

O-XX-25

**AN
ORDINANCE**

of the City Council of the City of Berkley, Michigan to add Article III, Workforce Housing PILOT to Chapter 114 Taxation, of the City of Berkley Code of Ordinances to provide for approval of an exemption from ad valorem property taxes for housing being developed or rehabilitated for workforce housing for persons and families whose household income is not greater than 120% of area median income, as authorized by provisions of the State Housing Development Authority Act of 1966, Public Act 346 of 1966. MCL 125.1401, et seq.

**THE CITY OF BERKLEY
ORDAINS:**

SECTION 1: Chapter 114 of the Berkley City Code is amended, as follows:

Chapter 114 TAXATION

Article I – Article II [Unchanged.]

ARTICLE III. WORKFORCE HOUSING PILOT

SECTION 114-24. Title. This ordinance shall be known and cited as the “City of Berkley Workforce Housing PILOT Ordinance.”

SECTION 114-25. Preamble.

It is a proper public purpose for the City of Berkley to encourage the development or rehabilitation of workforce housing for persons and families whose household income is not greater than 120% of area median income by exempting such housing from all ad valorem property taxes imposed by any taxing jurisdiction and providing for payment of an annual service charge for public services in lieu of all such taxes. A PILOT, or service charge payment in lieu of taxes, is an effective means of incentivizing the construction of workforce house. A stable and predictable service charge paid in lieu of all ad valorem property taxes for a fixed period is essential to the determination of the economic feasibility of workforce housing projects developed or rehabilitated in reliance on such tax exemption. The City of Berkley is authorized by section 15a of Public Act 346 of 1966, as amended, MCL 125.1415a, to establish, or change by any amount it chooses, the service charge to be paid in lieu of all ad valorem taxes in accordance with section 15a with respect to new or rehabilitated workforce housing, but not an amount that exceeds the taxes that would be paid but for this authorization or the other limitations imposed

by that section. Because workforce housing for individuals and families whose household income is not greater than 120% of area median income is a public necessity, and because the City of Berkley will be benefited and improved by such housing, encouraging the same through an ad valorem property tax exemption is a valid public purpose.

SECTION 114-26. Definitions.

- (A) "Accessible Design" means the design of site layouts, building layouts and building features where the needs of people with disabilities are specially accounted for.
- (B) "Authority" means the Michigan State Housing Development Authority.
- (C) "Additional Amount" means an amount equal to the difference between the following:
 - (1) the millage rate levied for operating purposes by the County multiplied by the current Taxable Value of a workforce housing project for which a PILOT Resolution has been adopted, and
 - (2) the amount of the annual service charge paid in lieu of ad valorem property taxes by the housing project under subsection (4)(C) that is distributed to the County pursuant to MCL 125.1415a(5).
- (D) "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of the occupants of a housing project representing rent or occupancy charges, exclusive of charges for gas, electricity, heat, or other utilities furnished to the occupants and paid for by the housing project.
- (E) "Area median Income" means the midpoint of income distribution for the Detroit-Warren-Livonia area as determined by the Department of Housing and Urban Development.
- (F) "County" means the County of Oakland, State of Michigan.
- (G) "PILOT Resolution" means a project-specific resolution adopted by the City Council of the City of Berkley that approves a housing project for exemption under this ordinance.
- (H) "Rehabilitation" means the process of renovating properties to improve their condition, functionality and value by repairing structural problems, adding features, modernizing layouts and improving energy efficiency. This does not include minor aesthetic upgrades such as paint, cabinet replacement, etc.
- (I) "Restrictive Covenant" means a recorded agreement between Sponsor and the City of Berkley running with the land that restricts the use of the housing project to workforce housing, as defined in this ordinance, for a period not to exceed 15 years, or such greater or lesser period of time as may be authorized by state law and as may be required by the PILOT Resolution.

- (J) "Sponsor" means any person or entity applying for a workforce housing exemption under this ordinance and includes any person or entity who subsequently owns the housing project.
- (K) "Taxable Value" means taxable value as calculated under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.
- (L) "Universal Design" means the design of site layouts, building layouts and building features that are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.
- (M) "Workforce housing" means rental units or other housing options that are reasonably affordable to, and occupied by, a household whose total household income is not greater than 120% of the area median income published by the United States Department of Housing and Urban Development.

SECTION 114-27. Authorization and Establishment of Workforce Housing Exemption.

