

CITY OF BERKELEY MEASURE DD

DD	Shall an ordinance permanently increasing the gross receipts tax on owners of three or more residential rental units from 1.081% to 1.5%, prohibiting landlords from passing the tax on to sitting tenants except as allowed by law, and authorizing the Council to create a citizen panel to make recommendations on increasing affordable housing and protecting residents from homelessness be adopted? <u>Financial Implications:</u> This amendment is estimated to raise approximately \$1,400,000 annually, increasing with rents.	YES
		NO

in the first year and \$75,000 - \$90,000 annually thereafter.

s/ZACH COWAN
Berkeley City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE DD

This measure was placed on the ballot by an initiative petition that was signed by registered voters equal in number to 5% of the number of votes cast in the City of Berkeley for Governor in the last gubernatorial election.

This measure amends the City's business license tax ordinance (Berkeley Municipal Code Chapter 9.04) to permanently increase the gross receipts tax on owners of five or more residential rental units from 1.081% to 1.5%. Tax proceeds would be placed in the City's general fund and could be used for any governmental purpose.

The measure would authorize the City Council to adopt criteria for hardship exemptions.

The measure would prohibit landlords from passing the tax on to sitting tenants except as permitted by law.

The measure would authorize the creation of create a new "Citizens Advisory and Oversight Panel on Safe Affordable Housing and Homelessness Prevention" to make non-binding recommendations to the City Council on to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents from homelessness. The Panel would be required to publish an annual report that includes recommendations to the City Council on how to allocate the City's general funds to increase its stock of permanently affordable housing and prevent and reduce homelessness, as well as any additional information the Panel deems appropriate. This report would be published on the City's website within 15 days and would be transmitted to the City Council, which would have to consider it, but need not adopt its recommendations.

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

Financial Implications

The tax increase is expected to raise approximately \$1,400,000 annually, increasing with rents. Costs of administering and collecting the tax are estimated to be approximately \$175,000 annually. Expenses related to the new Panel, if established, would be approximately \$150,000

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ARGUMENT IN FAVOR OF MEASURE DD

Vote **YES on Measure DD** to support creation and preservation of affordable housing in Berkeley.

Earlier this year, **more than 3,300 Berkeley voters** signed petitions to get Measure DD on the ballot. By signing, they were saying two things. First, that housing affordability needs to be a top priority of our city.

Secondly, they were saying, it is only fair to ask owners of residential rental units to contribute a little more by accepting **an across-the-board increase** in the tax they pay on rent they collect from tenants.

Today, owners of three or more residential rental units in Berkeley pay a business license tax equal to 1.081 percent of their annual gross receipts from rents. Measure DD increases this tax **by about 40 percent** from 1.081 percent to 1.5 percent of gross receipts.

The higher tax rate under Measure DD will mean an additional \$1.4 million will be available to the Berkeley City Council in the first year alone **to support affordable housing**. And revenue will grow as rent payments increase year after year.

Measure DD contains an assurance that the extra revenue goes to its intended purposes. It directs the City Council to establish a **Citizen Advisory Panel** to make budget recommendations on increasing affordable housing spending.

Lastly, and importantly, Measure DD is the only one of the two residential rental unit taxes on our November ballot that **doesn't play favorites by exempting big developers** and owners of new apartment complexes.

We don't claim Measure DD is the only answer to the **housing affordability** challenge facing our city and region. We do believe it is the fairest and most reasonable approach available to our city at this time.

We hope you agree. **VOTE YES on Measure DD.**

s/NATHAN R. WOLLMAN
Tenant & Lead Initiative Proponent

s/JUDITH M. SHAW
Homeowner

s/CLAIRE PIRIE
Tenant

s/KATHRYN SNOWDEN
Homeowner

s/JON A. VICARS
Rental Property Owner

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE DD

Vote No on DD

To support creation and preservation of affordable housing in Berkeley, **vote no on DD.**

While this measure is designed to look progressive, in truth **DD is not the real thing.**

The real purpose of DD is to save the large landlords money. Poison pill language in **DD would void U1**, which the City Council placed on the ballot by a unanimous vote.

U1 was crafted with extensive public input and is backed by a broad coalition of groups while Measure DD was crafted behind closed doors and placed on the ballot by out-of-town signature gatherers.

