

CITY OF BERKELEY MEASURE FF

s/FARIMAH BROWN
Berkeley City Attorney

FF Shall an ordinance enacting a tax at a rate of \$0.1047 per square foot of improvements, which is estimated to generate \$8.5 million annually for firefighting, emergency medical response, 9-1-1 communications services, hazard mitigation, and wildfire prevention and preparedness, until repealed by the voters, be adopted?	YES
	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE FF

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

This measure would authorize a special parcel tax of \$0.1047 per square foot of improvements (i.e., buildings or structures erected or affixed to the land) for each parcel of real property in the City of Berkeley, for the purpose of funding firefighter and emergency medical response, upgrades to the 9-1-1 dispatch system, hazard mitigation, and wildfire prevention and preparedness activities. The City Council may increase the tax annually by the increase in the local cost of living or the per capita personal income growth in the state, whichever is greater.

The tax would not apply to

- parcels and improvements exempt from taxation by the City pursuant to state or federal law
- property owned by individuals who qualify as "very low-income," as may be established by resolution of the City Council.

The measure shall pass if approved by two-thirds of the voters voting on this measure and would go into effect on January 1, 2021. It would remain in effect until repealed by the voters. Alternatively, the City Council could, without voter approval, reduce or eliminate the tax, add or modify exemptions, or amend it in any way that does not increase the tax.

Financial implications

The tax is estimated to generate \$8.5 million annually. The proceeds shall be placed in a special fund to be used only for the following:

- Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.
- Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.
- Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.

The above statement is an impartial analysis of Measure FF.

ARGUMENT IN FAVOR OF MEASURE FF

Vote YES on Measure FF to keep Berkeley safe by improving 911 dispatch, emergency warning and ambulance services and strengthening programs to plan for and respond to catastrophic wildfires, earthquakes and other emergencies.

Berkeley's emergency medical, fire and ambulance capabilities must be expanded to meet 21st century challenges. 911 calls have grown dramatically in Berkeley, more than doubling over the last 25 years. To meet these needs, we need modern equipment, new technology, and additional firefighters and paramedics.

Our population is aging, and closure of Alta Bates Hospital will require patients to be transported further away, tying up ambulances and staff. Alameda County cut funding for first responder and ambulance calls, and COVID-19 has reduced revenues at a time when emergency and mental health services are in higher demand.

With climate change, fires are burning with greater intensity, blowing embers and burning neighborhoods far from front lines. Earthquakes remain a danger, with the Hayward Fault overdue for a major event. Berkeley must be prepared to manage these multiple emergencies simultaneously.

Measure FF is critical for funding additional ambulances and emergency life-saving services, more effective 911 response, better warning and communication systems, and wildfire and disaster prevention and response.

Measure FF will help Berkeley:

1. Implement state-of-the-art 911 dispatch systems to insure rapid assistance to emergency calls.
2. Increase ambulance and paramedic capacity, to better meet the needs of all residents, including our most vulnerable.
3. Strengthen wildfire, earthquake and other disaster prevention and preparedness with new, expanded emergency warning systems, fire fuel reduction and evacuation planning.

Measure FF is a necessary and responsible measure to meet Berkeley's urgent fire and emergency response, communications, and disaster preparedness needs.

The Mayor and City Council unanimously placed this measure on the ballot.

Join elected leaders, firefighters, paramedics and seniors to vote YES on Measure FF, for a safe and resilient Berkeley. www.BerkeleyPrepared.com

s/NANCY SKINNER

State Senator

s/JESSE ARREGUÍN

Berkeley Mayor

s/SOPHIE HAHN

Berkeley Vice Mayor and Councilmember

s/SUSAN WENGRAF

Berkeley City Councilmember

s/JUSTIN IRONSIDE

President, Berkeley Firefighters Association Local 1227

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE FF

This Measure fails to guarantee that the Tax SHALL be spent on delivering the listed benefits. The Proponents enumerate all the benefits that citizens MIGHT receive. They list the 'Emergency' needs that citizens actually have. However, the Proponents fail to even promise that the taxes will be spent on the listed benefits. The best the Proponents can promise is that these new taxes 'will help' provide beneficial services.

The Measure has set up the classic 'bait & switch' scheme. The Measure and the Proponents have identified services that the public wants. The voters are left to assume that the City's statement of the need is the same as the City's promise to fulfill that need. Don't be FOOLED. The Tax Measure does NOT promise to fulfill the NEED and the Proponents don't promise delivery either.

Be realistic. The City can't afford to deliver these services and catch up with the out-of-control pension costs. Berkeley's Fiscal Report states that the City increased expenses last year by \$27.9 million primarily due to salaries and benefits. Voters will not approve 'more taxes for the Bureaucrat's benefit package.' So, Proponents are going the next best thing; trying to FOOL the voters with empty promises.

Voters can be certain that they are being BAMBOOZLED by the Proponents of this New Tax because the Proponents never mentioned the BIGGEST financial problem: Pensions. Pensions are the reason that the City needs more and more money to deliver basic services.

Just Vote NO!

s/MARCUS CRAWLEY

President – Alameda County Taxpayers Assoc., Inc.

s/DAMIAN PARK

Berkeley Voter

s/ORLANDO MARTINEZ

Berkeley Voter

s/DAVID DENTON

Berkeley Voter

s/LAURA MINARD

Berkeley Voter

ARGUMENT AGAINST MEASURE FF

This is a **TERRIBLE time to double taxes** for struggling taxpayers.

Berkeley Taxpayers already give the Fire Department \$8 Million/ year with three assessments for Fire and Paramedic. Now the City wants to DOUBLE those assessments to \$16 Million in the middle of the Covid 19-related recession!

Berkeley Taxpayers ALREADY pay for Fire and Paramedic with Measure GG since 2008. The City FAILED to set aside funds for a disaster. The City needs to provide accountability!

Another glaring problem with this tax is that the City insists on the continued use of the faulty dwelling square footage database to do the calculations. The City Council knows the ongoing property assessments are WRONG and refuses to correct them. Many property assessments are astonishingly wrong! The Average taxpayers should not subsidize mansions or landlords.

Worst of all, this expensive tax does not guarantee the vulnerable public with promised benefits. This Measure admits that the purpose of this TAX will be changed. Berkeley's BIG Problem is Pension Deficits. The City reserves the right to divert this tax to its Pension Funds. In a short time, the City WILL divert this tax to unfunded Pensions.

The Measure's promise of accountability is deceptive. Empty promises cannot overcome the Measure's own THREAT that the City can change the purpose to ANYTHING, regardless of wildfire prevention.

Demand honest and accountable taxation.

s/MARCUS CRAWLEY

President of Alameda County Taxpayers Association, Inc.

s/THOMAS RUBIN

Vice President of Alameda County Taxpayers Association, Inc.

s/DAMIAN PARK

Berkeley Voter

s/DAVID DENTON

Berkeley Voter

s/LAURA MENARD

Berkeley Voter

REBUTTAL TO ARGUMENT AGAINST MEASURE FF

Measure FF's small group of opponents, affiliated with an out-of-town anti-tax organization, are either confused or intentionally misleading voters. **Measure FF is a special tax that can only be used for fire and emergency services, not for pensions or anything else that isn't described in the Measure.**

Since voters approved Measure GG in 2008 - preventing fire station closures and cuts to services – Berkeley's emergency and fire needs have increased:

- Calls to 911 have continued to rise dramatically, even before COVID-19, adding stress to aging systems and equipment.
- Alameda County cut millions of dollars to Berkeley for emergency response.
- Sutter Health's plan to close Alta Bates Hospital increases resources needed to transport the sick and injured to emergency rooms.
- Climate change continues unabated, accelerating the threat of catastrophic wildfires.

Measure FF uses standard property assessment methodologies, exempting qualified low-income homeowners.

Measure FF can ONLY be used to enhance public safety and will fund:

- Firefighter and emergency medical response, by hiring and training personnel and upgrading safety equipment and facilities.
- Modernizing the 9-1-1 dispatch system.
- Wildfire prevention and preparedness, including vegetation management, hazard mitigation, evacuation planning, and emergency alert systems.

Measure FF is an important investment to ensure your safety in the face of expanded needs and rising threats. **All funds will be used to support our urgent fire and emergency response, communications, and disaster preparedness needs.**

Don't be misled. Join trusted leaders, firefighters, medical personnel, and disaster preparedness volunteers to **Vote YES on Measure FF.**

www.BerkeleyPrepared.com

s/GRADIVA COUZIN

Chair, Berkeley Disaster & Fire Safety Commission

s/ROBERT FLASHER

Berkeley Disaster & Fire Safety Commissioner

s/KATE HARRISON

Berkeley City Councilmember

s/BEN BARTLETT

Berkeley City Councilmember

s/COLIN ARNOLD

Vice-President, Berkeley Firefighters Association Local 1227

**FULL TEXT OF MEASURE FF
ORDINANCE NO. #,###-N.S.**

**IMPOSING A SPECIAL TAX AT A RATE OF
\$0.1047 PER SQUARE FOOT OF IMPROVEMENTS
TO PAY FOR FIREFIGHTING, EMERGENCY
MEDICAL RESPONSE, 9-1-1 COMMUNICATIONS
SERVICES, HAZARD MITIGATION, AND
WILDFIRE PREVENTION AND PREPAREDNESS**

BE IT ORDAINED by the people of the City of Berkeley as follows:

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. On June 16, 2020, the City Council adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have adequate resources to maintain existing staffing levels, fill vacant positions, adequately train firefighters and paramedics, maintain and replace equipment and facilities, prepare and plan for wildfires, and upgrade and modernize its 9-1-1 dispatch system.

B. Over the years, the Fire Department has experienced a significant increase in calls-for-service, rising from approximately 6,300 in 1995 to approximately 16,000 in 2017 without adequate increases in staffing levels. Over the years, this has resulted in increasing response times.

C. An increasing number of calls in the Fire Department are dedicated to addressing the needs of vulnerable populations including individuals experiencing homelessness and mental health crises and the Fire Department does not have resources dedicated to addressing these vital community needs.

D. The City's 9-1-1 dispatch center does not have the resources to ensure adequate staffing levels, upgrade its systems, and modernize to include emergency medical dispatching to ensure that the appropriate emergency response services are deployed to 9-1-1 calls-for-service.

E. The City is vulnerable to wildfires that could impact significant portions of the City and without a consistent source of funding, the City does not have the resources to address wildfire prevention activities such as vegetation management, hazard mitigation, evacuation planning, public education, and an emergency alert system.

Section 2. Code Amendment. A new Chapter 7.83 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 7.83

**Fire, Emergency Medical Response, 9-1-1
Communications Services, Hazard Mitigation, and
Wildfire Prevention and Preparedness Tax**

7.83.010 Special Tax.

A. A special tax for the purpose of funding firefighter and emergency medical response including, but not limited to, training, hiring, maintaining and upgrading facilities

and equipment, upgrades to the 9-1-1 communication system, hazard mitigation, and wildfire prevention and preparedness activities is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments, set forth in Section 7.83.020.

C. This special tax is imposed under Article XIII A, Section 4, of the California Constitution and the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purpose of enhancing public safety by funding the following:

1. Local firefighter and emergency medical response including hiring and training personnel and upgrading safety equipment and facilities.

2. Upgrading and modernizing the 9-1-1 dispatch system to implement and maintain a system to provide emergency medical dispatching.

3. Wildfire prevention and preparedness activities including, but not limited to, vegetation management, hazard mitigation, public education, evacuation planning, and an emergency alert system.

**7.83.020 Tax Authorized – Tax rate – Adjustments
for Inflation**

A. The City Council is hereby authorized to impose a special tax of \$0.1047 per square foot of improvements in the City of Berkeley.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.83.030 Definitions.

For purposes of this chapter, the following terms shall be defined as set forth below:

A. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" shall mean all buildings or structures erected or affixed to the land.

C. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which

includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.
2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.
3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

D. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

E. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment roll of the Alameda County Assessor.

7.83.040 Exemptions.

A. The tax imposed by this Chapter shall not apply to parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the 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, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

C. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought

7.83.050 Duties and Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged

with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.83.060 Collection with Property Tax – Penalties and Interest.

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

7.83.070 Collection.

The amount of any tax, penalty, or interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money 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. The City shall be entitled to reasonable attorneys' fees and its costs of suit in any such action.

7.83.080 Refunds.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

7.83.090 Savings clause – Severability.

The provisions of this chapter shall not apply to any person, association, corporation, entity, or property as to whom or which it is beyond the power of the City of Berkeley to impose the tax herein provided. If any sentence, clause, section, or part of this chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal, or invalid, such sentence, clause, section or part shall be severable and such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this chapter. It is hereby declared to be the intention of the City Council and the People of the City of Berkeley that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

7.83.100 Violation – Penalty.

Any person who fails to perform any duty or obligation imposed by this chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this section are in addition to the several remedies provided in this chapter.

Section 3. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation

limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 4. Effective date. The tax imposed by this Chapter shall be operative on January 1, 2021.

Section 5. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 6. 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 7. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax for restricted general revenue purposes and shall be effective only if approved by two-thirds of the voters voting thereon.

CITY OF BERKELEY MEASURE GG

GG Shall an ordinance enacting a tax on users of Transportation Network Companies for prearranged trips originating in Berkeley, at a rate of 50 cents per trip for private trips and 25 cents per trip for pooled trips, regardless of the number of passengers on the trip, which is estimated to generate \$910,000 annually for general municipal services in the City of Berkeley until January 1, 2041, be adopted?	YES
	NO

The measure shall pass if approved by a majority of the voters voting on the measure and would go into effect on January 1, 2021. The tax would remain in effect for 20 years, expiring on January 1, 2041.

Financial implications

The tax is estimated to generate \$910,000 annually. The revenues from the tax may be used to fund any municipal governmental purpose.

The above statement is an impartial analysis of Measure GG.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE GG

s/FARIMAH BROWN
Berkeley City Attorney

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

The measure would impose a general tax on Transportation Network Company ("TNC") trips that originate in City of Berkeley. Commonly referred to as "ridesharing companies," TNCs are companies that enable passengers to prearrange transportation with a driver using an online-enabled application software, website or other system. Users of TNCs would pay a tax of 50 cents for a private trip and 25 cents for a pooled trip, regardless of the total number of passengers. Users would pay the tax to the TNC at the time of payment for the trip, and the TNC would remit the tax quarterly to the City of Berkeley. A pooled trip is one in which the person requesting the trip agrees to share the trip with other potential passengers who are also willing to share a trip. A lower fare is generally charged for these trips. A private trip is one in which the person requesting the trip will not be sharing the trip with anyone other than their own guests. Drivers would not be required to pay City of Berkeley business license fees while the tax is in effect.

