

CITY OF BERKELEY BOND MEASURE M

TAX RATE STATEMENT FOR BOND MEASURE M City of Berkeley Streets and Watershed Bond Measure M

M	Shall the City of Berkeley issue general obligation bonds not exceeding \$30,000,000 for street improvements and integrated Green Infrastructure such as rain gardens, swales, bioretention cells and permeable paving, to improve roads, reduce flooding and improve water quality in the creeks and Bay? <u>Financial Implications:</u> The average annual cost over the 30-year period the bonds are outstanding would be approximately \$38, \$81, and \$116, respectively, for homes with assessed valuations of \$330,500, \$700,000 and \$1,000,000.	BONDS -YES
		BONDS-NO

An election will be held in the City of Berkeley (the “City”) on November 6, 2012, on the question of issuing bonds in the principal amount of \$30,000,000 to finance improvements to streets, with integrated watershed improvements, as described in the bond measure. If the bonds are approved, the City expects to sell the bonds in a single series of bonds. Principal and interest on the bonds will be paid from taxes levied on taxable property in the City. The following tax rate information is given to comply with Sections 9400-9404 of the Elections Code of the State of California.

Based on estimated assessed valuations available at the time of filing of this statement:

1. The best estimate of the tax rate that would be required to be levied to fund the bond issue during the first fiscal year after the sale of the first series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is \$0.01588 per \$100 (\$15.88 per \$100,000) of assessed valuation in fiscal year 2013/14.

2. The best estimate of the tax rate that would be required to be levied to fund the bond issue during the first fiscal year after the last sale of the bonds, based on estimated assessed valuations available at the time of filing of this statement, is \$0.01588 per \$100 (\$15.88 per \$100,000) of assessed valuation in fiscal year 2013/14.

3. The best estimate of the highest tax rate that would be required to be levied to fund the bond issue, based on estimated assessed valuations available at the time of filing this statement, is \$0.01588 per \$100 (\$15.88 per \$100,000) of assessed valuation in fiscal year 2013/14.

4. The best estimate of the average annual tax rate which would be required to be levied to fund the bond issue over the entire life of the bond debt service, based on estimated assessed valuations available at the time of filing of this statement, is \$0.01165 per \$100 (\$11.65 per \$100,000) of assessed valuation. The final fiscal year in which a tax is anticipated to be collected is 2042/43.

Voters should note that the estimated tax rates are based on the *assessed value* of taxable property on the County’s official tax rolls, *not* on the property’s market value. In addition, taxpayers eligible for a property tax exemption, such as the homeowner’s exemption, will be taxed at a lower effective tax rate than described above. Certain taxpayers may also be eligible to postpone payment of taxes. Property owners should consult their own property tax bills and the County Assessor to determine their property’s assessed value and any applicable tax exemptions.

The actual tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF BOND MEASURE M

This bond measure would authorize the issuance of \$30 million of general obligation bonds. Bond proceeds would be used to construct street improvements, such as street repaving and rehabilitation, which would include flood control and water quality measures when appropriate and consistent with the Watershed Management Plan.

Street improvements would be prioritized based on the City’s 5 year street repaving plan, which is updated annually. Integrated flood control and water quality measures (“Green Infrastructure”) would include, but not be limited to, improvements such as: (a) surface level bio-retention measures (rain gardens, swales, bio-retention cells, permeable paving, etc.) within parking lanes, the planted areas of sidewalks, red zone curb-extensions, or street medians; and (b) large underground storage pipes, which would fill during storm events and then discharge metered flows into the existing storm drain pipelines. Under the Watershed Management Plan, the purposes of Green Infrastructure are to reduce flooding and to improve water quality in the City’s creeks and the Bay.

Financial Implications

The year after the first bonds are issued, the tax rate required to meet the estimated debt service would be \$14.47 per \$100,000 of assessed valuation. This rate is expected to decrease each year (assuming one bond series) with the average \$10.84 per \$100,000 of assessed valuation during the 30-year issue.

The average annual cost over the 30-year period the bonds are outstanding would be approximately \$38, \$81, and \$116, respectively, for homes with assessed valuations of \$330,500, \$700,000 and \$1,000,000.

The estimated annual tax for a home with an assessed valuation of \$330,500 would be \$47.82 the first year after bonds are issued and average \$35.82 over the 30-year life of the bonds.

s/ZACH COWAN
Berkeley City Attorney

time of each sale, and actual assessed valuations over the term of repayment of the bonds. The estimates are based upon the City's projections and are not binding upon the City. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on the need for construction funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined by the County Assessor in the annual assessment and the equalization process.

Dated: July 19, 2012

s/Christine Daniel
City Manager, City of Berkeley

ARGUMENT IN FAVOR OF BOND MEASURE M

VOTE YES ON MEASURE M

It is a fact: our city streets are failing faster than we can repair them. If they are not repaired at a sustainable level now, the price tag for keeping them functional will escalate dramatically. Based on the City Auditor's 2011 report, fixing a street before it fails costs from **\$36,000 to \$306,000 per mile**. Reconstructing a street after it fails costs **\$1.15 million per mile**. 12% of our streets are currently "failed." If we do not act now our "failed" streets will escalate to 21% in 5 years.

Our city budget for street repair in 2014 is only \$3.6 million dollars. The current projection to keep all of our streets in good repair is \$46 million. **The longer we wait, the more expensive it will become.** At the end of five years the price tag escalates to roughly \$71 million.

At a cost of only \$30 per year for an average property, this bond measure will contribute \$30 million for our streets and allow us to make related improvements for watershed health and flood control.

Measure M is a wise investment in our town.

Without Measure M, the condition of our streets will continue to worsen and the City will be unable to fix them. When we refurbish a street, we will include watershed improvements such as permeable paving and bio-swales to reduce flooding and filter runoff. Measure M can also provide matching funds for grants for more extensive watershed health improvements: a win-win for the City of Berkeley. Let us take care of, and improve, our city's infrastructure now.

Make a wise investment in our city streets, provide matching funds for grants, create opportunity for watershed improvements.

Vote YES on Measure M.

s/Loni Hancock
State Senator

s/Linda Maio
Vice Mayor

s/Weldon Rucker
Former City Manager

s/Margo Schueler
Public Works Commissioner

s/Sherry Smith
President, League of Women Voters of Berkeley, Albany & Emeryville

REBUTTAL TO ARGUMENT IN FAVOR OF BOND MEASURE M

MOST VOTERS WOULD PROBABLY PLACE STREET REHABILITATION AND STORMWATER MANAGEMENT AS TOP PRIORITY. SO WHAT'S THE PROBLEM WITH MEASURE M?

MEASURE M IS A PIECEMEAL APPROACH GRUDGINGLY SPONSORED BY A DIVIDED COUNCIL.

- Three Councilmembers didn't vote to support this bond.
- In the voter poll, substantial support was expressed for a comprehensive \$50 Million street bond. Yet Council reduced this to accommodate the low priority pool measures.
- Councilmembers disagreed on how much, if anything, should be spent on streets versus trophy projects, like bioswales. Can we now trust them to properly spend the bond money?
- Measure M won't meet our street and water management needs, doesn't guarantee wise spending, and specifically enables spending on expensive unproven technology.

THE FIVE YEAR STREET RE-PAVING PLAN THAT WOULD GUIDE MEASURE M EXPENDITURES IS OUT OF DATE AND NOT EXPLICITLY ALIGNED WITH THE LATEST AND BEST PRACTICES RECOMMENDED BY THE CITY AUDITOR.

- According to the City website, the most current street plan commenced in 2010 and terminates in 2015. There is no indication that it has been modified or updated to incorporate newest Best Management Practices.
- Our City Auditor advised that, for a cost-effective program, the streets chosen for remedial action must be those indicated under the state-of-the-art *StreetSaver* program. *StreetSaver* is not mentioned at all in the City's Five Year Plan or in Measure M as the guiding mechanism for street rehabilitation.

WE CAN DO BETTER! WE NEED A COMPREHENSIVE, CLEAR, PROFESSIONAL PLAN FOR OUR STREETS AND SEWERS.

s/Shannon R. Brown
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Karl J. Reeh
President, Le Conte Neighborhood Association

s/Ted Edlin
President, Council of Neighborhood Associations (CNA); Former Chair, Housing Advisory Commission; Former Commission, Fire Safety Commission

ARGUMENT AGAINST BOND MEASURE M

Measure M does not guarantee appropriate rehabilitation of our streets or the cessation of flooding. Further, it enables funding of experimental technologies that may add to the cost of fixing our streets and sewers.

After many years of under-funding and neglect, Berkeley's streets are in terrible condition. The Metropolitan Transportation Commission ranks Berkeley streets near bottom (81st) among 98 cities. This is one problem area that has been extensively studied and for which clear cost estimates and solutions are available. Our City Auditor has made specific scientifically-based recommendations: to bring our streets into very good condition and reduce the unfunded streets liability to ZERO will take \$85 Million over five years and \$7.5 Million annual maintenance thereafter.

This is not what's proposed in Measure M. **Measure M doesn't insure that the streets chosen for remedial action are those indicated under Best Management Practices and the state-of-the-art *StreetSaver* program.** If the wrong streets are chosen, the overall cost will go up. Fixing streets BEFORE they fail costs far less than reconstructing failed streets (\$36 Thousand to \$309 Thousand per mile versus \$1.15 Million per mile).

Berkeley has not had prudent fiscal governance. Our employee costs have ballooned and are eating up moneys for vital needs. We have over \$500 Million in unfunded infrastructure need and ZERO dollars set aside to meet it. According to a recent voter survey, streets/sewers are top priority. We need the FACTS and a community-based consensus plan BEFORE Council presents ill-conceived tax measures to the voters. **Measure M is NOT a true start toward solving our street and sewer problem.**

We can do better. Join us in voting NO on Measure M.

Berkeley Budget SOS

Committee for FACTS

LeConte Neighborhood Association

Northeast Berkeley Association (NEBA)

s/Shannon R. Brown
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS

s/Karl J. Reeh
President, Le Conte Neighborhood Association

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Ted Edlin
President, Council of Neighborhood Associations (CNA); Former Chair, Housing Advisory Commission; Former Commissioner, Fire Safety Commission

**REBUTTAL TO ARGUMENT AGAINST
BOND MEASURE M**

Measure M is solely about making street repairs and related watershed improvements NOW. We must not wait.

Measure M's \$30 million bond offers the only effective way to **begin repairing streets NOW. Every year we wait adds \$6 million in costs, and increases the risk of accidents and lawsuits against the City.**

Measure M is part of a **planned approach, consistent with Berkeley's Street Repair Plan, Watershed Management Plan, and the City Auditor's recommendations.** In addition to funding street repair, Measure M will raise matching funds for flood control grants and storm water management. Grant possibilities for such projects have been identified.

