

**AGENDA FOR THE SPECIAL MEETING
DUNSMUIR CITY COUNCIL
January 11th , 2024**

REGULAR SESSION: 6:00 pm

Join Zoom Meeting: <https://us02web.zoom.us/j/84424135442>

Or Call: +1 669 900 6833

Enter Meeting ID: 844 2413 5442

As a courtesy, please turn off cell phones and electronic devices while the meeting is in session. Thank you.

- 1. CALL TO ORDER AND FLAG SALUTE**
- 2. ROLL CALL**
- 3. SPECIAL PRESENTATIONS AND ANNOUNCEMENTS**
- 4. PUBLIC COMMENT**

Regular City Council meetings are posted on the City's website to keep City residents informed of City Council actions and deliberations that affect the community. Meetings are scheduled to be televised on the 1st and 3rd Thursday of each month. Meetings that take place on dates other than the 1st and 3rd Thursday will not be televised.

This time is set aside for citizens to address the City Council on matters listed on the Consent Agenda as well as other items **not** included on the Regular Agenda. If your comments concern an item noted on the Regular Agenda, please address the Council when that item is open for public comment. **Each speaker is allocated three (3) minutes to speak. Speakers may not cede their time to another speaker.** Comments should be limited to matters within the jurisdiction of the City. Speaker forms are available from the City Clerk, 5915 Dunsmuir Ave, Dunsmuir, on the City's website, or on the podium. The City Council can only take action on matters that are on the Agenda, but may place matters brought to their attention at this meeting on a future Agenda for consideration. If you have documents to present to members of the City Council, please provide a minimum of seven (7) copies.

- 5. COUNCIL AND STAFF COMMENTS**
- 6. COMMITTEE REPORTS**
- 7. APPROVAL OF MINUTES – of December 7th , 2023**
- 8. CONSENT AGENDA:**
 - A. Check Register: 12/2/23-1/5/2024**
- 9. PUBLIC HEARING: NONE**
- 10. OLD BUSINESS**
 - A. AMTRAK Dogwood Trees Discussion**
- 11. NEW BUSINESS**
 - A. Code Review Ad hoc Committee**
 - B. Discuss Increasing Transient Occupancy Tax for Airbnb's and Hotels**
 - C. Discuss Housing Vacancy Tax on vacant Residential Units.**

12. FUTURE AGENDA ITEMS

Future Agenda Items are topics brought to the City Council for review and/or action. All dates refer to first introductions and can be altered due to time and priority levels.

- Fireworks Ordinance
- Historic Commission Reformation and/or Review
- Cannabis Ordinance
- Land Acknowledgement
- Special Event Ordinance
- Sheriff's Contract Extension
- Park & Rec Joint Meeting
- Discuss funding of Housing Element Update
- Snow Removal Policy & Parking Ordinance
- RFP for Planning
- Public Works Building Bid Documents

13. ADJOURNMENT

Copies of this agenda were posted at City Hall, Dunsmuir City Library, and City Website 72 hrs. prior to meeting time.

The City of Dunsmuir does not discriminate on the basis of race, color, national origin, religion, age, gender, sexual orientation, disability or any other legally protected classes in employment or provision of services. Persons who need accommodations for a disability at a public meeting may call City Hall at (530) 235-4822 for assistance. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to accommodate participation in the meeting.

CERTIFICATION

This is the official Dunsmuir City Council Agenda, created and posted in accordance with the Dunsmuir City Council Protocols.

Wendy Perkins, Deputy City Clerk

Date

CITY OF DUNSMUIR
CITY COUNCIL MEETING MINUTES
December 7th, 2023

CALL TO ORDER AND FLAG SALUTE:

Meeting was called to order @ 5:45 pm by Mayor Lucchesi

ROLL CALL:

Council members present: Clarno, Keisler, Deutsch, Bryan, Lucchesi

Absent: None

City staff present: City Manager Rief, Deputy City Clerk Perkins

PUBLIC COMMENT ON CLOSED SESSION - None

ADJOURN TO CLOSED SESSION – Keisler and Lucchesi recused themselves.

Closed Session Conference with Legal Counsel –Existing Litigation (Gov.Code 54956.9)

Name of case: SHOEMAKER v CITY of DUNSMUIR

(Siskiyou Co. Superior Court No. 23CV11088)

REPORT BACK FROM CLOSED SESSION: Direction Given to Staff

SPECIAL PRESENTATIONS AND ANNOUNCEMENTS

A. Recognition of Dale Faulkner of Dunsmuir Recreation & Parks District

Mayor reads proclamation supporting the work of Dale and Mike Rodriguez speaks to his contributions.

B. Union Pacific Railyard Oil Spill Response Clean-up Update

Mayor gives an update on the clean-up response.

PUBLIC COMMENT - Open at 6:18 p.m.

Arth – Lives in the historic district. Has great hopes for the Historic District and is concerned for the buildings in this District and preserving them.

Lucchesi – Give some anecdotes regarding the Jewish people and celebration of Chanukah.

Krash Villegas – Doesn't believe the “house of glass” is a historic building. Explains they have always been transparent regarding what they are doing with this building. Makes his case that they are keeping this place safe and secure by use of a caretaker. Is frustrated with the lack of cooperation with the city in regard to his rehabbing this building. Public comment closed at 6:30 pm.

COUNCIL AND STAFF COMMENTS

Ortiz – None

Rief – Gives updates on public works projects. 3 new staff members in Public Works with a 4th one ready to start.

Clarno – Happy Holidays.

Bryan – Recognize public comment regarding downtown vacant and distressed ordinance. There is a downtown revitalization underway. Thanks to Mt. Shasta ski park for donating the Christmas Tree for downtown.

Deutsch – Committee for Candles in Canyon has joined with Second Saturdays to bring their energies together. Pancake breakfast is this Saturday morning @ St. John’s Parish, there will be caroling and tree lighting in the evening starting @ 5:30. Will have street blocked off for this event.

Keisler – Have breakfast with Santa. Santa will sing his songs. Come to pizza factory for bake sale.

Lucchesi – Gives update that there will be a housing element workshop open house December 18th starting at 6 p.m. - 8.p.m. at Council Chambers. Closed @ 6:25

COMMITTEE REPORTS - None

APPROVAL OF MINUTES of November 16th, 2023

Motion by Keisler 2nd by Lucchesi to approve minutes of November 16th, 2023

Voice Vote:

AYES: Clarno, Keisler, Deutsch, Bryan, Lucchesi

NOES: None

ABSENT: None

ABSTAIN: None

CONSENT AGENDA

- A. Check Register 11/10-12/1/2023**
- B. Approval of the 2024 Schedule of Dunsmuir City Council Meetings**
- C. Approval of Temporary Street Closure December 9th for Candles in the Canyon and Caroling, Tree Lighting**
- D. Local Transportation Fund Claim Form to Obtain and Receive Funds**

Motion to adopt consent agenda by Keisler , 2nd by Bryan

Voice Vote: AYES: Clarno, Keisler, Deutsch, Bryan, Lucchesi

NOES: None

ABSENT: None

ABSTAIN: None

PUBLIC HEARINGS: NONE

OLD BUSINESS:

A. Hope/Apple/Branstetter St Pavement Overlay Bid Acceptance

City Manager Rief introduces this item to give some background information.

Public comment open at 6:40 p.m. None

Motion by Deutsch 2nd by Keisler to accept the Bid for 2023 Pavement Overlay Project (from Darren Taylor Construction Inc). in the amount of \$201,799.80 with Construction administration and contingency and a project total of \$217,000.00

Roll Call Vote: AYES: Clarno, Keisler, Deutsch, Bryan, Lucchesi
 NOES: None
 ABSENT: None
 ABSTAIN: None

NEW BUSINESS:

A. Public Works Building Lease for Winter

City Manager introduces the item to provide background. This building will be used for storage and maintenance of city equipment. Snow plows will be located this way. Maintenance will be performed here on city vehicles and equipment.

No Public comment.

Motion by Bryan 2nd by Keisler to approve the lease agreement with Castella fire district for 30844 Crag View Drive, Dunsmuir, CA 96025 and adjust the budget by \$7800.

Roll Call Vote: AYES: Clarno, Keisler, Deutsch, Bryan, Lucchesi
 NOES: None
 ABSENT: None
 ABSTAIN: None

B. Selection of Financial Management Software

Finance Director Michaelson goes over this item.

There is gWorks and Tyler VRB pro. Recommendation is to go with gWorks. Has lowest fees.