Each TNC would be required to register with the City's Finance Department and would be liable to the City for the amount of tax due. The measure would impose penalties and interest on a TNC that fails to remit the tax in a timely manner.

The tax would not apply to

- trips paid or reimbursed by a state or federal government healthcare payor, including trips paid for or reimbursed under Medi-Cal
- trips in Wheelchair Accessible Vehicles as defined by state law.

The City Council could increase the tax annually by the increase in the local cost of living or the per capita personal income growth in the state, whichever is greater. The City Council could also adopt by ordinance additional exemptions, waivers, discounts, or rebates for the tax, such as discounted or free trips for low-income individuals or youth traveling to or from school. The City Council could adopt regulations and procedures for implementing the tax, including any exemptions and tax rate reductions. The City Council could reduce or eliminate the tax without further voter approval.

ARGUMENT IN FAVOR OF MEASURE GG

Vote YES on Measure GG to create safer streets and ensure tax fairness.

For too long, Transportation Network Companies like Uber and Lyft have not paid their fair share. This is hurting public transit, damaging our streets, and endangering pedestrians, bicyclists and motorists. It's time to take action.

According to a 2019 study, between 2010 and 2016, congestion increased by 60% in San Francisco due to Transportation Network Companies.

Measure GG will help us mitigate the impacts of rideshare companies, who unlike most businesses including taxis, currently pay nothing for the right to operate in Berkeley despite contributing to traffic, congestion, and street erosion.

Measure GG establishes a 50 cent fee for each rideshare trip, generating General Fund revenue to improve Berkeley's streets, safety and environment.

Measure GG does not raise property taxes or sales taxes paid by everyday Berkeleyans. For those who choose rideshare, the fee encourages them to limit their environmental impact by utilizing shared rides through a discounted fee of 25 cents.

Measure GG will:

- Encourage more shared rides through a discounted fee. This will help reduce trips and our carbon emissions.
- Offer exemptions for healthcare workers and vehicles that are wheelchair accessible.
- Allow the Council to adopt further exemptions, waivers or discounts including those for low-income discount programs, free or donated trips, youth programs and more.
- Generate at least \$900,000 annually to support general municipal services like paving streets and improving pedestrian and bicycle infrastructure.

Measure GG is endorsed by a broad coalition of elected officials, environmental organizations, and transit, bike and pedestrian advocates.

VOTE YES ON MEASURE GG.

s/IGOR A. TREGUB

Chair, Sierra Club Northern Alameda County Group

s/JESSE ARREGUÍN

Berkeley Mayor

s/LIZA LUTZKER

Walk Bike Berkeley

s/LORI DROSTE

City Councilmember

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE GG

Here is what the tax proponents should say: 'Berkeley wants more money because pension liabilities continue to grow. Therefore, Berkeley is picking on Uber & Lyft and trying to copy San Francisco's tax, even though our tax is more regressive and will not have any accountability nor dedicate any money for infrastructure.'

Look at the argument again – there are very few relevant facts in their argument.

- 1) The TNCs pay gas taxes like everyone else, hence they do pay their "fair share."
- 2) Transit (i.e. AC transit and BART) is only being "hurt" because of the virus and because TNCs provide more useful service for some people, not because Berkeley doesn't have enough revenue.
- 3) Berkeley is not San Francisco, and SF's congestion is irrelevant to ours.
- 4) This tax will NOT encourage ridesharing because this measure makes it MORE expensive, not less.
- 5) This Tax MIGHT "support general municipal services like paving streets and improving pedestrian and bicycle infrastructure," but it could also pay for "raises for the city council, firefighter pensions and shadow studies." The money can go anywhere.

Our city may not even have the legal right to tax the TNCs, and if GG passes, we are likely to get sued (SF needed a state law to tax the TNCs: google *AB1184 TNC*).

Vote No!

s/MARCUS CRAWLEY

President – Alameda County Taxpayers Assoc., Inc.

s/DAMIAN PARK

Berkeley Voter

s/ORLANDO MARTINEZ

Berkeley Voter

s/DAVID DENTON

Berkeley Voter

s/LAURA MINARD

Berkeley Voter

ARGUMENT AGAINST MEASURE GG

Vote NO on DECEPTIVE Taxes.

Transportation Network Companies (TNCs), such as Uber and Lyft, provide Berkeley residents and visitors with affordable, convenient, and quick mobility, especially useful where walking, biking, driving and transit won't work. TNCs allow residents in the hills and other less walkable areas to abstain from driving (or even owning a car). They bring visitors to Berkeley who don't need to rent - and park - a car. They can reduce parking, and congestion, from "driving around the block" trying to find parking.

But the City deceptively tells us that TNCs do not pay their share of street maintenance. TNCs do pay for City street repairs, the same as anyone else. We all buy gasoline and pay State gas tax and sales tax on the gasoline and autos, which is then distributed by the State to cities for street repairs. The TNCs buy more gasoline than anyone else and therefore pay more road taxes than anyone else.

The problem with Berkeley's streets is that the City diverts street paving funds away from the paving budget. Don't blame Transportation Network Companies for Berkeley's bad streets. The Berkeley City Council fails to budget enough funds for good maintenance. In fact, in 2018, Berkeley DIDN'T PAVE A SINGLE STREET.

Don't let Berkeley expand its bureaucracy to oversee another tax bringing in less than \$1 million per year, an amount that wouldn't even repave a single street mile. Don't approve a 20-year DECEPTIVE tax with NO accountability for street maintenance. This new Tax will require the City to hire lots more bureaucrats to keep track of all those trips and make Berkeley's Pension deficit even worse. Don't scapegoat Uber/Lyft passengers AND DRIVERS for Berkeley's financial mess.

Vote No! on this TAX GRAB.

s/MARCUS CRAWLEY

President of Alameda County Taxpayers Association, Inc.

s/THOMAS RUBIN

Vice President of Alameda County Taxpayers Association, Inc.

s/DAMIAN PARK

Berkeley Voter

s/DAVID DENTON

Berkeley Voter

s/LAURA MENARD

Berkeley Voter

REBUTTAL TO ARGUMENT AGAINST MEASURE GG

Don't be fooled by a right-wing anti-tax group that always opposes local tax measures. **Measure GG is about making sure large corporations are paying their fair share and addressing the impact on our streets and environment.**

Too often we see Transportation Network Companies (TNCs) blocking bike lanes, causing backups on our streets, and polluting our air. According to a 2019 study, between 2010 and 2016, congestion increased by 60% in San Francisco due to TNCs.

Our local transit agencies are struggling to survive, while TNCs are profiting, taking advantage of the people that drive for them, and contributing **zero** to offset their impacts.

Despite what opponents claim, since 2016, Berkeley has paved approximately 27 miles of streets, including key projects such as reconfiguring Shattuck Avenue, reconstructing 6th Street and repaving Milvia Street. Over the next four years, the city will spend \$43 million to pave 20 miles of streets, the bulk of which are residential. **Gas taxes are not enough to keep up with the damage to our streets caused by TNCs.**

Under Measure GG, rideshare companies would remit tax directly to Berkeley on a quarterly basis as they have done in other cities. And it won't require a huge bureaucracy.

Measure GG exempts drivers from business taxes, and users would be exempt from paying the tax for medical trips, and in wheelchair accessible vehicles. It also allows Council to adopt further reductions and exemptions which is important as the tech industry and our community continues to grow.

VOTE YES ON MEASURE GG

s/IGOR A. TREGUB

Chair, Sierra Club Northern Alameda County Group

s/JESSE ARREGUÍN

Berkeley Mayor

s/RIGEL ROBINSON

Berkeley City Councilmember, District 7

s/BEN GERHARDSTEIN

Coordinating Committee Member, Walk Bike Berkeley

FULL TEXT OF MEASURE GG

ORDINANCE NO. ####-N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 50 CENTS FOR PRIVATE TRIPS AND 25 CENTS FOR POOLED TRIPS

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. Transportation Network Company (TNC) trips use the public infrastructure of the City of Berkeley, including our streets.

B. Maintaining our streets, sidewalks, and pedestrian crossings is costly, and important to the public.

C. The trips of TNCs contribute to traffic congestion, greenhouse gas emissions, air pollution, and wear and tear on the public infrastructure.

D. Currently, TNC trips do not pay taxes to the City of Berkeley.

E. A 2017 study from the *University of California Davis, Institute of Transportation Studies* stated: “Directionally, based on mode substitution and ride-hailing frequency of use data, we conclude that ride-hailing is currently likely to contribute to growth in vehicle miles traveled (VMT).”

F. A report by the *San Francisco County Transportation Authority* states: “TNCs drive approximately 570,000 vehicle miles within San Francisco on a typical weekday. This accounts for 20% of all local daily vehicle miles traveled (VMT) and includes both in-service and out-of-service mileage.”

G. A report by former NYCDOT staffer Bruce Schaller on TNC use in New York City stated that, “As a result of growing trip volumes, TNCs added 600 million miles of driving to city streets in 2016. The growth of on-demand ride services is also working to undercut the essential role of mass transit in absorbing growth in residents, workers and visitors.”

H. The City of Berkeley wishes to ensure tax fairness, and to provide for adequate revenue for public needs.

I. Multiple other jurisdictions, including the City of Chicago, and the State of Massachusetts, have adopted and implemented per-trip charges for the trips taken via Transportation Network Companies.

Section 2. Code Amendment. A new Chapter 7.71 is added to the Berkeley Municipal Code to read as follows:

Chapter 7.71

TRANSPORTATION NETWORK COMPANY USER TAX

7.71.010. Title

This chapter shall be known as the “Transportation Network Company User Tax Ordinance.”

7.71.020. Definitions

Except as where context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. “City” means the City of Berkeley.

B. “Digital Network” means an online-enabled application software, website, or system offered, utilized, or controlled by a Transportation Network Company that enables the prearrangement of transportation services by Drivers with Users.

C. “Driver” means a person who receives connections to potential Users through a Digital Network and uses a vehicle to offer or provide Prearranged Transportation Services to those Users.

D. “Exempt Trip” means any Trip for a Government Healthcare Payor or WAV Trip.

E. “Originate” refers to the location where a passenger of a Prearranged Transportation Service is picked up by a Driver. It does not refer to the location of the User who arranges the Prearranged Transportation Service, if different.

F. “Person” or “people” mean any non-exempt individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

G. “Pooled Prearranged Trip” means a prearranged trip which, prior to its commencement, a User requests through the transportation network company’s digital network to share the ride with one or more passenger for whom a separate fare will be charged and for which the fare is calculated, in whole or in part, based on the User’s request for the ride to be shared with other passengers, regardless of whether other passengers actually share all or a part of the ride.

H. “Prearranged Trip” means the transportation of one or more passengers in a single vehicle at the same time by a Driver that is arranged through a Digital Network for which a fee is charged.

I. “Prearranged Transportation Service” means a “Prearranged Trip” or a “Pooled Prearranged Trip.”

J. “Tax”, “Transportation Network Company User Tax”, or “TNC User Tax” means the tax imposed by this chapter.

K. “Transportation Network Company” or “TNC” means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, that provides Prearranged Transportation Services for compensation using a Digital Network to connect Users with Drivers.

L. “Trip for a Government Healthcare Payor” means a Prearranged Trip that is paid for or reimbursed by a state, or federal government healthcare payor. The term includes trips paid or reimbursed under the Medi-Cal program.

M. “User” means a person who uses a Digital Network to connect with a Driver to request and pay for Prearranged Transportation Service. A User may or may not be a passenger.

N. "WAV Trip" means a Prearranged Trip that is provided in a wheelchair accessible vehicle as defined in section 5431.5 of the Public Utilities Code.

7.71.030. Imposition and Rate of Tax

A. For each Prearranged Trip that Originates in the City that is not part of a Pooled Prearranged Trip there is imposed a tax of 50 cents on the User. There is no additional tax on guests of a User who arranges a Prearranged Trip.

B. For each Pooled Prearranged Trip there is imposed a tax of 25 cents on each User who arranges each Prearranged Trip that Originates in the City and which comprises part of the Pooled Prearranged Trip. There is no additional tax on guests of a User who arranges a Prearranged Trip that comprises part of a Pooled Prearranged Trip.

C. The tax constitutes a debt owed by the User to the City, which is extinguished only by payment to the TNC at the time of payment for the Prearranged Transportation Service.

D. While the tax imposed by this section is in effect, Drivers shall not be required to pay Berkeley business license fees under Chapter 9.04 of the Berkeley Municipal Code for carrying on the business of being a Driver in the City.

E. No Tax shall be imposed under this section for any Exempt Trip.

F. The City Council may by Ordinance adopt further exemptions, waivers, discounts, or rebates for the tax, including, but not limited to, exemptions, waivers, discounts, or rebates for low-income discount programs or free donated trips, programs to help youth get to or from school, and may adopt regulations and procedures for implementing the tax, including but not limited to the exemptions and tax rate reductions in subsection E of this section.

G. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.71.040. Collection and Remittance of Tax by Transportation Network Company

Every TNC engaged in business in the City shall at the time of collecting payment for a Prearranged Transportation Service originating in the City, collect the tax from the User and remit the tax to the City on a quarterly basis. In all cases in which the tax is not collected by the TNC, the TNC shall be liable to the City for the amount of tax due. A TNC is engaged in business in the City if it facilitates a trip for a User that Originates in the City.

7.71.050. Registration of Transportation Network Company

A. Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, every TNC engaged in business in the City must register with the Finance Department of the City, using a form provided by the Director of Finance.

B. Each TNC registration shall set forth the name under which the TNC transacts or intends to transact business, the location of its primary place or places of business, and such other information to facilitate the collection of the tax as the Director of Finance may require. The registration shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the registration. The Director of Finance shall within thirty (30) days after such registration issue without charge a certificate of authority to each registrant to collect the tax from a User. Such certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Director of Finance upon the cessation of business in the City or upon its sale or transfer.