Berkeley is 134 years old and it has infrastructure needs. Measure M addresses infrastructure needs and cannot be used for any other purposes, including unfunded pension liabilities, as the opponents incorrectly claim. **Street repairs are a separate issue.**

Opponents of Measure M want to hold street repair hostage to passage of their "FACTS" initiative. **Don't let the opponents disdain for sensible city government sway you as a voter. We need to move forward with a prudent, achievable plan to stop flooding in West Berkeley, repair our streets, and improve the environment while keeping our streets safe for cars, bicycles, and pedestrians.**

Vote YES on Measure M.

s/Ann-Marie Hogan
City Auditor

s/Andy Katz
Director, East Bay Municipal Utility District

s/Margo Schueler
Public Works Commissioner

s/Tom Bates
Mayor, City of Berkeley

s/Sherry Smith
President, League of Women Voters of Berkeley, Albany
& Emeryville

FULL TEXT OF BOND MEASURE M

AUTHORIZING THE CITY OF BERKELEY TO INCUR BONDED DEBT AND ISSUE A GENERAL OBLIGATION BOND FOR STREET AND RELATED WATERSHED IMPROVEMENTS

WHEREAS, this resolution is adopted pursuant to and in conformance with Chapter 7.64 of the Berkeley Municipal Code; and

WHEREAS, the City has developed a 5 year street repaving plan, which it updates annually; and

WHEREAS, the City has developed a Watershed Management Plan to manage and improve overall watershed health within the City's boundaries by identifying and prioritizing infrastructure needs associated with aging facilities and capacity needs, and in particular utilizing Green Infrastructure elements (such as rain gardens, swales, bio-retention cells, permeable paving) within the public right-of-way and streets; and

WHEREAS, because the City's streets, with their curbs and gutters, are an integral part of the City's storm water management system, storm water management improvements consistent with the Watershed Management Plan should be integrated into street improvements where they will enhance water quality and flood control; and

WHEREAS, existing annual funds and funding sources are insufficient to adequately improve the City's streets, aged storm drains and storm water management systems and improve water quality in the City's creeks and the Bay; and

WHEREAS, the City needs to repair its failing streets by significantly accelerating implementation of its 5 year street repaving plan, but existing funds and funding sources are inadequate to do so; and

WHEREAS, the City Council has therefore determined that the public interest requires additional funding for acceleration of the 5 year street repaving plan, as it is updated annually.

NOW THEREFORE, BE IT RESOLVED by the People of the City of Berkeley that the public interest requires the issuance of a general obligation bond in the amount of \$30,000,000 to fund construction of the Improvements described below.

BE IT FURTHER RESOLVED the People of the City of Berkeley that:

A. Proceeds of bonded indebtedness shall be used to construct the following facilities ("Improvements"):

1. Street repaving and rehabilitation consistent with the 5 year street repaving plan as it is updated annually, and sufficient to significantly accelerate the implementation of that plan.

2. Installation of Green Infrastructure (GI), as it is defined in the Watershed Management Plan as part of the street work described in the preceding paragraph, when appropriate. GI includes, but is not limited to: (a) surface level bio-retention measures (rain gardens, swales, bio-retention cells, permeable paving, etc.) within the parking strip, planter area of sidewalks, red zone curb-extensions, and in street medians as feasible; and (b) large underground storage pipes, which would fill during storm events and then discharge metered flows into the existing storm drain pipelines.

For purposes of this measure, "Improvements" shall also include design, permitting, administrative and overhead costs.

BE IT FURTHER RESOLVED by the People of the City of Berkeley that:

A. The estimated cost of the Improvements to be funded by any bonds issued pursuant to this measure is \$30 million, although the total cost of all Improvements needed to address all of the City's street-related capital needs is in excess of that amount.

B. The amount of the principal of the general obligation indebtedness (the "Bonds") to be incurred shall not exceed \$30 million.

C. The estimated cost may include legal and other fees and the cost of printing the Bonds and other costs and expenses incidental to or connected with the issuance and sale of the Bonds.

D. The proceeds of the Bonds authorized to be issued by this resolution shall be used to finance construction of the Improvements and to pay any fees and costs in connection with the issuance of the Bonds, including but not limited to, legal fees and bond printing costs.

E. The maximum rate of interest to be paid on the Bonds shall not exceed eight percent (8%).

CITY OF BERKELEY BOND MEASURE N

<p>N Shall the City of Berkeley issue general obligation bonds not exceeding \$19,400,000 to fund construction of replacement Warm and Willard pools, and renovation or replacement of associated facilities, as well as repair, renovation or replacement of locker rooms and associated facilities at the existing West Campus and King pools?</p> <p><u>Financial Implications:</u> The average annual cost over the 30-year period the bonds are outstanding would be approximately \$7.01 per \$100,000 of assessed valuation.</p>	BONDS-YES
	BONDS-NO

the 30-year issue.

The estimated annual tax for a home with an assessed valuation of \$330,500 would be \$31.56 the first year after bonds are issued and average \$23.17 over the 30-year life of the bonds.

s/ZACH COWAN
Berkeley City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF BOND MEASURE N

This bond measure would authorize the issuance of \$19.4 million of general obligation bonds, **but only if a companion measure to pay for operation and maintenance of those pools is also approved by the voters at the November 6, 2012 election.**

Bond proceeds would be used to implement the City's Pools Master Plan by funding the following improvements:

Warm Water Pool. Bond funds would be used to construct a replacement indoor warm pool and repair, renovate or replace associated facilities, including but not limited to utility structures, including locker rooms, restrooms, mechanical rooms and equipment, and related site improvements such as paving, lighting, fencing, utilities, and landscaping and other amenities, at West Campus (University Avenue at Bonar Street). Bond funds would also be used to renovate or replace the existing locker room serving the existing outdoor lap pool at West Campus.

Willard Middle School. Bonds funds would be used to replace the previously existing swimming pool at Willard Middle School, and to repair, renovate or replace associated facilities, including but not limited to utility structures, including locker rooms, restrooms, mechanical rooms and equipment, and related site improvements such as paving, lighting, fencing, utilities, and landscaping and other amenities.

King Middle School. Bonds funds would also be used to repair, renovate or replace the locker rooms at the swimming pool at King Middle School and, to the extent funds are available, for related site improvements such as paving, lighting, fencing, utilities, and landscaping and other amenities.

Financial Implications

The year after the first bonds are issued, the tax rate required to meet the estimated debt service would be \$9.55 per \$100,000 of assessed valuation. This rate is expected to decrease each year (assuming one bond series) with the average \$7.01 per \$100,000 of assessed valuation during

TAX RATE STATEMENT FOR BOND MEASURE N

An election will be held in the City of Berkeley (the "City") on November 6, 2012, on the question of issuing bonds in the principal amount of \$19,400,000 to finance improvements to the West Campus warm water pool, Willard Middle School pool and King Middle School pool as described in the bond measure. If the bonds are approved, the City expects to sell the bonds in a single series of bonds. Principal and interest on the bonds will be paid from taxes levied on taxable property in the City. The following tax rate information is given to comply with Sections 9400-9404 of the Elections Code of the State of California.

Based on estimated assessed valuations available at the time of filing of this statement:

1. The best estimate of the tax rate that would be required to be levied to fund the bond issue during the first fiscal year after the sale of the first series of bonds, based on estimated assessed valuations available at the time of filing of this statement, is \$0.00955 per \$100 (\$9.55 per \$100,000) of assessed valuation in fiscal year 2013/14.

2. The best estimate of the tax rate that would be required to be levied to fund the bond issue during the first fiscal year after the last sale of the bonds, based on estimated assessed valuations available at the time of filing of this statement, is \$0.00955 per \$100 (\$9.55 per \$100,000) of assessed valuation in fiscal year 2013/14.

3. The best estimate of the highest tax rate that would be required to be levied to fund the bond issue, based on estimated assessed valuations available at the time of filing this statement, is \$0.00955 per \$100 (\$9.55 per \$100,000) of assessed valuation in fiscal year 2013/14.

4. The best estimate of the average annual tax rate which would be required to be levied to fund the bond issue over the entire life of the bond debt service, based on estimated assessed valuations available at the time of filing of this statement, is \$0.00701 per \$100 (\$7.01 per \$100,000) of assessed valuation. The final fiscal year in which a tax is anticipated to be collected is 2042/43.

Voters should note that the estimated tax rates are based on the *assessed value* of taxable property on the County's official tax rolls, *not* on the property's market value. In addition, taxpayers eligible for a property tax exemption, such as the homeowner's exemption, will be taxed at a lower effective tax rate than described above. Certain taxpayers may also be eligible to postpone payment of taxes. Property owners should consult their own property tax bills and the County Assessor to determine their property's assessed value and any applicable tax exemptions.

The actual tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the

time of each sale, and actual assessed valuations over the term of repayment of the bonds. The estimates are based upon the City's projections and are not binding upon the City. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on the need for construction funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined by the County Assessor in the annual assessment and the equalization process.

Dated: July 3, 2012

s/Christine Daniel
City Manager, City of Berkeley

ARGUMENT IN FAVOR OF BOND MEASURE N

Berkeley's municipal swimming pools are a treasure. Countless children, families and individuals rely on them for exercise, recreation and swim instruction. However, Berkeley has 50% fewer public pools than it did two years ago.

In 2010, Berkeley voters came close to approving Measure C, which would have funded the renovation of the King, West Campus and Willard pools and rebuilt the Warm Water Pool.

After Measure C lost, the city closed two of the four public pools due to a shortage of operating funding.

After 40 years of providing recreation to children in South Berkeley, Willard Pool is instead filled with dirt. The Warm Water Pool has also been demolished, disenfranchising the children, elderly and disabled who need a multi-use warm pool for therapy and swim instruction. The locker rooms at King and West Campus also need major renovation and repair.

Children, the disabled and elderly, and all Berkeleyans deserve modern, energy-efficient pools. For the health, sustainability and recreation of Berkeley residents, we need Measure N.

Measure N would provide needed funds to renovate and reopen Willard Pool and build a new Warm Water Pool. It would also make needed improvements to the King and West Campus pools.

While some say we shouldn't approve bonds until the City fixes its budget situation, we shouldn't punish our children, the disabled and elderly. We can fix our pools and plan for our city's financial health at the same time.

This is our **last chance** to repair and keep open all of our pools.

