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## **Judge orders Berkeley to correct its misleading ballot so voters can make informed choice between competing tax measures**

*Ruling comes in lawsuit contending city concealed special treatment for real estate developers, gamed revenue estimates and ballot position to tilt election in contest between competing rental housing taxes*

**Hayward, Calif., Aug. 31, 2016**—An Alameda Superior Court Judge on Wednesday ruled against the city of Berkeley in a lawsuit contending city officials were misleading voters and illegally manipulating the ballot in an election contest between competing rental housing tax measures.

“We feel totally vindicated,” said Krista Gulbransen, executive director of the Berkeley Rental Housing Coalition, the political action arm of an association of small landlords who filed the lawsuit after having their complaints about the ballot rebuffed by city officials.

“All we’ve ever wanted is for Berkeley voters to have a chance to make an informed choice on whether it makes sense to raise rental housing taxes as response to our housing affordability crisis and, if so, how best to go about it,” Gulbransen said.

The dispute centers on Measure U1 and Measure DD, competing ordinances appearing on the Nov. 8 ballot to increase a Berkeley business license tax that owners of residential rental units pay on the rent they collect from tenants.

Under Berkeley City Council-sponsored Measure U1, the tax rate would jump by 166 percent from 1.081 percent of gross receipts on rent payments to 2.88 percent—with special exceptions for certain categories of owners. In particular, Measure U1 contains

a provision exempting developers and owners of large new apartment complexes—both those recently built and future developments—for the first 12 years of occupancy.

Conversely, Measure DD, an initiative ordinance that qualified for the ballot via a signature drive, treats all landlords the same. Under Measure DD, the tax rate on residential rental income would rise by a lesser amount of 40 percent—from 1.081 percent to 1.5 percent of gross receipts—but the higher rate would apply across-the-board to all landlords covered by the existing business license tax.

Both measures would result in comparable net revenue to the city General Fund, which the City Council could then direct toward affordable housing creation and preservation, and homelessness prevention, as both measures intend.

The fundamental difference between the two measures is that Measure U1 creates a two-tier tax system—one favoring owners of big new, apartment complexes while slapping a big tax increase on longtime operators of rent-controlled housing—while Measure DD asks all categories of owners to absorb a smaller increase, raising slightly less revenue in the first year but avoiding new administrative and enforcement costs associated with Measure U1. In addition, Measure DD calls for establishment of an independent citizens oversight board to monitor spending to ensure rental housing tax dollars go to their intended purpose of supporting affordable housing creation and preservation. Measure U1 does not.

“We think Berkeley voters will see Measure DD is the fairer approach,” said Gulbransen, “and that raising taxes on rent-controlled housing, as proposed by Measure U1, is probably counterproductive, if the entire rationale is housing affordability.”

Apparently, city officials had the same concern—that voters might favor Measure DD over the City Council’s Measure U1, especially in an election in which only the measure receiving the greatest total number of affirmative votes can become law. So, they tried to improve U1’s chances by writing a ballot description that concealed exemptions for developers and inflated Measure U1 revenue projections.

And, they didn’t stop there. City officials also instructed Alameda County election officials to place Measure U1 at the top of the local ballot and Measure DD at the back, separated by eight other measures. The predictable effects would be to make it harder for voters to compare Measure U1 and Measure DD—and to virtually ensure Measure DD would receive fewer overall votes cast because voting invariably drops off on measures further down a ballot.

In a tentative ruling issued on Tuesday, Alameda Superior Court Judge Kimberly Colwell was having none of it. In her ruling—finalized Wednesday in a final judgment signed by all parties—Judge Colwell called Measure U1 revenue projections “misleading,” and she directed the city to instead use a revenue range, starting at a much lower figure of \$2.8

million a year and topping out at \$3.45 million. Originally, the city projected Measure U1 would raise \$3.9 million in new revenue.

Colwell also ordered that official ballot language summarizing Measure U1 be amended to make clear “Measure U1 has exemptions”—for developers and owners of new apartment complexes and others. The ballot summary Berkeley officials sent to the Alameda County Department of Elections made no mention of exemptions for politically favored groups. Indeed, it was city officials’ refusal to acknowledge and take into account Measure U1 exemptions that produced the inflated revenue projections for Measure U1 in the first place, city records filed as part of the lawsuit show.

Additionally, the judge ordered stricken from the county Voter Guide “false” and “misleading” wording appearing in an argument in favor of Measure U1 that had been signed by multiple members of the Berkeley City Council.

Lastly, and importantly, Judge Colwell ruled that Measure U1 and Measure DD must appear “next to each other” on the ballot, rather than with Measure U1 at the top and Measure DD at the bottom, as Berkeley officials had instructed county election officials.

She noted that in other cases in Berkeley, when competing measures dealing the same subject were to appear on the same ballot, the measures were placed side by side.

In her ruling, Colwell said Berkeley had failed to provide any justification for separating Measure U1 and Measure DD at opposite ends of a lengthy local ballot, with eight different measures on different subjects appearing between, a move the lawsuit contended could only have one result—that is, to “confuse voters and obstruct fair voting.”

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*Berkeley Rental Housing Coalition is the political action committee of the Berkeley Property Owners Associate, a grassroots trade association that represents owners of residential rental property in Berkeley. BPOA members are a leading provider of below-market rental housing. The vast majority of BPOA residential rental property in the city is covered by and operated in conformance with Berkeley rent control and the city’s stabilization ordinance.*