7.71.060 Duties of the Director of Finance

It shall be the duty of the Director of Finance to collect and receive all taxes imposed by this chapter and to keep an accurate record thereof. Said Director of Finance is charged with the enforcement of this chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce those rules and regulations necessary or advisable to effectuate the purposes of this chapter, including provisions for the re-examination and correction of declarations, returns, and payments; the exclusive discretionary authority to waive penalties; and the authority to defer the payment due dates as prescribed herein. In individual cases, the Director of Finance may make findings of fact in support of decisions, determinations, and rulings enforcing this chapter. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

7.71.070. Determinations, Returns, and Payments

A. Due Date of Taxes. All taxes imposed by this chapter and collected by any TNC or required to be collected by any TNC are due and payable to the Director of Finance for each taxable quarter on or before the last day of the month immediately following each respective quarterly period.

B. Return—Time for Filing. On or before the last day of the month immediately following each quarterly period, a return for the preceding quarterly period must be filed with the Director of Finance, in such form as the Director of Finance may prescribe.

C. Contents of Return. Returns must show the amount of tax collected for the related period and such other information as required by the Director of Finance. The Director of Finance may require returns to show the total number of Prearranged Trips and Pooled Prearranged Trips originating within the City upon which tax was collected or otherwise due, the total number of Prearranged Trips and Pooled Prearranged Trips originating in the City for such period, and an explanation in detail of any discrepancy between the amounts.

D. Delivery for Return and Remittance. The return shall be transmitted with the remittance of the amount of the tax due to the Director of Finance at the Finance Department on or before the date provided in this chapter.

7.71.080. Penalties and Interest

A. Original Delinquency. Any TNC that fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any TNC that fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed

C. Fraud. If the Director of Finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalty stated in subdivisions A and B of this section.

D. Interest. In addition to any penalties imposed, any TNC that fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

7.71.090. Deficiency Determinations

A. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Director of Finance is not satisfied with the return or returns of the tax or the amount of the tax paid to the City by a TNC, he or she may compute and determine the amount required to be paid based upon the facts contained in the return or returns or upon any information within the Director of Finance's possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more periods.

B. Penalties and Interest on Deficiency. Penalties and interest under Section 7.71.080 shall be applied to any additional amount of tax determined to be due in a deficiency determination under subdivision A of this section. Interest shall be calculated from the original due date of the additional amount of tax determined to be due.

C. Offsetting of Overpayments. In making a deficiency determination, the Director of Finance may offset overpayments for a period or periods against underpayments for another period or periods or against penalties and interest on the underpayments.

D. Notice of Director of Finance's Determination—Service of. The Director of Finance shall give to the TNC written notice of the deficiency determination. The notice may be served personally or by certified mail, return receipt requested; if by certified mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the TNC at its business address as it appears in the records of the Director of Finance. In case of service by mail or any notice required by this chapter, the service is complete at the time of the

deposit of the notice in the United States Post Office, without extension of time for any reason.

E. Time Within Which Notice of Deficiency Determination Is to Be Mailed. Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the last day of the calendar month following the quarterly period for which the deficiency determination applies or within three years after the return for the period to which the deficiency determination applies was filed, whichever period expires later. The time to issue a notice of deficiency determination under this section shall be tolled during the pendency of an audit of a TNC under Section 7.71.120.

7.71.100. Determinations If No Return Made

A. Estimate—Computation of Tax Penalty. If any TNC fails to make a return, the Director of Finance shall estimate the number of Prearranged Trips and Pooled Prearranged Trips originating in the City subject to the tax. The estimate shall be made for the period or periods for which the TNC failed to make a return and shall be based upon any information that is in the Director of Finance's possession or may come into his or her possession.

B. Penalties and Interest. Penalties and interest under Section 7.71.080 shall be applied to the tax determined to be due in subdivision A of this section. Interest shall be calculated from the original due date of the amount of tax determined to be due.

C. Manner of Computation—Offsets—Interest. In making a determination, the Director of Finance may offset overpayments for a period or periods against underpayments for another period or periods or against penalties and interest on the underpayments.

D. Giving Notice—Manner of Service. After making the determination, the Director of Finance shall give the TNC written notice of the estimate, determination, penalty, and interest. The notice shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

E. Time to Make a Determination. The Director of Finance may make a determination in accordance with this Section at any time within three years of a return being due. The time to issue a determination under this section shall be tolled during the pendency of an audit of a TNC under Section 7.71.120.

7.71.110. Administrative appeal to the City Manager from Director of Finance decision.

A. Petition for Redetermination. Any TNC against whom a determination is made under this chapter may appeal such decision to the City Manager by filing a verified appeal with the City Manager within thirty (30) days after receipt of service upon the TNC of notice thereof. If a petition for redetermination is not filed in writing with the City Manager, City Hall, 2180 Milvia St. Berkeley, California 94704, within the 30-day period, the determination becomes final at the expiration of the period.

B. Consideration of Petition—Hearing. If a petition for redetermination is filed within the 30-day period, the City

Manager shall reconsider the determination and, if the TNC has so requested in its petition, shall grant the TNC an oral hearing, and shall give the TNC at least ten days notice of the time and place of hearing. The City Manager may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

C. **Determination of Petition.** The City Manager or their designee may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the City Manager or their designee at or before the hearing.

D. **Finality of Determination.** The order or decision of the City Manager, or their designee upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner. There is no appeal of the City Manager's decision (or his or her deputies designated for a redetermination) to the City Council; writs challenging the City Manager's decision must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California Code of Civil Procedure § 1094.6.)

E. **Tax a Debt.** The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any TNC 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. Such action must be filed within three years of a determination under Sections 7.71.090 or 7.71.100 becoming final or a redetermination under Section 7.71.110 becoming final.

7.71.120. Records and Audits

A. It shall be the duty of every TNC engaged in business in the City to keep and preserve, for a period of five years, all records as may be necessary to determine the amount of tax the TNC may have been liable for the collection of and payment to the City, which records the Director of Finance shall have the right to inspect upon notice at a reasonable time.

B. The Director of Finance may conduct an audit, no more frequently than once annually, of any TNC engaged in business in the City to ensure compliance with the requirements of this chapter. The Director of Finance shall notify the TNC of the initiation of an audit in writing. The audit period of review shall not exceed three years. Upon completion of the audit, the Director of Finance may make determinations under Section 7.71.090 and/or Section 7.71.100 of any tax determined to be owed.

7.71.130. Refunds

Whenever any tax under this chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter 7.20 of the Berkeley Municipal Code. Filing a claim for refund under Chapter 7.20 does not absolve a claimant of the requirement to exhaust the administrative remedies provided in this chapter.

7.71.140. Violations

Any TNC which fails or refuses to register as required herein, or to furnish any return required to be made or which

fails or refuses to furnish any other data required by the Director of Finance, or which renders a false or fraudulent return or claim, or which fails to meet the substantive requirements of any other provision of this chapter may be charged with a civil penalty or an infraction.

7.71.150. Sunset

This tax will sunset in 20 years (on January 1, 2041).

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. 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 5. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this general tax for each of the four fiscal years from 2021 through 2024.

Section 6. General Tax; Majority Approval; Effective Date. This Ordinance enacts a general tax for unrestricted general revenue purposes. Tax revenue collected pursuant to the Ordinance may be used by the City for any municipal governmental purpose. The Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2021 and shall remain in effect until January 1, 2041.

Section 7. Council Amendments. The City Council of the City of Berkeley is hereby authorized to amend Chapter 7.71 of the Berkeley Municipal Code as adopted by this Ordinance in any manner that does not increase the rate of the Transportation Network Company User Tax, except pursuant to the inflation factor described in section 7.71.030, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, including reducing the rate of the tax or even eliminating the tax.

CITY OF BERKELEY MEASURE HH

HH Shall an ordinance increasing the Utility Users Tax on electricity and gas from 7.5% to 10%, with exemptions for low-income users, for general municipal services, including programs to equitably reduce local greenhouse gas emissions, and authorizing the City Council to increase the gas users tax by an additional 2.5%, with the total tax estimated to generate \$2.4 million annually, until repealed by the voters, be adopted?	YES
	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE HH

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

The measure would increase the utility user taxes on electricity and gas from 7.5% to 10% and would authorize the City Council to further increase the tax on gas by an additional 2.5%.

Utility user taxes are taxes on the use of utility services in the City of Berkeley and are generally measured as a percentage of the charge for the utility service. The taxes are collected by the utility providers on the customers' utility bills and remitted to the City. This measure would not increase the rates of City's utility user taxes on telephone or video services.

PG&E has informed the City that currently it cannot collect utility user taxes on gas and electricity at different rates. Consequently, although this measure allows the City Council to increase the tax on gas by an additional 2.5%, the City could not do this until PG&E is able to collect it.

The measure would exempt individuals enrolled in the California Alternate Rates for Energy Program (CARE) or the Family Electric Rate Assistance Program (FERA) from both the gas and electricity user taxes.

The measure would create the Climate Equity Action Fund and revenues from the increases in the gas and electricity user taxes may be placed in the fund, as well as any other funds designated by the City Council.

The measure would rename the Energy Commission the Climate Action and Energy Commission and would direct the commission to provide non-binding recommendations to the City Council on how revenues in the Climate Equity Action Fund could be spent to address environmental justice, climate equity issues, and the impact of climate change on the City's low income and most vulnerable populations. At the City Council's discretion, revenues in the Fund may be spent on the Commission's recommendations or any other municipal purpose.

The measure would also make technical changes to the utility user tax ordinances.

The measure would impose a general tax that could be spent on any government purpose and shall pass if approved by a majority of the voters voting on the measure.

Financial Implications

The 2.5% increase in the gas and electric utility user taxes is estimated to generate \$2.4 million per year. Increasing the gas users tax a further 2.5% as authorized by the measure is estimated to generate an additional \$730,000 per year.

The above statement is an impartial analysis of Measure HH.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE HH

The pandemic and global warming are the twin crises of our lifetimes. Both have enormous economic impacts, disproportionately harm low-income and marginalized communities, and require collective action.

Voting YES on Measure HH will speed up reductions in greenhouse gas emissions while reducing energy costs for thousands of Berkeley residents and kickstarting a green economic recovery.

Berkeley made history by passing a Climate Action Plan, a Climate Emergency Declaration and a Fossil Free Resolution. But we are falling short on reducing global warming pollution and our plan needs funding. Measure HH could fund projects and programs that:

- Transition existing buildings to clean electricity;
- Expand clean transportation alternatives such as shared electric vehicles, and bicycle and pedestrian improvements; and
- Implement energy efficiency and resiliency measures for homes and businesses.

The Fund would prioritize equity and environmental justice by ensuring that low-income families, seniors, renters, and small businesses hit hardest by the pandemic realize lower energy costs *and* benefit from the green economy.

Measure HH would:

- Eliminate the Utility User Tax on gas and electricity for the nearly 5,000 low-income Berkeley residents who enroll in California's CARE or FERA programs, saving them an average of \$160 per year, and
- Increase the natural gas and electric portion of the utility users' tax by 2.5%, at an average annual cost of \$53 per year for other customers.

Together, these changes would raise about \$2.4 million per year. Measure HH would create a panel of energy, equity, and climate experts to advise the City Council on how to make equitable and effective climate action investments. The measure also gives the Council the authority to later charge different tax rates on electricity and gas to promote clean energy.

Please join the League of Women Voters, the Ecology Center, Green the Church, our local 350 chapter, and Sunrise Movement Bay Area in creating a greener, cleaner and more equitable community.

VOTE YES on Measure HH.

s/MELINDA HOWARD-HERRARTE

Vice Chair, Sierra Club SF Bay Chapter, Northern Alameda County Group

s/JINKY GARDNER

Action Director League of Women Voters Berkeley Emeryville Albany

s/DAVID HOCHSCHILD

Chair, California Energy Commission (for identification purposes only), Resident of District 6

s/MARTIN BOURQUE

Executive Director, Ecology Center

s/DR. ASHLEY E. MCCLURE

Primary Care Physician; Medical Community Climate Organizer; Co-Founder of Climate Health Now; Mom

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE HH

VOTE NO for a tax that only "COULD" fund clean energy programs.

This measure holds no assurance at all for discerning voters, who want their tax dollars spent wisely. If you care about climate change and low-income families, DEMAND that proponents put forward a special tax that, with a two-thirds vote, would REQUIRE the revenues are spent towards specific, useful purposes, not spent on who-knows-what.

Even though Berkeley passed a Climate Action Plan, there is no implementation scheme. Any funds available to be spent is always channeled to City payroll. In fact, the City's \$28 Million expense increases in 2019 went to increased salaries and benefits according to their last Financial Report. Why didn't the funds go clean electricity or clean transportation or energy efficient homes?

The Proponents want to 'Prioritize equity and environmental justice.' Good! The Proponents can do that NOW without this Tax Increase. The truth is, the City has insufficient capability to successfully implement the Proponents' laundry list of complex, wide-ranging program ideas, many of which would duplicate state and utility programs.

A smart and effective tax would have specific assurances and would make the Sierra Club and League of Women Voters and every Berkeley citizen proud.

VOTE NO and tell Proponents to return after the pandemic with a specific plan that will use our tax dollars effectively and with oversight. With climate change and economic uncertainty, we cannot afford to waste money on well-intentioned, but half-baked ideas.

s/MARCUS CRAWLEY

President – Alameda County Taxpayers Assoc., Inc.

s/DAMIAN PARK

Berkeley Voter

s/ORLANDO MARTINEZ

Berkeley Voter

s/DAVID DENTON

Berkeley Voter

s/LAURA MINARD

Berkeley Voter

ARGUMENT AGAINST MEASURE HH

This Measure is a DECEPTIVE FOREVER Tax increase.
Vote No!

Due to COVID, many people have lost their jobs or businesses, and we are all unsure of the future. This is a terrible time to add over \$4million of TAXES that ALL citizens must pay. Many of us are struggling to make our next mortgage or rental payment. Asking us to pay EVEN MORE in taxes is BAD.

This tax revenue will be placed in the General Fund and can be spent on ANYTHING. MAYBE the Council will vote to spend this tax on 'greenhouse programs' and maybe NOT. MAYBE on 'air pollution' and MAYBE NOT. Maybe for a year or two and maybe not.

The City of Berkeley has a BAD Pension deficit problem. This Tax promises public services that will instead be diverted to Berkeley's ever-growing Pension. These funds will just disappear in the General Fund to be forgotten by the public.

