

**RESOLUTION NO. 24-78**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
SUBMITTING A BALLOT MEASURE TO VOTERS TO APPROVE AN ORDINANCE  
OF THE CITY COUNCIL OF THE CITY OF BENICIA FOR THE IMPOSITION, LEVY  
AND COLLECTION OF A TAX ON THE CONVEYANCE OF REAL PROPERTY  
BASED ON THE VALUE OF THE REAL PROPERTY IN ADDITION TO THE  
AMOUNT AUTHORIZED BY CALIFORNIA REVENUE AND TAXATION CODE  
SECTION 11911**

**WHEREAS**, the City of Benicia ("City") is a full-service city equipped with its own City-run police, fire, park, library and water and wastewater services that prides itself on providing quality services to its residents, businesses and visitors; and

**WHEREAS**, the City continues to combat a long-term structural budget deficit, caused by a declining population and limited economic growth, that it is working to solve; and

**WHEREAS**, the structural deficit threatens the City's capacity to continue to provide vital services to its citizens; and

**WHEREAS**, financial forecasts projected large deficits necessitating the preparation to reduce Police and Fire services, limiting library and recreation programs and cutting resources to maintain its neighborhood parks and roads; and

**WHEREAS**, in summer of 2023, the City and its citizens began a months-long planning process to solve the deficit problem which produced Benicia's Resiliency Plan; and

**WHEREAS**, the Resiliency Plan has three pillars:

1. Cutting Costs
2. Local Investment
3. Smart Growth

**WHEREAS**, the City has implemented many cost-saving measures, having made significant changes to its personnel structure, compensation guidelines and operating strategies to make the City more financially stable; and

**WHEREAS**, protecting and maintaining public safety, emergency services, fixing streets, and making critical infrastructure repairs are priorities and essential to City residents; and

**WHEREAS**, Measures F (Special Transaction and Use Tax), G (Charter Authorizing Adoption of Real Property Transfer Tax) and H (Real Property Transfer Tax) are part of the Resiliency Plan; and

**WHEREAS**, The City has a demonstrated need for road repair infrastructure improvements in the range of \$100 million over the next 15 years and proposed three funding mechanisms for further consideration; and

**WHEREAS**, the adoption of a City Charter, which ballot measure is also being presented to the voters on November 5, 2024 as Measure G, is legally necessary to allow the city to enact a real property transfer tax, revenue from which will be used for unrestricted general governmental purposes, including infrastructure such as roads, repairing potholes, storm drains, sidewalks, and public facilities such as the City Pool, Community Center, Library, Marina, parks, and essential services such as Police, Fire, library, youth and senior programs, engineering and community development (planning and building) and other uses; and

**WHEREAS**, if the Real Property Transfer Tax (Measure H), as authorized by the City Charter, is approved by the voters, the revenue from the real property tax will be subject to transparency and accountability provisions such as financial audits and oversight by an independent Citizens Oversight Committee, public disclosure of all spending, and public budgeting processes to ensure that all funds will remain in the City for the local general services on which residents and businesses rely and that the Federal or State governments can take none of the new funding; and

**WHEREAS**, pursuant to authority provided by Article XI of the California Constitution, and Title 4, Division 2, Chapter 3 of the Government Code and Division 9, Chapter 3, Article 3 (commencing at Section 9255) of the Elections Code of the State of California, the City Council desires to submit a measure to the qualified electors of the City of Benicia regarding whether the City of Benicia shall become a Charter City; and

**WHEREAS**, the proposed “ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 3.17 (VOTER APPROVED REAL PROPERTY TRANSFER TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE BENICIA MUNICIPAL CODE”, attached hereto and incorporated herein by reference as Exhibit “A” (the “Real Property Transfer Tax Ordinance”), would impose a tax on the transfer of real property at the rate of \$4.00 per \$1,000.00 of valuation for properties \$2,000,000 and under, \$6.00 per \$1,000.00 of valuation for properties over \$2,000,000 to \$10,000,000, and \$8.00 per \$1,000.00 of valuation for properties over \$10,000,000 providing approximately \$850,000 annually, with audits and citizens’ oversight; and