Public comment open at 6:54 p.m. None

Motion by Keisler 2nd by Deutsch to select gWorks as the city's financial management software and authorize finance director to enter in agreement.

Roll Call Vote: AYES: Clarno, Keisler Deutsch, Bryan, Lucchesi
 NOES: None
 ABSENT: None
 ABSTAIN: None

C. Discussion on Pre-Agenda Meeting Schedule for 2024

City Manager Rief proposes moving the meetings to Wednesday rather than Thursday. When all documents are due on Friday it makes a crunch. No objection to the request
public comment open at 6:56 p.m.

Arth – Wants to speak to the protocols in general. Speaks to the lack of movement of the Future Agenda items. For pre-agenda meetings, meeting are meant to be as useful as possible. Have a huge list of things that seems the city is just too busy to do.

Motion by Lucchesi 2nd by Deutsch to update protocols change pre-agenda meeting scheduled dates to the Wednesday prior to the next Council meeting (8 days prior) rather than Thursday (7 days prior) All in favor.

D. Council Reorganization – Selection of Mayor and Vice Mayor for 2024

Motion by Keisler 2nd by Deutsch to select Michael Clarno as Mayor of Dunsmuir

All in favor.

Deutsch moves 2nd by Lucchesi to select Matthew Bryan to be Vice Mayor

All in favor

Public comment open at 7:04 p.m. - None

E. Committee Appointments for 2024

Standing:

Finance Committee: Currently Bryan (expiring) and Clarno (on 2nd year)

No changes other than Bryan will server another term.

Solid Waste Committee: Currently Keisler and Lucchesi

Ad Hoc's:

Airport Advisory Ad Hoc – currently Deutsch and Lucchesi

Mossbrae Falls Trail Ad Hoc – Currently Lucchesi and Keisler

Public Safety Ad Hoc – Currently Lucchesi and Bryan

Assignments

LOLA – Remains Mayor and Vice Mayor

Siskiyou County Solid Waste Joint Powers Authority – currently CM and Lucchesi

Siskiyou County LTC – Currently Council member Deutsch is assigned.

Airport Land Use Committee: Currently Lucchesi

Chamber of Commerce Liaison – Currently Clarno

Public comment open @ 7:09 p.m.

Arth is disappointed with the Committee system. DPAC has since disbanded. Airport committee never meets, Solid Waste, never meets. What’s the use of populating committees that don’t meet?

FUTURE AGENDA ITEMS – carry over all from last month

ADJOURNMENT @ 7:13 p.m.

Mayor Clarno

ATTEST:

Deputy City Clerk Perkins

Check Register Report

Date: 01/04/2024

Time: 9:22 am

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City of Dunsmuir

BANK: U.S. BANK

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
U.S. BANK Checks								
58416	12/08/2023	Printed			9885	ANTHONY CATLETT	winter change over 2001Ford F2	161.20
58417	12/08/2023	Printed			1910	AT&T	lift station alarm phones	184.52
58418	12/08/2023	Printed			2800	BAXTER AUTO PARTS, INC.	cross chain with return credit	223.55
58419	12/08/2023	Printed			9820	CITY OF DUNSMUIR	i-5 lift station water 250800	566.28
58420	12/08/2023	Printed			6325	CLEMENS WASTE REMOVAL	weight dump fees Nov2023	6,397.80
58421	12/08/2023	Printed			10743	GARLAND TECH, INC.	IT support, M365 licensing	2,114.64
58422	12/08/2023	Printed			25317	KENNY & NORINE	Dunsmuir city general legal	828.00
58423	12/08/2023	Printed			7260	L.N. CURTIS AND SONS, INC	size 12 hazmat boot	184.84
58424	12/08/2023	Printed			31212	MANFREDI'S DEPOT	Fire department Fuel Nov23	1,899.32
58425	12/08/2023	Printed			10887	MSW CONSULTANTS	SOLID WASTE RATE STUDY	2,535.00
58426	12/08/2023	Printed			33130	MT SHASTA CITY	Oct 2023 CDBG-CV invoicing	44,110.61
58427	12/08/2023	Printed			47520	NAPA	2015 Ford F250 Tie Rod End	79.08
58428	12/08/2023	Printed			9201	O'REILLY AUTO PARTS	H2O Sep vlv,Drag link, Credit	40.18
58429	12/08/2023	Printed			10753	PACE ANALYTICAL SERVICES, LLC	ww weekly LND 23K0789	384.59
58430	12/08/2023	Printed			10879	SILVER & WRIGHT LLP	4427Duns, 4120Edyth,patricia	4,969.43
58431	12/08/2023	Printed			10289	SISKIYOU CO TOURISM IMPROV DIS	July-Aug-Sept 2023 1st QTR TOT	21,810.95
58432	12/08/2023	Printed			47669	SISKIYOU OPPORTUNITY CENTER	Nov 2023 Blue Bags	594.60
58433	12/08/2023	Printed			57228	SOLANO'S CONTRACTOR	roofing seinna blend	176.01
58434	12/08/2023	Printed			10791	STEWART ENGINEERING INC	June23-Oct2023 Engineering	159,147.89
58435	12/08/2023	Printed			10888	STILLWATER ECOSYSTEM,	bat habitat assessment	9,931.55
58436	12/08/2023	Printed			48710	SWRCB	Facility ID5SSO10812	3,746.00
58437	12/08/2023	Printed			48710	SWRCB	Facility ID 5A470101001	5,473.00
58438	12/08/2023	Printed			53806	USA BLUE BOOK, INC	stablCal Ampule Cal Kit for	337.29
58439	12/08/2023	Printed			10731	VYVE	171-576572 wwtp internet	111.09
58440	12/08/2023	Printed			10731	VYVE	internet services172-576567	166.09
58441	12/08/2023	Printed			60005	YREKA TRANSFER COMPANY	Job2040, Job2041 Drop box PW	2,592.80
58442	12/15/2023	Printed			514	ADVANCED INFOSYSTEMS	Utility billing Dec 2023	400.59
58443	12/15/2023	Printed			2800	BAXTER AUTO PARTS, INC.	O bottle, INM 25% CD/AR 80	450.43
58444	12/15/2023	Printed			10793	BIG VALLEY SANITATION	Tauhindauii park blue room	168.00
58445	12/15/2023	Printed			5325	REBECCA CATLETT	Dec2023 City Cleaning	115.50
58446	12/15/2023	Printed			10783	CIVICWELL	4-440 Dunsmuir ATP Oct2023	7,686.97
58447	12/15/2023	Printed			10580	CROSS CONNECTIONS	Radio seaker mic, w/ holster	4,639.42
58448	12/15/2023	Printed			10866	DEAN LAW FIRM, INC	ctydu-01 City Vs Foster #A	288.00
58449	12/15/2023	Printed			9850	DUNSMUIR TRUE VALUE	Nov 2023 Hardware supply	984.31
58450	12/15/2023	Printed			9303	FASTENAL COMPANY	first aid kit, whit roll towel	1,409.20
58451	12/15/2023	Printed			10889	KEVIN COBB'S BACKFLOW	Backflow and PRV tests	995.00
58452	12/15/2023	Printed			7260	L.N. CURTIS AND SONS, INC	2-size 10 Hazmat boots	547.67
58453	12/15/2023	Printed			35508	NORTHSTATE ASPHALT	Road Base	1,825.59
58454	12/15/2023	Printed			9201	O'REILLY AUTO PARTS	dump truck lights for plowing	30.79
58455	12/15/2023	Printed			10753	PACE ANALYTICAL SERVICES, LLC	ww weekly lnd 23K0897	1,608.03
58456	12/15/2023	Printed			39005	PACE ENGINEERING, INC.	0204.40 city engineer services	132,402.00
58457	12/15/2023	Printed			39015	PACIFIC POWER	63601721-001 5Nov2023	4,196.81
58458	12/15/2023	Printed			44240	RAMSHAW'S ACE HARDWARE	mechanic tool set Fire Depart	141.68
58459	12/15/2023	Printed			10616	RENTAL GUYS	trailer rental 500gal vac	5,332.05
58460	12/15/2023	Printed			47676	SMITH BUILDING SERVICES, LLC	plan check review	2,644.73
58461	12/22/2023	Printed			9885	ANTHONY CATLETT	rain x wiper blades #301	58.16
58462	12/22/2023	Printed			10882	BAINS TOWING & RECOVERY LLC	tow ford F250 to crown motors	387.00
58463	12/22/2023	Printed			10793	BIG VALLEY SANITATION	hedge creek porta potty	789.75
58464	12/22/2023	Printed			10890	BSB CINDER CO.	2 loads of cinders delivered	1,810.20
58465	12/22/2023	Printed			10001	CED-REDDING	8ft,4ft lamp recycling kits	543.78
58466	12/22/2023	Printed			6325	CLEMENS WASTE REMOVAL	refuse contract Dec2023	29,055.03
58467	12/22/2023	Printed			6630	ANTHONY CONGI	qtrly phone reimbursement	90.00
58468	12/22/2023	Printed			10211	DEPARTMENT OF JUSTICE	Nov 2023 Fingerprint roll	147.00