The DECEPTIVE implication of this TAX is that this new increased tax is 'modern' and therefore GOOD. This argument suggests that the existing, lower utility tax is 'old fashion' and needs to be modernized into a new higher tax. Your opportunity to pay 30% more for the same utilities! Buried in the fine print is a provision that allows the Berkeley City Council to increase the tax rate on natural gas ANOTHER 2.5% to 12.5% total rate for natural gas.

Berkeley's Overlords ask approval to decide for the public and later inform the public about what is best for the Overlords. Don't Vote away your Rights.

Don't Vote For 'FOREVER' Taxes -Ever. Make the City return to the Voters to approve the City's performance. Make the City prove good accountability. Cherish your rights as voters. Don't just vote away your Rights.

Vote No!

s/MARCUS CRAWLEY

President of Alameda County Taxpayers Association, Inc.

s/THOMAS RUBIN

Vice President of Alameda County Taxpayers Association, Inc.

s/DAMIAN PARK

Berkeley Voter

s/DAVID DENTON

Berkeley Voter

s/LAURA MENARD

Berkeley Voter

REBUTTAL TO ARGUMENT AGAINST MEASURE HH

Berkeley voters and your City Council know that global warming is an existential threat demanding **rapid, equitable, and collective investments**. Together, we have increased energy efficiency, installed solar panels and created alternative, clean transportation. But most current programs are underfunded and generally accessible only by the well-off.

Now, by voting YES on Measure HH, you can help Berkeley make ambitious investments in a cleaner, healthier and safer future *and* help low-income residents share in that future while giving them immediate financial relief on their energy bills.

Even in tough times, Berkeleyans are committed to the future. In the depths of the Great Depression, voters approved the creation of the East Bay Regional Parks District, a jewel that still protects the environment nearly 90 years later. Like then, now is the time to act.

Opponents of Measure HH claim that the City Council will not spend these funds on climate mitigation, but this Council has firmly kept faith with the voters. 100% of the 2014 tax on sugary beverages, while deposited in the General Fund, was invested by the Council in public health and anti-obesity programs. Spending decisions on the soda tax were made based on recommendations from a panel with specific, relevant qualifications. A similar panel would be created for the Climate Equity Fund.

After four years of anti-environment rollbacks from the Trump Administration, Berkeley voters must take urgent and equitable action to combat climate change. Please visit Berkeleyclimate.org and join the Sierra Club, the Ecology Center, the League of Women Voters, Green The Church, the Sunrise Movement Bay Area, Climate Health Now and McGee Spaulding Neighbors in Action.

Vote YES on climate equity. Vote YES on Measure HH!

s/JESSE ARREGUÍN

Berkeley Mayor

s/KATE HARRISON

Berkeley City Councilmember, District 4

s/KATHY DERVIN

Co-Coordinator, 350 East Bay

s/BEN GERHARDSTEIN

Coordinating Committee Member, Walk Bike Berkeley

s/KARMA SMART

Community Health Commissioner, City of Berkeley;
Health Educator

FULL TEXT OF MEASURE HH

ORDINANCE NO. #,###-N.S.

INCREASING THE UTILITY USERS TAXES ON ELECTRICITY AND GAS FROM 7.5% TO 10% TO FUND GENERAL MUNICIPAL SERVICES AND TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND CLIMATE POLLUTANTS, AND AUTHORIZING THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5%

BE IT ORDAINED by the people of the City of Berkeley as follows:

Section 1. Findings and declarations.

The People of the City of Berkeley find and declare as follows:

A. Human activities have warmed the earth and global warming has set in motion catastrophic environmental changes.

B. According to climate projections, the Earth's temperature is on track to increase at a level that could cause irreparable damage to the environment and uncontrollable global warming.

C. The effects of global warming are being felt in the City of Berkeley through severe weather patterns, drought, uncontrollable wildfires, and anticipated sea level rise.

D. In November 2006, Berkeley voters issued a call to action by overwhelmingly endorsing ballot Measure G. The mandate was simple but bold: "Reduce our entire community's greenhouse gas (GHG) emissions by 80% by the year 2050."

E. In 2009, the City of Berkeley adopted a Climate Action Plan that established a vision and plan to achieve greenhouse gas emissions reduction targets of 33% below 2000 levels by 2020 and consistent with Measure G, 80% below 2000 levels by 2050.

F. While the City has made great strides in reducing greenhouse gas emissions, achieving a 15% reduction below 2000 levels, Berkeley had not yet achieved its 33% reduction target by 2020.

G. In 2018, Berkeley declared a Climate Emergency (Res. No. 68,486-N.S.) to call attention to the climate crisis and as a call to action to mobilize the city, region, state, and entire country around the urgent need to take action to reduce greenhouse gas emissions.

H. On June 16, 2020, the City adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have the resources to adequately address the climate crisis and support general municipal services. The City needs new funds to pay for municipal services and to establish a Climate Equity Action Fund to reduce greenhouse gas emissions, such as increasing electric vehicle, bicycle and pedestrian infrastructure and other clean transportation options; increasing energy efficiency and renewable energy use in homes and businesses; investing in clean and

reliable back-up power for emergency services facilities; and supporting low-income and historically marginalized individuals to reduce energy use and costs, and benefit from solutions to the climate crisis.

Section 2. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.020 is hereby amended to read as follows:

7.70.020 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. "Person" shall mean, without limitation, any domestic, non-profit, or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; private cogeneration facility; Berkeley business; Massachusetts business or common law trust; society; municipal corporation (other than the City); municipal district; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; or any natural individual.

B. "City" shall mean the City of Berkeley.

C. "Telephone corporation," "electrical corporation," and "gas corporation," shall have the same meanings as defined in Sections 234, 218, and 222 respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1983. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electricity to a service user, but shall not be construed to include any private cogeneration facility. "Gas corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of gas power to a service user, but shall not be construed to include any private cogeneration facility.

D. "Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15U.S.C. Section 79z-5a) and regulations thereunder.

E. "Service supplier" shall mean any entity or person, including the City, that provides telephone communication, electric, gas or cable television service to a user of such services within the City. The term shall include any entity or person required to collect, or self-collect under Section 7.70.071 of this chapter, and remit a tax imposed by this chapter, including its billing agent in the case of electric, gas or cable television service suppliers.

F. "Non-utility service supplier" shall mean:

1. a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

2. an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a ~~supplier~~provider of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and
3. a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

G. "Service user" shall mean a person required to pay a tax imposed by this chapter.

H. "Month" shall mean a calendar month.

I. "Tax administrator" shall mean the City Manager of the City, or his or her authorized representative.

J. "Gas" shall mean natural or manufactured gas or any ~~alternate~~alternative hydrocarbon fuel, which may be substituted ~~therefore~~therefor.

K. "Public utility," as used in Section 7.70.070, shall be construed to include "electrical corporations," as defined in Section 218 of the Public Utilities Code, but shall not be construed to include any private cogeneration facility.

L. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section ~~218.5216.6~~ of the Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

M. "Video service supplier" shall mean any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multi-channel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)], open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

N. "Video services" shall mean any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, regardless of the content of such video programming or communications.

"Video services" shall not include services for which a tax is paid under Section 7.70.050 of this chapter.

O. "Service address" shall mean the residential street address or the business street address of the premises of the gas or electricity service user. For a telephone communications service user, "service address" shall mean the residential street address or the business street address of the service user's primary place of telephone communication service usage.

P. "Billing address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

Q. "Telephone communication services" shall mean and include the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service--see 47 USCA Section 332(c)(7)(C)(i)--regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of the ordinance codified in this chapter, and includes, without limitation, fiber optic, coaxial cable, and wireless. The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. "Telephone communication services" include, but are not limited to, the following services regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); local number portability; text messaging; ancillary telecommunication services; prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitles a user to exclusive or priority use of communications channels. "Telephone communication service" does not include: internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151 note; video programming services; and digital downloads, such as

downloads of books, music, ringtones, games and similar digital products.

R. Reserved.

S. "Ancillary telecommunications services" shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

1. Services that link two or more participants of an audio or video conference call, including the provision of a telephone number.
2. Services that separately state information pertaining to individual calls on a customer's billing statement.
3. Services that provide telephone number information, and/or address information.
4. Services offered in connection with one or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.
5. Services that enable customers to store, send or receive recorded messages.

Section 3. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.060 is hereby amended to read as follows:

7.70.060 Electricity users tax.

A. There is hereby imposed a tax upon every person ~~other than an electrical or gas corporation,~~ using electricity in the City, ~~except individuals enrolled in the California Alternate Rates for Energy Program ("CARE") or the Family Electric Rate Assistance Program ("FERA").~~ The tax imposed by this section shall be at the rate of ~~seven and one-half ten percent (7.510%)~~ of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. There is a presumption that electricity services, which are billed to a service address in the City or have electricity meter(s) located in the City, are used within the City's boundaries, and such services are subject to taxation under this section.

B. The tax administrator may, from time to time, survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges ~~thereforetherefor,~~ including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The tax administrator may, thereafter, issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or ~~the various unbundled billing components of electric retail service that they commonly provide to~~ common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically

have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. ~~Unbundled charges~~Charges for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable.

D. As used in this section, the term "using electricity" shall not be construed to mean:

1. The use of an electricity product of which a significant portion is derived from high-quality, new renewable resources. The tax administrator shall adopt rules and regulations not inconsistent with this section to establish definitions and criteria for electricity products that qualify under this paragraph. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.
2. The mere receiving of such electricity by an electric public utility or governmental agency at a point within the City for resale; or the use of such electricity in the production or distribution of water by a public utility or a government agency.
3. The use of "self-generated electricity" from sources other than a conventional power source as defined in Public Utilities Code Section 2805. "Self-generated electricity" shall mean electricity which is generated by the end user of the electricity within the City and is delivered to the end user on a dedicated set of conductors that are owned by or operated exclusively on behalf of the producer/consumer. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.

E. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for electricity imposed in this section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the

previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term “charges” shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. Energy charges;
2. Distribution or transmission charges;
3. Metering charges;
4. Standby, reserves, firming, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and
6. Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, or by any state or federal law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 4. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.070 is hereby amended to read as follows:

7.70.070 Gas users tax.

A. ~~There is hereby imposed a tax upon every person other than a gas corporation or electrical corporation,~~ using gas within the City, which is delivered through a pipeline distribution system; ~~or by mobile transport, except individuals enrolled in the CARE or FERA Program.~~ The tax imposed by this section shall be at the rate of ~~seven and one-half ten percent (7.510%)~~ of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The City Council may by ordinance further increase the tax by up to an additional two and one-half percent (2.5%) from 10% up

to 12.5%. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent; and shall apply to all uses of gas, including, but not limited to, heating, and the use of gas as a component of a manufactured product. There is a presumption that gas services, which are billed to a service address in the City or have gas meter(s) located in the City, are used within the City’s boundaries, and such services are subject to taxation under this section.

B. The tax administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The tax administrator may, thereafter, issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. ~~Unbundled charges~~ Charges for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

D. There shall be excluded from the calculation of the tax imposed in this section:

1. Charges made for gas which is to be resold and delivered through mains, pipes, by mobile transport, or other means. ~~a pipeline distribution system by a public utility or governmental agency.~~

2. Charges made for gas used in the production of electricity by a public utility, or for the production or distribution of water by a public utility or governmental agency.

E. ~~The tax that is calculated on charges for gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for gas imposed in by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the~~

tax billed in the previous month, or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term “charges” shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term “charges” shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);

3. Storage charges; provided, however, that the service provider shall not be required to apply the tax to any charges for gas storage services when the service providers cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,

5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 5. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.073 is hereby added to read as follows:

7.70.073 Climate Equity Action Fund; Climate Action and Energy Commission.

A. The Climate Equity Action Fund is hereby established. Revenues received from the user tax imposed on electricity and gas above 7.5% and any other funds designated by the City Council, may be placed in the fund. The Climate Action and Energy Commission or successor commission

shall provide non-binding recommendations to the City Council on how these proceeds could be spent to address climate equity issues. At the City Council’s discretion, the proceeds may be spent to reduce local greenhouse gas emissions or for any other municipal purpose. Funds may be used for City government expenditures, and/or to provide grants to local non-profit organizations, businesses, and government agencies.

B. The Energy Commission is renamed the Climate Action and Energy Commission. The Climate Action and Energy Commission shall develop guidelines for the Climate Equity Action Fund, communicate with the public on the availability and uses of the Fund, and make recommendations to the Council on how and to what extent the City should establish and/or fund programs. Considerations should include the effect of proposed actions on greenhouse gas emissions, on equity and environmental justice, the impacts of climate change on the City’s low income and most vulnerable populations.

C. Each member of the Climate Action and Energy Commission must have one or more of the following qualifications:

1. Experience in community-based inclusive equity-based programs;
2. Experience in social and racial equity;
3. Experience in climate and energy conservation or renewable energy policies and programs;
4. Experience in municipal-scale inclusive and equitable energy and transportation initiatives;
5. Technical expertise in health and other disproportionate impacts of climate change on low income and vulnerable populations.

D. In addition to its standing duties and responsibilities, the Climate Action and Energy Commission shall, by majority vote, publish an annual report that includes the following:

1. Recommendations on how to allocate funds deposited into the Climate Equity and Action Fund to reduce the emission of greenhouse gases, increase participation of low income, disadvantaged, and vulnerable populations in climate action programs, and reduce the impacts of climate change on the City’s low income and most vulnerable populations. Information, if available, concerning the impact of funds deployed from the Climate Equity and Action Fund on the achievement of goals in the City’s Climate Action Plan;
2. Any additional information that the Climate Action and Energy Commission deems appropriate.

E. Within 30 days of receipt of the annual report of the Climate Action and Energy Commission, the City Manager shall cause the report to be published on the City’s website and transmitted to the City Council.

F. The City Council shall consider, but need not follow, the Climate Action and Energy Commission’s recommendations and shall annually inform the Climate Action and Energy

Commission as to the extent to which it has implemented its recommendations.

Section 6. 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.

Section 7. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this general tax for each of the four fiscal years from 2021 through 2024.

Section 8. Amendment, repeal, and reenactment. The City Council may amend this ordinance in any manner, including reducing any applicable tax rates or adding or modifying exemptions that does not result in an increase in the tax imposed herein without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 9. 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 10. 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.

