



Kate Harrison
Councilmember, District 4

ACTION CALENDAR
September 12, 2023

To: Honorable Mayor and Members of the City Council
 From: Councilmember Harrison
 Subject: Designating Open Space Adjacent to and in Front of Old Berkeley City Hall as a Linear City Park Pursuant to BMC 6.42

RECOMMENDATION

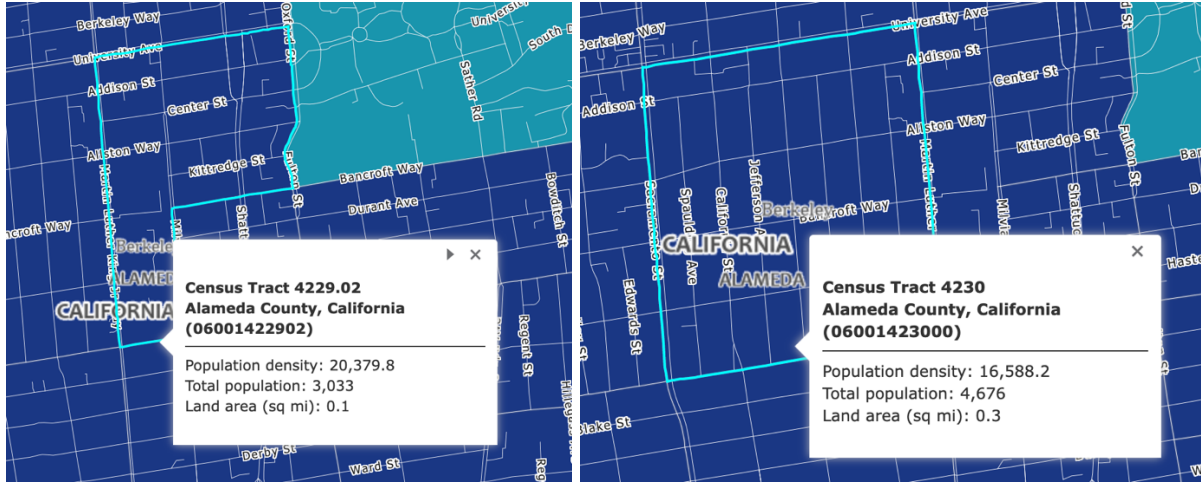
Adopt a resolution designating open space in front of Old City Hall as linear City park space and formally dedicate this site for permanent recreational use pursuant to BMC 6.42.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

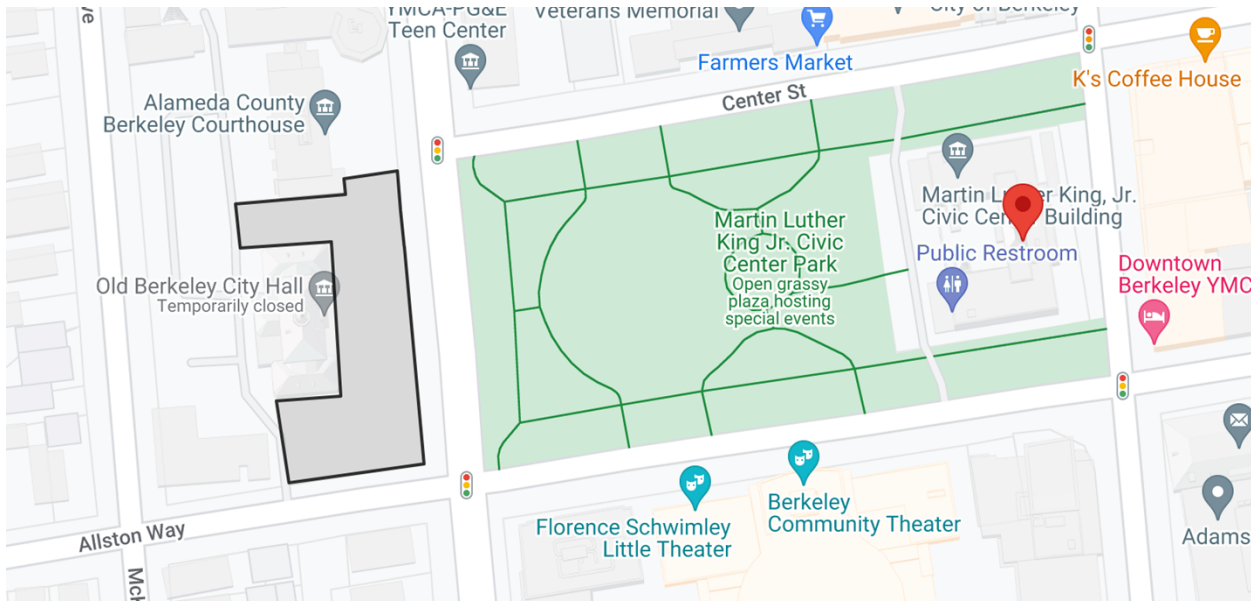
The built environment of Downtown Berkeley lacks an abundance of open space and recreational facilities. Parks and open space are critical for the well-being of residents.