Check Register Report

Date: 01/04/2024

Time: 9:22 am

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City of Dunsmuir

BANK: U.S. BANK

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
U.S. BANK Checks								
58469	12/22/2023	Printed			9303	FASTENAL COMPANY	TP, paper towels, gateraid	259.29
58470	12/22/2023	Printed			10757	GATEHOUSE MEDIA CA HOLDINGS	2023 pavement overlay project	396.81
58471	12/22/2023	Printed			17013	GOLD NUGGET PRINTING CO.	bulding permit worksheet	255.04
58472	12/22/2023	Printed			10892	GWORCS	software implementation,	39,500.00
58473	12/22/2023	Printed			10891	IWORQ	systems software management	15,000.00
58474	12/22/2023	Printed			9999992289	KIMLEY-HORN & ASSOC., INC.	northend twy ph1 Nov services	7,691.25
58475	12/22/2023	Printed			10753	PACE ANALYTICAL SERVICES, LLC	ww monthly 23L0120	983.78
58476	12/22/2023	Printed			39015	PACIFIC POWER	willow st i-5 lights	10.86
58477	12/22/2023	Printed			39015	PACIFIC POWER	63601721-017 1 mott airport rd	21.55
58478	12/22/2023	Printed			39015	PACIFIC POWER	street lights 63601721-015 5	1,732.82
58479	12/22/2023	Printed			39825	PITNEY BOWES, INC	stamp sheets	44.61
58480	12/22/2023	Printed			45110	MARIO J. RUBINO	Dec 2023 Treasurer	50.00
58481	12/22/2023	Printed			10677	SHASTA VALLEY PEST CONTROL	Dec 2023 Pest control	200.00
58482	12/22/2023	Printed			47659	SISKIYOU COUNTY EDC	MOU Dec 2023	500.00
58483	12/22/2023	Printed			9918	SISKIYOU MEDIA COUNCIL	Aug 3rd Meeting balance	250.00
58484	12/22/2023	Printed			53813	US BANK CORP PAYMENT SYSTEMS	cc051 Nov Dec2023	10,288.67
58485	12/22/2023	Printed			53806	USA BLUE BOOK, INC	Repl. Stir Paddle for YSI 5905	889.50
58486	01/05/2024	Printed			1923	AXCES INDUSTRIAL SUPPLY INC.	float away degreaser	2,998.43
58487	01/05/2024	Printed			9437	BLUE STAR GAS	library tank 5714Dunsmuir Ave	992.97
58488	01/05/2024	Printed			4050	BORGES & MAHONEY	detector system so2	2,194.47
58489	01/05/2024	Printed			99016	CALIFORNIA BLDG STANDARDS COMM	Oct- Dec 2023	17.68
58490	01/05/2024	Printed			5325	REBECCA CATLETT	city cleaning Dec-Jan24	181.50
58491	01/05/2024	Printed			9820	CITY OF DUNSMUIR	sdsa pump acct350460	786.28
58492	01/05/2024	Printed			6325	CLEMENS WASTE REMOVAL	Dec 2023 Dump fees/	6,767.84
58493	01/05/2024	Printed			8600	DEPT OF CONSERVATION	Oct-Dec 2023 Strong motion	8.29
58494	01/05/2024	Printed			10148	DIVERSIFIED ELECTRIC, INC.	4841 Duns Ave	3,970.00
58495	01/05/2024	Printed			10149	DIVISION OF THE STATE ARCHITECT	Oct-Dec 2023 DSA 796 Fee	10.40
58496	01/05/2024	Printed			9303	FASTENAL COMPANY	grape drink rtd, padlock replc	479.09
58497	01/05/2024	Printed			5219	FERGUSON ENTERPRISES INC,1423	cncrt elec bx lid, cncrt lid	919.43
58498	01/05/2024	Printed			17297	GRAINGER	half mask resprator, elastomer	239.63
58499	01/05/2024	Printed			17310	GREAT NORTHERN CORP.	20-CDBG-CV2-3-00050	8,150.39
58500	01/05/2024	Printed			10657	GRIMM, GREG	grade3 services Dec2023	3,635.00
58501	01/05/2024	Printed			18200	HACH COMPANY	RGT SET TNT AMVER HR 50 TESTS	598.39
58502	01/05/2024	Printed			10871	KOSMONT COMPANIES	Sept 2023 Retail Recruitment	32,383.85
58503	01/05/2024	Printed			31625	MEYER & SONS HEATING	toilet for airport	347.16
58504	01/05/2024	Printed			10730	NBS GOVERNMENT FINANCE GROUP	fire assessment property data	1,180.48
58505	01/05/2024	Printed			10753	PACE ANALYTICAL SERVICES, LLC	WW biweekly 23L0658	1,174.16
58506	01/05/2024	Printed			39015	PACIFIC POWER	city electric	8,337.81
58507	01/05/2024	Printed			39015	PACIFIC POWER	city electric 81096055-0111	15.47
58508	01/05/2024	Printed			39015	PACIFIC POWER	river ave sewage lift	75.85
58509	01/05/2024	Printed			44240	RAMSHAW'S ACE HARDWARE	Eled pen light recharg 250L	139.09
58510	01/05/2024	Printed			10616	RENTAL GUYS	20' office Rental Dec2023	373.25
58511	01/05/2024	Printed			10893	SHORT, ROBERT	Boots reimbursement23/24	100.27
58512	01/05/2024	Printed			10879	SILVER & WRIGHT LLP	abatement leagal drafts	9,671.89
58513	01/05/2024	Printed			47669	SISKIYOU OPPORTUNITY CENTER	fire hydrant poles for snow	75.25
58514	01/05/2024	Printed			48710	SWRCB	community wa system annual fee	3,931.58
58515	01/05/2024	Printed			48710	SWRCB	ID5A45CR00519 WWTP	399.00
58516	01/05/2024	Printed			48710	SWRCB	7/23-6/24 ID5a47cr00059	216.00
58517	01/05/2024	Printed			10503	THATCHER COMPANY	chlorine 150# CYI poison gas	7,428.28

Check Register Report

Date: 01/04/2024

Time: 9:22 am

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City of Dunsmuir

BANK: U.S. BANK

Check Number	Check Date	Status	Void/Stop Date	Reconcile Date	Vendor Number	Vendor Name	Check Description	Amount
U.S. BANK Checks								
58518	01/05/2024	Printed			10731	VYVE	171-576572 ww treatment plant	111.09
58519	01/05/2024	Printed			10731	VYVE	internet 172-576567 City office	166.09
58520	01/05/2024	Printed			10752	WEX BANK	fuel for Dec 2023	2,316.21
58521	01/05/2024	Printed			60005	YREKA TRANSFER COMPANY	dump and return drop box	1,916.40

Total Checks: 106 **Checks Total (excluding void checks): 647,897.15**

Total Payments: 106 **Bank Total (excluding void checks): 647,897.15**

Total Payments: 106 **Grand Total (excluding void checks): 647,897.15**



STAFF REPORT	
RE: AMTRAK Dogwood Trees	MEETING DATE: January 11, 2024
SUBMITTED BY: Dustin J. Rief, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input checked="" type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL: To take action on the approval of a new location for dogwood trees to replace the memorial trees planted in the Union Pacific Parking lot next to the AMTRAK platform.

BACKGROUND/DISCUSSION: The City was notified of the potential damage to the dogwood trees near the AMTRAK platform due to a Federally Mandated ADA project upgrade to the AMTRAK facilities along the Union Pacific tracks. These upgrades are required and will impact Dogwood trees that were planted in memorial of local residents. In order for the project to be completed safely there is a requirement to remove the trees. After numerous discussions and research transplanting the trees would likely result in the trees dying. The option to plant new trees would be more cost effective and increase the likelihood of survivability of the trees.