CITY OF BERKELEY MEASURE II

<p>II Shall the measure amending the Berkeley City Charter to create an independent Berkeley Police Accountability Board and Director of Police Accountability to provide oversight of the Berkeley Police Department (Department) policies, practices, and procedures; obtain access to records; investigate complaints filed by members of the public against sworn employees of the Department; and recommend discipline of sworn employees of the Department, based upon a preponderance of the evidence, be adopted?</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE II

Current Law

In 1973, Berkeley voters approved an ordinance establishing the Police Review Commission (“PRC”). That ordinance authorizes the PRC to investigate complaints, conduct hearings, and issue findings regarding police misconduct claims. The Police Chief and City Manager may consider these findings when determining whether to discipline a City police officer.

The Proposed Charter Amendment

This proposed Charter Amendment would establish the Police Accountability Board (“Board”) to replace the existing PRC and create new procedures for reviewing police misconduct claims. The Board would consist of nine (9) members selected by the Mayor and City Council. The Charter Amendment would also create the office of Director of Police Accountability (“Director”), who would be appointed by the City Council to serve as the Board secretary and be responsible for investigating complaints against sworn members of the Berkeley Police Department. The Charter Amendment would allow the City Council to vote to remove any Board member or the Director.

The Board would have the following powers and duties:

- Make recommendations regarding the operation of the Police Department, including review of the Department budget,
- Review complaints against sworn members of the Berkeley Police Department and recommend disciplinary actions,
- Access records, compel testimony and issue subpoenas as needed to carry out its functions, subject to applicable state confidentiality laws,
- Review agreements between the Police Department and other law enforcement, military or private security organizations,
- Participate in the hiring of the Chief of Police,
- Adopt rules and regulations necessary to conduct its business,

- Any other powers or duties the Council may assign.

The Charter Amendment would establish two separate processes by which a member of the public could submit a police misconduct complaint:

1. Complaints filed with the Police Accountability Board

A member of the public could submit a complaint to the Board by filing the complaint with the Director. The complaint would be investigated by the Director and decided on by the Board following a confidential hearing in which the Board would determine whether misconduct had occurred based upon a “preponderance of the evidence.” The Board would then recommend whether disciplinary action is appropriate, and in certain cases, the level of discipline. In most cases, the Chief of Police would decide the nature and extent of discipline imposed following a finding that misconduct has occurred.

2. Complaints filed with the Berkeley Police Department

Alternatively, a member of the public could file a complaint with the Police Department, after which the Chief of Police would make a decision as to the need for disciplinary action. A complainant could contest the Chief of Police’s decision by requesting review by the Director and Board.

Under both procedures, a final determination would be required within 240 days of the complaint. In the event of disagreement between the Board and the Chief of Police, the City Manager would make a final determination.

This Charter Amendment was placed on the ballot by the City Council.

The above statement is an impartial analysis of Measure II.

s/FARIMAH BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE II

Berkeley police officers must be held to the highest standards of conduct. Measure II establishes an independent agency to investigate complaints and ensure effective civilian oversight of police conduct. This measure results from an unprecedented collaborative process between Berkeley Police, the Police Review Commission, and City Council.

The Charter Amendment replaces the Police Review Commission, established in 1973, with a new Police Accountability Board, with expanded powers to investigate police misconduct and provide civilian oversight.

A Director of Police Accountability would provide professional oversight and investigate complaints, make independent findings, and recommend corrective action. This is estimated to cost approximately \$300,000 per year, less than 0.5% of the Police Department's current budget. Other provisions include:

- extending the deadline for people to file and for the Board to review complaints (many complaints are not thoroughly investigated because the timeframe is far shorter than in other cities);
- adopting a more reasonable standard of proof for complaints (the current unreasonably high burden of proof is inconsistent with that of other cities);
- requiring officers to testify and city administration to provide relevant records;
- recommending discipline in cases of serious misconduct;
- using complaint and other information to propose policy changes to ensure fair and impartial policing, address racial inequities, and protect civil liberties;
- advising the City Council on the hiring of the Chief of Police with final approval remaining with the elected City Council.

The City Council would still have ultimate say over policing policy and the City Manager's Office would retain its authority over police department management.

Voting YES on Measure II will give the Police Accountability Board the authority and resources to thoroughly investigate misconduct allegations, propose discipline, and review police policies to protect civil rights and liberties and address racial and other disparities.

For a more accountable Berkeley, join us in voting YES on Measure II.

s/ELLIOT HALPERN

Board Member ACLU Berkeley/North East Bay Chapter

s/DAVID MUHAMMAD

Executive Director, National Institute for Criminal Justice Reform

s/TY ALPER

Professor, U.C. Berkeley School of Law (For Identification Purposes Only); Vice-President, Berkeley School Board

s/MANSOUR ID-DEEN

President, Berkeley NAACP

s/KITTY CALAVITA

Chair, Berkeley Police Review Commission, Chancellor's Professor Emerita of Criminology, Law & Society, UC Irvine (For Identification Purposes Only)

NO ARGUMENT AGAINST MEASURE II WAS SUBMITTED

FULL TEXT OF MEASURE II

CHARTER AMENDMENT TO ESTABLISH A POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley to read as follows:

Section 1. The Charter of the City of Berkeley is amended to add Article XVIII, to read as follows:

Article XVIII. POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

Section 1. Establishment and purpose.

A Police Accountability Board is hereby established in the City of Berkeley. The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

Section 2. Definitions.

The following definitions apply to this Article:

(a) “Commissioners’ Manual” refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) “Complainant” shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Accountability Board, or the Police Department.

(c) “Director of Police Accountability” or “DPA” refers to an individual fulfilling the police oversight role established pursuant to section 1 of this Article.

(d) “Effective Date” shall be the date that the Secretary of State accepts and files this Article.

(e) “Police Accountability Board” or “Board” refers to the Police Accountability Board established in Section 1 of this Article, which shall be the successor agency to the Berkeley Police Review Commission in accordance with Section 27.

(f) Except as otherwise specifically provided, all references in this Article to California code sections shall

refer to such Code sections as they may be amended or re-codified from time to time.

Section 3. Police Accountability Board powers and duties.

(a) The Police Accountability Board has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations;

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

(5) To access records of City Departments, compel attendance of sworn employees of the Police Department, and exercise the power of subpoena as necessary to carry out its functions;

(6) To adopt rules and regulations necessary for the conduct of its business; and

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Accountability Board shall limit the City Council’s, Chief of Police’s or City Manager’s authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.

(c) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

Section 4. Independent agency; budget authority and allocation.

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Accountability Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Accountability Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

Section 5. Composition of Police Accountability Board; eligibility.

(a) The Police Accountability Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

- (1) Be a resident of the City;
- (2) Be at least 18 years old;

(3) Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and

(4) Be fair minded and objective with a demonstrated commitment to community service.

(b) Desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations.

(c) All appointees to the Board shall be subject to background checks before final appointment.

Section 6. Board member selection.

(a) Candidates for the Board must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the City Council.

(b) The City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for the position of Board member, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.

Section 7. Terms; term limits.

(a) Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two years.

(b) To the extent not in conflict with subsection (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding Board member term limits and the effect of interruption in service, apply.

Section 8. Conflicts of interest and Avoiding Bias.

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Accountability Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related

to” shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant’s spouse within the third degree of relationship.

Section 9. Expiration of term; termination; leaves of absence; removal.

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member’s term expires due to term limits, as provided in Section 7 .

(b) The term of a Board member who fails to remain eligible to serve on the Board (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Board members, apply to the Police Accountability Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

Section 10. Board Chairperson and Vice-Chairperson.

(a) The Board shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

Section 11. Board member stipends.

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

Section 12. Board member training; At will Status; Oath of Maintaining Confidentiality.

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

(1) Quasi-judicial duties and obligations of the Board;

(2) Constitutional rights and civil liberties;

(3) Fundamentals of procedure, evidence and due process;

(4) The Public Safety Officers Procedural Bill of Rights Act;

(5) Police Department operations, policies, practices, and procedures; and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by a two-thirds vote of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

Section 13. Board meetings; quorum; rules of procedure; subcommittees.

(a) At the beginning of each calendar year, the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.

(b) A majority of appointed Board members constitutes a quorum to conduct business and take any action.

(c) The Board shall establish rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment and removal of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners’ Manual.

Section 14. Office of the Director of Police Accountability.

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights;
- (5) Police Department operations, policies, practices, and procedures; and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Accountability Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the Police Accountability Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures, and personnel rules of the City and Berkeley Police Department.

(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Accountability Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work of the Police Accountability Board and the Office of the Director of Police Accountability.

Section 15. Legal counsel.

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

Section 16. Board reports.

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

- (1) A description of the Board's activities during the year, including:
 - i. A summary of the number, type, and disposition of complaints filed with the Board;
 - ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;

iii. Policy complaints undertaken; and

iv. Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Accountability Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department, and the Police Department General Order on Fair and Impartial Policing.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

Section 17. Policy review and approval.

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

Section 18. Complaints filed with the Director of Police Accountability.

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with

the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

(1) What constitutes a complaint; and

(2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Accountability Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(f) No City employee, officer, official or member of the Police Accountability Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Accountability Board, and to each identified sworn employee of the Police Department against whom the complaint has been filed.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Accountability Board and, if warranted, the Board may agree to hold a personnel

hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Accountability Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Accountability Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Accountability Board, if the Chief of Police and Director of Police Accountability or Police Accountability Board are in accord, the Chief of Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Accountability Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Accountability Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article

after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

Section 19. Review of complaints filed with the Berkeley Police Department.

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is "not sustained", "unfounded" or "exonerated", within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Accountability Board will convene to conduct a review based upon the investigative record provided by the Department; or

ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Accountability Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Accountability Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police.

(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager,

Director of Police Accountability, and the Chief of Police, as applicable.

Section 20. Access to records of City departments; compelling testimony and attendance.

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Director of Police Accountability, Police Accountability Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Accountability Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Accountability Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

Section 21. Advice regarding Police Department budget.

The Board is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

Section 22. Hiring of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police

Accountability Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

Section 23. Chief of Police or command staff to attend Board meetings.

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

Section 24. Berkeley Police Department written reports to the Board.

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, may prescribe. At least one report per year shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

Section 25. Contract negotiations.

The City Manager shall inform the Police Accountability Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

Section 26. Commendation program.

The Board shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to members of the public, the community at large, or the Department.

Section 27. Transition from Police Review Commission to Police Accountability Board.

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022.

(b) To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

(c) The Police Review Commission staff shall transfer all Police Review Commission files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Accountability Board.

Section 28. Review of processes.

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

Section 29. Enabling Legislation.

The Board may make recommendations to the City

Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

Section 30. Repeal of Ordinance No. 4,644-N.S., as amended.

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Accountability Board established by this Article.

Section 31. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, 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 Article, 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 declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

CITY OF BERKELEY MEASURE JJ

JJ Shall the measure amending the City Charter to provide that compensation for the office of Mayor be set at Alameda County's median three-person household income from the California Department of Housing and Community Development and that of Councilmembers maintained at 63% of the Mayor's compensation, with annual increases based on changes in Area Median Income, but which may be lowered for unexcused Council meeting absences or negotiated salary reductions for City employees, be adopted?	YES
	NO

The Charter Amendment would also expand the situations in which the Mayor or a Councilmember could be excused from attending a regular Council meeting without being subject to a salary reduction by allowing the Mayor or a Councilmember to be excused by the Council for up to two regular meetings in a year due to the illness or death of a close family member.

The above statement is an impartial analysis of Measure JJ.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE JJ

This Charter Amendment was placed on the ballot by the City Council.

Current Law

The Berkeley City Charter provides that the Mayor is paid at a rate of \$2,850 per month, and City Councilmembers are paid at a rate of \$1,800 per month. These amounts were set in December 1998, and have been adjusted upward based upon the increase in the cost of living for the San Francisco Bay Area. As a result, the Mayor is currently paid at a rate of \$61,304 per year, and Councilmembers are currently paid at a rate of \$38,695 per year.

The Mayor and Councilmembers are paid for each regular meeting attended that month in an amount based upon their monthly salary divided by the number of regular meetings in that month. If the Mayor or a Councilmember is absent from a regular Council meeting, they do not receive the per-meeting salary payment for that meeting. However, the Mayor or Councilmember can be excused by the Council in order to attend to official City business, or for up to two regular meetings per year due to illness, without being subject to this salary reduction.

The Proposed Charter Amendment

The proposed Charter Amendment would amend the City Charter to provide that the Mayor's salary would be set at the same rate as the median income for a three-person household in Alameda County. Councilmembers' salaries would be set at 63% of the Mayor's salary, which would maintain the existing proportionate relationship between the salaries for each position. Based upon current income information for Alameda County, the Mayor's annual income would be expected to be approximately \$107,300, with Councilmembers' salaries set at approximately \$67,599. These amounts would be subject to annual adjustments based upon changes in the area's median income.

Under the Charter Amendment, if the City and organizations representing City employees agree to change employee compensation in order to reduce costs, the City Personnel Board will be required to review and amend the Mayor's and Councilmembers' salaries to achieve comparable cost savings.

ARGUMENT IN FAVOR OF MEASURE JJ

Measure JJ would promote diverse representation of our community on the City Council and help remove money from politics.

Berkeley's new public financing of elections makes it possible for candidates with important perspectives to run but the very low compensation makes it impossible for many to serve. Single parents, young people without generational wealth, people of color and working-class residents are hindered by the compensation, which was set over 20 years ago and has not kept pace with area cost-of-living.

Measure JJ creates a formula tying the Mayor's compensation to that of a low-income household (\$107,300) and Councilmembers to a very low-income household (\$67,599). Using a formula avoids political influence in setting compensation. The total cost would be about \$277,000 annually.

Councilmembers presently receive \$38,695/year and the Mayor \$61,304, which places them at the extremely low-income and low-income level in Alameda County. Meanwhile, the average rent in the city has risen to \$3,183 per month. Councilmembers without wealth have to rely on a secondary source of income – a second job, a partner's income or accumulated assets – to be able to live in the districts they represent.

The Mayor and Council oversee a \$450 million budget, develop policy with colleagues through policy committees, represent the community at regular and special City Council meetings and serve constituents. The current structure assumes that the Mayor and Councilmembers are compensated only for attending regular Council meetings, vastly understating the time spent in other critical duties.