Measure 'L', the *Berkeley Public Parks and Open Space Preservation Ordinance*, adopted by the City of Berkeley in 1986 and codified as Berkeley Municipal Code (BMC) Section 6.42, designates "census tracts containing less than the master plan provision of two acres of parks and open space per one thousand population shall be singled out as having a high priority for funding the acquisition, development and maintenance of parks and recreational facilities."

The Downtown Census tracts 4229.02 and 4230 with respective populations of 3,033 and 4,676 fall short of this threshold and should be prioritized for additional open space. The only park in Census tract 4229.02 is Civic Center Park with 3.46 acres of open space, nearly half the amount of space recommended by Measure L. Similarly, tract 4230 in Central Berkeley has a mere .63 acres of open space, when according to Measure L it should have approximately just under 10 acres.



Pursuant to BMC 6.42, this item would contribute approximately an additional .68 acres of Parks and Open space for use by residents and visitors to these two Central/Downtown census tracts by converting the open space in front of Old City Hall.



BACKGROUND

The District 4 Council District, where Old City Hall is located, contains nearly 14,082 residents according to the 2020 census but only contains roughly 4.02 acres of open space and park land. This means that, according to Measure L, District 4 has a high priority for funding, acquisition, development, and maintenance of new open space.

The open space and landscaping along the western side of MLK and in front of and to the sides of Old City Hall is currently designated a landscaping associated with civic buildings. The space does not currently enjoy the same status of a City park, which would

confer additional maintenance and protection benefits via the Parks, Recreation & Waterfront Department.

The open space in front of these three public buildings is already often used for variety of civic events and as a lunch spot for residents, workers, and Berkeley High students.

Within Berkeley's Open Space and Recreational Element of the General Plan, adopted April 3, 2002, the objectives are stated as follows and are consistent with the goals of this item:

- preserving, maintaining, and repairing the city's existing open space and recreational resources and facilities;
- expanding open space and recreational resources to meet the evolving open space and recreational needs of all segments of this community through land acquisitions and improvements;
- increasing funding for parkland, recreational facilities, and open space maintenance, improvement, and expansion; and

In addition, designating this area as an official public park would help achieve the goals ED-2 and OS-1 of the Berkeley Downtown Area Plan, to "maintain a safe and inviting streets, parks and plazas that contribute to the success of businesses and the wellbeing of residents" and "create new public gathering places that support nearby uses and Downtown as a destination."

In 2019, Council previously designated Berkeley's portion of Ohlone Greenway and the West Street Bike Path as linear City parks pursuant to BMC 6.42. It is the public interest to similarly designate the Berkeley-owned open space and land included in this item as an official part of Berkeley park infrastructure.