Measure N was put on the ballot by a unanimous City Council. Please join community leaders; the Presidents of major neighborhood associations; and elderly and disability advocates in supporting Measure N. Lets restore the Willard and Warm Pools for the health and wellbeing of future generations.

s/Loni Hancock
State Senator

s/Tom Bates
Mayor of Berkeley

s/John T. Selawsky
President, Berkeley School Board

s/Ed Gold
Chair, Berkeley's Commission on Aging

s/Jim Bullock
President, Bateman Neighborhood Association

REBUTTAL TO ARGUMENT IN FAVOR OF BOND MEASURE N

OUR OFFICIALS SHED CROCODILE TEARS FOR POOLS

- Pools advocates claim: two of four pools were closed and new dedicated funding is required due to a shortage of operating funding...ongoing budget cuts; Willard Pool is "filled with dirt"; the Warm Pool has been demolished; locker rooms need major renovation.
- They don't tell you why there is limited funding—our budget has been eaten up by ballooning employee costs, misplaced priorities, and lack of long-term planning.
- They don't tell you that the City itself deliberately filled Willard Pool with dirt.
- They don't tell you that BUSD tore down a fine warm water pool in a historic building for which a \$3.25 Million rehabilitation bond was approved by the voters in 2000 but never used.

OUR OFFICIALS DISTORT THE FACTS

- They claim that the public only has two pools available.
- They ignore that there are nine pools open to the public plus two more in Albany and one at Berkeley High that could be opened. The Pool Master Plan stated there is no deficit in pools even while inexplicably excluding the three YMCA pools.

THERE ARE COST-EFFECTIVE SOLUTIONS IF VOTERS WANT THEM

- Albany built two large pools for only \$8 Million.
- For a small fraction of the proposed \$20M and with a cooperative approach, the City could meet any unmet pool needs by working with Cal, Albany, BUSD, and the YMCA to extend hours and seasons of operation and selectively raise pool temperatures.

s/Shannon R. Brown
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS

s/Beverly Doane
Treasurer, Claremont-Elmwood Neighborhood Assn.

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Ted Edlin
President, Council of Neighborhood Associations (CNA)

ARGUMENT AGAINST BOND MEASURE N

We strongly urge you to vote NO on ALL Berkeley tax measures until we have the fiscal FACTS and a comprehensive community consensus plan to address the City's looming insolvency.

Berkeley has \$1.2 Billion in unfunded liabilities, half for employee costs and half for infrastructure needs. Infrastructure needs include \$28 Million for parks, \$87 Million for streets, \$118 Million for public facility seismic retrofit, and \$207.5 Million for watershed.

Who will determine which are most important—you, the public, or our insular City Council responding to their own priorities and relentless lobbying from special interest groups?

A \$19.4 Million bond for pools and a \$604 Thousand inflation-indexed annual operations tax are NOT aligned with voter priorities. Voters rejected a similar measure in an expensive special election two years ago. Further, in a recent voter survey, the use of scarce tax resources for pools ranked **second to bottom** among eleven possible funding areas.

Why would our City need more money for operation and maintenance when it annually funds \$200 Thousand for employee health club membership, a \$240 Thousand inflation-indexed guaranteed annual retirement for our former City Manager, and many other no-cost-to-employee benefits?

Yes, pools and swim skills are very important. But Berkeley already has nine pools open to the public (two City/BUSD, four Cal, and three YMCA), another pool at Berkeley High, and two pools available nearby in Albany. These pools have excellent well-priced swim programs.

Choices need to be made about how to spend our scarce tax dollars. These choices must reflect community priorities and be part of a consensus plan. Do you really think \$20 Million for more pools is top priority?

Vote NO on Measures N and O

Berkeley Budget SOS

Committee for FACTS

Claremont-Elmwood Neighborhood Association

(CENA)

Northeast Berkeley Association (NEBA)

s/Shannon R. Brown
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS

s/Beverly Doane
Treasurer, Claremont-Elmwood Neighborhood Assn.
(CENA)

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Ted Edlin
President, Council of Neighborhood Associations
(CNA); Former Chair, Housing Advisory Commission;
Former Commissioner, Fire Safety Commission

REBUTTAL TO ARGUMENT AGAINST BOND MEASURE N

Vote YES on N. Invest in the health and well-being of our City.

Berkeley has major disparities in health, based on race and income. Critical to the health and success of our youth is access to opportunities for exercise and recreation. Unfortunately, Berkeley has half as many public pools as it did two years ago.

We need Measure N to rebuild the Willard and Warm Water Pools and restore all of our pools.

Opponents of Measure N have presented a “sky is falling” picture of the city's fiscal health, **but these arguments are false.**

Berkeley's fiscal health is sound. We have a better bond rating (AA+) than most sovereign governments, and our debt payments make up only 2% of annual revenues. We are not verging on bankruptcy, and are in strong financial shape.

Opponents argue that the City shouldn't undertake any major project until it has cash to cover all unfunded liabilities, but this is just as **untrue** as saying a homeowner shouldn't repair his roof without having all the money in the bank to pay off his mortgage. To let our pools crumble and disappear is **pennywise and pound-foolish.**

Opponents have also **wildly exaggerated** the availability of other pools in Berkeley.

We need Measure N to ensure that all people throughout our city have access to pools for exercise, therapy, and recreation.

Don't give in to the misinformation. **Vote YES on N.** Invest in our pools for future generations and improve the health, value and success of our city.

s/Gordon Wozniak
Berkeley City Councilmember

s/Shahryar Abbasi
ASUC External Affairs Vice President

s/C. Mark Humbert
President, Neighborhood Association; Claremont-Elmwood resident

s/Lisa Stephens
Chair, Berkeley Rent Stabilization Board; former Chair,
Parks & Recreation Commission

s/Thomas F. Killilea
Schools & Parent leader

FULL TEXT OF BOND MEASURE N

RESOLUTION NO. 65,804–N.S.

AUTHORIZING THE CITY OF BERKELEY TO INCUR BONDED DEBT AND ISSUE A GENERAL OBLIGATION BOND FOR POOLS AND ASSOCIATED FACILITIES

WHEREAS, this resolution is adopted pursuant to and in conformance with Chapter 7.64 of the Berkeley Municipal Code; and

WHEREAS, on November 17, 2009, the Berkeley City Council adopted the Pools Master Plan; and

WHEREAS, the City Council has determined to implement the following elements of the Pools Master Plan (the “Improvements”) at this time:

- **Warm Water Pool.** Construct a replacement indoor warm pool and repair, renovate or replace associated facilities, including but not limited to utility structures, including locker rooms (including the locker room serving the existing outdoor lap pool), restrooms, mechanical rooms and equipment, and related site improvements such as paving, lighting, fencing, utilities, and landscaping and other amenities, at West Campus (University Avenue at Bonar Street).
- **Willard Middle School.** Renovate or replace the previously existing swimming pool and repair, renovate or replace associated facilities, including but not limited to utility structures, including locker rooms, restrooms, mechanical rooms and equipment, and related site improvements such as paving, lighting, fencing, utilities, and landscaping and other amenities, at Willard Middle School.
- **King Middle School.** Repair, renovate or replace the locker rooms at the swimming pool at King Middle School and related site improvements such as paving, lighting, fencing, utilities, and landscaping and other amenities, as funding allows; and

WHEREAS, the Improvements are estimated to cost \$19,400,000; and

WHEREAS, funds are not available to construct the Improvements unless the City issues a general obligation bond; and

WHEREAS, implementation of the Pools Master Plan, even in part, will serve the public interest of the residents of Berkeley by providing both recreational and therapeutic pools, thereby providing opportunities for improved health and fitness of Berkeley residents; and

WHEREAS, the City Council has therefore determined that the public interest requires additional funding for construction of the Improvements.

NOW THEREFORE, BE IT RESOLVED by the People of the City of Berkeley that the public interest requires the issuance of a general obligation bond in the amount of \$19,400,000 to fund construction of the Improvements as described above.

BE IT FURTHER RESOLVED by the People of the City of Berkeley that proceeds of bonded indebtedness shall be used to construct the Improvements specified above. For purposes of this measure, “Improvements” shall also include design, permitting, administrative and overhead costs.

BE IT FURTHER RESOLVED by the People of the City of Berkeley that:

A. The estimated cost of the Improvements to be funded by any bonds issued pursuant to this measure is \$19.4 million.

B. The amount of the principal of the general obligation indebtedness (the “Bonds”) to be incurred shall not exceed \$19.4 million.

C. The estimated cost may include legal and other fees and the cost of printing the Bonds and other costs and expenses incidental to or connected with the issuance and sale of the Bonds.

D. The proceeds of the Bonds authorized to be issued by this resolution shall be used to finance construction of the Improvements and to pay any fees and costs in connection with the issuance of the Bonds, including but not limited to, legal fees and bond printing costs.

E. The maximum rate of interest to be paid on the Bonds shall not exceed eight percent (8%).

BE IT FURTHER AND FINALLY RESOLVED by the People of the City of Berkeley that in the event this measure is approved by two thirds of the voters, it shall take effect, and debt may be incurred, only if all of the following conditions are met:

A. the voters also approve the special tax on the November 6, 2012, ballot to fund operation and maintenance of the new Warm Water and Willard pools;

B. after the City of Berkeley executes a lease or leases with the Berkeley Unified School District for all of the pool sites on which funds will be spent, and such lease or leases provide: (1) for a term of at least 40 years with at least one ten-year option that may be exercised by the City; (2) for nominal rent; and (3) that the Berkeley Unified School District shall pay user fees on the same basis as other users.

CITY OF BERKELEY MEASURE O

<p style="font-size: 2em; margin: 0;">O</p> <p style="margin: 0;">Shall a special tax of \$0.00779 per square foot of improvements on land in Berkeley be authorized to fund maintenance and operation of the replacement Warm Water and Willard Pools, if a bond measure funding construction of those pools is adopted?</p> <p style="margin: 0;"><u>Financial Implications</u></p> <p style="margin: 0;">The annual cost in fiscal year 2013-14 would be \$14.80 for a 1,900 square foot home, \$23.37 for a 3,000 square foot home and \$77.90 for a 10,000 square foot building.</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE O

The proposed measure would impose a special tax totaling approximately \$604,000 per year to fund operation and maintenance of two proposed public swimming pools: a warm water pool to be constructed at the Berkeley Unified School District’s West Campus on University Avenue and a pool at Willard School to replace the previously existing pool there.

For purposes of this tax, “operation and maintenance” would recreation program services consisting of the administration and operation of the City’s aquatics program, and maintenance and repair of the pools and their associated facilities, which include but are not limited to locker rooms, utility buildings, pumps, filters and piping.