Berkeley is a world-renowned leader in many things, including bold legislation. Our residents expect their legislators to approach this job with their whole energy and mind. Reasonable compensation that allows leaders from diverse backgrounds to answer the call to service is a key to equitable, accessible and effective government.

Please join us in voting YES on Measure JJ.

s/GORDON WOZNIAK

Former Councilmember, District 8

s/DANIEL G. NEWMAN

Author of Berkeley's Public Campaign Finance System and the Book "Unrig: How to Fix Our Broken Democracy"

s/KHIN CHIN

President, SEIU 1021 Community Services Chapter & Part Time Recreation Leaders Association

s/ELLEN G. WIDESS

Former Chief of Division of Occupational Safety & Health, CA Labor Agency

s/MANSOUR ID-DEEN

President - Berkeley NAACP

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE JJ

A recent Community Survey found 44% of Berkeley's voters reported decreased household income during the pandemic. Now is not the time for the **75% raise** that Measure JJ would grant Berkeley's politicians.

Proponents say Berkeley's legislators would "approach this job with their whole energy and mind" in exchange for a **75% raise**. But Measure JJ fails to write this "full time" job description into the City Charter.

Proponents say leaders like the Mayor and Councilmembers would "answer the call to service" for **75% more money**, which makes us wonder what they're doing now.

For example, for the past 7 years the Council has overseen a General Fund that each year has provided repairs to only 1 of Berkeley's 216 crumbling street-miles, even in good times. Their performance does not merit a **75% raise** now.

Since 1998 the Charter has required that Council compensation be "adjusted upward by the increase in the cost of living for the San Francisco Bay Area." But proponents claim that Council compensation "has not kept pace with area cost-of-living." Have proponents checked the Charter?

The compensation formula that proponents say "avoids political influence" is just a roundabout way to **raise Council salaries 75%**. Measure JJ would allegedly "help remove money from politics" by removing more of your money for Council's benefit.

The path forward is for the Mayor and Councilmembers to really take care of the City's business, and come back when Berkeley is not hurting so badly.

Please vote NO on Measure JJ.

s/JESSICA BEHRMAN

44-Year Berkeley Resident and Worker

s/KENNETH BERLAND

13-Year Berkeley Resident, Attorney, Engineering Manager

s/CHARLES CLARKE

Current Market-Rate Tenant and Former Barista in Berkeley

s/TED EDLIN

Former Chair Housing Advisory Commission / Member Fire Commission

s/ERIC FRIEDMAN

Twenty-Year Berkeley Resident

ARGUMENT AGAINST MEASURE JJ

How many of you have had your salary and benefits nearly doubled recently?

By voting yes on Measure JJ, you would be giving the Mayor and each Councilmember a **75% raise** amid a great budget crisis.

In a recent City survey 47% of Berkeley voters like you reported that you've been seriously hurt by the COVID-19 pandemic.

You're losing livelihoods and businesses, homes and careers – something that a **75% raise** for elected officials will do nothing to help.

Now is not the time for a **75% raise**.

Raises should reflect performance.

- Are your streets better paved, cleaner and safer?
- Are your parks, marina and waterfront more vibrant?
- Are local businesses thriving?

No, they are not.

Now is not the time for a **75% raise**.

Please vote NO on Measure JJ.

s/JESSICA BEHRMAN

44-Year Berkeley Resident and Worker.

s/KENNETH BERLAND

13-Year Berkeley Resident, Attorney, Engineering Manager.

s/CHARLES CLARKE

6-Year Berkeley Resident

s/THEODORE EDLIN

Former Chair Housing Advisory Commission / Member Fire Commission Now Disaster & Fire Safety Commission

s/ERIC FRIEDMAN

Twenty Year Berkeley Resident

REBUTTAL TO ARGUMENT AGAINST MEASURE JJ

We all know there is never a good time to ask your boss (in this case, you, the voters) for a raise, particularly given the tough economic times caused by COVID-19. But it is especially during this time of uncertainty and inequality that Berkeley needs broad and proactive representation.

Measure JJ promotes good government by making it possible for Berkeley residents, regardless of their wealth, to serve their community as elected officials.

Twenty years have passed without meaningfully adjusting the Mayor and Council salaries. Housing costs have skyrocketed in the Bay Area. Councilmembers' current compensation would qualify them for food stamps and subsidized housing. At the same time, the work of Councilmembers and the Mayor is much more complex and involved than when compensation was last set in 1998, making it difficult for them to work at other jobs. The total cost of \$280,000 per year is only 0.06% of the city's total \$450 million budget – a small price to pay for elected oversight and governance.

Measure JJ would compensate councilmembers at a modest 60% of the median household income in Alameda County. The measure also gives the Personnel Board the authority to reduce Council and Mayor compensation if city employees take pay cuts in a downturn. Current city law does not allow this.

Measure JJ ensures that people with varied experiences, perspectives, and income levels can serve. Amidst a national conversation around racial justice, diversity of backgrounds in our leadership has never been more important.

Please join your neighbors in voting "yes" on Measure JJ.

s/GORDON WOZNIAK

Former Councilmember, District 8

s/JACK KURZWEIL

Administrative Coordinator, Wellstone Democratic Renewal Club

s/JULIA CATO

Chair BTU Steering Committee

s/MANSOUR ID-DEEN

President – Berkeley NAACP

s/ELIZABETH GRUBB

President of Cal Berkeley Democrats

FULL TEXT OF MEASURE JJ

AMENDMENTS TO ARTICLE V OF THE BERKELEY CITY CHARTER RELATED TO SALARIES FOR THE MAYOR AND CITY COUNCIL

The People of the City of Berkeley hereby amend Section 19 of the Charter of the City of Berkeley to read as follows:

Section 1. Section 19 of Article V of the Charter of the City of Berkeley related to the salaries for Mayor and Councilmembers is amended to read as follows:

Section 19. Salaries.

The ~~Mayor~~Councilmembers shall receive remuneration for the performance of their official duties at the ~~Alameda County median income for a three-person household and Councilmembers at 63% of that amount, with annual adjustments based on adjustments to the area median income.~~ at the rate of up to \$1,800 per month, and the Mayor shall receive up to \$2,850 per month, effective the Council term beginning in December 1998. Such amount shall be adjusted upward by the increase in the cost of living for the San Francisco Bay Area as verified by official United States economic reports.

If the City and employee organizations agree to amend the compensation provisions of existing memoranda of understanding to reduce costs, the Personnel Board shall review and amend the Mayor and Councilmembers' salary as necessary to achieve comparable cost savings in the affected fiscal year or years.

Either the Mayor or any Councilmember may, at ~~his or her~~their sole discretion, reduce the remuneration paid ~~himself or herself~~themselves. In any such case, the difference between the reduced amount actually paid to such Mayor or Councilmember and the amount of remuneration authorized by this Article shall be appropriated as part of the budget of the Mayor or Councilmember taking the voluntary reduction in remuneration and such differential may be expended for any purpose otherwise authorized for the expenditure of sums so budgeted. If the Mayor or any member of the Council is absent from one or more regular meetings of the Council during any calendar month, unless excused by the Council in order to attend to official business of the City, or unless excused by the Council as a result of their own illness or the illness or death of a "close family member" as defined in the City's bereavement policy from attending no more than two regular meetings in any calendar year, he or she shall be paid for each regular meeting attended during such months in an amount equal to the monthly remuneration divided by the number of regular meetings held during such month.

CITY OF BERKELEY MEASURE KK

<b style="font-size: 2em;">KK Shall the measure amending the City Charter to eliminate the residency requirement for sworn members of the fire department, conform the provisions of Article V, Section 9.5 and Section 10 regarding the eligibility requirements for the Redistricting Commission to state law, remove gender-specific language and amend Article VII, Section 28 and Article XVI, Section 113 to update terms and duties of the office of City Attorney be adopted?	YES
	NO

CITY CLERK’S IMPARTIAL ANALYSIS OF MEASURE KK

Current Law

In 1994, Berkeley voters amended the City Charter to require that all City firefighters hired after January 1, 1995, live within a radius of 40 air miles of the City. All but four of the City’s roughly 130 firefighters were hired after January 1, 1995, and therefore must comply with this residency requirement.

The Charter restricts membership on the Citizens Redistricting Commission to registered voters in the City of Berkeley who have voted in the last two General Municipal Elections, unless ineligible to do so by reason of age, thereby precluding noncitizen residents from serving on the Citizens Redistricting Commission.

The Charter currently uses gender references such as “he” and “she.”

The Charter currently provides that the City Attorney is appointed by the City Manager, subject to the affirmative vote of five members of the City Council, and is responsible for prosecuting all criminal cases arising from violations of the Charter and City ordinances, and attending to suits and proceedings in which the City is interested, subject to the Council’s control over all litigation in which the City is involved.

The Proposed Charter Amendment

The Charter Amendment would eliminate the requirement that City firefighters live within a radius of 40 air miles of the City.

The Charter Amendment would change the name of the “Citizens Redistricting Commission” to the “Independent Redistricting Commission,” and eliminate the requirement that members be Berkeley registered voters who have voted in the last two General Municipal Elections, and instead require that members be Berkeley residents who are 18 years of age or older, thereby allowing noncitizen residents to serve on the Independent Redistricting Commission. This amendment conforms the Charter to state law allowing noncitizens to serve on appointed commissions.

The Charter Amendment would replace all gender-specific references in the Charter with gender-neutral pronouns such as “they” and “their.”

The Charter Amendment would provide that the City Attorney shall be appointed for an indefinite term, and may be removed, by a vote of five members of the City Council. Under the Charter Amendment, the City Attorney’s authority to prosecute violations of the Charter and City ordinances would not apply to City boards whose members are elected, such as the Rent Stabilization Board and Board of Education. The Charter Amendment would require the City Attorney to draft ordinances, advise the Council and City boards and officers, and prosecute and defend the City in all judicial and quasi-judicial proceedings, subject to the general direction of the Council and the Council’s approval to commence, settle, or dismiss any action, and would authorize the City Attorney to enter into contracts to support these functions. The Charter Amendment would provide for the City Attorney to propose a budget and for the Council to provide sufficient funds to carry out the duties of the office.

The City Council placed the proposed Charter Amendment on the ballot.

The above statement is an impartial analysis of Measure KK.

s/MARK NUMAINVILLE
Berkeley City Clerk

ARGUMENT IN FAVOR OF MEASURE KK

Placed on the ballot by a unanimous City Council and Mayor, **Measure KK is a good government measure to update various administrative provisions of the Berkeley City Charter.**

First adopted in 1895, Berkeley's City Charter is built on an old foundation. Updates are necessary to remove outdated elements, increase clarity and ensure conformity with current law and best practices.

Measure KK:

- Allows the implementation ordinance for the Redistricting Commission to be amended less than 5 years after adoption when necessary to conform with State or Federal Law.
- Removes an outdated firefighter residency requirement.
- Brings eligibility requirements for serving on the Redistricting Commission into conformance with California Law.
- Provides for the City Council to appoint the City Attorney and clarifies City Attorney duties and responsibilities.
- Updates outdated Charter language to remove non-inclusive gendered language, bringing our Charter in line with current law and practice.

Changes in mutual aid reduce the need for firefighters to live in a small radius, and the rising cost of housing has pushed many first responders to live beyond the urban core. Lifting the firefighter residency requirement will allow Berkeley to recruit firefighters from a broader geographic area while still ensuring emergency response capabilities necessary for major events.

Subsequent to Berkeley's adoption of an independent citizen's Redistricting Commission, California adopted a law that residents "regardless of citizenship or immigration status" may hold appointed office. Measure KK conforms the Charter to State law and allows all Berkeleyans, regardless of citizenship, to serve on our Redistricting Commission.

Berkeley's Charter doesn't formally establish the Office of City Attorney or delineate its duties and powers in a comprehensive manner. Measure KK brings the establishment and responsibilities of the Office of City Attorney in line with best practices in cities, counties, and other municipalities across the State.

Thank you for voting **YES** on Measure KK, to support good government in Berkeley.

s/JESSE ARREGUÍN

Berkeley Mayor

s/SOPHIE HAHN

Berkeley Vice Mayor and City Councilmember

s/BEN BARTLETT

Berkeley City Councilmember

s/KATE HARRISON

Berkeley City Councilmember

s/RIGEL ROBINSON

Berkeley City Councilmember

**NO ARGUMENT AGAINST MEASURE KK
WAS SUBMITTED**

FULL TEXT OF MEASURE KK

AMENDMENT TO THE BERKELEY CITY CHARTER TO ELIMINATE THE RESIDENCY REQUIREMENT FOR SWORN MEMBERS OF THE FIRE DEPARTMENT, CONFORM THE PROVISIONS OF ARTICLE V, SECTION 9.5 AND SECTION 10 REGARDING REDISTRICTING TO STATE LAW, REMOVE GENDER-SPECIFIC LANGUAGE, AND AMEND ARTICLE VII, SECTION 28 AND ARTICLE XVI, SECTION 113 TO UPDATE TERMS AND DUTIES OF THE OFFICE OF CITY ATTORNEY

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley as follows:

Section 1. Section 37a of Article VII of the Charter of the City of Berkeley is amended as follows:

Section 37a. ~~Repealed. Residency requirement for sworn members of the fire department.~~

~~Any sworn member of the fire department who is hired subsequent to January 1, 1995, may not reside greater than a radius of forty (40) air miles from the boundaries of the City of Berkeley.~~

Section 2. Article V, Section 9.5 and Article V, Section 10 of the Charter of the City of Berkeley are amended throughout to change all instances of the name of the commission from the “Citizens Redistricting Commission” to the “Independent Redistricting Commission.”

Section 3. Article V, Section 9.5(a)(4) of the Charter of the City of Berkeley is amended as follows:

(4) The City Council, by a two-thirds vote, shall adopt an ordinance establishing procedures to implement this Charter section. An implementation ordinance cannot be modified by the Council for a period of five years after initial adoption, and without a two-thirds vote of the Council, unless adoption of an amendment to the Charter, a change in applicable state or federal statute, or court decision necessitates an earlier modification.

Section 4. Article V, Section 9.5(b)(1) of the Charter of the City of Berkeley is amended as follows:

(1) Membership. The Commission shall consist of thirteen members, each of whom is a ~~registered voter~~ resident of in the City of Berkeley. The application and selection process set forth below and by ordinance is intended to produce an Independent Citizens Redistricting Commission that is independent from legislative and political influence, and reasonably representative of the City’s population.