FISCAL IMPACTS OF RECOMMENDATION

This area is already owned and maintained by the City of Berkeley so the fiscal impacts of making it an official park would be small. A minimal use of staff time would be required to dedicate the area as a park and add park signage.

ENVIRONMENTAL SUSTAINABILITY

Designating the open space adjacent to and in front of Old City Hall will enable the City to better maintain these dedicated these spaces as safe and enjoyable low-carbon and carbon sequestering recreation areas.

CONTACT PERSON

Councilmember Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Resolution
2. Voter Information Pamphlet Text of Measure L

RESOLUTION ##,###-N.S.

DESIGNATING THE BERKELEY-OWNED OPEN SPACE ADJACENT TO AND IN FRONT OF OLD CITY HALL AS AN OFFICIAL PART OF CITY PARK INFRASTRUCTURE

WHEREAS, in Berkeley's Open Space and Recreational Element of the General Plan, adopted April 3rd, 2002, the objectives are stated as:

- preserving, maintaining, and repairing the city's existing open space and recreational resources and facilities;
- expanding open space and recreational resources to meet the evolving open space and recreational needs of all segments of this community through land acquisitions and improvements;
- increasing funding for parkland, recreational facilities, and open space maintenance, improvement, and expansion; and

WHEREAS, in Berkeley's Downtown Area Plan, adopted March 20th, 2012, the objectives are stated as:

- maintaining a safe and inviting streets, parks and plazas that contribute to the success of businesses and the wellbeing of residents;
- creating new public gathering places that support nearby uses and Downtown as a destination; and

WHEREAS, Measure L, the *Berkeley Public Parks and Open Space Preservation Ordinance* adopted by the City of Berkeley in 1986 requires the Council "To preserve and maintain the public parks and open space which exist in Berkeley, as well as To acquire and maintain public parks and open space in the census tracts and Neighborhoods of Berkeley having less than the minimum amount of open Space relative to population (2 acres per 1,000)"; and

WHEREAS, District 4 and the census tracts therein adjacent to Old City Hall contains less than 2 acres of public parks and open space per 1,000 residents and therefore has a high priority for funding, acquisition, development, and maintenance of open space; and

WHEREAS, the above goals and ordinances establish the protection of open space and the establishment of public parks as an important City priority; and

WHEREAS, the open space and land along the western side of MLK and in front of Old City Hall are already being used for civic and recreational activities and are comparable to existing Park Space in the adjacent Civic Center Park.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Berkeley-owned open space and land adjacent to and in front of Old City Hall is designated as an official part of City park land and infrastructure.

CITY OF BERKELEY INITIATIVE ORDINANCE

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| <p>L MEASURE L: Shall an ordinance be adopted to require voter approval of non-recreational uses of parks or open space and require acquisition of open space controlled or leased by the City if acquisition is the only means of preserving the open space?</p> <p>Financial Implication: Increase in landscape assessment fees; acquisition costs unknown.</p> | YES |
| | NO |

FULL TEXT OF MEASURE L

LET IT HEREBY BE ORDAINED that an Ordinance shall be passed which shall provide:

THE BERKELEY PUBLIC PARKS AND OPEN SPACE PRESERVATION ORDINANCE: PROPOSAL FOR AN ORDINANCE TO REQUIRE THE BERKELEY CITY COUNCIL TO PRESERVE AND MAINTAIN THE PUBLIC PARKS AND OPEN SPACE WHICH EXIST IN BERKELEY, AS WELL AS TO ACQUIRE AND MAINTAIN PUBLIC PARKS AND OPEN SPACE IN THE CENSUS TRACTS AND NEIGHBORHOODS OF BERKELEY HAVING LESS THAN THE MINIMUM AMOUNT OF OPEN SPACE RELATIVE TO POPULATION (2 ACRES PER 1,000) IDENTIFIED IN THE BERKELEY MASTER PLAN OF 1977; AND TO REQUIRE THE CITY TO SUBMIT TO A POPULAR VOTE ALL PROPOSALS TO WITHDRAW FROM RECREATIONAL USE PUBLIC PARKS OR PUBLIC OPEN SPACE.