Citizens addressed the City Council requesting the city save the trees. The City does not have a maintenance agreement associated with the trees, or any records of permissions or agreements with Union Pacific associated with the trees. City Staff has been in discussion with the Contractor, they have offered to move the trees to a location specified, however it will still be highly likely it will result in the death of the trees. There is no money available to assist in costs outside of the physical transplanting of the trees. In order to best serve the request to assist the residents, staff has found a location to offer the planting of new memorial trees in designated locations in Caboose Park. Caboose Park is in need of a refresh and new Dogwood trees would be a great asset in the refresh of this park space. Staff recommends offering this location to coordinate a future planting of new dogwood trees.

OPTIONS: Motion to offer this location for a future planting of Dogwood Memorial Trees

Do not offer a new location.

Offer alternatives.

FISCAL IMPACT:

None Yes Budgeted Item? Yes No

Budget Adjustment Needed? Yes No If yes, amount of appropriation increase:

Affected fund(s): General Fund Water OM Fund Sewer OM Fund Other:

SUGGESTED MOTIONS: Motion to direct staff to coordinate the future planting of dogwood trees at Caboose Park.



STAFF REPORT	
RE: Adopt a Resolution Establishing a Municipal Code Review Ad hoc Committee	MEETING DATE: January 11, 2024
SUBMITTED BY: Dustin J. Rief, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL: To establish a committee to review city code for proposed changes.

BACKGROUND/DISCUSSION: Staff has received complaints on certain sections of the code and has also found situations in which the code is confusing or no longer relevant. Staff has requested from council to establish an Adhoc committee to review areas of the municipal code to better enhance opportunities for business and align with current practice and resident needs for a clean, safe and business friendly community.

OPTIONS: Adopt resolution to Establish a Code Review Ad hoc Committee

Modify resolution and Adopt

Adopt Resolution

FISCAL IMPACT:

None

Comments:

SUGGESTED MOTIONS:

Attachments:

A. Resolution Establishing the Code Review Adhoc Committee

RESOLUTION 2024-01
RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF DUNSMUIR AUTHORIZING THE CREATION OF THE
MUNICIPAL CODE ADVISORY AD HOC COMMITTEE

WHEREAS, the City of Dunsmuir is required to have a municipal code to govern aspects of the city; and,

WHEREAS, the municipal code is an integral part of how city staff manages and upkeep the city services; and,

WHEREAS, City staff has found a number of sections of the municipal code that are confusing, conflicting and not currently the best practices and,

WHEREAS, in order to effectively manage the City, and meet resident and business needs and state and federal regulations, a Municipal Code Advisory Ad Hoc Committee should be created; and,

WHEREAS, the purpose of this committee is to advise the City Council on matters related to municipal code changes; and,

THEREFORE, BE IT RESOLVED, the City Council of the City of Dunsmuir determines that the Municipal Code Advisory Ad Hoc Committee shall have responsibilities, duties, membership, and organizational features as described below:

1. NAME

The name of the committee shall be the Municipal Code Advisory Ad Hoc Committee.

2. PURPOSE

The purpose of the Municipal Code Advisory Ad Hoc Committee is to advise the Dunsmuir City Council on code text amendments and changes.

3. MISSION

The mission of the Municipal Code Advisory Ad Hoc Committee is to review and advise of changes to the municipal code in a way that ensures equitable and fair regulations of city that are inclusive and relevant to support a thriving community for businesses and residents and serves as an asset to the City of Dunsmuir.

4. GOALS

The goals of the committee shall be set by the City Council with consultation from City Staff and the Committee annually.

5. QUALIFICATIONS

Committee members shall be City Council members and City Manager

6. COMPOSITION OF COMMITTEE

The Committee shall be an Ad Hoc to the City Council and make up of two (2) Council members and the City Manager. The City Manager may assign appropriate staff to assist the committee, schedule meetings, and take meeting minutes.

7. TERM OF OFFICE

The Committee members shall be appointed and/or renewed on an annual basis in January of each calendar year.

8. MINUTES

The City Staff assigned to the committee, unless another member elected to take the minutes at each meeting.

9. MEETINGS

Meetings shall be held at least quarterly at a consistent time and date each month in a consistent location. The exact dates, times, and location(s) shall be reported to the Deputy City Clerk at the beginning of the calendar year for that entire calendar year. The Committee members may call a special meeting at any time. Notice of all meetings must comply with Government Code Section 54956.

10. RALPH M. BROWN ACT

Although the Ad Hoc Committee format does not require compliance with the Ralph M. Brown Act, the Municipal Code Advisory Ad Hoc Committee shall conduct themselves in such a way as to publicly advertise the meeting agenda at least 72 hours in advance of a regular meeting, at least 24 hours in advance for a special emergency meeting, allow public comment related to items on the agenda and under the committee's purview, and keep meeting minutes for public review.

11. REMOVAL OF MEMBERS

All committee members serve at the pleasure of the City Council.

12. REPORTING

A representative of the committee shall make a presentation or submit a written report to the City Council concerning the committee's activities and progress after each committee meeting.

THEREFORE, BE IT RESOLVED, this Resolution of the City Council of the City of Dunsmuir shall institute the Municipal Code Advisory Ad Hoc Committee and govern the operations of the committee hereafter.

The foregoing Resolution was approved and adopted at a special meeting of the City Council of the City of Dunsmuir on the 11th day of January 2024 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED

ATTEST:

CITY OF DUNSMUIR

Wendy Perkins, City Clerk

Michael Clarno, Mayor

CITY ATTORNEY

John Kenny, City Attorney



STAFF REPORT	
RE: Transient Occupancy Tax Discussion	MEETING DATE: January 11, 2024
SUBMITTED BY: Dustin J. Rief, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL: To discuss and provide direction on placing an increase to the Transient Occupancy Tax

BACKGROUND/DISCUSSION: The City has adopted a Transient Occupancy Tax that places a 10% fee on hotel stays and short term rentals such as those made available on VRBO.com or AirBnB.com. Currently, the TOT provides the city with funds in excess of \$200,000 per year. A increase of 2.5% would provide the city with an estimated additional \$50,000 that the city could use towards improvements in the community.

The City has 2 options in the process. You could have an increase that would go towards general funds or option 2 would be to make it specific. A general increase requires a majority of voters for approval. Special or specific purposes requires 2/3 majority of voters for approval. I have attached a presentation summarizing the law and authority from CalCities.

OPTIONS: Discuss and provide Staff Direction

FISCAL IMPACT:

None

Comments:

SUGGESTED MOTIONS:

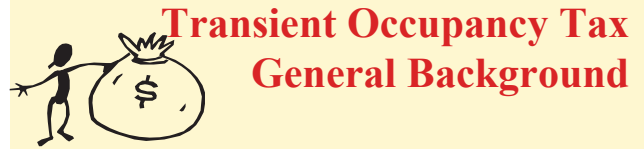
Attachments:

- A. Transient Occupancy Tax Presentation



Transient Occupancy Tax

Jolie Houston
Berliner Cohen



Transient Occupancy Tax General Background

- Originally to compensate local government
- Currently a stable source of general fund monies
- To date, no cap
- Any new or increased TOT requires a vote

Revenue and Taxation Code 7280



- Authorizes general law city to tax
- TOT adopted by a charter city is not preempted
- Authority to tax 30 days or less in hotels



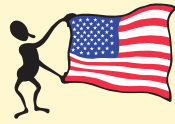
Exceptions to TOT

- Prohibits TOT on a “time-share estate”
- No tax on state park campsites
- TOT *applies* to state employees, not federal



Voter Approval Required_

- TOT General Tax
- *New* TOT or *increase* needs vote
- Requires majority vote



Voter Approval Required

- TOT Special Tax
- Requires 2/3 vote



TOT as a Percentage Hotel Room Rate

- TOT as a percentage
- Set TOT as a cap
- TOT cap is not a tax increase
- No vote required



TOT has been called a “painless” tax

- Opponents are the owners and operators of hotels and motels



TOT and Time-Share Rentals

- Although generally excluded, TOT may include “Time-share Projects”

Recent TOT Ordinance Challenges



- Vagueness
- Recordkeeping
- Subpoenas

Britt v. City of Pomona 223 Cal.App.3d 265 (1990)



- Court holding: Must distinguish between transients and persons in residence



City of San Bernardino Hotel/Motel Assn v. City of San Bernardino, 59 Cal.App.4th 237(1997)

- Invalidated because the definition of “transient” was confusing
- 90-day versus 30-day time limit was vague



Patel v. City of Gilroy
97 Cal.App.4th483 (2002).