Section 5. The first paragraph of Article V, Section 9.5(b)(3) of the Charter of the City of Berkeley is amended as follows:

(3) Qualifications and eligibility. All ~~registered Berkeley residents who are 18 years of age or older at the time their application is submitted, who have voted in the last two General Municipal elections, unless ineligible to do so by reason of age,~~ are eligible for membership on the Citizens-Independent Redistricting Commission, subject to the following limitations.

Section 6. Article V, Section 9.5(b)(3)(i) of the Charter of the City of Berkeley is amended as follows:

(i) The following individuals are prohibited from serving on the ~~Citizens-Independent~~ Redistricting Commission:

(A) any individual who currently holds, has held, or who has been a qualified candidate for the office of Mayor or City Councilmember within the two years preceding the date of application;

(B) any other individual who holds or has held any City of Berkeley elective office identified in this Charter within the two years preceding the date of application;

(C) the immediate family of the Mayor or any Councilmember, as well as immediate family of staff to the Mayor or Councilmember;

(D) any employee of the City of Berkeley;

(E) any person performing paid services under a contract with the City of Berkeley, including employees of subcontractors;

(F) any individual who has served as an officer, paid staff, or paid consultant of a campaign committee of a candidate for Mayor or City Council within the two years preceding the date of the application;

(G) any individual who is currently, or within the two years preceding the date of application, has been a paid staff member or unpaid intern to the Mayor or any Councilmember;

(H) any individual ineligible to serve in public office under Government Code sections 1021, 1021.5, 1770, or the Constitution and laws of the State of California, except for those laws requiring citizenship status.

Section 7. Article V, Section 9.5(b)(5) of the Charter of the City of Berkeley is amended as follows:

(5) Application process. The City Clerk shall initiate and advertise a 30-day nomination period for appointment to the ~~Citizens-Independent~~ Redistricting Commission. The nomination process shall be open to ~~all registered Berkeley residents~~ voters who are 18 years of age or older at the time their application is submitted, and be conducted in a manner that promotes a diverse and qualified applicant pool.

Section 8. Article V, Section 9.5(e)(2) of the Charter of the City of Berkeley is amended as follows:

(2) In the event of substantial neglect of duty, gross misconduct in office or inability to discharge the duties of office, or if it is determined that a commissioner is ineligible under subdivision ~~(d)~~ (b)(3), a Commissioner may be removed by a two-thirds vote of the Independent Citizens Redistricting Commission, after having been served written notice and provided with an opportunity to respond.

Section 9. Article XVI, Section 109.5 is hereby added to the Charter of the City of Berkeley as follows:

Section 109.5 Gender-neutral language.

The Charter of the City of Berkeley is amended throughout to remove all gender-specific language such

as “he,” “she,” “him,” “her,” or “his” and any other gendered pronouns or nouns. Gendered language shall be replaced with appropriate gender-neutral pronouns such as “they,” “their,” or “them” or with gender neutral nouns such as “the candidate,” “the voter,” “the Clerk,” or “the officer” as grammatically appropriate and in a manner that does not change the legal meaning of any provision of the Charter. Gendered language will be preserved if legally required due to the specific gendered intent of the provision.

- (a) The gender neutral pronoun includes the feminine and masculine genders.
- (b) “They/them/their” shall indicate a singular individual, unless the context indicates the contrary. In most cases, the singular number includes the plural and the plural number includes the singular.

Section 10. Article VII, Section 28(c) of the Charter of the City of Berkeley is amended as follows:

(c) Except as otherwise provided in this Charter, ~~To~~ exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof.

Section 11. Article XVI, Section 113 of the Charter of the City of Berkeley is amended as follows:

Section 113. Office of the City Attorney and conduct of legal proceedings.

The City Attorney shall be an officer of the City of Berkeley, appointed by a vote of five members of the Council, serving at the will of the Council for an indefinite period, and removed only by a vote of five members of the Council, and shall receive such salary as may be fixed by the Council. Upon presentation of a proposed budget by the City Attorney, the Council shall provide funds sufficient to carry out the responsibilities of the office of City Attorney and for the City Attorney’s department (subject to available resources), which shall be under the administrative control of the City Attorney.

Except in the case of the Berkeley Housing Authority, and in the case of the Board of Education, Rent Stabilization Board and any other boards whose members are elective officers pursuant to this Charter, and in addition to duties and powers provided elsewhere in this Charter, the City Attorney shall prosecute all violations of the Charter and ordinances of the City; shall, subject to the general direction of the Council, prosecute and defend for the City and all boards, officers and employees in their official capacity, all proceedings before judicial and quasi-judicial tribunals; shall not commence, compromise, settle or dismiss any action for or against the City except as authorized by an ordinance or resolution adopted by the Council; shall be the legal advisor of and attorney and counsel for the City and for all officers and boards thereof, in all matters relating to their official duties; shall have the authority to enter into contracts to prosecute or defend any action or proceeding or when necessary to advise the Council, any board or commission, the City Manager, or any division, department, or bureau of the City Government; and shall draft proposed City ordinances and amendments thereto.

~~The City Attorney shall prosecute, in behalf of the people, all criminal cases arising from violations of the provisions of this Charter and the ordinances of the City, and shall attend to all suits and proceedings in which the City may be legally interested; provided, the Council shall have control of all litigation of the City and may employ other attorneys to take charge of any litigation or to assist the City Attorney therein.~~

CITY OF BERKELEY MEASURE LL

LL Shall the City's appropriation limit under Article XIII B of the California Constitution be increased to allow expenditure of the proceeds of City taxes and income from the investment of those taxes for fiscal years 2021 through 2024?	YES
	NO

Financial Implications:
This measure would not increase taxes or impose a new tax. It would authorize the City to continue to spend the proceeds of already- approved taxes for FY 2021 through 2024.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE LL

Current Law

Article XIII B of the California Constitution creates an appropriations limit whereby the City cannot authorize expenditure of tax revenues over the amount it spent in the 1986-1987 fiscal year (adjusted for inflation and changes in population). City voters may, by a majority vote, authorize the City to spend tax revenues beyond this appropriations limit.

In 2016, Berkeley voters approved a measure allowing the City to spend all revenues from existing taxes. Under the California Constitution, such a vote can only raise the spending limit for up to four years. Therefore, the spending increase approved by the voters in 2016 will expire after fiscal year 2020. If, in a cumulative two-year period, a city exceeds the spending limit without authorization from its voters, the city must return all revenues in excess of the spending limit in the form of reduced taxes or fees over the subsequent two years.

The Proposed Measure

This measure would extend the voter-approved spending authorization by an additional four years, thereby allowing the City to continue to appropriate all funds generated by City taxes for fiscal years 2021 through 2024.

This measure would not increase taxes or create any new taxes. It would authorize the City to continue to spend the proceeds from existing taxes as well as any income from the investment of the revenues generated by those taxes.

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

The above statement is an impartial analysis of Measure LL.

s/FARIMAH BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE LL

Because of a state mandated ceiling on city expenditures, this ballot measure must come before the voters every four years for approval. **Measure LL must pass or city services will be sharply curtailed.**

This measure does not raise taxes.

During the past decade, **the city's population has grown by more than 11%**. We are providing **essential services** for our expanding population with a **smaller city staff**. Our citizens want a wide variety of city services and have voted by a two-thirds margin to fund those services during the past two decades. Those tax measures included funding for City libraries (1988), streets (2012), parks (1997 and 2014) Emergency Medical Services (1997), Emergency Services for Severely Disabled Persons (1998), and for keeping fire stations open and improving emergency medical response and disaster preparedness (2008).

This measure will allow City of Berkeley Departments to continue to provide these important, tax supported community services to our growing population.

If Measure LL does not pass, the City will lose tens of millions of dollars in voter approved tax revenue, forcing dramatic reductions in landscaping, park maintenance, library services, paramedic and physically disabled services, fire safety, and disaster preparedness. **These services impact the quality of life throughout our city.**

Measure LL was placed on the ballot by a unanimous City Council.

We urge your YES vote.

s/JESSE ARREGUÍN

Mayor, City of Berkeley

s/KATE HARRISON

Berkeley City Councilmember

s/JOHN T SELAWSKY

President, BOLT (Board of Library Trustees)

s/JAMES MCGRATH

Chair, Parks and Waterfront Commission

s/DMITRI BELSER

Executive Director, Center for Accessible Technology

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE LL

A NO Vote on the GANN Measure will keep the City honest!

The City can and must keep the services you pay for and enjoy at the same level, without this measure. Furthermore, the 11% population increase gives the City an 11% spending limit increase. Rate of growth is built into the state spending formula!

There are ways to stay within state limits.

Last year, the City's library system took in \$4 Million more than they spent. This excess can be spent on the libraries or the tax goes back to the citizens. Yes, that is what the constitution requires if the GANN spending limit is reached.

But, the City wants to spend more, preferring to divert the excesses to higher citywide staff salaries and benefits. Are Berkeley citizens enjoying increased household income during the pandemic?

Most of Berkeley is belt-tightening, and the taxes keep increasing! Tighten even more...three costly taxes for the Berkeley schools will begin in December.

When the proponents say they will lose millions in taxes, this really means they must become accountable to you, the citizen. Why is the City so loathe to spend revenues for their specified purposes, when this is the right thing to do?

The 11 Harmed Homeowners have pondered this very question. Their homes have been overcharged for these taxes for years yet are denied a correction.

We want to see our tax dollars used for their intended purposes or refunded as the law requires.

Vote NO on the GANN Measure.

s/LILANA SPINDLER

President, Berkeley for Assessment Tax Equity

s/LAURA MENARD

s/CHRIS CATLETTS

s/ORLANDO MARTINEZ

s/JAY THARP

ARGUMENT AGAINST MEASURE LL

GANN Limits are a state constitutional check to rationalize government taxing and spending by limiting to a per capita rate. GANN Limits require that the constituents of a city get reimbursed when excess revenues exist. If this measure is not approved then, in this time of devastating health and financial dangers for most residents, the City might actually have to rebate excess dollars to taxpayers.

Why doesn't the City Attorney's "impartial analysis" create awareness of these basic facts?

Clearly, the City does not want taxpayers to know how much revenue is moving to the City coffers where it is easily spent and wasted without our knowledge.

The City misleads the public when they ask you to vote to allow them to spend the proceeds of already approved taxes. Among California cities, Berkeley is at the top level of per capita spending, employees per capita, and local taxation. Now, in a time of devastating health and economic impacts for most of our residents, our officials are trying to raise the tax burden even higher with a series of new tax measures and raises for City Councilmembers!

It is one thing if our taxes were spent to fix up our streets, parks, Marina, the University Avenue city gateway, and other infrastructure. Instead, the spending increases have mostly gone to prop up the City bureaucracy and its favored constituencies. Despite all the spending, Berkeley's social, physical and economic conditions have palpably worsened. And almost all of the recent "cuts" were of already-vacant employee positions!

Excess revenues are already accumulating, and that is why the City wants you to allow them to spend it.

Demand results for all of our tax dollars spent.

Vote NO on the GANN Appropriations limit increase and on the other new tax measures.

s/LILANA SPINDLER

President, Berkeley for Assessment Tax Equity

REBUTTAL TO ARGUMENT AGAINST MEASURE LL

Vote Yes on Measure LL to prevent devastating cuts to essential, lifeline services.

The passage of Proposition 13 in 1978 had immediate negative impacts on funding for schools, public safety and other essential services. A vestige of the Prop 13 era is the requirement that every four years, voters have to reauthorize the expenditure of previously approved taxes.

Our citizens have voted by a two-thirds margin to fund a variety of city services over the past two decades. Those tax measures included funding for our libraries (1988), street repair (2012), parks (1997 and 2014), Emergency Medical Services (1997), Emergency Services for Severely Disabled Persons (1998) and keeping our fire stations open, improving emergency response and disaster preparedness (2008). These are special taxes for specific purposes and **cannot** be spent on salaries or other projects.

Now the opponents of Measure LL are trying to undo the will of the voters and prevent us from spending tax revenues you **already** authorized.

Imagine if one day - the library closed, your fire station wasn't open, and persons with disabilities couldn't get the care they need. **This could happen if Measure LL fails to pass.**

Don't let the anti-tax crowd starve our city of essential services in an emergency.

VOTE YES ON MEASURE LL

s/JESSE ARREGUÍN
Berkeley Mayor

s/SUSAN WENGRAF
City Councilmember

s/GORDON WOZNIAK
Parks and Recreation Commissioner, Former City Councilmember

s/DIANE LEE DAVENPORT
Board of Library Trustees, Retired BPL Librarian

FULL TEXT OF MEASURE LL

RESOLUTION NO. ##,###-N.S.

APPROVING INCREASE IN APPROPRIATION LIMIT
FOR FISCAL YEARS 2021 THROUGH 2024

WHEREAS, Article XIII B of the California Constitution requires that the voters approve increases in the City's appropriations limit on a four year cycle; and

WHEREAS, such increases allow the City to expend funds it has already collected from previously approved ballot measures for various purposes including public safety, parks and recreation, health services, and infrastructure; and

WHEREAS, such expenditures are necessary for the continued health and well-being of City residents.

NOW THEREFORE BE IT RESOLVED by the People of the City of Berkeley that the City's appropriation limit under Article XIII B of the California Constitution is increased to allow the expenditure of the proceeds of City taxes and income from the investment of those taxes for fiscal years 2021 through 2024.

CITY OF BERKELEY MEASURE MM

MM Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: prohibit eviction of qualifying tenants for nonpayment of rent during state or local emergencies; authorize the Rent Stabilization Board to set registration fees for certain partially exempt units; and limit the Accessory Dwelling Unit exemption to owner-occupied properties with a single-family home and one accessory unit be adopted?	YES
	NO

construct an ADU on a multi-unit property. A recent change in state law now permits the construction of ADUs on multi-unit properties. The measure would limit the City’s ADU exemption to owner-occupied properties that contain only a single-family home and no more than one ADU. The measure would not constrain the right of a property owner to construct additional ADUs as permitted by law, but would limit the applicability of the exemption from the City’s Rent Stabilization and Eviction for Good Cause Ordinance.

The above statement is an impartial analysis of Measure MM.