- (A) The class of housing projects to which the tax exemption applies and for which a service charge may be paid in lieu of all ad valorem property taxes are housing projects being developed or rehabilitated for workforce housing.
- (B) Subject to the recording of a Restrictive Covenant, workforce housing and the property on which such housing is or will be located is exempt from all ad valorem property taxes as of December 31 of the year in which construction or rehabilitation commences. Construction must start within one year of the date of the Authority's notification of exemption or such longer period of time as may be provided by the PILOT Resolution.
- (C) The City of Berkley will accept payment of an annual service charge in lieu of all ad valorem property taxes for public services from the owner of a housing project for which the City of Berkley has received a certified notification of exemption from the Authority in accordance with the following:
 - (1) Subject to subsections (D), (E) and (F), for a new construction project, an amount that is the greater of the tax on the property on which the project is located for the tax year proceeding the date on which the construction is commenced or 10% of the Annual Shelter Rent obtained from the project.
 - (2) Subject to subsections (D), (E) and (F), for a rehabilitation project, an amount that is the lesser of the tax on the property on which the project is located for the tax year proceeding the date on which rehabilitation is commenced or 10% of the Annual Shelter Rent obtained from the project.

- (3) The service charge paid in lieu of taxes shall not exceed the amount in ad valorem taxes that the Sponsor would have otherwise paid if the workforce housing project were not tax exempt.
- (D) Notwithstanding the provisions of MCL 125.1415a(3)(b) and 125.1415a(7) to the contrary, upon the adoption of a PILOT Resolution and receipt of a certified notification of exemption from the Authority, a contract is be deemed effected between the City of Berkley and the Sponsor, to provide a tax exemption and accept service charge payments in lieu of taxes as previously described by this section.
- (E) Notwithstanding subsection (C), the service charge paid each year in lieu of taxes for that part of a workforce housing project that is tax exempt under this ordinance but not used for workforce housing must be equal to the full amount of the taxes that would be paid on that portion of the project as if the project were not tax exempt. The owner of the project must allocate the benefits of any tax exemption granted pursuant to this ordinance exclusively to workforce housing or to the maintenance and preservation of the housing project as a safe, decent, and sanitary workforce housing.
- (F) The annual service charge under subsection (C) for a workforce housing project for which a PILOT Resolution has been adopted must be increased by the Additional Amount if both of the following requirements are met:
- (1) Not later than 45 days after the County Treasurer's receipt of the certified notification of exemption, the County Board of Commissioners passes a resolution, by majority vote, that provides that the Additional Amount must be paid.
- (2) The approval of the resolution described in subparagraph (1) is in accordance with an ordinance or resolution adopted by the County Board of Commissioners establishing the factors to be considered when assessing whether the Additional Amount must be paid.

SECTION 114-28. Workforce Housing Exemption Application, Review and Approval Process.

- (A) The Sponsor of a workforce housing project must own the property that is the subject of the application or must be the purchaser under a purchase or option agreement or otherwise demonstrate that they have control over the property. The property that is the subject of the application must be zoned for the intended use at the time of application.
- (B) Prior to applying for a workforce housing exemption, the Sponsor is required to meet with the City Manager, Treasurer, Assessor, and any other person as may be designated by the City Manager and present the proposed workforce housing project. The presentation must include a description of the Sponsor's organizational structure and development experience, a narrative describing the scope of the

workforce housing project, including location, number and type of units, typical floor plans and exterior elevations, the targeted median income and proposed rent limits, a schedule with projected milestones, a development income and expense pro forma (including the estimated Annual Shelter Rents), and a ten-year cash flow projection.

- (C) The Sponsor must submit its request for a workforce housing exemption using the form provided by the City Manager and including the information identified in subsection (B).
- (D) If a complete application is received, the City Manager will forward the application to be considered by City Council at a regularly scheduled City Council meeting within sixty (60) days of receipt of the completed application.
- (E) When reviewing an application for a workforce housing exemption, the decision to approve or deny the request must increase the number of available workforce housing units in the city and be guided by the City Council's consideration of the following factors:
 - (1) Whether the workforce housing project will reduce the functional obsolescence of an existing building or housing unit(s).
 - (2) Whether the workforce housing project is likely to encourage expansion of the population of the City.
 - (3) Whether the location of the workforce housing project is consistent with the goals and objectives of the City's Master Plan.
 - (4) Whether the development or rehabilitation of the workforce housing project complies with ordinance provisions and does not require zoning variances or results in the elimination of a nonconforming use.
 - (5) Whether the workforce housing project will include a level of amenities desired by or appropriate for the community.
 - (6) Whether the workforce housing project will add attractive, viable housing units to the community.
 - (7) Whether the workforce housing project incorporates green technologies or energy-efficient components.
 - (8) Whether the workforce housing project incorporates accessible design and/or universal design principles.
 - (9) Whether the workforce housing project exceeds the general cost of providing city services to the property.