Only one of these measures would achieve its stated purpose. In the first year, **U1 would collect up to \$3½ million**, while **DD would only collect about \$1.4 million.** DD's shortfall is intentional.

DD is also unfair as shifts the burden from large landlords by taxing the smallest landlords, apartments that have dedicated affordable rents, and new construction.

Proponents of Measure DD say they "don't want to play favorites by exempting big developers." Who are they kidding? Their measure was put on the ballot by big landlords who don't want to pay their full share to fund affordable housing.

The difference between Measure DD and U1 is simple: DD is sponsored and paid for by big landlords to reduce the amount they have to pay for affordable housing.

Vote Yes on U1 and No on DD.

s/JESSE ARREGUIN
Berkeley City Councilmember, District 4

s/KRISS WORTHINGTON
Berkeley City Council

s/MAXWELL G. ANDERSON JR.
City Councilmember

s/KEVIN H. RAMIREZ
President, Berkeley Student Cooperative

s/LEAH SIMON-WEISBERG
Legal Director, Housing Advocate

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ARGUMENT AGAINST MEASURE DD

SAY NO TO BIG LANDLORD MEASURE DD

Berkeley's largest landlords spent more than \$65,000 to hire teams of out-of-town signature gatherers to put this misleading measure on the ballot. If this measure gets more votes than Measure U1, larger landlords will save millions every year in lower taxes, while affordable housing and homeless services will lose out by the same amount.

Rents are through the roof in Berkeley. This year landlords will collect \$82 million more in rent than they did five years ago. They can afford to pay up to an additional \$3½ million a year that the City can use to fund affordable housing and homelessness prevention. That's only \$30 per unit per month, far less than the last rent increase.

That's why:

- The Berkeley City Council voted unanimously to place Measure U1 on the ballot.
- Measure U1 is sponsored by a broad community coalition including all of Berkeley's major affordable housing and homeless services providers including the Berkeley Food and Housing Project and East Bay Housing Organizations; environmental groups including the Sierra Club, student organizations including the Associated Students of the University of California and the Berkeley Student Cooperative, the Berkeley Tenants Union, labor unions, senior and disability advocates and many more.

Measure DD will raise less than half as much as Measure U1 and also taxes the small landlords with fewer than five units so the big guys can pay less.

Don't be fooled. Measure DD is bankrolled by big landlords to get themselves off the hook. Measure U1 is the real affordable housing measure, supported by affordable housing organizations because it brings in more than double the revenue for affordable housing and homelessness prevention, paid for by the landlords.

Don't be fooled by their heavily-funded and misleading campaign. **Vote NO on DD and YES on U1**, the real affordable housing measure.

s/JESSE ARREGUIN

Berkeley City Councilmember

s/KRISS WORTHINGTON

Berkeley City Councilmember

s/MAXWELL G. ANDERSON JR.

Berkeley City Councilmember

s/MATTHEW LEWIS

ASUC Housing Commission Chair on behalf of the Associated Students of the University of California

s/IGOR TREGUB

President, East Bay Young Democrats

REBUTTAL TO ARGUMENT AGAINST MEASURE DD

The truth is a handful of Berkeley Council members are trying to score political points in an election year by proposing yet another tax hike—one they're disguising as a solution to the housing crisis.

They don't care about the predictable impact of their Measure U1 on Berkeley tenants or on Berkeley's supply of rent-controlled housing.

And they can't stand the fact that somebody stood up to them by crafting a **common sense alternative, Measure DD**.

Here are **five facts you need to know about Measure U1**:

- It imposes a **166 percent increase** in the gross receipts tax that landlords pay on rent they collect from residential tenants.
- It **exempts developers and big, out-of-town owners of new luxury apartment complexes**—properties not subject to rent control, charging the highest rents, and changing the fabric of Berkeley.
- It **harms tenants** because a tax increase of this size will get passed along in the form of higher rents, less money for property improvement or both.
- It directs money from the tax into the city General Fund where **Council members can spend it however they want**.
- And it means **additional and unnecessary spending** to administer and enforce a new two-tier tax system—one that punishes smaller, rent-controlled landlords while rewarding developers and owners of new luxury apartment complexes who will pay nothing.

Vote NO on Measure U1—because, with U1, Berkeley loses.

Then, Vote YES on Measure DD—commonsense tax policy to create and preserve affordable and below-market-rate housing.