This measure would take effect only if a bond measure on the November 6, 2012, ballot is approved to construct both pools and make improvements to associated facilities such as locker rooms, and repair, renovate or replace the locker rooms at King Pool, and the City is able to enter into a lease with the Berkeley Unified School District for facilities on which bond funds are spent, which conforms to specified terms. The tax could not be collected without a lease for the facilities.

Proceeds of the tax could not be spent at King Pool.

Financial Implications

The proposed City special tax rate would limit the annual cost for an average 1,900 square foot home to \$14.80 in fiscal year 2013-14. It is estimated that the tax will cost residential and other taxpayers no more than the following average amounts during FY 2013-14:

<u>Square Feet</u>	<u>Annual Tax</u>
1,200	\$ 9.35
1,500	\$11.69
1,900	\$14.80
3,000	\$23.37
10,000	\$77.90

s/ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE O

Vote YES on O. Restore Willard Pool and the Warm Water Pool. Support our community pools for the health, recreation and well-being of our children, the elderly and disabled, and all Berkeleyans.

Our municipal pools are an important community resource. They provide recreation activities for our children and youth and improve the health of our community.

Measure N will provide the capital funds to renovate Willard Pool and build a new Warm Water Pool through a bond measure. Since bond funding can’t be used for operating pools, Measure O tax revenues will go this purpose. This measure would provide aquatics programs to serve the youth of South Berkeley as well as provide recreation and therapy to children, seniors, and people with mobility impairments.

Due to ongoing budget cuts, and the current recession, the City can only operate the King and West Campus pools due to limited funding. Keeping open the new Willard and Warm pools requires new dedicated funding for their operation and maintenance.

Measure O would fund adequate hours and programs to enable all Berkeley children and residents to swim safely. It would also provide resources to maintain our pools, and modernize and make them more energy-efficient.

This tax would only be assessed if Measure N (also on the November ballot) passes. Measure O is a modest tax which would make sure that our entire city benefits from our neighborhood pools and is also an investment in the health and improvement of our entire city.

Measure O was put on the ballot by a unanimous City Council. Please join elected leaders, neighborhood association presidents, and senior and disability advocates in supporting this important measure. Keep all of our pools open for future generations.

s/Loni Hancock
State Senator

s/Tom Bates
Mayor of Berkeley

s/John T. Selawsky
President, Berkeley School Board

s/Edward Gold
Chair, Berkeley’s Commission on Aging

s/George Beier
Neighborhood Association President, Willard resident

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE O

OUR OFFICIALS SHED CROCODILE TEARS FOR POOLS

- Pools advocates claim: two of four pools were closed and new dedicated funding is required due to a shortage of operating funding...ongoing budget cuts; Willard Pool is “filled with dirt”; the Warm Pool has been demolished; locker rooms need major renovation.
- They don’t tell you why there is limited funding—our budget has been eaten up by ballooning employee costs, misplaced priorities, and lack of long-term planning.
- They don’t tell you that the City itself deliberately filled Willard Pool with dirt.
- They don’t tell you that BUSD tore down a fine warm water pool in a historic building for which a \$3.25 Million rehabilitation bond was approved by the voters in 2000 but never used.

OUR OFFICIALS DISTORT THE FACTS

- They claim that the public only has two pools available.
- They ignore that there are nine pools open to the public plus two more in Albany and one at Berkeley High that could be opened. The Pool Master Plan stated there is no deficit in pools even while inexplicably excluding the three YMCA pools.

THERE ARE COST-EFFECTIVE SOLUTIONS IF VOTERS WANT THEM

- Albany built two large pools for only \$8 Million.
- For a small fraction of the proposed \$20M and with a cooperative approach, the City could meet any unmet pool needs by working with Cal, Albany, BUSD, and the YMCA to extend hours and seasons of operation and selectively raise pool temperatures.

s/Shannon R. Brown
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS

s/Beverly Doane
Treasurer, Claremont-Elmwood Neighborhood Assn.

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Ted Edlin
President, Council of Neighborhood Associations,
(CNA)

ARGUMENT AGAINST MEASURE O

We strongly urge you to vote NO on ALL Berkeley tax measures until we have the fiscal FACTS and a comprehensive community consensus plan to address the City’s looming insolvency.

Berkeley has \$1.2 Billion in unfunded liabilities, half for employee costs and half for infrastructure needs. Infrastructure needs include \$28 Million for parks, \$87 Million for streets, \$118 Million for public facility seismic retrofit, and \$207.5 Million for watershed.

Who will determine which are most important—you, the public, or our insular City Council responding to their own priorities and relentless lobbying from special interest groups?

A \$19.4 Million bond for pools and a \$604 Thousand inflation-indexed annual operations tax are NOT aligned with voter priorities. Voters rejected a similar measure in an expensive special election two years ago. Further, in a recent voter survey, the use of scarce tax resources for pools ranked **second to bottom** among eleven possible funding areas.

Why would our City need more money for operation and maintenance when it annually funds \$200 Thousand for employee health club membership, a \$240 Thousand inflation-indexed guaranteed annual retirement for our former City Manager, and many other no-cost-to-employee benefits?

Yes, pools and swim skills are very important. But Berkeley already has nine pools open to the public (two City/BUSD, four Cal, and three YMCA), another pool at Berkeley High, and two pools available nearby in Albany. These pools have excellent well-priced swim programs.

Choices need to be made about how to spend our scarce tax dollars. These choices must reflect community priorities and be part of a consensus plan. Do you really think \$20 Million for more pools is top priority?

Vote NO on Measures N and O

Berkeley Budget SOS

Committee for FACTS

**Claremont-Elmwood Neighborhood Association
(CENA)**

Northeast Berkeley Association (NEBA)

s/Shannon R. Brown
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS

s/Beverly Doane
Treasurer, Claremont-Elmwood Neighborhood Assn.
(CENA)

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Ted Edlin
President, Council of Neighborhood Associations
(CNA); Former Chair, Housing Advisory Commission;
Former Commissioner, Fire Safety Commission

REBUTTAL TO ARGUMENT AGAINST MEASURE O

Our public pools are not only an important community resource, but are also critical to the health and success of children and all Berkeley residents. Unfortunately, Berkeley has half as many public pools as it did two years ago.

Measure N provides needed capital funding to restore the mothballed 50-year-old Willard Pool and the demolished Warm Pool, while Measure O ensures **dedicated funding for their modernization, operation and maintenance**. This modest tax would only be assessed if Measure N passes.

Opponents of Measure O have presented a “sky is falling” picture of the city’s fiscal health, **but these arguments are false**.

Berkeley’s fiscal health is sound. We have a better bond rating (AA+) than most sovereign governments, and our debt payments make up only 2% of annual revenues. We are not verging on bankruptcy, and are in strong financial shape.

Opponents argue that the City shouldn’t undertake any major project until it has cash to cover all unfunded liabilities, but this is just as **untrue** as saying a homeowner shouldn’t repair his roof without having all the money in the bank to pay off his mortgage.

We need Measure O so that all people throughout our city have access to pools for exercise, therapy, and recreation

Don’t give in to the misinformation. **Vote YES on O**. Invest in our pools to improve the health, value and success of our city.

s/Jesse Arreguín
Berkeley City Councilmember

s/Shahryar Abbasi
ASUC External Affairs Vice President

s/C. Mark Humbert
President, neighborhood association; Claremont-
Elmwood Resident

s/Nancy Carleton
Co-Chair, neighborhood association in South Berkeley;
Former Chair, Zoning Board; Former Vice Chair, Parks
& Recreation Commission

s/Thomas F. Killilea
Schools & Parent leader

FULL TEXT OF MEASURE O

ORDINANCE NO. -N.S.

AUTHORIZING SPECIAL TAX TO FUND OPERATION AND MAINTENANCE OF THE REPLACEMENT WARM WATER AND WILLARD POOLS

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

Section 1. Findings and purpose.

A. On November 17, 2009, the Berkeley City Council adopted the Pools Master Plan, and on June 26, 2012, proposed a general obligation bond to fund replacement of the Warm Water Pool and Willard Pool.

B. It is necessary to have an assured source of funds for maintenance and operation of those pools or they would be at risk of closure or reduction in hours and programs in the future.

C. Construction of these replacement pools will serve the public interest of the residents of Berkeley by providing both recreational and therapeutic pools, thereby providing opportunities for improved health and fitness of Berkeley residents.

Section 2. Special tax.

A. The tax imposed under this Chapter is solely for the purpose of raising revenue to pay for operation and maintenance of the replacement Warm Water Willard Pools. "Operation and maintenance" includes recreation program services consisting of the administration and operation of the City's aquatics program, and maintenance and repair of the pools and their associated facilities, which include but are not limited to locker rooms, utility buildings, pumps, filters and piping.

B. Section 4 of Article XIII A of the California Constitution (Proposition 13) allows two-thirds of the qualified electors of the City to impose a special tax within the City, provided the special tax is not an *ad valorem* tax on real property or a transaction tax or a sales tax on the sale of real property within the City. The tax imposed by this Chapter is a special tax that is authorized for elector approval by Section 4 of Article XIII A of the California Constitution.

Section 3. Tax authorized--Tax rate--Indexing.

A. There is imposed a special tax of \$0.00779 per square foot on all improvements in the City, for the purpose set forth in Section 2.A above.

B. The tax imposed by this Chapter shall be operative on July 1, 2013, subject to Section 12.

C. The City Council of Berkeley is authorized to increase the tax rate authorized by this Chapter annually in May by up to the greater of the cost of living in the immediate San Francisco Bay Area, per capita personal income growth in the state (each as verified by official United States Bureau of Labor statistics), or 5%. 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.

Section 4. Definitions.

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

A. "Building" means 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" means all buildings or structures erected or affixed to the land.

C. "Parcel" means a unit of real estate in one ownership as shown on the most current official assessment role of the Alameda County Assessor.

D. "Square footage" means 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 subsection 3 of this definition, 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.

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

Section 5. Authority of the City Manager.

It shall be the duty of the City Manager's staff 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. The City Manager may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Section 6. Interest and penalties.

A. The City Council is authorized to have the taxes imposed by this Chapter collected by the county of

Alameda in conjunction with the county's collection of property tax revenues for the City. In the event that the county of Alameda collects the taxes imposed by this Chapter, the imposition of penalties, additional fees and interest upon persons who fail to remit any tax imposed by this Chapter, or who fail to remit any delinquent remittance under this Chapter, shall be subject to and governed by the rules, regulations and procedures utilized by the county in its collection of property taxes for the City, and in its collection of this additional tax for the City.

B. Every penalty imposed and such interest as accrues under the provisions of this Chapter shall become a part of the tax herein required to be paid.

Section 7. 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.

Section 8. Collection.

The amount of any tax, penalty, and 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.