**WHEREAS**, the City Council of the City of Benicia has determined that enactment of a Real Property Transfer Tax, as authorized by the adoption of a Charter, would be beneficial for the City of Benicia and its residents by establishing the authority for the qualified electors of the City of Benicia to decide whether to enact a Real Property Transfer Tax Ordinance which revenues would be locally controlled and help to ensure that essential city services are provided and maintained; and

**WHEREAS**, the City Council desires to submit the proposed Real Property Transfer Tax Ordinance to the voters of the City at a General Municipal Election to be held on Tuesday, November 5, 2024, and to be consolidated with the general municipal election and the statewide election to be held on that date (“Election”); and

**WHEREAS**, pursuant to Government Code Section 53724 and Elections Code Section 9222, the City Council desires to submit the Real Property Transfer Tax Ordinance to the qualified electors of the City of Benicia at the Election.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF BENICIA:**

**Section 1. Recitals.** The City Council hereby finds and determines that the foregoing recitals are true and correct and are hereby fully incorporated by this reference.

**Section 2. Election.** The City Council of the City of Benicia hereby orders the proposed Real Property Transfer Tax Ordinance be submitted to the voters at the General Municipal Election to be held on Tuesday, November 5, 2024 and requests the Solano County Elections Department to conduct the election and consolidate it with the statewide election to be held on November 5, 2024.

<b>Measure H – Real Property Transfer Tax to Invest in Benicia’s Future, Part 2</b>	
To invest in essential city services including: <ul style="list-style-type: none"><li>• Roads, infrastructure, facilities</li><li>• Police, Fire, City services</li></ul>	YES
Shall the City of Benicia enact a real property transfer tax based on sale price, assessed only when property is sold, with exemptions for family members, at a rate of 0.4% for properties \$2 million and under, 0.6% for properties over \$2 million, and 0.8% for properties over \$10 million, providing approximately \$850,000 annually, until ended by voters, with audits and citizens’ oversight?	NO

**Section 3. Proposed Ordinance.** The text of the proposed Real Property Transfer Tax Ordinance to be submitted to the voters is attached to this Resolution as Exhibit A and incorporated by reference. The full text of the proposed Ordinance shall be printed in the Sample Ballot and Voters Pamphlet and shall be made available to the public and to any voter at the Solano County Elections Department and the Benicia City Clerk.

**Section 4. Publication of Measure.** The City Clerk is directed to publish a synopsis of the measure at least one time not later than one week before the election.

**Section 5. Approval.** The vote requirement for this measure to pass shall be a majority of those casting ballots on the measure (50% plus 1).

**Section 6. Filing with County.** The City Clerk shall file a certified copy of this Resolution with the Solano County Elections Department.

**Section 7. Analysis and Argument.** Pursuant to Elections Code Section 9280, the City Attorney shall prepare an impartial analysis of the measure that shall not exceed 500 words no later than 12:00 p.m. on August 14, 2024. Pursuant to Elections Code Section 9282, the deadline to submit to the City Clerk primary arguments which shall not exceed 300 words for and against the ballot measure is 12:00 p.m. on August 16, 2024. Pursuant to Elections Code Section 9285, the deadline to submit to the City Clerk rebuttal arguments which shall not exceed 250 words is 12:00 p.m. on August 20, 2024. Pursuant to Elections Code Section 9287, if more than one argument is submitted against the measure, the City Clerk shall select the argument to be included with the ballot materials.

**Section 8. Implementation.** The City Clerk and City Manager are authorized to take all actions as necessary to effectuate the purposes of this resolution and the election. The City Manager is authorized to execute all documents and to perform all other necessary City acts to enter into a service agreement for the provision of election services with the Solano County Registrar of Voters. The City Clerk and City Attorney are authorized to make any typographical, clerical, and non-substantive corrections to this resolution as may be deemed necessary by the Solano County Elections Department.