FINDINGS:

WHEREAS the Berkeley Master Plan of 1977 (hereinafter Master Plan) provides for a minimum standard of two acres of public open space per 1,000 persons and identifies specific Berkeley census tracts as having high population density and high open space demands, and attainment of the minimum standard is jeopardized by continued loss of Public open spaces.

WHEREAS the City of Berkeley is the second most densely populated city in California, undeveloped land is at a high premium in Berkeley, there are significant pressures to convert City owned or controlled open space to permanent or long-term non-park, non-open space uses and there exists a clear and present emergency in that the threatened loss of open space, parks and recreational opportunities in the neighborhoods in Berkeley will cause irreparable damage to the health and welfare of Berkeley residents.

WHEREAS the Berkeley City Council has failed to provide and fund the Master Plan minimum standard of public parks and open space in every Berkeley neighborhood, and in particular in those census tracts having high park and open space requirements.

WHEREAS, specific procedures and directives to the Berkeley City Council are necessary to insure that the Master Plan's minimum park and open space goals are not rendered impossible through the continued loss of public open spaces;

VOTER AUTHORIZATION PROCEDURE

Section 1: That no public parks (hereinafter defined) or public open space (hereinafter defined) owned or controlled or leased by the City of Berkeley or agency thereof, shall be used for any other purpose than public parks and open space, without The Berkeley City Council first having submitted such use to the citizens for approval by a majority of registered Berkeley voters voting at the next occurring general election.

FUNDING LEVELS TO ALLOW FULL USE

Section 2(a): That wherever public parks and open space currently exist in Berkeley, such use shall continue and be funded at least to allow the maintenance of the present condition and services. (b) That all undedicated or unimproved open space owned or controlled by the City of Berkeley (including land held by the City in trust) shall be retained and funded by the Berkeley City Council to enable public recreational use of those lands. (c) That those census tracts containing less than the Master Plan provision of two acres of parks and open space per 1,000 population shall be singled out as having a high priority for funding the acquisition, development and maintenance of parks and recreational facilities.

Section 3(a): **Public parks** shall be defined as City of Berkeley parks, public school playgrounds or lands held in trust by a public entity, which have been formally dedicated to permanent recreational use by the City of Berkeley, and funded for recreational use by City of Berkeley public funds.

Section 3(b) **Public open space** shall be defined as all City of Berkeley parks, public school playgrounds, and vacant public land, whether dedicated formally to park use or being used de facto as open space with recreational use or potential use on or after January 1, 1985.

ADOPTION OF THIS ORDINANCE

Section 4(a): If the petition accompanying this proposed ordinance is signed by the number of voters required by the Berkeley City Charter, Article XIII, Section (3) or (4) or (5), the Berkeley City Council is hereby directed to submit this ordinance forthwith to the vote of the people pursuant to the appropriate Charter Section that applies to the highest number of voter signatures certified by the City Clerk, unless the Council passes this ordinance pursuant to the Charter, Article XIII, Section (3)(a).

RETROACTIVITY

Section 5(a): Upon passage of this initiative, all actions taken on or after January 1, 1985, by the Berkeley City Council, Housing Authority, or any agency of the City of Berkeley which contravene the provisions herein shall be declared null and void.

Section 5(b): Upon passage of this initiative, all actions, even administrative, taken by the Berkeley City Council, or Housing Authority or agency of the City of Berkeley occurring after the date this initiative is certified for placement on the next occurring general election ballot, which actions are not in full conformity with this Ordinance, shall be declared null and void.

SEVERABILITY

Section 6: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are severable.