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE MM

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

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

This measure would amend the City’s Rent Stabilization and Eviction for Good Cause Ordinance in three ways.

1. Emergency Eviction Limitations

The measure would prohibit the eviction of a residential tenant for nonpayment of rent when a state or local emergency has been declared and emergency legislation has been enacted to authorize the tenant to withhold rent. The City of Berkeley has adopted an “eviction moratorium” in response to the COVID-19 pandemic. The measure would provide that the moratorium and any future legislation authorizing the withholding of rent during an emergency would create an exception to the existing rule that eviction proceedings for nonpayment of rent may commence following three-days’ notice to the tenant.

2. Registration and Fees for Partially Exempt Units

The measure would authorize the Rent Stabilization Board to collect information from the owners of rented single-family homes, rented condominiums, and newly constructed rental units, and to set and charge a registration fee for those units. These units are exempt from the rent control provisions of the Rent Stabilization and Eviction for Good Cause Ordinance, but not from the Ordinance’s good cause requirement for eviction. The fee set by the Rent Stabilization Board would cover the cost of registration and counseling services but would not include the cost of services from which such units are exempt, such as rent adjustment petitions and hearings.

The new registration requirements and fee would not apply where a property owner rents out their own home on a temporary basis, provided that the owner does not own any other rental units in the City, the owner’s absence from the unit does not exceed 24 months, and the length of the owner’s absence is specified in the lease.

3. Accessory Dwelling Unit Exemption

The measure would clarify the existing exemption for Accessory Dwelling Units (ADUs) to address a change in state law. Under City law, ADUs are exempt from rent control and eviction limitations. At the time this exemption was adopted by City voters in 2018, it was not lawful to

ARGUMENT IN FAVOR OF MEASURE MM

Vote YES on MM to protect neighbors from losing their homes, require newer apartment buildings to pay their fair share for City services, and support the construction of backyard units behind single-family homes.

Because of COVID-19, millions of Californians have lost their jobs and one-third of Americans have missed rent. Many are at risk of becoming homeless.

The City Council enacted strong eviction protections under its emergency powers, but Berkeley's Rent Stabilization Ordinance continues to recognize non-payment of rent as a cause for eviction. **Once the City's emergency proclamation is lifted, many Berkeley renters are at risk of losing their homes.**

Measure MM prohibits evictions for nonpayment of rent during a proclaimed emergency if the City or state has allowed for emergency-related nonpayment.

There are eviction controls on buildings constructed after 1980, even though they are exempt from rent control. But owners of these properties do not pay any fees for the services they receive from the Rent Board. Older properties, including small properties owned by local residents, do pay a registration fee. This is unfair.

Measure MM requires newly-built and other similar units to register and pay their fair share for services, but **does not subject them to rent control**. Primary residences rented for up to two years are exempt, ensuring homeowners aren't asked to pay fees and register for a sabbatical or other limited absence.

Measure MM also encourages construction of new housing by continuing to exempt new Accessory Dwelling Units on single-family properties from rent and eviction controls. State law recently changed to allow ADUs on multi-unit properties. Measure MM limits the ADU rent and eviction control exemption to owner-occupied single-family properties, as originally intended by Berkeley voters in 2018.

Vote YES on Measure MM.

s/JESSE ARREGUÍN
Berkeley Mayor

s/JUDITH APPEL
Berkeley School Board, President

s/XAVIER JOHNSON
Chair, Housing Advisory Commission; Sierra Club
Executive Committee Member

s/PAOLA LAVERDE
Rent Stabilization Board, Chair

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE MM

The proponents say: Once the City's state of emergency is lifted, many **Berkeley renters are at risk of losing their homes. NOT TRUE!**

The Facts: The City's eviction moratorium already protects all tenants from eviction during and after the COVID-19 state of emergency. It permanently bans eviction for overdue rent that accrued during the emergency, treating it instead as consumer debt. **Measure MM provides no new protections from eviction.**

The proponents say: Measure MM **encourages the construction of backyard cottages. The opposite is true!**

The Facts: Measure MM reverses the 2018 voters' decision that all backyard cottages should be exempt from rent stabilization and eviction controls. Homeowners will only choose to build backyard cottages for long-term tenants if they can determine with whom they will share their personal space!

We need to encourage homeowners to create backyard cottages, not add more rules that treat ordinary homeowners the same as large commercial landlords. As recently as this year, the Rent Board voted to put *all* Accessory Dwelling Units (ADUs) and golden duplexes under rent stabilization and eviction controls.

The proponents say: **Property owners of units not covered by rent control should pay a fee to the Berkeley Rent Board.**

Why? The Rent Board provided no financial analysis to justify a new fee on all rented single-family homes, condos, and new units.

An impartial Alameda County Grand Jury audit said the Berkeley Rent Board lacks oversight and accountability, increasing fees "without justification."

Measure MM discourages housing when we need it most. Let homeowners be part of the solution!

Vote NO on MM.

s/TOM BATES
Berkeley Mayor (2002-2016)

s/DENISE PINKSTON
Member and Former Chair, Zoning Adjustments Board;
President, The Casita Coalition

s/GORDON WOZNIAK
Former Berkeley City Councilmember

s/KATHLEEN CRANDALL
Co-Chair The ADU Task Force (East Bay)

s/ELISA MIKITEN
City Planner; Former Member, Zoning Adjustments
Board

ARGUMENT AGAINST MEASURE MM

Measure MM is a poorly-designed policy that will discourage homeowners from creating backyard cottages—known as Accessory Dwelling Units (ADUs), which tend to be more affordable for tenants and easily blend into our neighborhoods.

Measure MM adds no new tenant protections. The measure poses as protecting tenants by prohibiting evictions during a state of emergency. But that is already City law! The redundant tenant protections are an attempt to gain support for the measure’s more harmful elements.

Measure MM will discourage new ADUs. Every time we debate more regulations on ADUs, we create more uncertainty in homeowners’ minds about whether they should make the long-term, costly commitment to build an ADU. We support protecting tenants, and we also need to create more homes!

Just two years ago, Berkeley citizens voted to exempt *all* ADUs from rent stabilization and eviction controls. Now the Rent Board wants to reverse the will of the voters by removing this exemption for a second ADU that a homeowner creates—under a complex set of rules not fully described in the measure. These complicated rules will discourage homeowners from adding even one ADU to their property and renting it out to a long-term tenant.

Measure MM raises fees without oversight. The measure would even require that owners of all rented ADUs, single-family homes, condos, and new units pay a registration fee. No evaluation has been done to justify this proposed new fee to the public. An Alameda County Grand Jury audit criticized the Berkeley Rent Board for increasing fees “without justification.” The audit found that Berkeley already has the highest registration fees in California.

Ordinary homeowners should not be treated the same as large commercial landlords. Individuals who choose to share their personal space should be able to choose with whom they will live!

Vote NO on Measure MM.

s/LONI HANCOCK

Former Berkeley Mayor (1986-94), California State Senator (2002-2016)

s/DEBRA R. SANDERSON

Co-Chair, ADU Task Force

s/RASHI KESARWANI

Berkeley City Councilmember

s/LAURIE CAPITELLI

Berkeley City Councilmember (ret.)

s/GREGORY MAGOFNA

Former Vice Chair, Community Environmental Advisory Commission; Former Commissioner, Housing Advisory Commission

REBUTTAL TO ARGUMENT AGAINST MEASURE MM

Opponents claim that Measure MM will “discourage” homeowners from creating backyard cottages.

FACT: Measure MM continues the exemption from rent and eviction controls approved in 2018 for one Accessory Dwelling Unit (ADU) on a single-family parcel. State law has since changed allowing ADUs on multi-family properties. This could result in suddenly exempting a 30-unit building from rent and eviction controls if the landlord builds an ADU and lives on the property. That is not what the voters intended, and leaves tenants vulnerable to displacement. **Measure MM closes this loophole and encourages the construction of new housing in our neighborhoods.**

Opponents claim that the eviction protections in Measure MM are “redundant”.

FACT: Once Berkeley’s local emergency expires, these protections will go away, and tenants could be evicted for non-payment of rent. Measure MM clarifies the law and locks in critical protections for tenants impacted by COVID-19 and other emergencies.

Opponents claim that Measure MM raises fees “without oversight”.

FACT: Measure MM requires that new construction, and other currently-exempt units, pay a modest registration fee for services they already receive from the City. Currently small landlords pay registration fees for Rent Board services, but developers don’t. Measure MM will ensure fairness and registration fees would be set by the elected Rent Board, through a public process and with oversight.

Measure MM is essential to continue eviction protections for tenants impacted by COVID-19, ensure fairness for all property owners, and produce more housing. Please join us in voting YES.

s/KATE HARRISON

Berkeley City Councilmember, District 4

s/RIGEL ROBINSON

Berkeley City Councilmember, District 7

s/LEAH SIMON-WEISBERG

Berkeley Rent Stabilization Board Commissioner

s/PETER SELAWSKY

Litigation Attorney, Eviction Defense Center

s/JULIA CATO

Chair, Berkeley Tenants Union

FULL TEXT OF MEASURE MM

ORDINANCE NO. ##,###-N.S.

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO PROHIBIT EVICTION FOR NONPAYMENT OF RENT OF TENANTS WHO QUALIFY UNDER THE TERMS OF ADOPTED EMERGENCY LEGISLATION; ADOPT A SECONDARY REGISTRATION FEE FOR SINGLE-FAMILY HOMES, CONDOMINIUMS, AND NEWLY CONSTRUCTED UNITS; AND CLARIFY THE EXEMPTION OF LAWFULLY PERMITTED ACCESSORY DWELLING UNITS.

The People of the City of Berkeley do ordain as follows:

Section 1. Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

13.76.050 Applicability

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or

an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of ~~Section 13.76.080, Rent Registration;~~ Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120,

Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one a lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the

unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 2. Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

13.76.060 Rent Stabilization Board

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2. In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.

9. Request the City Council to remove rent controls under Section 13.76.060Q.

10. Administer oaths and affirmations and subpoena witnesses and relevant documents.

11. Establish rules and regulations for settling civil claims under Section 13.76.150.

12. Seek injunctive relief under Section 13.76.150.

13. Pursue civil remedies in courts of appropriate jurisdiction.

14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.

15. Hold public hearings.

16. Charge and collect registration fees, including penalties for late payments.

17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.

18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley. All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

Q. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual

adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 3. Section 13.76.080 of the Berkeley Municipal Code is amended to read as follows:

13.76.080 Rent registration

A. The board shall require all landlords subject to the provisions of this chapter prior to November 3, 2020, to file a rent registration statement with the board by September 1, 1980 ~~a rent registration statement~~ for each rental unit covered by this chapter. The board shall require all landlords subject to Subsections 13.76.050I. and 13.76.050O. of this chapter to file a rent registration statement with the board for each rental unit covered by this chapter as outlined in Subsection 13.76.080L. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter and need not file a rent registration statement for the subject rental unit.

B. Landlords shall provide in their initial rent registration statement the following information:

- (1) The address of each rental unit;
- (2) The name and address of the landlord(s) and the managing agent, if any;
- (3) The date on which the landlord received legal title to or equitable interest in the rental unit;
- (4) The housing services provided for the rental unit;
- (5) The rent in effect on June 6, 1978;
- (6) The rent in effect on December 30, 1979;
- (7) The base rent ceiling;
- (8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this chapter;
- (9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;
- (10) Whether the rental unit was vacant or occupied on May 31, 1980;
- (11) Rent in effect on December 31, 1981.

C. All rent registration statements provided by landlords in accordance with this chapter shall include an affidavit signed by the landlord declaring under penalty of perjury that the information provided in the rent registration statement is true and correct.

D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall

be paid no later than July 1 of each. Because fees charged in years prior to 1991 were due on September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

E. The board shall provide forms for the registration information required by this section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this section.

F. Every annual registration fee required by this chapter which is not paid on or before July 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of one hundred percent of the fee so delinquent in addition to the fee. Every six months that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent of the original fee. The board may waive the penalty if payment is made within thirty days of the original due date.

A landlord may request the board to waive all or part of the penalty if he/she can show good cause for the delinquent payment.

G. The amount of any registration fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city.

H. Within thirty days after the filing of a rent registration statement, the board shall provide a true and correct copy of said statement to the occupant of the respective unit.

I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be prorated based upon the number of months remaining to the next July 1 annual registration deadline.

J. No landlord shall be deemed to be in compliance with this section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

K. Registration fees shall not be passed along to the tenants without the express, prior approval of the board. Under no circumstances shall penalties be passed along to tenants.

L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050O.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be prorated based upon the number of months remaining to the next July 1 annual registration deadline.

Section 4. Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows:

13.76.130 Good cause required for eviction

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the

landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

- a. The landlord has unreasonably withheld consent to the subtenancy; and
- b. The tenant remains an actual occupant of the rental unit; and
- c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.
- d. Withholding of consent by the landlord shall be deemed to be unreasonable where:
 - (i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;
 - (ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and
 - (iii) The proposed new subtenant meets the landlord's customary occupancy qualifications

and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and

(iv) The landlord has not articulated in writing a well-founded reason for refusing consent.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a “temporary rental agreement”) on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord’s spouse or by the landlord’s child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant’s surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

d. All notices terminating tenancy pursuant subsection 13.76.130A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families

with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord’s ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord’s decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant’s surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant’s tenancy shall create a presumption that such unit was vacant and available at the time of the landlord’s decision to seek to recover possession of the premises. “Presumption” means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant’s unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i) “low-income tenants” means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) a person is “disabled” if he/she has a physical or mental impairment that limits one or more of a person’s major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) “elderly” is defined as sixty (60) years of age or older.

(iv) “minor child” means a person who is under 18 years of age.

(v) “tenancy began prior to January 1, 1999” is a tenancy where an “original occupant” (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord’s qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant’s surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the

school year. The term “school year” as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term “custodial relationship” means that the person is a legal guardian of the child, or has a caregiver’s authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child’s legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child’s lifetime, whichever is less. The term “family relationship” means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

l. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more; or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.1 must submit a statement, with supporting evidence, to the landlord. A tenant’s failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant’s unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.1. A landlord may challenge a tenant’s claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant’s unit.

n. The provisions of subsection 13.76.130A.9.1 shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or

greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).

o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed.

Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have

vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130A.8, or 13.76.130A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.