Section 9. Severability clause.

The provisions of this Chapter shall not apply to any person, association, corporation or to any property as to whom or which it is beyond the power of the City Council 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 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 declared to be the intention of the City Council 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.

Section 10. Violation--Penalty.

Failure to perform any duty or obligation imposed by this Chapter is a misdemeanor punishable as set forth in Chapter 1.20 of this code, but may be charged, in the discretion of the citing officer, as an infraction.

Section 11. Increase appropriations limit.

Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2013-14 through 2016-17.

Section 12. Effectiveness.

A. This Chapter shall take effect only if the voters also approve the general obligation bond measure on the November 6, 2012, ballot to construct a new Warm Water

Pool and a new Willard Pool and make improvements to their associated facilities, and to renovate the locker rooms at King Pool, and that measure becomes effective.

B. No tax may be collected under this Chapter for any period during which the City does not have a lease for the facilities upon which tax proceeds would be spent, which conforms to the conditions set forth in the general obligation bond measure on the November 6, 2012, ballot.

CITY OF BERKELEY MEASURE P

<p>P Shall the appropriation limit under Article XIII B of the California Constitution (which limits city expenditures) be increased to allow for the expenditure of taxes previously approved by the voters for parks maintenance; libraries; emergency medical services; emergency services for severely disabled persons; and fire protection and emergency response and preparedness, for fiscal years 2013 through 2016? <u>Financial Implications:</u> This measure would not increase taxes. It only authorizes expenditure of existing voter-approved taxes.</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE P

This measure would authorize the City to continue to spend the proceeds of the Parks Maintenance Tax, Library Relief Tax, Emergency Medical Services Tax, the Emergency Services for Severely Disabled Persons Tax, and the Fire Protection and Emergency Response and Preparedness Tax, all of which were previously approved by the voters. Under Article XIII B of the California Constitution a city is limited to appropriating (i.e. authorizing expenditure of) the amount of taxes (adjusted by inflation) that it spent in the 1986-1987 fiscal year. This limit may only be exceeded if the voters approve the excess expenditures by a majority vote. This constitutional restriction on appropriations (expenditures) is in addition to the constitutional requirement that special taxes must be approved by a two-thirds (2/3) vote of the people. Although the appropriations (expenditure) limit was raised by the voters to allow continued expenditure of the proceeds of these taxes when the taxes were approved, voter authorization to raise the spending limit must be renewed every four years. A city has two years to obtain voter approval on this expenditure. After that, the tax increase would have to be returned to the taxpayers within two years. Submitting the measures individually would cost \$26,000 per measure and could confuse voters since the net effect of the measures is to raise the City’s expenditure limit by the amount of taxes previously approved by the voters. For this reason, a single measure would raise the City’s expenditure limit by the aggregate amount of the taxes raised by prior voter-approved tax measures.

Financial Implications:

The measure would not increase taxes nor adopt a new tax. It would authorize the City to continue to spend tax funds previously approved by the voters for the purposes specified in those voter-approved tax measure for fiscal years 2013 through 2016.

s/ZACH COWAN
 Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE P

Because of a state mandated ceiling on city expenditures, this ballot measure comes before the voters every four years for approval. **It 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 nine percent.** 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), parks (1997) 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 the measure 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.

This measure was passed unanimously by the City Council.

We urge your AYE vote.

- s/Loni Hancock
State Senator
- s/Winston Burton
Chair Berkeley Board of Library Trustees
- s/Ronald D. Adler
Medical Doctor
- s/Jan Garrett
Disability Rights Activist
- s/John Steere
Environmental Planner

**NO ARGUMENT AGAINST MEASURE P
 WAS SUBMITTED**

FULL TEXT OF MEASURE P

Shall the appropriation limit under Article XIII B of the California Constitution (which is a ceiling on city expenditures) be increased to allow for the expenditure of taxes previously approved by the voters for parks maintenance; libraries; emergency medical services; emergency services for severely disabled persons; and fire protection and emergency response and preparedness, for fiscal years 2013 through 2016?

Financial Implications: This measure would not increase taxes. It only authorizes expenditure of existing voter-approved taxes.

CITY OF BERKELEY MEASURE Q

<p>Q Without increasing the rate, shall an ordinance be adopted to update Berkeley’s existing utility users tax, which funds police, fire and other essential City services, to keep current with changes in technology and Federal and State laws while maintaining exemptions for nonprofit educational organizations and hospitals, adding an exemption for low-income taxpayers, and requiring an annual verification and public report as to collection and expenditure of the tax?</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE Q

This measure is proposed by the Berkeley City Council to update the City’s existing Utility Users Tax (“UUT”) to be consistent with current practice. This measure will not increase the current tax.

The UUT is levied on utility users in the City. The City has imposed the UUT on telephone services since 1984. The proceeds of the UUT can only be spent on City services and cannot be taken away by the State. UUT revenues are paid into the City’s general fund to pay for such services as police and fire protection, public health services and recreational programs, maintenance of City infrastructure such as streets and parks, and senior programs.

The City’s UUT, like those of most California cities, referred to federal law to describe telephone services. These definitions have changed and telephone technology has changed significantly. The measure would update the UUT to modernize its language and to treat all technologies equally so every phone customer is treated fairly, whether they use the latest technology or older phone services. It would ratify Council ordinances that updated the tax.

This measure would also add a requirement for an annual verification and public report to ensure that the tax is being collected and remitted properly, and spent in accordance with law. It would also add a new low income exemption.

This measure would not apply to charges for internet access, internet content or downloads of music, video and other information.

This measure also does not increase the current UUT rate. Voter approval would be required for any increase in the rate or the scope of services subject to the UUT.

The proposed measure requires approval of a majority of voters. A “yes” vote is a vote in favor of adopting the updated UUT. A “no” vote will reject the proposed amendments and continue the UUT in its present form.

s/ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE Q

At the City Council meeting on June 12, 2012 the **Council voted unanimously** to place the Utility Users Tax measure on the November 2012 ballot. This measure asks voters to 1) **update the existing measure** and 2) **extend a new federal exemption to Berkeley’s low income taxpayers.**

The amendments are primarily technical and do not change the existing tax rate.

Recent changes in federal law and changes in communications technology mean the City’s utility users tax on telecommunications services needs to be updated. In addition, **federal law providing exemptions for nonprofit educational organizations and hospitals was recently broadened to include a new exemption for low income taxpayers that should be extended to Berkeley citizens.** If this measure does not pass, low income taxpayers will not receive the new federal exemption.

This tax funds important public services: police and fire protection, public health services, recreational programs, maintenance of our streets and parks, library services, and senior programs. These programs provide the strong community connections that make the City of Berkeley unique in the Bay Area.

The proposed measure requires an annual verification of tax collection and a public report of the tax expenditures related to the amendment.

We ask for an Aye vote

s/Tom Bates
Mayor

s/Susan Wengraf
Berkeley City Councilmember

s/Darryl Moore
Berkeley City Councilmember District 2

s/Charles L. Robinson
Home Owner

s/Maxwell G. Anderson
Berkeley City Councilmember

NO ARGUMENT AGAINST MEASURE Q WAS SUBMITTED

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

**AN ORDINANCE OF THE CITY OF BERKELEY
AMENDING CHAPTER 7.70 OF THE BERKELEY
MUNICIPAL CODE TO MODERNIZE THE APPLI-
CATION OF THE UTILITY USERS TAX**

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN
AS FOLLOWS:

Section 1. Code Amendment.

That Section 7.70.020.Q of the Berkeley Municipal Code is hereby amended to read as follows:

Q. "Telephone communication services" shall mean ~~any telephonic type and quality of communication including that which is interconnected to the public switched network, which allows people to talk to each other without the necessity of conversing in person. In determining whether a service constitutes a telephone communication service, all technology used to transmit voice communications from one person to another shall be included irrespective of whether, for example, such technology utilizes computer processing applications on the form, code or protocol of the content of the communication or where the origination and/or termination points of the transmission, conveyance or routing are not fixed. Such means of transmission shall include, without limitation for the purpose of transmitting messages or information (including but not limited to voice, telegraph, teletypewriter, data facsimile, video, or text) by electronic, radio or similar means whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave including, but not limited to, cellular service, personal communications service (PCAS), specialized mobile radio (SMR), and other types of personal wireless service regardless of radio spectrum used, switching facilities, satellite or any other similar facilities. 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, pre-paid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunication 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 entitle 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.

Section 2. Code Amendment.

That a new subdivision (S) is hereby added to Section 7.70.020 of the Berkeley Municipal Code, to read as follows:

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.

That Section 7.70.050 of the Berkeley Municipal Code is hereby amended to read as follows:

7.70.050 Telephone users tax

A. There is hereby imposed a tax upon every person who uses any international, interstate and/or intrastate telephone communication services in the City, other than a telephone corporation. Interstate calls shall include calls to and from the District of Columbia or any U.S. territory.

The tax imposed by this section shall be at the rate of seven and one-half percent (7.5%) of the charges made for such telephone communication services. The tax shall be collected from the service user by the telephone communication services supplier or its billing agent. To the extent allowed by federal and state law, the tax on telephone communication services is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. Section 116 et seq. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the city are used, in whole or in part, within the city's boundaries, and that such services are subject to taxation under this Chapter. There is also a rebuttable presumption that telephone communication services sold within the city that are not billed to a billing address or provided to a primary physical location are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter. ~~shall apply to a service user if the billing or service address of the service user is within the City's boundaries, irrespective of whether a particular telephone communication service originates and/or terminates within the City. If the billing address of the service user is different from the service address, the service address of the service user shall be used.~~

B. The following shall be exempt from the tax imposed by this ~~s~~Section, if any:

1. Service paid for by inserting coins in coin-operated telephones with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

2. Payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

3. Payment received for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA § 288, or to the American National Red Cross.

4. Payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.

5. The amount paid for any toll telephone service to the extent that the amount so paid is for use by a common

carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

6. The amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital which is exempt from federal and state income tax under section 501(a) of the Internal Revenue Code.

7. Any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization which is exempt from income tax under section 501 (a) of the Internal Revenue Code. The term also includes a school operated as an activity of an organization which is exempt from income tax under section 501 (a) if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

9. Private mobile radio service. For purposes of this chapter "private mobile radio service" is a radio communication service which is not a commercial mobile service. A "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding. A "commercial mobile service" is a "mobile service" that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.