- (F) Approval of an exemption for a workforce housing project requires passage of a PILOT Resolution by a majority vote of the City Council that includes the findings with respect to the standards of subsection (E) above.
- (G) If the workforce housing exemption application is approved, the City Clerk will deliver to the Sponsor a certified copy of the resolution approving the application.
- (H) To defray the administrative cost of processing an application for a workforce housing exemption, the City Council must include a workforce housing application fee in its annually adopted fee schedule.

SECTION 114-29. Authority Affidavit and Assessor Notification.

- (A) Following adoption of the PILOT Resolution, the Sponsor must submit an affidavit to the Authority in the form required by the Authority for certification by the Authority that the project is eligible for the workforce housing exemption.
- (B) Upon receipt of notification from the Authority that the project is eligible for a workforce housing exemption, the Sponsor or the Authority must file the certified notification of exemption with the City Assessor before November 1 of the year preceding the tax year in which the exemption is to be effective.
- (C) Not later than 5 business days after receipt of the certified notification of exemption, the City Assessor must provide a copy of the certified notification of exemption to the County Treasurer.

SECTION 114-30. Payment of PILOT.

- (A) No later than April 1, or such other date provided for in the PILOT Resolution, Sponsor must submit to the City Treasurer, Sponsor's budget for Annual Shelter Rent for the current calendar year and a copy of Sponsor's audited financial statements for the preceding calendar year, prepared in accordance with generally accepted auditing standards or, if Sponsor is not subject to an audit requirement, Sponsor's compiled financial statements for the preceding calendar year prepared in accordance with generally accepted accounting principles and certified by Sponsor. Within 30 days of receipt of the foregoing documents, the City Treasurer will issue an invoice showing the PILOT payment due for the current year, which payment is due no later than July 1.
- (B) Except as otherwise provided in this section and section 114-27, any payments for public services under this ordinance must be distributed to the governmental units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The distribution to those governmental units must be made as if the number of mills levied for local school district operating

purposes were equal to the number of mills levied for the purposes in 1993 minus the number of mills levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906, for the year for which the distribution is calculated. The amount of payments in lieu of taxes to be distributed to a local school district for operating purposes under this subsection must not be distributed to the local school district but instead must be paid to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

- (C) Any PILOT payment or portion of PILOT payment remaining unpaid as of the due date will bear interest at 1% per month and require payment of a 3% penalty fee. The collection of past due PILOT payments must otherwise be in accordance with the provisions of Chapter 211 of the General Property Tax Act, Act 206 of 1893, as amended; MCL 211.44 et seq.

SECTION 114-31. Duration and Recorded Restrictive Covenant.

- (A) A workforce housing project approved for an exemption by a PILOT Resolution must be encumbered by a Restrictive Covenant recorded in the office of the Register of Deeds for the County.
- (B) The Restrictive Covenant must acknowledge:
 - 1) That the economic feasibility of the workforce housing project depends on the approval and continuing effect of the payment in lieu of all ad valorem taxes as approved by the PILOT resolution;
 - 2) That the City agreement to accept payment of an annual service charge in lieu of all ad valorem taxes in consideration of the Sponsor's offer to construct or rehabilitate workforce housing; and
 - 3) That the amount of the annual service charge to be paid for each operating year.
- (C) The Restrictive Covenant must provide:
 - 1) For the reporting and monitoring of the Sponsor's compliance with the Restrictive Covenant, this ordinance and the PILOT Resolution;
 - 2) That the Restrictive Covenant is enforceable by City and any Tenants to be benefitted at law or in equity;
 - 3) Other remedies available to the City for non-compliance, including termination of the exemption and repayment of all prior years' tax savings under the workforce housing exemption after notice and hearing; and
 - 4) That the Restrictive Covenant cannot be modified or terminated except in a written instrument executed by the Sponsor or then current owner and the City.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance remain in full force and effect.

SECTION 3: Penalty

All violations of this ordinance are municipal civil infractions and upon determination of responsibility therefore are punishable by a civil fine of not more than \$500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

SECTION 4: Effective Date

This Ordinance becomes effective 30 days following the date of adoption.

SECTION 5: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, May 5, 2025 .

Adopted on the Second Reading at the Regular City Council Meeting on Monday, May 19, 2025 .

Bridget Dean, Mayor

Attest:

Victoria Mitchell, City Clerk