- Does not have any conflicts
- Only applies to “transients” as defined

**City’s Authority to Collect
TOT**



- Power to impose TOT includes collection

**City’s TOT Ordinance
Recordkeeping Requirement**

- Keep records for 3 years
- Records available for inspection
- Use an auditor



**Recordkeeping Constitutional
Requirements**



- power to regulate;
- rational relationship; and
- the burdens are reasonable



City's Subpoena Power to Obtain TOT Records

- General law city has the power to issue subpoenas
- Charter city has authority pursuant to California Constitution



TOT Subpoena Procedures

- Government Code governs
- Signed by the Mayor and issued by City Clerk
- Service is governed by Code of Civil Procedure and Government Code

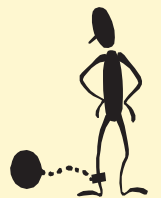


TOT Subpoena Enforcement

- Cities do not have independent authority to enforce
- Superior court determines the validity
- Court will issue an attachment
- Judge has jurisdiction to issue contempt order

TOT Subpoena Enforcement

- Punishment is civil contempt
- City of Vacaville judge opted for an Order to Show Cause Hearing





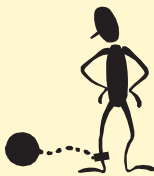
TOT Collection

- Civil lawsuit
- Unfair Business Practices
- Tax as a lien
- Criminal prosecution

Suggested Changes to Older TOT Ordinances



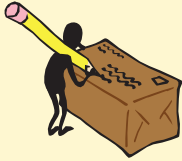
Remove the Criminal Enforcement Section



Clarify the Exemption Section



Clarify Written Agreement



City Attorneys Department Spring Meeting
League of California Cities
May 5-7, 2004

Jolie Houston
Berliner Cohen
10 Almaden Boulevard, 11th Floor
San Jose, CA 95113

TRANSIENT OCCUPANCY TAX
TRANSIENT OCCUPANCY TAX

I. Transient Occupancy Tax - General Background

Transient occupancy tax (“TOT”) is levied on the privilege of using a hotel accommodation. The tax was originally designed to compensate local government for the increased public service costs incurred by serving local tourists. TOT is currently recognized as a stable source of general fund monies to cities. To date, there is no cap on the tax rate under the state enabling legislation applicable to general law cities; however, any new or increased TOT now requires a vote of the electorate. Cal. Const. art. XIII C, § 1 subd.(a) and § 2 subd.(b).

II. City’s Authority to Tax

- A. All cities whether general or charter law, have the power to tax. Cal. Const. art. XI § 5 (charter cities); Govt. Code 37100.5 (general law).

California Constitution, article XI, section 5(a) provides:

“It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.”

A charter city has coequal powers of taxation with the state, and is limited only by its charter and the state and federal constitutions in the exercise of this power. Cal. Const., art. XI, §5; *Gowens v. City of Bakersfield* 193 Cal.App.2d 79, 13 Cal.Rptr. 820 (1961). The power of a city operating under a home rule charter to levy taxes for city purposes is a municipal affair. *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99; *City of San Bernardino Hotel/Motel Assn v. City of San Bernardino*, 59 Cal.App.4th 237, 242, 69 Cal.Rptr.2d 97 (1997).

- B. Revenue and Taxation Code section 7280 (“Section 7280”).

Revenue and Taxation Code 7280 authorizes general law cities to impose a transient occupancy tax, and a transient occupancy tax adopted by a charter city is not preempted. *City of San Bernadino, supra*, 59 Cal.App.4th 237, 243. Section 7280 provides the authority for cities to tax a person staying 30 days or less in hotels, motels and similar lodgings including mobile homes.

Section 7280 states:

“The legislative body of any city or county may levy a tax on the privilege of occupying a room or rooms or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for any period of more than 30 days. The tax when levied by the legislative body of a county shall apply only to the unincorporated areas of the county.”

C. Exceptions to TOT Pursuant to Section 7280.

Section 7280 prohibits the imposition of TOT on a “time-share estate” after May 1, 1985.

In addition, cities may not levy tax on the privilege of occupying campsites in a state park system. Rev. & Tax Code § 7280(b) and (c).

TOT does *not* apply to federal employees traveling on business, even if their room charges are paid directly by the employee and reimbursed by the federal government. *California Credit Union League v. City of Anaheim* 95 F.3d 30 (9th Cir. 1996). However, TOT does apply to state employees traveling on business even if their room charges are paid directly by the governmental employer. *See* 75 Ops.Cal.Atty.Gen. 86 (1992); 46 Ops.Cal.Atty.Gen. 16 (1965).

III. Voter Approval Required

By law the city council must submit any new TOT or increase in an existing TOT to the voters for approval.

A. TOT as a General Tax.

For TOT imposed for general government purposes, such tax is required to be submitted to the electorate and approved by a majority of the electorate voting in the election on the tax. Cal. Const. art. XIIC, § 1 subd.(a) and § 2 subd.(b).

➤ *Sample Resolution of the City Council Calling a Special Election for the Submission to the Voters a Question Relating to an Increase in TOT from 9% to 10% is attached.*

➤ *Sample Ordinance Amendment to Increase TOT from 9% to 10% is attached.*

B. TOT as a Special Tax.

For TOT imposed for special purposes, including taxes imposed for specific purposes and placed into a general fund, such tax is submitted to the electorate and approved by a 2/3 vote of the electorate voting in the election on the tax. Cal. Const. art. XIIC, §1 subd.(d) and § 2(b).

C. TOT as a Percentage of Hotel Room Rate.

Most cities set the rate of their TOT as a percentage of the hotel room rate. Generally, TOT percentages range from 8 to 14%. Some cities have set it as a cap, for example, 12% or at any lesser rate that the city council shall determine by resolution. The benefit of a voter approved TOT cap or inflation rate is that it is not considered a tax increase, and therefore does not require subsequent voter approval. Govt. Code §§ 53739, 53750.

➤ *Suggested ballot measure language for a TOT with an inflation rate:*

Shall an ordinance be approved to amend section ___ of the City of _____ Municipal Code to increase the Transient Occupancy Tax to an amount not to exceed twelve percent (12%)?

TOT has been called a “painless” tax because it is paid by the out-of-town tourists and not by local residents. The only opponents of the tax are the owners and operators of hotel and motel properties, who claim the tax is unfair because it singles them out, taxing them and not others. They also claim that it is expensive, difficult to collect, and gives hotels from neighboring communities a competitive advantage. Without public understanding of TOT and support from the local visitor bureau and/or Chamber of Commerce, TOT ballot measures often fail.

➤ *See City of Sonoma’s February 2004 survey regarding TOT.*

IV. Special TOT Tax

A. TOT as Special Tax.

In addition to the standard TOT adopted as a general tax, some cities have adopted a related special tax of 1% to help promote local tourism. For example, a hotel guest would pay a 10% TOT on their hotel room with an additional 1% to be used by a local conference and visitors council to promote tourism. This additional tax is considered a special tax and requires a 2/3 vote of the electorate voting in the election on the tax. Cal. Const. art. XIII C, §1 subd.(d) and § 2(b).

➤ *Suggested ballot measure language for a Special TOT:*

Shall the City of _____ adopt an ordinance amending section ___ of the Municipal Code by imposing a special one percent (1%) tax charged to guests of hotels and motels under the City’s Transient occupancy Tax Ordinance for the purpose of protecting the local economy by continuing tourism promotion?

B. TOT and Time-Share Rentals.

The City of Newport Beach imposes a TOT of 9% (and a Visitor Service Fee of 1%) of the rental rate on hotel guests during the first 30 days of their stay. The City of Newport Beach also includes in its TOT collection time-share rentals for less than 30 days.

Although Section 7280(b) generally excludes an *owner* of a time-share estate in a room or rooms in a time-share project from the definition from the term “privilege of occupying a room or rooms, or other living space, in a hotel, in a tourist home or house, motel, or other lodging,” the City of Newport Beach has included “Time-share Projects” within their definition of a “hotel.” The ordinance also defines the term “Time-share Interests,” which means either a Time-share Estate or a Time-share Use (as defined in section 11003.5 of the Business & Professions Code) and any similar form of ownership involving a right in perpetuity, for life, or for a term of years, to occupy any room, space or area in a time-share project.” “Time-share Owner” is also defined, and means any person or entity that owns a Time-share Interest. “Time-share Project” means a structure or real property (including air space) in which a time-share has been sold.

For purposes of the Newport Beach Ordinance, the term “transient” does *not* include any person who occupies any room, space or area in a Time-share Project pursuant to a Time-share Interest and *without paying rent* including: (a) a Time-share Owner; (b) a member of the family or guest of the Time-share Owner; (c) any person who is entitled to occupy pursuant to any Time-share exchange program or any similar program; and (d) any person entitled to occupancy pursuant to any exchange or incentive program involving or sponsored by the operator of the Time-share Project.