**Section 9. Declaration.** The City Council shall meet to declare the results of the election called for by this Resolution at their regular meeting following certification of election results or at a special meeting called for that purpose.

**Section 10. Effective Date.** This Resolution shall take immediate effect upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

**Section 11. Environmental Compliance.** The proposed Real Property Transfer Tax ballot measure is exempt from further review under the California Environmental Quality Act (CEQA) because the adoption of a Real Property Transfer Tax involves the creation of a government funding mechanism which does not involve any commitment to any specific project and thus is not a project subject to the requirements of CEQA as provided by Guidelines Section 15378(b)(4), and further pursuant to Guidelines Section 15061(b)(3) which exempts projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

On motion of Council Member Birdseye, seconded by Council Member Scott, the above Resolution was **passed and adopted** by the City Council of the City of Benicia at a special meeting of said Council held on the 6<sup>th</sup> day of August 2024 by the following vote:

Ayes: Council Members Birdseye, Campbell, Macenski, Scott and Mayor Young

Noes:

Absent:

Abstain:



Lisa Wolfe, City Clerk

8/9/24  
Date

I, Lisa Wolfe, City Clerk of the City of Benicia, County of Solano, State of California, hereby certify that the foregoing Resolution was adopted by the City Council of the City of Benicia at a regular meeting held the 6<sup>th</sup> day of July 2024.



Lisa Wolfe, City Clerk

Exhibit A  
Ordinance Adding New Municipal Code Chapter 3.17 – Voter Approved Three-Tiered Real  
Property Transfer Tax  
[see next page]

**CITY OF BENICIA**

**ORDINANCE NO. 24-\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 3.17 (VOTER APPROVED REAL PROPERTY TRANSFER TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE BENICIA MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1.**

Title 3 (Revenue and Finance) of the Benicia Municipal Code is amended by adding a new Chapter 3.17 (Voter Approved Real Property Transfer Tax) to read as follows:

**Chapter 3.17**

**VOTER APPROVED REAL PROPERTY TRANSFER TAX**

Sections:

- 3.17.010 Title and Purpose.
- 3.17.020 Imposition.
- 3.17.030 Payment.
- 3.17.040 Exception – Security agreement.
- 3.17.050 Exception – Public agencies.
- 3.17.060 Exception – Conveyances.
- 3.17.070 Exception – Order of S.E.C.
- 3.17.080 Exception – Partnership interest.
- 3.17.090 Exception – Instrument of foreclosure.
- 3.17.100 Exception – Intra family transfers
- 3.17.110 Administration.
- 3.17.120 Refunds.
- 3.17.130 Audits and Oversight

**3.17.010. Title and Purpose.** This article may be cited as the “Real Property Transfer Tax Ordinance of the City of Benicia.” It is adopted pursuant to the authority contained in Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State of California. It is also enacted pursuant to the authority of Article XI, Section 5 of the Constitution of the State of California and the Charter of the City of Benicia held as a chartered city.

The tax imposed under this article is solely for the purpose of enacting a Real Property Transfer Tax to raise revenues for the general governmental purposes of the City. All of the proceeds

from the tax imposed by this article shall be placed in the City's general fund. This article is not enacted for regulatory purposes.

**3.17.020. Imposition.** There is imposed on each instrument or writing by which land, tenement or other realty sold within the city is transferred or conveyed to the purchaser or other grantee when the consideration or value of the interest conveyed, exclusive of the value of an encumbrance remaining at the time of sale, exceeds \$100, a tax at the rate of \$4.00 for each \$1,000.00 or fractional part of \$1,000.00 for transactions with sales values \$2,000,000 and under, a tax at the rate of \$6.00 for each \$1,000.00 or fractional part of \$1,000.00 for transactions with sales values of over \$2,000,000 to \$10,000,000, and a tax at the rate of \$8.00 for each \$1,000.00 or fractional part of \$1,000.00 for transactions with sales values of over \$10,000,000.