C. The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this ~~e~~Chapter, an administrative rulings identifying those telecommunication services that are subject to the tax of subsection (A) above. The administrative rulings shall implement the intent of the City Council that the telephone users tax be imposed on any person who initiates or receives high-quality voice communications without regard to the type or kind of transmission media or technology that exists on the date the amendments to this section became effective or which may be developed in the future. Such administrative rulings shall be consistent with legal nexus and laws

pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as allowed by California Government Code §§ 53750(h)(2) and (h)(3) or other law. The tax administrator may consider state-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the tax administrator determines that the tax imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the tax administrator's discretion to settle disputes. The tax administrator's exercise of prosecutorial forbearance under this chapter does not constitute a change in taxing methodology for purposes of Government Code § 53750(h), and the city does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval. The administrative ruling shall be consistent with and shall not impose a new tax or increase an existing tax without voter approval.

D. 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 telephone communication services. 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 identifies, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

E. As used in this section, the term "charges" shall not include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation.

F. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another American state or city on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section. ~~For purposes of establishing sufficient legal nexus for the imposition and collection of utility users' tax on charges for telephone communication services pursuant to this chapter, "minimum contacts" shall be construed broadly in favor of the imposition and collection of the utility users' tax to the fullest extent permitted by California and federal law, and as it may change from time to time.~~

G. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator on or before the last day of the following month; and must be received by the tax administrator on or before the last day of the following month.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as that law may change from time to time. Any telephone communication service (including VoIP) used by a person with a service address in the city, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the city, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents or other representatives; solicits business in the city by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail.

I. The tax imposed by this Section shall not apply to 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 his or her entitlement thereto annually by submitting a claim for a refund, with supporting documentation, to the Finance Director in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager. Such applications shall be on forms provided by the Finance Director, or his or her designee, and shall provide and/or be accompanied by such information as the Finance Director shall require, including but not limited to, federal income tax returns and W-2 forms. Upon timely receipt and verification of the required claim and supporting documentation, the Finance Director shall promptly refund the tax paid for the prior 12 months. 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.

Section 4. Code Amendment.

That a new Section 7.70.055 is hereby added to the Berkeley Municipal Code to read as follows:

7.70.055 Exclusion of Internet Access from Telephone Tax

Nothing in section 7.70.050 (Telephone users tax) is intended to include charges for Internet Access within the scope of taxable charges for telephone communications services.

Section 5. Code Amendment.

That Section 7.70.180 of the Berkeley Municipal Code is hereby added to read as follows:

7.70.180 Effect of state and federal authorization

To the extent that the City's authorization to impose or collect any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the City's authorization up to the full amount of the tax imposed under this Chapter.

Section 6. Code Amendment.

That Section 7.70.190 of the Berkeley Municipal Code is hereby added to read as follows:

7.70.190 Verification Audit

The City shall annually verify that the taxes owed under section 7.70.050 have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable law, and issue a public report of the findings of such verification. The annual verification shall be performed by a qualified auditor and shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The audit of a service supplier shall not be required where the cost of the audit is expected to exceed the additional tax revenue to be derived from the performance of the audit.

Section 7. Amendment of Ordinance.

Chapter 7.70 of the Berkeley Municipal Code as amended by this Ordinance may be repealed or amended by the City Council without a vote of the people except as follows: as required by Proposition 218, any amendment to that Chapter that increases the amount or rate of tax beyond the levels authorized by this Ordinance may not take effect unless approved by a vote of the people. The City Council may impose the taxes authorized by that Chapter in any amount or rate which does not exceed the rate approved by the voters of the City.

Section 8. Ratification.

Ordinance Nos. 6,926-N.S. and 6580-N.S., are hereby ratified.

Section 9. Severability.

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

portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 10. Majority Approval; Effective Date; Execution.

This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council. The Mayor and City Clerk are hereby authorized to execute this Ordinance to give evidence of its adoption by the voters.

CITY OF BERKELEY MEASURE R

<p style="font-size: 2em; margin: 0;">R Shall the Charter of the City of Berkeley be amended to provide that council district redistricting shall be adopted by ordinance and to require that districts be as equal in population as feasible taking into consideration topography, geography, cohesiveness, contiguity, integrity, compactness of territory and communities of interest, and have easily understood boundaries such as major traffic arteries and geographic boundaries? <u>Financial Implications:</u> No significant cost impacts.</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE R

The City Council is required to adopt new council district boundaries within three years after the U.S. census, which happens every ten years.

Currently, the City Charter requires that the any new district boundaries preserve, to the extent possible, the boundaries established in 1986 in the City Charter, subject to the requirements that they be as nearly equal in population as may be, and that no change in district boundaries operates to abolish or terminate the term of a sitting Council member.

The proposed Charter amendment would eliminate the requirement that new district boundaries preserve, to the extent possible, the boundaries established in 1986. Instead, it would authorize the Council to adopt new district boundaries that are as nearly equal in population as may be, taking into consideration topography, geography, cohesiveness, contiguity, integrity and compactness of territory of the districts, as well as existing communities of interest, using easily understood district boundaries such as major traffic arteries and geographic boundaries to the extent consistent with communities of interest.

A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.

The proposed measure would retain the limitation that no change in the boundary or location of any district could result in two sitting Council members being in the same district.

s/ZACH COWAN
 Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE R

Twenty six years ago, Berkeley voters changed the way City Councilmembers are elected by implementing district elections. The problem we face now is that when the District Elections Charter Amendment was approved, it put in place boundaries that could only be changed to a limited degree, regardless of population changes. Over the decades, population changed but the boundaries didn’t, so that the system became increasingly outdated and unfair.

By federal law the Berkeley City Council is required to adopt new Council district boundaries following each decennial census to reflect changes in population and ensure the principle of “one person, one vote,” so a simple and equitable system is needed.

Measure R keeps in place our system of district elections but provides common sense changes to Berkeley’s redistricting process to replace the outdated rules put in place decades ago. Under the Measure, redistricting will base City Council district lines on 1) geographic boundaries and major streets so that lines are clear and easy to follow; 2) respect for communities of interest (such as neighborhoods), topography, geography, cohesiveness, contiguity, integrity, and compactness of territory; and 3) will keep in place the policy that Councilmembers cannot be redistricted out of office.

This measure **simplifies the City Charter** by removing geographic restrictions of district boundaries, makes redistricting easier, and setting **clear and fair rules** to make sure that district boundaries follow state law and consider communities of interest.

Measure R is a **good-government measure**, which creates a **fair and inclusive process, at no significant cost to the City**. Please join a unanimous City Council and good government groups in supporting Measure R.

- s/Sherry Smith
 President, League of Women Voters of Berkeley, Albany & Emeryville
- s/Nancy Skinner
 Assemblymember
- s/Aryndel Lamb-Marsh
 President, Berkeley Common Cause
- s/Connor Landgraf
 ASUC President
- s/Tom Bates
 Mayor, City of Berkeley

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE R

Welcome to Texas.

The 1986 District Elections Charter Amendment specified the borders of Berkeley's eight council districts. Measure R erases all those instructions and allows current councilmembers to draw district lines **at their discretion and for their personal benefit without the consent of voters!**

The district borders were specified in the original amendment to prevent just the kind of gerrymandering Measure R would institutionalize. Under Measure R, the only restrictions on the council are perfectly vague: "integrity", "topography", "community interest", "major arteries", and those are only required to be "taken into consideration."

No council should be given this much power! While adjustments are currently required ten years based on census counts, the council is obliged to adhere as closely as feasible to the Charter boundaries, while upholding Federal equal population requirements.

If our Council just wanted to adjust those boundaries to better reflect changing populations, they would specify new boundaries in this Charter Amendment instead of giving themselves alone the power to draw them, and make themselves councilmembers for life. **Any massive change to the boundaries must go before the voters**, according to the current law! Measure R is an end run around this key provision.

Measure R is **NOT good government**. It is **NOT** fair and inclusive. It gives **all the power to sitting Councilmembers** and takes it away from the people of Berkeley. The Council only needs this much power in order to abuse it. **Don't give it to them!**

Join us in voting NO on Measure R.

s/Pamela Y. Sanford

Author of Districts "A New Beginning"; Former Chair of The Berkeley HAAB Board

s/Shirley Dean

Former Mayor, City of Berkeley

s/Nancy Carleton

Former Chair, Zoning Board; Former Vice Chair, Parks & Recreation Commission; Co-Chair, neighborhood association in South Berkeley

s/Dave Blake

Vice-chair, Berkeley Rent Board/former chair Berkeley Zoning Board/member Berkeley Civic Arts Commission/member Berkeley Design Review Commission

s/Jacquelyn McCormick

founder Berkeley Council Watch, coordinator Berkeley Budget SOS

ARGUMENT AGAINST MEASURE R

Twenty-six years ago Berkeley residents voted to abolish at large council seats. The people of Berkeley changed the city charter and enacted district elections. This occurred because I, along with many others, felt residents were not being heard or properly represented by our council members. I looked for a solution along with others to alleviate the problem; We decided the solution was to elect our council members by "Districts". I, and my team drew the district lines by talking to various people in the community and drawing from my experience as a lifelong Berkeley resident. From the time I entered elementary school until I completed my degree at the University of California, Berkeley, I've seen the power of the Berkeley electorate. I worked for the City of Berkeley and the Berkeley Unified School District; I attended St. Paul African Methodist Episcopal Church South Berkeley. I keenly understand how powerful the Berkeley community is when we work together. Empowered by this knowledge, we were able to know where to place the district lines allowing for true representation for all Berkeley constituents. The final product of both the district map and charter was presented to the public to vote on. Now the City Council is threatening to override the will of the electorate, proposing changes that will allow them to modify District lines anyway they want with or without our input.

Don't let them take our choices away.

s/Pamela Y. Sanford

Author of: "Districts A New Beginning 1986"

s/Jacquelyn McCormick

founder Berkeley Council Watch, Berkeley Budget SOS coordinator

s/Beverly Doane

Treasurer Claremont Elmwood Neighborhood Assn

REBUTTAL TO ARGUMENT AGAINST MEASURE R

Berkeley's population is growing, changing, and shifting. **Districts that were fair and representative 26 years ago are decades outdated.** We must fix this problem.

Districts must be as equal in population as possible. The City is required by federal law to complete redistricting every 10 years, and it is crucial that this process is fair and equitable. This change does not allow the Council to "modify district lines anyway they want" as the opposition claims; **Measure R clearly states that the city will be divided into districts that respect geographic boundaries, neighborhoods, and other communities as defined by California law.**

As always, there will continue to be a public process where people can submit their own maps to Council, comment on other maps submitted, and have a voice in the redistricting process.