V. **Recent TOT Ordinance Challenges**

A. *Britt v. City of Pomona*, 223 Cal.App.3d 265, 272 Cal.Rptr. 724 (1990).

The City of Pomona enacted its TOT Ordinance in 1965, which assessed a tax on persons living in qualifying structures for specified short periods of time. In 1987, the TOT Ordinance was amended and the time limitations were deleted, making all of the residents of hotels subject to the tax regardless of the duration of their occupancy. In 1988, the ordinance was amended and changed the name of the tax to an occupancy tax, and changed the term “transients” to “lodgers,” and also exempted any person residing in the qualifying structures under a tenancy contract.

The Court of Appeal held that the tax ordinance violated equal protection requirements, since it taxed persons who resided only in certain designated types of shelter but not persons who resided in others, and payment of the tax did not depend on who was a true transient. It also held that the ordinance violated due

process requirements, since its terms were too vague to be understood and applied by persons of common intelligence.

➤ *Specific ordinance language:*

The court in *Britt* found that the City of Pomona’s TOT Ordinance failed to distinguish between transients and persons in residence. “Transient,” as defined by the ordinance, applied to anyone who “occupied” a “hotel” without any reference to an occupancy time limitation. “Hotel” was defined as any structure which was occupied by “transients” for “dwelling, lodging or sleeping purposes.” “Occupancy” was defined as the use or possession of any “hotel” for “dwelling, lodging or sleeping purposes.” This ordinance did not clearly state to whom it applied. For example, the ordinance would apply to both transients and residents; thus, the court’s conclusion that the ordinance was circular was well founded.

B. *City of San Bernardino Hotel/Motel Assn v. City of San Bernardino*, 59 Cal.App.4th 237, 69 Cal.Rptr.2d 97 (1997).

A hotel association brought an action to challenge the validity of a TOT adopted by a charter city. The ordinance imposed a 10% tax on transients for occupancy in a hotel in the city, and a violation of any provision of the ordinance was a criminal misdemeanor.

The Court of Appeal held that the city’s TOT was not preempted by Revenue & Taxation Code section 7280.¹ The court held that under the California Constitution, article XI, section 5, subd. (a), a charter city’s ability to impose revenue taxes can be curtailed only by the charter itself or when in direct and immediate conflict with a state statute or statutory scheme. In this case, there was no actual conflict with Revenue & Taxation Code section 7280, which authorizes general law cities to impose a TOT.

However, the court further held that the ordinance violated due process of law under the U.S. Constitution, 5th Amendment since its definitional sections were too vague to be the basis for a criminal statute.

➤ *Specific ordinance language:*

In *San Bernardino*, the City’s TOT Ordinance was invalidated because the definition of “transient” was confusing. The definition of “transient” had a 90-day occupancy time limit while the definition of “hotel” had a 30-day occupancy time limit. The vagueness was based on the conflict of the 90-day versus 30-day occupancy time limit for “transients” who would be occupying a hotel room.

¹ The court also held that Civil Code sections 1940, 1940.2, Code of Civil Procedure section 1161, Penal Code section 602, and Health & Safety Code section 50519 did not compel the conclusion that the Legislature intended to preempt local TOT.

The San Bernardino TOT Ordinance was also defective for failure to distinguish which time limit applied to “transient” because the definition of “hotel” stated that it was for “occupancy” by “transients” for “lodging or sleeping purposes” for 30 days. “Occupancy” was defined as the use or possession of any room in any “hotel” for “dwelling, lodging or sleeping purposes.” The definition of “hotel” included “occupancy” by a “transient” for “lodging or sleeping purposes” but not for “dwelling.” Thus, the court’s conclusion that the ordinance was circular and confusing was well founded.

C. *Patel v. City of Gilroy*, 97 Cal.App.4th483, 118 Cal.Rptr. 354 (2002).

Motel and hotel owners, who had been found liable for tax delinquencies under the City of Gilroy’s TOT Ordinance, filed a petition for a writ of mandate against the city and sought declaratory and injunctive relief, challenging the validity of the ordinance on constitutional grounds. The trial court entered judgment for the city, finding the tax ordinance was valid and constitutional.

The Court of Appeal held that the ordinance was not unconstitutionally vague under the due process clauses (U.S. Const. amends. XIV, V and Cal. Const., art. I, § 7), since it gave fair notice of its collection and reporting requirements and provided reasonably adequate standards to guide enforcement. The tax clearly applied solely to those who occupied a hotel or motel for a period of 30 consecutive calendar days or less. Thus, it was clear what the ordinance prohibited, and the ordinance was valid in its intended applications.

➤ *Specific ordinance language*

The City of Gilroy’s TOT Ordinance does not have any conflicts between the use of “hotel,” “occupancy” or “transient” as seen in the ordinances invalidated in the *Britt* or *San Bernardino* cases. Gilroy’s TOT Ordinance applies to “transients” which includes any person who exercises “occupancy” for a period of 30 days or less. Gilroy’s TOT Ordinance includes the terms “hotel” and “occupancy” within the definition of “transient.” The effect is that a “transient” includes any person who uses or possesses or has the right to use or possess any room or rooms or portions thereof in any hotel for “dwelling, lodging or sleeping purposes” for a period of 30 consecutive calendar days or less.

Gilroy’s TOT Ordinance does not contain the same circularity or confusion among the definitions as found in *Britt* or *San Bernardino* Ordinances.

VI. City’s Authority to Collect TOT

With the power of cities to impose TOT is the corollary power to use reasonable means to effect collection, which includes having others collect the tax and remit it to the city. *Eastern Mun. Water Dist. v. City of Moreno Valley*, 31 Cal.App.4th 24, 36 Cal.Rptr. 823 (1994) (general law cities); *City of Modesto v. Modesto Irrigation Ditch*, 34 Cal.App.3d 504, 508; 110 Cal.Rptr. 111 (1973) (charter

cities). In *City of Modesto* the court held that “it is basic that the power to tax carries with it the corollary power to use reasonable means to effect its collection; otherwise the power to impose a tax is meaningless.” *Id.* at p.508.

VII. City’s TOT Ordinance Recordkeeping Requirement

A. TOT Ordinance Recordkeeping Requirements.

A part of any city’s TOT collection procedure is the requirement that the hotel operator maintain TOT records and have them available for the city’s review.

TOT Ordinances generally require that the operator who is liable for the collection and payment of the tax to the city to keep and preserve for a period of 3 years all records necessary to determine the amount of such tax. TOT Ordinances require that records be available for inspection by a city at reasonable times, and cities usually use an independent auditor to request and review such records.

B. TOT Ordinance Recordkeeping Must Comply with Federal and State Constitutions.

Statutory and regulatory recordkeeping and reporting requirements must comply with both federal [*People v. Hutchins*, 69 Cal.App. 3d Supp. 33, 36, 138 Cal.Rptr.485 (1977); *Shapiro v. United States*, 335 U.S. 1, 32-35 (1948)], and state constitutions [*Wilson v. California Health Facility Com.*, 110 Cal.App.3d 317, 322-325, 167 Cal.Rptr. 801 (1980)]. State and federal constitutions require that no person be deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV; Cal. Const. art, I § 7. Substantive due process protects an individual’s liberty and property interest against unreasonable governmental action.

The principal constitutional substantive due process challenge to TOT recordkeeping and reporting ordinances involves violation of the prohibition against unreasonable searches and seizures.

Substantive due process challenges to recordkeeping and reporting statutes may be brought; however, these challenges have very little success because statutes and rules that involve social and economic regulation and/or public health and safety, are exercises of the state’s police power. The statute or ordinance must only be rationally related to the governmental purpose as discussed below.

C. Constitutional Test for TOT Ordinance Recordkeeping Requirements.

A statute requiring reports on, or records of, regulated activities will pass constitutional muster if it meets all of the following criteria: (1) the government has the power to regulate or forbid the activity concerned; (2) there is a rational relationship between the recordkeeping or reporting requirement and the government’s objective; and (3) the burdens of compliance are reasonable. *California Bankers Assn v. Shultz*, 416 U.S. 21, 45-50 (1974); *Wilson v.*

California Health Facility Com., 110 Cal.App.3d 317, 322-325; 167 Cal.Rptr. 801 (1980); *Blinder v. Division of Narcotics Enforcement*, 25 Cal.App.3d 174, 179-184, 101 Cal.Rptr. 635 (1972).