BERKELEY CITY ATTORNEY ANALYSIS OF MEASURE L

The initiative ordinance would have the following effect:

1. Require that all existing public parks and vacant public land, either formally or informally devoted to recreational use after January 1, 1985, be retained and maintained at their present level of service. This requirement would only apply to land owned or controlled by the City of Berkeley, since the City does not have the authority to regulate land owned by other public entities such as the school district or the University of California. The Berkeley Redevelopment Agency and the Berkeley Housing Authority are independent state agencies and thus would be immune from regulation in this manner.
2. Require prior voter approval if such City of Berkeley public parks or open space are to be used for any other purpose. This measure requires the City to acquire land it does not presently own, if acquisition is the only means to retain the land as open space or public park. As of the date this analysis was prepared, several City parks are owned by others, including: sections of Ohlone Park, leased from Bay Area Rapid Transit District; six school parks owned by the Berkeley Unified School District and maintained, in part, by the City; and Douglas Park on Dwight Way which is owned by the University. The City has plans underway to acquire the remaining section of Ohlone Park.
3. Census tracts that do not meet the Master Plan open space requirements will have priority for the funding, acquisition, development and maintenance of parks and recreational facilities.

Financial Implications

Currently park maintenance is funded by fees through the Landscape Assessment District. Increase in fees will be required to maintain additional land. Costs to acquire land owned by others is unknown at this time, but may be significant.

ARGUMENT IN FAVOR OF MEASURE L

Approval of this citizen's initiative ordinance will allow Berkeley Voters to directly participate in decisions to change the use of Public Parks and Open Space.

Berkeley's parks and public open spaces are highly used and valued by all parts of the community. They help provide for the health, fitness, children's play, entertainment, and recreational needs of all citizens. Decisions to reduce our presently insufficient number of parks belong on the ballot where all citizens can express their opinion with their vote.

This initiative ordinance requires that the voters must approve new uses for city lands held in public trust. It does not limit or prohibit any potential new uses approved by the majority of the voters.

Approval of this ordinance would certify that Berkeley Census tracts that presently contain less public open space than the Master Plan standard of two acres per 1,000 residents be given priority funding in acquisition, development and maintenance of parks/recreational facilities. It will help make distribution of parks more equitable throughout Berkeley. This is a minimal standard, since Berkeley has fewer parks than state and national averages.

The provisions of the Master Plan combined with the approval of Measure Y (1974) park funding, strongly suggests that the Citizens of Berkeley believe that Public Parks and Open Space need expansion. Since there is no indication that Berkeley has changed its opinion, it is all the more appropriate to require voter approval when potential development removes parks and open space called for in the Berkeley Master Plan.

You can help Preserve Berkeley's parks and open space by voting YES on Measure L.

s/Martha Nicoloff, Co-Author, Neighborhood Preservation Ordinance

s/Clifford Fred

s/Dorothy Bryant

s/Carroll B. Williams, Former Berkeley School Director

s/John G. Cecil, Chair, Preservation Initiatives Committee

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE L

The need for parks is a serious issue which should not be the subject of the scare tactics employed by the proponents of Measure L.

City parks are designated in the Master Plan for recreational use. Contrary to implications made by the proponents of this measure, **no one can recall any City plan**—past, present, or future—to **reduce the number of parks** serving Berkeley's recreational needs. Open space, sometimes a vacant lot, on the other hand, is usually held by owners other than the City. They may, or may not, have plans for future use of their property.

The real reason for Measure L is the Housing Authority's plan to build 12 single-family townhouses for low income families on a small portion of School District property at Savo Island (MLK, Jr. Way between Derby and Ward). The remaining piece of land is large enough to accommodate a football field. The neighborhood will still be able to enjoy the use of this open space.

Measure L does more than require a vote for new uses for City lands held in public trust. It requires the City to acquire land. But **where will the money come from?** Given the tremendous federal budget cuts to municipalities and the demands on the City's budget, from what other City services will the trade-off come? And given the pressure of Measure L on the City, property owners would be foolish to negotiate.