Adoption of Ballot Measure R is a common sense response to federally-mandated redistricting. **Measure R is supported by good-government organizations, the entire Berkeley City Council, and university students.** It is a fair and inclusive process with **no significant costs to the City.**

Please join a unanimous City Council, good-government groups, and Cal students in supporting Measure R.

s/Sherry Smith

President, League of Women Voters of Berkeley, Albany and Emeryville

s/Aryndel Lamb-Marsh

President, Berkeley Common Cause

s/Shahryar Abbasi

ASUC External Affairs Vice President

s/Darryl Moore

Berkeley City Councilmember

s/Tom Bates

Mayor, City of Berkeley

FULL TEXT OF MEASURE R

FULL TEXT OF CHARTER AMENDMENT CHARTER AMENDMENT TO ALLOW CITY COUNCIL TO ADOPT DECENNIAL REDISTRICTING PLAN

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

Section 1. Section 9 of Article V of the Charter of the City of Berkeley is amended to read as follows:

Section 9. Election and Districts.

(a) The Mayor, Auditor and School Directors shall be elected at the general municipal election on a general ticket from the City at large.

(b) The Councilmembers shall be elected at the general municipal election by districts. The Councilmembers shall be recalled by districts.

(c) No later than December 31st of the third year following the year in which each decennial federal census is taken, commencing with the 2010 census, the Council shall by ordinance divide the City into eight Council districts. Any such redistricting shall become effective as of the next general election of Councilmembers immediately following the effective date of said ordinance.

(1) In establishing and modifying district boundaries, the Council shall ensure that the districts continue to be as nearly equal in population as may be according to the census, taking into consideration topography, geography, cohesiveness, contiguity, integrity and compactness of territory of the districts, as well as existing communities of interest as defined in California Constitution Article XXI, section 2(d)(4), and shall utilize easily understood district boundaries such as major traffic arteries and geographic boundaries to the extent they are consistent with communities of interest.

(2) Notwithstanding the foregoing paragraph, no change in the boundary or location of any district by redistricting may result in the residences of two sitting Council members being located in the same district.

The City is hereby divided into eight Council districts as hereinafter set forth, and, commencing with the general municipal election in November, 1986 and continuing thereafter until new districts are established as hereinafter set forth, such districts shall be used for the election and recall of Councilmembers and for filling any vacancy in the office of Councilmember by appointment. If and when new districts are established, as hereinafter provided, such new districts shall be used for the aforesaid purposes; provided, however, that no change in the boundary or location of any district by redistricting as herein provided shall operate to abolish or terminate the term of office of any Councilmember for which such Councilmember was elected or appointed. The eight Council districts, as established herein, shall be bounded and described as follows:

~~FIRST COUNCIL DISTRICT shall comprise all of that~~

portion of the City of Berkeley commencing on the point at the center of the intersection of University Avenue and Grant Street, thence northerly along the center line of Grant Street to the center of the intersection of Vine Street; thence westerly along the center line of Vine Street to the center of the intersection of Vine Street and Edith Street; thence northerly along the center line of Edith Street to the center of the intersection of Edith Street and Rose Street; thence westerly along the center line of Rose Street to the center of the intersection of Rose Street and Sacramento Street; thence northerly along the center line of Sacramento Street to the center of the intersection of Sacramento Street and Hopkins Street; thence easterly along the center line of Hopkins Street to the center of the intersection of Hopkins Street and Hopkins Court; thence westerly along the center line of Hopkins Court to the center of the intersection of Hopkins Court and Albina Avenue; thence northerly along the center line of Albina Avenue to the northern boundary line of the City of Berkeley; thence westerly along said northern boundary line to the western boundary line of the City of Berkeley in the San Francisco Bay; thence southerly along said western boundary line to where it intersects with a line which is a direct extension of the center line of University Avenue; thence easterly along said extension line and along the center line of University Avenue to the point of beginning.

~~SECOND COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley commencing on the point on the western boundary line of the City of Berkeley in the San Francisco Bay where an extension of the center line of University Avenue would intersect said western boundary line; thence southerly along said western boundary line to the southern boundary line of the City of Berkeley; thence easterly along said southern boundary line to the intersection of said southern boundary line and the center line of California Street; thence northerly along the center line of California Street to the center of the intersection of California Street and Ashby Avenue; thence westerly along the center line of Ashby Avenue to the center of the intersection of Ashby Avenue and Sacramento Street; thence northerly along the center line of Sacramento Street to the center of the intersection of Sacramento Street and University Avenue; thence westerly along the center line of University Avenue, and along an extension of said center line, to the point of beginning.~~

~~THIRD COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley commencing on the point where the southern boundary line of the City of Berkeley intersects the center line of California Street; thence easterly along said southern boundary line to the intersection of said southern boundary line and the center line of Deakin Street; thence northerly along the center line of Deakin Street to the center of the intersection of Deakin Street and Ashby Avenue; thence easterly along the center line of Ashby Avenue to the center of the intersection of Ashby Avenue and Ellsworth Street; thence northerly along the center line of Ellsworth Street to the center of the intersection of Ellsworth Street and Dwight Way; thence westerly along the center line of Dwight Way to the center~~

of the intersection of Dwight Way and Sacramento Street; thence southerly along the center line of Sacramento Street to the center of the intersection of Sacramento Street and Ashby Avenue; thence easterly along the center line of Ashby Avenue to the center of the intersection of Ashby Avenue and California Street; thence southerly along the center line of California Street to the point of beginning.

~~**FOURTH COUNCIL DISTRICT** shall comprise all of that portion of the City of Berkeley commencing on the point at the center of the intersection of Ellsworth Street and Dwight Way; thence northerly along the center line of Ellsworth Street to the center of the intersection of Ellsworth Street and Channing Way; thence westerly along the center line of Channing Way to the center of the intersection of Channing Way and Fulton Street; thence northerly along the center line of Fulton Street to where it becomes Oxford Street and continuing along the center line of Oxford Street to the center of the intersection of Oxford Street and Hearst Avenue; thence easterly along the center line of Hearst Avenue to the center of the intersection of Hearst Avenue, Arch Street and Le Conte Avenue; thence northerly along the center line of Arch Street to the center of Arch Street and Cedar Street; thence westerly along the center line of Cedar Street to the center of the intersection of Cedar Street and Spruce Street; thence northerly along the center line of Spruce Street to the center of the intersection of Spruce Street and Vine Street; thence westerly along the center line of Vine Street to the center of the intersection of Vine Street and Martin Luther King Jr. Way; thence southerly along the center line of Martin Luther King Jr. Way to the intersection of Martin Luther King Jr. Way and Cedar Street; thence westerly along the center line of Cedar Street to the center of the intersection of Cedar Street and Grant Street; thence southerly along the center line of Grant Street to the center of the intersection of Grant Street and University Avenue; thence westerly along the center line of University Avenue to the center of the intersection of University Avenue and Sacramento Street; thence southerly along the center line of Sacramento Street to the intersection of Sacramento Street and Dwight Way; thence easterly along the center line of Dwight Way to the point of beginning.~~

~~**FIFTH COUNCIL DISTRICT** shall comprise all of that portion of the City of Berkeley commencing on the point at the center of the intersection of Spruce Street and Vine Street; thence northerly along the center line of Spruce Street to the center of the intersection of Spruce Street and Grizzly Peak Blvd; thence northerly along the center line of Grizzly Peak Blvd. to the northern boundary line of the City of Berkeley; thence westerly and thence southerly along said northern boundary line to the intersection of said boundary line with the center line of Albina Avenue; thence southerly along the center line of Albina Avenue to the center of the intersection of Albina Avenue and Hopkins Court; thence easterly along the center line of Hopkins Court to the center of the intersection of Hopkins Court and Hopkins Street; thence westerly along the center line of Hopkins Street to the center of the intersection of Hopkins Street and Sacramento Street; thence southerly~~

~~along the center line of Sacramento Street to the center of the intersection of Sacramento Street and Rose Street; thence easterly along the center line of Rose Street to the center of the intersection of Rose Street and Edith Street; thence southerly along the center line of Edith Street to the center of the intersection of Edith Street and Vine Street; thence easterly along the center line of Vine Street to the center of the intersection of Vine Street and Grant Street; thence southerly along the center of Grant Street to the center of the intersection of Grant Street and Cedar Street; thence easterly along the center line of Cedar Street to the center of the intersection of Cedar Street and Martin Luther King Jr. Way; thence northerly along the center line of Martin Luther King Jr. Way to the center of the intersection of Martin Luther King Jr. Way and Vine Street; thence easterly along the center line of Vine Street to the point of beginning.~~

~~**SIXTH COUNCIL DISTRICT** shall comprise all of that portion of the City of Berkeley commencing on the point at the center of the intersection of Arch Street, Le Conte Avenue and Hearst Avenue; thence easterly along the center line of Hearst Avenue, and along a direct extension of the center line of Hearst Avenue, to the point where it intersects the boundary line of the campus of the University of California, which boundary line is also the boundary line of federal census tract number 4226, thence northerly, and thence easterly, along said boundary line to where it intersects the eastern boundary line of the City of Berkeley; thence northerly along said eastern boundary line to the intersection of said boundary line and the center line of Grizzly Peak Blvd.; thence southerly along the center line of Grizzly Peak Blvd. to the center of the intersection of Grizzly Peak Blvd. and Spruce Street; thence westerly and southerly along the center line of Spruce Street to the center of the intersection of Spruce Street and Cedar Street; thence easterly along the center line of Cedar Street to the center of the intersection of Cedar Street and Arch Street; thence southerly along the center line of Arch Street to the point of beginning.~~

~~**SEVENTH COUNCIL DISTRICT** shall comprise all that portion of the City of Berkeley commencing at the point on the southern boundary line of the City of Berkeley where it intersects the center line of Deakin Street; thence easterly along said southern boundary line to the intersection of said southern boundary line and the center line of College Avenue; thence northerly along the center line of College Avenue to the center of the intersection of College Avenue and Ashby Avenue; thence westerly along the center line of Ashby Avenue to the center of the intersection of Ashby Avenue and Benvenue Avenue; thence northerly along the centerline of Benvenue Avenue to the center of the intersection of Benvenue Avenue and Parker Street; thence easterly along the center line of Parker Street to the center of the intersection of Parker Street and College Avenue; thence northerly along the center line of College Avenue to the center of the intersection of College Avenue and Bancroft Way; thence easterly along the center line of Bancroft Way to the center of the intersection of Bancroft Way, Piedmont Avenue and Gayley Road; thence northerly~~

