth in subsections (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 tax year.

I. 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 tax 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 tax year.

J. A person shall be liable for the Empty Homes Tax only if that person, while owning a Residential Unit, has kept or is deemed to have kept that Residential Unit unoccupied, uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a tax year. In determining whether an owner has kept a Residential Unit Vacant during a tax 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 tax year.

K. The Empty Homes Tax shall take effect on January 1, 2024. The Empty Homes Tax shall expire on December 31, 2053.

#### **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 Finance Department.

B. Each person that owns a Residential Unit at any time during a tax 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 tax year in the form and manner prescribed by the Finance Department. 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 tax 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 tax year for which the return is required.

#### **7.54.060 Exemptions and Exclusions.**

A. For only so long as and to the extent that the City is prohibited from imposing the Empty Homes Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Empty Homes Tax 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 family trust that owns no more than two Single Family Dwellings (inclusive of an Accessory Dwelling Unit or a junior Accessory Dwelling Unit) shall be exempt from the Empty Homes Tax. For purposes of subparagraph 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.

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

A. Except as otherwise provided under this Chapter, the Empty Homes Tax shall be administered pursuant to Chapter 2.44 and 9.04.

B. 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. In addition to the Empty Homes Tax due as a result of this subsection (b), any owner liable for any Empty Homes Tax as a result of this subsection (b) shall be liable for a penalty in an amount equal to the Empty Homes Tax due as a result of this subsection (b).

#### **7.54.080 Housing Trust Fund; Deposit of Proceeds.**

A. Establishment of Fund. The Housing Trust Fund ("Fund") is hereby established as a special purpose fund, and shall receive all taxes, penalties, interest, and fees collected from the Empty Homes Tax imposed under this Chapter.

B. Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the Fund shall be used exclusively for the purposes described in Section 7.54.090.

C. Administration of Fund. Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the Finance Director shall file annually with the Council, by February 15 of each year, a report containing the amount of monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 7.54.090, and such other information as the Finance Director, in the Finance Director's sole discretion, deems relevant to the operation of Chapter.

D. All monies collected under the Empty Homes Tax Ordinance shall be deposited to the credit of the Housing Trust Fund ("Fund") established in subsection A of this Section. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose and shall be carried forward and accumulated in the Fund for the purposes described in Section 7.54.090.

#### **7.54.090 Expenditure of Proceeds.**

Subject to the budgetary and fiscal provisions of the Charter, monies in the Housing Trust Fund shall be appropriated on an annual or supplemental basis and used exclusively for the following purposes:

A. To the Finance Department and other City Departments, for administration of the Empty Homes Tax and administration of the Housing Trust Fund.

B. Refunds of any overpayments of the Empty Homes Tax, including any related penalties, interest, and fees.

C. All remaining amounts to provide funding, including administrative costs, for Eligible Programs, 10% of which shall be used for the programs described in subsection 7.54.090 C.(1)(a), 10% of which shall be used for the programs described in subsection 7.54.090 C.(1)(b), and 10% of which shall be used for the programs described in subsection 7.54.090 C.(1)(c). The voters intend that these remaining amounts be spent on Eligible Programs at levels in addition to amounts currently spent on such Eligible Programs and that such remaining amounts not be used to supplant existing expenditures.

(1) For purposes of this Section 7.54.090, "Eligible Programs" means:

(a) Construction of new affordable housing, including by providing pre-development to non-profit affordable housing developers. Buildings subject to expenditures under this subsection 7.54.090 C.(1)(B) shall be restricted through a recorded deed restriction or restrictions mandated for the useful life of the building to households with an household income of 80% or less of Area Median Income.

(b) The acquisition and rehabilitation of multi-unit buildings for affordable housing, and the operation of such buildings acquired and/or rehabilitated. Buildings subject to expenditures under this subsection 7.54.090 C.(1)(B) shall be restricted through a recorded deed restriction or restrictions mandated for the useful life of the building to households with an household income of 80% or less of Area Median Income.

(c) Rental subsidies for individuals age 60 or older and rental subsidies for households with a household income of not more than 80% of Area Median Income.

(2) For purposes of this Section 7.54.090, "Area Median Income" means the median income as published annually by the City Manager pursuant to Chapter 23.328.080 (Administrative Regulations), derived in part from the income limits and area median income determined by the United States Department of Housing and Urban Development, or its successor agency, for the Alameda County metro fair market rent area, adjusted solely for household size, but not for high housing cost area. The Council may modify this definition of Area Median Income solely for purposes of subsection 7.54.090 C.(1)(b) to determine area median income by zip code area.

#### **7.54.100 Technical Assistance to the Finance Department.**

The Department of Public Works, the Department of Building Inspection, the Rent Board, and the Assessor-Recorder's Office shall provide technical assistance to the Finance Department, upon the Finance Department's request, to administer the Empty Homes Tax.

#### **7.54.110 Authorization and Limitation on Issuance of Bonds.**

The City is hereby authorized to issue from time to time limited tax bonds or other forms of indebtedness to finance the costs of the projects described in Section 7.54.090. 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.

**7.54.120 Amendment of Ordinance.**

The Council may amend this ordinance in any manner by two-thirds vote, including reducing any applicable tax rates or adding or modifying exemptions that does not result in an increase in the tax imposed herein without further voter approval except as limited by Articles XIII A and XIII C of the California Constitution. 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.

**7.54.130 Severability.**

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.

**7.54.140 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.

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 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. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a

Special tax for special revenue purposes and shall be effective only if approved by a majority of the voters voting thereon.