**3.17.030. Payment.** The tax imposed under BMC 3.17.020 shall be paid by any person who makes a transfer of real property subject to the tax and any person to whom such a transfer is made shall be jointly and severally liable for payment of the tax. The transferor and transferee may apportion the tax among themselves.

**3.17.040. Exception – Security agreement.** The tax imposed does not apply to an instrument in writing given to secure a debt.

**3.17.050. Exception – Public agencies.** Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.

**3.17.060. Exception – Conveyances.** The tax imposed does not apply to a conveyance to make effective a plan of reorganization or adjustment:

- A. Confirmed under the federal Bankruptcy Act;
- B. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
- C. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
- D. Whereby a mere change in identity, form or place of organization is effected.

This section applies only if the filing of instrument of transfer or conveyance occurs within five years from the date of confirmation, approval or change.

**3.17.070. Exception – Order of S.E.C.** The tax does not apply to the making of conveyances to make effective an order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954 if:

- A. The order of the Securities and Exchange Commission recites that the conveyance is necessary or appropriate to carry out Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935; and
- B. The order specifies the property which is ordered to be conveyed. (Prior code § 11-307).

**3.17.080. Exception – Partnership interest.**

A. In the case of realty held by a partnership, no levy is imposed by reason of transfer of an interest in a partnership if:

- 1. The partnership is a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
- 2. The continuing partnership continues to hold the realty concerned.

B. If there is a termination of a partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter the partnership shall be treated as having executed an instrument whereby there was conveyed for fair market value, exclusive of the land value of an encumbrance remaining, all realty held by the partnership at the time of termination.

C. Not more than one tax may be imposed by reason of a termination described in subsection (B) of this section, and any transfer pursuant to it, with respect to the realty held by the partnership at the time of termination.

**3.17.090. Exception – Instrument of foreclosure.** Any tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds that unpaid debt, including accrued interest and cost of foreclosure.

**3.17.100. Exception – Intra-family transfer.** Any tax imposed pursuant to this chapter shall not apply with respect to any intra-family transfers of property, including:

- A. Transfers such as a gift or purchase between parents and children;  
“Children” is defined to include the following: sons and daughters, sons-in-law and daughters-in-law, stepchildren, and children adopted under 18.
- B. Transfers such as a gift or purchase between grandparents and grandchildren;
- C. Transfers such as a gift or purchase between siblings;
- D. Transfer made during the term of a marriage or domestic partnership between spouses or domestic partners;

E. Transfers from one spouse or domestic partner to the other in accordance with the terms of a decree of dissolution or legal separation or in fulfillment of a property settlement incident;

**3.17.110. Administration.** The county recorder shall administer this chapter in conformity with Part 6.7 of Division 2 of the Revenue and Taxation Code and any county ordinance adopted pursuant to it.

**3.17.120. Refunds.** A claim for refund of the tax imposed is governed by Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code of the state, beginning with Section 5096.

**3.17.130 Audits and Oversight.** This Ordinance shall be audited annually and the City shall establish a Citizen’s Oversight Committee to monitor the application of the Ordinance and make recommendations to the City Council.

**SECTION 2.** Effective Date. This Ordinance shall become effective as provided by California Elections Code Section 9217.

**SECTION 3.** Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

**SECTION 4.** Codification. Section One of this Ordinance shall be codified in the City of Benicia Municipal Code. Sections Two, Three, Four and Five shall not be codified in the City of Benicia Municipal Code.

**SECTION 5.** Execution. The Mayor of the City of Benicia is hereby authorized to attest to the adoption of this Ordinance by the voters of the City of Benicia by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the people of the City of Benicia voting thereon the 5th day of November, 2024.

\_\_\_\_\_  
Steve Young, Mayor

Attest:

\_\_\_\_\_

Lisa Wolfe, City Clerk

\_\_\_\_\_  
Date