And visit www.realaffordablehousing.com.

s/CHARLES P. SMITH

Homeowner

s/DYLAN MCCALL

Tenant

s/JUDITH SHAW

Rental Property Owner

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FULL TEXT OF MEASURE DD

The Fair & Equitable Residential Rental Income Business License Tax Act

NOTE: **Unchanged Code text and uncodified text** are in plain font.

Additions to Codes are in single-underline italics Times New Roman font.

Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.

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

Section 1. Title.

This measure shall be known and may be cited as “The Fair & Equitable Residential Rental Income Business License Tax Act.”

Section 2. Findings and Purpose

Whereas, the fairest and most equitable way of increasing revenue to the General Fund from the business license tax on rental residential property is to ask that all individuals and entities already required to pay the tax agree to share the burden of a business license tax increase equally; and

Whereas, the cost of housing and access to affordable housing is one of our city, county and region's greatest challenges; and

Whereas, the failure of government at all levels to respond effectively to the housing affordability challenge risks increased homelessness, displacement, loss of community diversity, and heightened economic insecurity; and

Whereas, the City of Berkeley has long had a municipal commitment to address housing affordability, most notably with the adoption of municipal rent control and eviction protection legislation; and

Whereas, the City, recognizing that regulating the terms of tenancies is just one housing affordability strategy, must continue to explore multiple policy approaches that increase the supply of housing and provide access to rent or buy; and

Whereas, the City's General Fund is one source of municipal support for affordable housing development and preservation, rent subsidies, and homeless shelter and care services; and

Whereas, the City's business license tax as applied to owners and operators of rental housing is one source of General Fund revenue that, at the discretion of the City Council, can be used to support municipal affordable housing and shelter and care programs; and

Whereas, it is reasonable to increase the business license tax on individuals and entities engaged in the business of renting housing;

Now, therefore, the City institutes a fair and equitable increase on the business license tax for rental properties within the City.

Section 3. That Section 9.04.195 of the Berkeley Municipal Code is amended to read as follows:

9.04.195 Rental of real property.

A. Every person engaged in the business of renting or letting a building structure or other property, or a portion

of such building, structure or property, within the City for ~~residential use any purpose~~, except property designated for and used exclusively for residential use which contains fewer than three dwelling units, shall pay an annual license fee as provided in Section 9.04.240 ~~for “Rental of residential real property”~~ for each thousand dollars of gross receipts.

B. Every person engaged in the business of renting or letting a building structure or other property, or a portion of such building, structure or property, within the City for any purpose other than for residential use shall pay an annual license fee as provided in Section 9.04.240 for “Rental of non-residential real property” for each thousand dollars of gross receipts.

~~BC.~~ Every person engaged in the business of providing lodging for five or more persons, for direct or indirect compensation, shall pay an annual license fee as provided in Section 9.04.240 ~~for “Rental of residential real property”~~ for each thousand dollars of gross receipts.

~~CD.~~ A lessor may exclude from gross receipts any receipts received which represent rent for the use of space by the lessor, by a partner, when the lessor is a partnership, or by an affiliated corporation, as defined in Section 9.04.025(I).

~~DE.~~ A lessor may not combine returns, or include income derived from real property rental with income from other business activities taxed under other provisions of this chapter. A separate license is required for each building or structure or lodging property, subject to business license taxation, as provided in this section.

F. The City Council may establish a hardship exemption program for property owners subject to the provisions of this section, including specific criteria for hardship and regulations implementing the program.

G. Residential property owners may not pass on to tenants part or all of any increase in the business license tax through an increase in rent, except as otherwise allowed by law.

Section 4. That Section 9.04.240 of the Berkeley Municipal Code is amended to read as follows:

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9.04.240 Rates--General.

The base rate for gross receipts business license taxes is established at one dollar and twenty cents for each one thousand dollars gross receipts per year.