D. TOT Ordinances Recordkeeping Requirements Meet the Constitutional Test.

The only way that cities are able to obtain the needed information regarding TOT is by the TOT Ordinance's recordkeeping requirement. There is no doubt that a TOT Ordinance's recordkeeping requirement bears a rational relationship to a legitimate city purpose, which is to enable the city to assess and to collect TOT. The burden of complying with this requirement is not unduly oppressive or costly since it is only a matter of maintaining the records for 3 years and having them available for inspection by a city at reasonable times. In addition, these are also the very same business records that the hotel operators must maintain to comply with their reporting and remittance requirements.

VIII. City's Subpoena Power to Obtain TOT Records

A. City's Subpoena Power.

A general law city has the power to issue subpoenas requiring attendance of witnesses or production of documents in proceedings pending before it. Government Code §§ 37104-37109; *Connecticut Indemnity Company*, 23 Cal.4th 807, 98 Cal.Rptr.2d 221 (2000). A charter city has the independent authority to issue subpoenas pursuant to the powers contained in the California Constitution. Cal. Const. art. XI, §§ 3 subd.(a). Charter cities may also have the subpoena power included within their city charter. *Brown v. City of Berkeley*, 57 Cal.App.3d 223, 236 (1976).

When a hotel operator refuses to submit to a TOT audit, a city has the express power to issue administrative subpoenas for the records. The only condition precedent for an administrative subpoena is that an investigation or proceeding be under way and it must further a legitimate purpose of the legislative body. "There are, of course, limits on the use of legislative subpoenas. We agree with the United States Supreme Court that issuance of such a subpoena is proper only if (i) it is authorized by ordinance or similar enactment, (ii) it serves a valid legislative purpose, and (iii) the witness or material subpoenaed are pertinent to the subject matter of the investigation." *Connecticut Indemnity Company, supra*, 23 Cal.4th at p.814; *Wilkinson v. United States*, 365 U.S. 399, 408-409 (1961).

B. TOT Subpoena Procedures.

Government Code section 37105 governs the procedural requirements for issuing a subpoena. The subpoena must be signed by the Mayor and issued by the City Clerk. The service of the subpoena is governed by Code of Civil Procedure section 1987 and Government Code section 37105.

➤ *City of Gilroy's administrative subpoena attached.*

C. TOT Subpoena Enforcement.

A city has no independent authority to enforce the failure to comply with a subpoena but is required to report the violation of the subpoena to the superior court within its jurisdiction. The superior court then determines both the validity of the subpoena and whether it has been violated. Govt. Code §§ 37105-37109. This superior court review is necessary before discipline can be imposed for failure to comply. Failure to provide a mechanism by which a request for records can be judicially reviewed may have constitutional implications. *See Pinney v. Phillips*, 230 Cal.App.3d 1570; 1586-1588; *See v. Seattle*, 387 U.S. 541, 544-545 (1967); *California Restaurant Assn. V. Henning*, 173 Cal.App.3d 1069, 1075, 219 Cal.Rptr.630 (1985).

The superior court will then issue an attachment, directed to the sheriff of the county where the witness was required to appear or produce documents, commanding the appearance of the person to court. Govt. Code § 37107. On the return of the attachment and production of the witness, the judge has jurisdiction to issue a contempt order. Govt. Code § 37108. The punishment for disobedience of a subpoena issued under section 37104 is the same as if contempt had been committed in a civil trial in superior court. Govt. Code § 37109.²

D. The issue of criminal penalties for failure to provide TOT records is being challenged in court at this time. The City of Vacaville's subpoena for TOT records is being challenged by attorney Frank Weiser.

IX. TOT Collection

There are various methods for collection, with a civil lawsuit being most common.

- A. The basis for the civil lawsuit is that the TOT Ordinance declares that the tax is deemed to be a debt owed to the city, for which the operator is liable to the city.
- B. Unfair Business Practices under Business and Professions Code section 71200 *et seq.* are possible. Attorneys fees are not available under the Business and Professions Code.
- C. Some cities collect the delinquent tax as a lien on the real property owned by the hotel operator and follow the standard lien procedures.
 - *City of Santa Clara's TOT Ordinance language is attached.*
- D. Another alternative remedy for failure to collect and/or remit the tax is to enforce it as a violation of the operator's business license with the possibility of business license revocation. This only applies to a city that has a "regulatory" business license that provides for revocation for any violation of its city code.

² Note: In the City of Vacaville administrative subpoena case, the judge opted for an Order to Show Cause Hearing instead of the attachment proceeding.

- E. Criminal prosecution for failure to collect and/or remit the tax. This is not as common because of the difficult burden of proof.

X. Suggested Changes to Older TOT Ordinances

- A. Remove the Criminal Enforcement Section.

Older TOT Ordinances have a standard enforcement section, which states that a “violation of any provision of this chapter or article” is a misdemeanor (or infraction). A challenge to a TOT Ordinance’s recordkeeping and reporting requirement on due process vagueness grounds may trigger a stricter review by the court if the ordinance prescribes criminal penalties for violations. *Kolender v. Lawson* 461 U.S. 352, 358, fn.8 (1983) (Where a statute imposes criminal penalties, the standard of certainty is higher.)

- B. Clarify the Exemption Section.

Many TOT Ordinances have the exemption that the tax will not be imposed on “any person as to whom, or any occupation as to which, is beyond the power of the city to impose the tax.”

This ordinance provision is confusing as to whom the exemption applies, and as the court noted in the City of Gilroy case, the “Exemptions’ provision, ... is hardly a model of clarity.” The TOT exemptions section should be amended to provide exemptions for *federal* employees, for example, federal credit union employees, who stay at hotels for official business or by means of a federal contract. *California Credit Union League v. City of Anaheim* 95 F.3d 30 (9th Cir. 1996). Some cities now provide exemption forms for federal employees and/or require written documentation of the employee’s official business.

Many cities include an exemption for “Any federal or state employee when on official business.” However, state employees are *not* exempt under the Attorney General’s opinions, and the *California Credit Union* case was limited to federal employees only. See 75 Ops.Cal.Atty.Gen. 86 (1992); 46 Ops.Cal.Atty. Gen. 16 (1965).

➤ *Suggested language:*

No tax shall be imposed upon:

1. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
2. Any federal officer or employee when on official business.

No exemption shall be granted except upon a claim therefor made at the time the rent is collected, and under penalty of perjury, upon a form prescribed by the director of finance.

- *City of Corona's exemptions claim form with summary of remittance process is attached.*

C. Clarify Written Agreement.

Some cities use a standard form that must be filled out prior to occupancy in order to qualify for the 30-day exemption. Using a standard form or a “qualifying rental agreement” will make the TOT audits easier.

- *City of San Jose's form is attached.*



STAFF REPORT	
RE: Housing Vacancy Tax on vacant residential units to fund housing element programs	MEETING DATE: January 11, 2023
SUBMITTED BY: Dustin J. Rief, City Manager	
PURPOSE OF REPORT: <input type="checkbox"/> Information only <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Action Item	

WHAT IS BEING ASKED OF THE CITY COUNCIL: To discuss a potential tax to place before the electorate that would charge property owners with vacant housing units a tax to fund housing programs that assist and encourage the construction of new housing units.

BACKGROUND/DISCUSSION: The State allows Municipalities to place a tax on vacant residential units to encourage an increase in available housing stock for permanent residents. The implementation of this tax requires a majority vote of the voters at an election. Attached is a summary example of what was proposed in Berkeley, CA on the last General Election. The City of Dunsmuir suffers from a vacancy rate around 30%. There is a strong need to address housing all across California. The cities of San Francisco and Oakland have adopted Measure M tax proposals that are to go into effect this month. Additionally, the City of Sacramento is also exploring this tax for the upcoming ballot. The tax has been challenged in the courts but has not yet completed the court process.

If the city implemented this tax to fund housing programs, it could cause additional homes to become available for rent or sale. Additionally, a conservative estimate at \$1,000 levy per vacant housing unit could generate upwards of \$300,000 in revenues to address housing issues. The City has approximately 300 vacant residences according to the latest census data. While this data may or may not be correct, the ultimate idea is to improve accessibility to housing that is currently underutilized. This will improve the housing stock, encourage investment and increase the population and economy of Dunsmuir.

OPTIONS: Discuss and provide direction to staff

FISCAL IMPACT:

None

SUGGESTED MOTIONS: NONE

Attachments:

- A. City of Berkeley Analysis of Measure M

Measure M

Vacancy Tax

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

City Attorney's Impartial Analysis of Measure M

This measure was placed on the ballot by the City Council.