If we want additional parks, someone has to pay. And since we will ultimately pay, **we should know the cost before we make such an important decision.**

Don't let the proponents of this measure scare you into believing that our parks will disappear. Quite honestly, they won't.

VOTE NO ON MEASURE L

s/Wesley E. Hester, Chair, Council Committee on Revenue and Finance

s/Arlene Irlando, Member, Berkeley Chicano/Latino Network

s/Maudelle Miller Shirek, Berkeley City Council

s/Stacy Wilson, Chair, Citizens Budget Review Commission

s/Carole K. Davis, Former Vice-Mayor

ARGUMENT AGAINST MEASURE L

On its face as a statement of community values, Measure L seems harmless. What could be wrong with wanting additional parks? However, the difference between the outcome of Measure L and the kind of program which can come from a thoughtful parks proposal such as Measure Y (1974) is a budget—a specific amount dedicated to acquiring and maintaining parks and open space.

In 1974 voters passed a park acquisition, renovation and development ordinance: Measure Y. It raised more than \$5 million. As a result, the City was able to create 9 new parks and 8 parks on-school grounds. That measure was a direct result of the recognition that Berkeley was deficient in park space and was able to accomplish what it did because it included a budget.

As a community we are stretched thin in trying to fund a variety of City Services ranging from police services to sidewalk repair. **New parks** and additional open space **cost money** (if and when the City can get title to the property. In fact, this measure may well prejudice City negotiations with landowners who will use this measure in their bargaining. The proponents of Measure L are irresponsible in offering this proposal without including the means by which to finance it. They have made promises but have not provided any way of keeping them. **The citizens deserve to know how the money will be obtained, and what the price tag will be.**

s/Hynetha Hewitt, Parks and Recreation Commissioner

s/Carole Davis, Former Vice-Mayor

s/Maudelle Shirek, Berkeley City Council

s/Carole Lewis, Social Services Director

s/Rich Illgen, President, Planning Commission

REBUTTAL TO ARGUMENT AGAINST MEASURE L

The opponents of Measure L have missed its major provision.

Measure L **prevents the City Council from using the existing public parks and open spaces for any new use without the approval of the community.**

If the **Council wants to remove/develop** existing public parks and open space, **prior voter approval is required.**

At this time, **no law prevents** our elected officials from placing such decisions on the ballot.

Measure L also requires that the **minimal standard for parks already in existence** be observed in **areas that presently have less than their "fair share" of parks** called for in the Berkeley Master Plan of 1977.

We do not agree with the opponents financial argument.

Despite the implication of the opponent's argument, responsibility for implementing and financing the Master Plan has not shifted from Council and Staff to individual community members. It should be noted that **determined citizens** who believe in the importance of parks and recreational facilities in everyone's quality of life, have and will continue to assist in the search for sources of new and additional funding.

Measure L ensures the community will be directly involved in decisions to re-use existing Public Parks and Open Space by placing every proposed development plan on the ballot and letting the voters decide between parks and development.

Vote YES on Measure L.

- s/Michael Winter, Executive Director, Center for Independent Living
- s/Pamela J. Ferguson
- s/Gloria A. Belsky
- s/John G. Cecil, Chair, Preservation Initiatives Committee
- s/Janet M. Maestre

CITY OF BERKELEY INITIATIVE ORDINANCE

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| <p>M MEASURE M: Shall an ordinance be adopted requiring voter approval for non-educational and/or non-recreational uses of Berkeley Unified School District property?</p> <p>Financial Implications: Unknown.</p> | YES |
| | NO |

FULL TEXT OF MEASURE M

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF BERKELEY:

FINDINGS:

WHEREAS the Berkeley City Council and Berkeley Housing Authority have attempted to acquire, develop, use or approve Berkeley Unified School District property for non-educational purposes.

