

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

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

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

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

Chapter 7.54

Empty Homes Tax

Sections:

7.54.010 Short Title.

7.54.020 Findings and Purpose.

7.54.030 Definitions.

7.54.040 Imposition of Tax.

7.54.050 Returns; Presumption of Vacancy.

7.54.060 Exemptions.

7.54.070 Administration; Penalties.

7.54.080 Use of Funds for General Municipal Purposes.

7.54.090 Technical Assistance to the City Manager; Annual Reports.

7.54.100 Authorization and Limitation on Issuance of Bonds.

7.54.110 Severability.

7.54.120 Savings Clause.

7.54.130 Liberal Construction.

7.54.010 Short Title.

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

7.54.020 Findings and purpose.

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

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

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

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

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

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

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

7.54.030 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.54.040 Imposition of Tax.

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

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

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

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

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

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

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

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

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

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

7.54.050 Returns; Presumption of Vacancy.

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

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

7.54.060 Exemptions.

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

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

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

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

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

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

7.54.070 Administration; Penalties

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

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

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

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

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

7.54.080 Use of Funds for General Municipal Purposes.

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

7.54.090 Annual Reports.

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

7.54.100 Authorization and Limitation on Issuance of Bonds.

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

7.54.110 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

7.54.120 Savings Clause.

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

7.54.130 Liberal Construction.

This Chapter shall be liberally construed to effectuate its purpose.

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

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

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

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