This measure would create a tax on property owners who keep a residential unit vacant for more than a total of 182 days in a calendar year. The tax would be imposed on owners at the following rates:

- For residential units in duplexes, condominiums, single-family homes and townhouses, the tax would be \$3,000 for the first year a unit is vacant, and increase to \$6,000 for any subsequent year a unit remains vacant.
- For all other residential units, the tax would be \$6,000 for the first year the unit is vacant, and increase to \$12,000 for any subsequent year the unit remains vacant.

These rates would be adjusted annually by the increase in the Consumer Price Index for the San Francisco/Oakland/San Jose area.

A residential unit would not be counted as vacant during any of the following periods that it is unoccupied, uninhabited or unused:

- The period during which a building permit application is pending with the City, for up to one year
- The two-year period after a building permit is issued for repair or rehabilitation of the unit
- The two-year period after a unit is made uninhabitable or unusable due to fire, natural disaster or other catastrophic event
- The period that the unit is the owner's principal residence
- The period that the unit is leased for occupancy
- The period that a unit is vacant following the death of the owner who occupied the unit, for up to two years or until the end of probate, whichever is longer
- The period that a unit is vacant because the occupant is in a hospital or care facility

The following property owners would be exempt from this tax:

- 501(c)(3) organizations
- State or local governmental entities

- An individual or trust who owns a single property that has four or fewer residential units, who uses the property as their primary residence, and who owns no other residential units in the City. This exemption would not apply to real estate investment trusts, corporations, or limited liability companies.

The measure would allow the City Council to suspend the tax by a two-thirds vote in the event of a declared emergency. The measure would allow the City Council to amend the tax by a simple majority vote, provided the Council does not change the amount of the tax or expand any exemptions. State law also prevents City Council from narrowing any exemptions.

Property owners would be subject to this tax beginning January 1, 2024 until December 31, 2034.

The tax is estimated to generate \$3,900,000 to \$5,900,000 annually. The City Manager would provide City Council an annual report of revenues collected during the prior fiscal year.

This is a general tax. The revenue from this tax would be deposited into the general fund and could be used for any municipal purpose.

This measure requires a simple majority vote for passage.

The above statement is an impartial analysis of Measure M.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

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.

ARGUMENT IN FAVOR OF MEASURE M

Vote YES on Measure M to bring needed housing back online and ensure speculators pay for the impacts of long-term vacancies.

The lack of available and affordable housing impacts the safety, diversity, and quality of life in our city. Rising rents fuel displacement of long-term residents, push people into overcrowded living conditions, and increase homelessness, impacting our streets, parks, and public spaces.

While the City is building new housing, some corporate speculators and scofflaws keep units and even entire apartment buildings empty during an extreme housing shortage. Long-term vacancies artificially restrict the supply and create blight in neighborhoods.

An important strategy to increase our housing supply now is unlocking the over 1,000 empty homes currently vacant. Measure M, the Empty Homes Tax, discourages property owners from keeping units vacant with an annual tax of \$3,000 on empty condos, duplexes, and single-family homes not used as someone's primary residence and \$6,000 for all other empty units. The tax increases progressively based on the length of vacancy. Estimated to generate up to \$5.9 million annually, Measure M can provide general funds for building and preserving affordable housing.

Measure M targets corporate landlords and owners of large or multiple properties, and includes exemptions to avoid burdening small property owners. Homeowners can hold a unit open for a child returning from college and or a caregiver as they grow older, and vacant units on small properties can be used by the owner. This is in addition to probate, construction, and disaster recovery exemptions. The tax doesn't go into effect until January 1, 2024, giving property owners significant time to comply.

Endorsers include the Alameda County Democratic Party, Wellstone Democratic Renewal Club, the Bay Area Community Land Trust, Cal Berkeley Democrats, SEIU 1021, Berkeley Citizens Action, the Berkeley Progressive Alliance, and Telegraph for People.

We can make housing available now and improve quality of life by encouraging housing to be rented. Vote YES on the Empty Homes Tax.

s/Jesse Arreguin
Mayor of Berkeley

s/Kate Harrison
Berkeley Vice Mayor and Councilmember

s/Rigel Robinson
Berkeley City Councilmember

s/Ben Bartlett
Berkeley City Councilmember

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE M

There must be a reason why nearly half of City Council did not vote to put this measure on the ballot.

- Perhaps it's because they knew that Measure M would create a tremendous burden on City Staff at a time when their focus should be on providing essential city services.
- Perhaps it's because they knew that revenue projections for this tax were grossly overestimated and that any money which MIGHT be generated is not earmarked for affordable housing.
- Perhaps it's because they knew that some of Measure M's endorsers would soon be calling for the repeal of exemptions for single-family homeowners and small property owners.
- Perhaps it's because they knew that in the rare instance the tax was paid by a corporate owner it would simply be tacked on to the sale price of the property, making housing even more unaffordable in Berkeley.
- Perhaps it's because they know that the U.S. Department of Housing and Urban Development has estimated the vacancy rate in our area to be an already low 3.4%, and even a quick internet search will show that driving the rate down further will result in drastically higher rents for tenants.

Berkeleyans must ask more from their elected officials. Rather than pay lip service to the affordable housing crisis, supporters should take the time to analyze whether a vacancy tax will do more harm than good. The rushed manner in which this was placed on the ballot is evidence that they have not.

Please Vote NO on Measure M.

s/Marcus Crawley
President, Alameda County Taxpayers' Association

ARGUMENT AGAINST MEASURE M

There is no doubt that we are in a housing crisis, but Measure M is a classic example of a solution looking for a problem. **That's because there is no solid data showing an actual vacancy problem in the City of Berkeley.**

Proponents used 2020 Census data to support this measure, but vacancies that year were inflated as thousands of students abandoned their apartments when the University closed its campus due to the pandemic. **Using 2020 Census data to make a case for this tax wasn't just negligent, it was downright wrong.**

In addition to lacking data, the measure was rushed to the ballot without moving through the City Council committee process. As such, City Council was forced making last minute decisions without thoroughly vetting revenue projections or unintended consequences. There is a very real possibility that this tax will cost more money to administer than it makes. **That could ultimately mean less money for essential city services and affordable housing in Berkeley.**

The measure also doesn't include an appeal process for homeowners that are taxed incorrectly. Instead, supporters say that City Staff is responsible for creating this process along with a complicated set of regulations to administer and levy the tax. **Not only does this deprive Berkeley Voters of a say in how the tax is administered, it creates a huge burden on City Staff who are already stretched thin.** City Staff should be focusing on providing essential city services and creating real affordable housing solutions rather than wasting tax dollars on bringing a handful of expensive apartments to market.

Lastly, there is already talk of **repealing exemptions for single-family homeowners and small property owners.** **Even if you're safe now, you won't be very soon.**

Vote NO on Measure M.

s/Marcus Crawley
President, Alameda County Taxpayers' Association

REBUTTAL TO ARGUMENT AGAINST MEASURE M

While it may be profitable for property owners to leave units empty, it is very expensive for the community and for those unable to find housing.

Unlike the Census' 4,725 vacant units cited by those opposing the tax, the City's robust database of 1,128 units classified as 'not available to rent' is not a snapshot in time. It is a definitive record of landlords **permanently removing their units from the market**, artificially reducing the supply of housing and exacerbating already high rents and displacement. It is this figure that the City used to estimate the number of units that could be once again available as housing and the revenues to be realized from the tax.

Measure M was carefully drafted for more than half a year and was informed by extensive data analysis, consultation with other jurisdictions, City Finance and the City Attorney and months of public input and debate. The authors listened diligently to the public, crafting thoughtful exemptions, and empowering the Council to make minor amendments that don't increase the tax or the types of units to which the tax applies.

Tax administration will be smooth and cost-effective due to the City's existing dataset and rental regulations, leaving millions of additional dollars to provide essential city services or build affordable housing. The Measure also empowers the City to create an appeals process through regulations – a routine process.

Let's restore missing housing units and reduce blight. **Join us in voting YES on the Empty Homes Tax.**

s/Igor A. Tregub
Chair, Sierra Club Northern Alameda County Group

s/Andy Kelley
Corresponding Secretary, Alameda County Democratic Party

s/Leah Simon-Weisberg
Chair of the Berkeley Rent Board

s/Chris Schildt
Chair, Berkeley Housing Authority Board

s/Cecilia Lunaparra
President, Cal Berkeley Democrats