WHEREAS the Berkeley Unified School District (hereinafter School District) has been given a public trust in real property to use for the educational benefit of the Citizens of Berkeley.

WHEREAS the School District has purchased and developed real property with monies received in trust and intended to be expended for the educational benefit of the citizens of Berkeley, which property if lost to the originally intended and dedicated educational and related recreational uses, will be unavailable or irreplaceable when needed for those uses.

WHEREAS there is a potential that use or development of School District property for non-educational uses will ultimately act to the detriment of the Citizens of Berkeley and will violate the wishes of a majority of the Citizens of Berkeley regarding the use of that property.

WHEREAS these actions have been proposed and are being undertaken without the approval of the voters of Berkeley.

WHEREAS there exists a clear and present emergency in that the threatened sale or long-term lease of School District real property and buildings for non-educational or non-recreational use will cause irreparable damage to the health and welfare of Berkeley residents.

Section 1: That should the Berkeley City Council, Housing Authority or any other agency of the City of Berkeley propose to acquire, or approve the use of, School District property (hereinafter defined) for other than educational or existing recreational purposes, and should that approval or use require the purchase, sale or long-term encumbrance (hereinafter defined) of that property, the Berkeley City Council shall first submit that specific proposal, detailing the specific use, transaction sought, and the site involved, after being approved officially by the appropriate City agency and the Berkeley City Council, to the Citizens for approval by a majority of registered Berkeley voters voting at the next occurring general election.

DEFINITIONS

Section 2(a): **School District property** shall be defined to include the land and buildings which have been used by the Berkeley Unified School District for educational purposes, child-care, recreation or School District support services (including maintenance) at any time since January 1980.

Section 2(b): A **long-term encumbrance** shall include a lease whose term is greater than five years or where options are granted such that the term may be extended beyond five years by option of the lessee. In addition, a long-term encumbrance shall include any mortgage transaction which pledges the property as security.

ADOPTION OF THIS ORDINANCE

Section 3(a): If the petition accompanying this proposed ordinance is signed by the number of voters required by the Berkeley City Charter, Article XIII, Section (3) or (4) or (5), the Berkeley City Council is hereby directed to submit this ordinance forthwith to the vote of the people pursuant to the appropriate Charter Section that applies to the highest number of voter signatures certified by the City Clerk, unless the Council passes this ordinance pursuant to the Charter, Article XIII, Section (3) (a).

RETROACTIVITY

Section 4(a): Upon passage of this initiative, all actions taken on or after January 1, 1985, by the Berkeley City Council, Housing Authority or any agency of the City of Berkeley which contravene the provisions herein shall be declared null and void.

Section 4(b): Upon passage of this initiative, all actions, even administrative, taken by the Berkeley City Council, Housing Authority or agency of the City of Berkeley occurring after the date this initiative is certified for placement on the next occurring general election ballot, which actions are not in full conformity with this Ordinance, shall be declared null and void.

SEVERABILITY

Section 5: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are severable.

BERKELEY CITY ATTORNEY ANALYSIS OF MEASURE M

The initiative ordinance would have the following effect:

1. Require the City Council to submit to the voters for prior approval any proposal to acquire, encumber or lease for a period longer than five years, or approve the use of property owned by the Berkeley Unified School District, if the property is not intended to be devoted to educational or recreational uses. Under current law, voter approval of such a proposal would be required only if the property was to be used for specified kinds of public housing and the City had exhausted its current voter approved authority to construct such units. The Housing Authority is an independent state agency implementing statewide laws and is not subject to this ordinance. Zoning or other City land use approvals of projects proposed by other private or public persons or entities would not be subject to prior voter approval under current case law.
2. Provide that any actions taken by the City Council or the Berkeley Housing Authority or other City agency after January 1, 1985, which contravene the ordinance in the above respect, are null and void. The Berkeley Housing Authority has entered into a long-term lease with the Berkeley Unified School District