Industry Classification Category	Tax Basis	Base Rate Factor	Per Year Tax Rate for \$1,000	Section Reference
Administration headquarters	Gross payroll	1.0	1.20	9.04.190
Business personnel and repair services	Gross receipts	1.5	1.80	9.04.160
Medical Cannabis Business	Gross receipts	20.83	25.00	9.04.136
Non-Medical Cannabis Business	Gross receipts	83.25	100.00	9.04.136
Construction contractor	Gross receipts	1.5	1.80	9.04.180
Firearms and firearm ammunition	Gross receipts	125.0	150.00	9.04.177
Grocer (retail or wholesale)	Gross receipts	0.5	0.60	9.04.140
Manufacturing	Value added	1.0	1.20	9.04.185
Miscellaneous business	Gross receipts	2.0	2.40	9.04.220
Motor vehicle sales	Gross receipts	1.0	1.20	9.04.145
Nonprofit organizations	Gross receipts	0.5	0.60	9.04.305
Private rubbish haulers	Gross receipts	125.0	150.00	9.04.176
Private franchised/ recycling rubbish haulers	Gross receipts	1.5	1.80	9.04.176
Professional-Semiprofessional	Gross receipts	3.0	3.60	9.04.165
Professional sports events	Gross receipts	83.33	100.00	9.04.175
Recreation and entertainment	Gross receipts	3.75	4.50	9.04.170
Rental of residential real property	Gross receipts	9.0 12.5	10.81 15.00	9.04.195
Rental of non-residential real property	Gross receipts	9.0	10.81	9.04.195
Retail trade	Gross receipts	1.0	1.20	9.04.135
Wholesale trade	Gross receipts	1.0	1.20	9.04.150

Section 5. That Chapter 3.82, “The Citizens Advisory and Oversight Panel on Safe Affordable Housing and Homelessness Prevention,” is added to the Berkeley Municipal Code and reads as follows:

3.82.010 Establishment. The City Council may establish a Citizens Advisory and Oversight Panel on Safe Affordable Housing and Homelessness Prevention to make non-binding recommendations to the City Council on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

3.82.020 Membership. Appointments to the Panel shall be made in accordance with Sections 2.04.030 through 2.04.130 of this Code. The Panel shall be composed of nine (9) members who live or work in the City, all of whom shall be appointed by the City Council. The City Manager shall identify a City employee to provide clerical assistance and administrative support to the Panel. Each member shall have experience in: (i) the production or preservation of affordable housing; or (ii) the provision of services to prevent homelessness; or (iii) the research on or evaluation of affordable housing or homelessness prevention programs.

3.82.030 Terms. Terms shall expire and vacancies shall be filled in accordance with the provisions of Sections 2.04.030 through 2.04.130. In accordance with Section 3.02.040, members of the Panel may be reappointed, but shall not serve more than eight (8) consecutive years.

3.82.040 Officers, meetings and procedures.
A. 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.

B. The Panel shall annually and by majority vote: (i) appoint one of its members as Chair and one of its members as Vice-Chair; (ii) approve bylaws to facilitate the proper functioning of the Panel; and (iii) establish a regular time and place of meeting.

3.82.050 Functions.
A. The Panel shall annually and by majority vote publish an annual report that includes recommendations to the City Council on how to allocate the City’s general funds to increase its stock of permanently affordable housing and prevent and reduce homelessness, as well as any additional information that the Panel deems appropriate.

B. The City Manager shall, within 15 days of receipt of the publication of the Panel’s annual report, publish the report on the City’s website and transmit the report to the City Council.

C. The City Council may consider, and need not follow, the Panel’s recommendations, and may consider annually informing the Panel as to the extent that the Panel’s recommendations are implemented.

Section 6. Effective Date.

This Ordinance shall be effective pursuant to applicable law, and shall become operative on January 1, 2017.

Section 7. Severability.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall

not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The voters hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

Section 8. Conflicting Measures.

This measure is intended to be comprehensive. It is the intent of the people of the City of Berkeley that in the event this measure and one or more measures relating to the business license tax applicable to the rental of real property shall appear on the same ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure appearing on the same ballot relating to the business license tax applicable to the rental of real property, then this measure shall take effect to the extent not in conflict with said other measure or measures.

Section 9 Liberal Construction.

This measure is an exercise of the initiative power of the people of the City of Berkeley for the taxation of rental property within the City, and shall be liberally construed to effectuate its purposes.

Section 10. Election

Pursuant to Article XIII C of the Constitution of the State of California, this measure shall be submitted to the qualified electors of the City of Berkeley at the November 8, 2016 consolidated general election or, if this measure does not qualify for the November 8, 2016 election, then at the next soonest election permitted by law.