~~along the center line of Gayley Road to the center of the intersection of Gayley Road and Hearst Avenue; thence westerly along the centerline of Hearst Avenue to the center of the intersection of Hearst Avenue and Oxford Street; thence southerly along the center line of Oxford Street to where it becomes Fulton Street and continuing southerly along the center line of Fulton Street to the center of the intersection of Fulton Street and Channing Way; thence easterly along the center line of Channing Way to the center of the intersection of Channing Way and Ellsworth Street; thence southerly along the center line of Ellsworth Street to the center of the intersection of Ellsworth Street and Ashby Avenue; thence westerly along the center line of Ashby Avenue to the center of the intersection of Ashby Avenue and Deakin Street; thence southerly along the center line of Deakin Street to the point of beginning.~~

~~**EIGHTH COUNCIL DISTRICT** shall comprise all of that portion of the City not otherwise described as constituting the First, Second, Third, Fourth, Fifth, Sixth and Seventh Council Districts:~~

~~The Council shall, by ordinance, adjust if necessary the boundaries of the Council districts herein set forth by December 31st of the third year following the year in which each decennial federal census is taken, commencing with the 2010 census, as provided and required in the Constitution and statutes of the State of California and in order that the eight Council districts shall continue to be as nearly equal in population as may be according to said census. Any such redistricting shall preserve, to the extent possible, the Council districts originally established herein and shall become effective as of the next general election of Councilmembers immediately following the effective date of said ordinance.~~

~~Commencing with the general municipal election in November 1986, e~~

~~(d) Each Councilmember shall be elected by the electors within a Council district, must have resided in the District in which he or she is elected for a period of not less than thirty days immediately preceding the date he or she files a declaration of candidacy for the office of Councilmember, must continue to reside therein during his or her incumbency, and shall be removed from office upon ceasing to be such resident.~~

~~(e) The candidate receiving the highest number of votes for the offices, respectively, of Mayor, Auditor and Councilmembers of the City shall be elected to such offices, provided that such candidate receives at least 40% of the votes cast for each such office. In the event that no candidate for Mayor, Auditor and Councilmember for one or more Council offices receives at least 40% of the votes cast for that office, then there shall be a runoff election between the two candidates receiving the most votes, which runoff election shall be held on the first Tuesday after the first Monday in February of the odd numbered year following the initial election. No other issues shall appear on the ballot of any runoff election. The successful~~

~~candidate in any runoff election shall assume office on March 1, after the election results have been declared by the Council. If the provisions of Article III, Section 5, Paragraph 12 related to instant runoff voting are operative, the vote threshold requirements in this section shall have no application to municipal elections.~~

~~(f) Should any provision of the amendment of this section be held invalid, the remainder of this section the amendment shall not be affected thereby, and such word, phrase, sentence, part, section, subsection, or other portion shall be severable, and the remaining provisions of this section shall remain in full force and effect. The voters hereby declares that they would have passed this section and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more, subsections, sentences, clauses or phrases had been declared invalid.~~

~~Section 2. Section 5, subdivision 12 of Article III of the Charter of the City of Berkeley is amended to read as follows:~~

~~**(12) Use of instant runoff voting in lieu of runoff elections.**~~

~~For purposes of this charter "instant runoff voting" shall refer to a voting system which, in a single election, determines the candidate supported by the voters. Notwithstanding any section of this Charter to the contrary, upon a determination by the City Council of all of the following, that: a) the voting equipment and procedures are technically ready to handle instant runoff voting in municipal elections; b) instant runoff voting will not preclude the City from consolidating its municipal elections with the County; and c) instant runoff elections will not result in additional City election costs, the Council may by ordinance establish a system of instant runoff voting for the offices of Mayor, City Council, and Auditor in any manner permitted by the State of California Elections Code. Once the Council institutes a system of instant runoff voting, future elections shall be conducted as instant runoff voting elections, unless the Council finds that circumstances have changed such that one or more of the prior Council findings required by this section are no longer valid. In such case, the Council shall articulate the specific basis therefore in order to suspend an existing system of instant runoff voting. Subdivision (e) The fourteenth paragraph of Section 9 of Article V relating to the percentage threshold to trigger a runoff election shall have no application to a system of instant runoff voting. The City Clerk shall conduct voter and community education to familiarize voters with instant runoff voting.~~

CITY OF BERKELEY MEASURE S

<p>S Shall an ordinance prohibiting sitting on sidewalks in commercial districts from 7:00 am to 10:00 pm, with exceptions for: (a) medical emergencies; (b) wheelchairs and similar mobility devices; (c) bus benches; (d) street events; (e) other furniture placed on the sidewalk pursuant to a permit; requiring the City to ensure that it is applied in a constitutional manner and requiring a warning prior to citation, be approved?</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE S

This measure would prohibit any person from sitting on a sidewalk in a commercial zoning district from 7:00 a.m. until 10:00 p.m., subject to the following exceptions:

1. Due to a medical emergency;
2. On a wheelchair or other device that is needed for mobility;
3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or
4. As authorized by a City-issued permit, such as a permit for a Street Event, or for public benches or outside café seating.

This measure would also provide that it could not be applied or enforced in a manner that violates the United States or California constitutions, and would require the City to develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or California constitutions, prior to enforcement.

This measure would provide that a first violation would be an infraction subject to either a \$75 fine or community service, but that subsequent violations could be charged as either an infraction or a misdemeanor.

The measure would require that before a person could be cited he or she would have to be warned by a peace officer and given an opportunity to comply. A single warning would be sufficient for a 30-day period.

The measure would also allow the Council to amend or repeal the prohibition without further voter approval.

If approved, the measure would not go into effect until July 1, 2013.

s/ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE S

Berkeley takes pride in being a humanitarian city. Berkeley was early in setting up services for people who were forced out of State institutions. Berkeley taxpayer’s yearly fund more than \$2,800,000 to those in need. Yet, there are some who resist our help, preferring to encamp on shopping streets creating unsanitary conditions for themselves and residents. **Drugs, alcohol, and/or mental illness cause behavior that can be perceived as menacing, keeping shoppers away and hurting local merchants trying to make ends meet in a tough economy.**

Living on the street is unhealthy. It sends people into a downward spiral. Berkeley offers comprehensive social services that are successful in finding treatment and homes for people who participate.

Measure S (Berkeley Civil Sidewalks) has two goals: taking the initiative to help people into services and preventing street encampments that keep shoppers away from our businesses. Measure S will prevent sitting on commercial sidewalks during the day. **Outreach will take place before implementation, and Ambassadors will encourage individuals into city services.** If the Ambassadors are repeatedly unsuccessful, citations will follow. However, Berkeley will erase those citations for the person entering and participating in services.

Measure S is supported by a broad coalition of neighborhood merchants, residents and parent groups. **Confrontational behaviors from people who block sidewalks for hours at a time create an unacceptable environment for the “mom and pop” merchants who pay the taxes that fund the services, grow local jobs and make Berkeley a special place to live.**

Measure S is based on successful laws implemented in over 60 cities, but with the addition of several improvements that ensure we are helping people find services.

Vote Yes on S. Help people get social services, help merchants grow local jobs, and ensure civil and welcoming sidewalks for everyone.

- s/Tom Bates
Mayor City of Berkeley
- s/James C. Young
Partner - Paul’s Shoe Repair
- s/Erin Rhoades
Chair, Livable Berkeley
- s/Craig Becker
Owner, Caffe Mediterraneo
- s/Susan Wengraf
Berkeley City Councilmember

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE S

Our community has a tradition of compassionate, sensible problem-solving. Where other cities scapegoat, Berkeley seeks real solutions.

Criminalizing sitting is a proven failure: San Francisco's law has failed "to improve merchant corridors, serve as a useful tool for SFPD, connect services to those who violate the law, and positively contribute to public safety," according to a report commissioned by the San Francisco Controller's Office. Imitating other cities' failures doesn't help businesses and hurts poor people. This is not how Berkeley solves problems.

Measure S will divert police resources from preventing and solving real crimes. It will push unsheltered teens into a futile cycle of warrants, jail time, and back into the streets. The ACLU calls Measure S "an infringement of civil rights and civil liberties."

Poor people do not choose to rest in public. We have no drop-in center for homeless youth. Our youth shelter is open only six months a year. Neither the youth shelter nor the adult shelter is open during the day. There are four homeless people in Berkeley for every shelter bed. The "ambassadors"—hired to clean downtown streets—are not trained in mental health or homeless outreach.

We can do better than this. Instead of wasting city money on proven failures, we can fully fund a youth shelter, provide enough shelter beds, and more public restrooms. Instead of pushing people out of our shared public spaces, we can unite to create *real* solutions for the economic problems that plague small businesses. **Vote No on Proposition S.**

s/Jesse Arreguín

Berkeley City Councilmember

s/Elisa Della-Piana

Civil Rights Attorney, East Bay Community Law Center

s/Branden Ignacio Figueroa

Student Organization Coordinator

s/Mary Dirks

Owner, Cafe

s/Rabbi David J. Cooper

Rabbi, Kehilla Community Synagogue

ARGUMENT AGAINST MEASURE S

Can you imagine getting arrested for sitting down on a public sidewalk? In Berkeley?

If Measure S passes, anybody could be cited or arrested for this simple act—yet another law restricting the public space we all share. But it also sets a dangerous precedent, discriminating against an entire class of people who happen to be poor. These are not Berkeley values.

The street behavior used to justify this measure is already illegal. This measure will harm public safety by diverting police resources away from solving real crimes.

Measure S won't help business. A similar law in San Francisco had no effect on improving merchant corridors, helping homeless people obtain services, reducing the number of homeless people on the street, or increasing public safety.

Throwing people in jail is no solution to homelessness. Instead, it creates a problem for all of us. The U. S. Interagency Council on Homelessness has found that when people are arrested or fined for "act of living" crimes in public spaces, it makes it *more* difficult for them to find work and receive services and housing. This measure is a step backwards.

Berkeley has the largest gap between rich and poor in the Bay Area—we need serious solutions, not laws criminalizing the act of sitting down. This measure offers no solutions for businesses, customers, or homeless people.

Join the ACLU, small businesses, Berkeley community organizations, and faith groups to VOTE NO on this extraordinary waste of money and police resources. Stand up for the simple human right to sit down, to rest, and to share our common public space.

Let's come together, as one Berkeley, and find real solutions that help our communities.

Visit www.noonsberkeley.com. **KEEP SITTING LEGAL. Vote NO on Measure S.**

s/Max Anderson

Berkeley City Council

s/Kriss Worthington

Berkeley City Council

s/Satinder Boona Cheema

Executive Director Homeless Service Provider, Activist

s/Nolan Pack

Senator, Associated Students of the University of California

s/Eleanor Walden

Senior Housing Activist

REBUTTAL TO ARGUMENT AGAINST MEASURE S

Don't believe the scare tactics being used by the opponents of Measure S the Berkeley Civil Sidewalks Ordinance.

Ordinances like Measure S have already saved jobs in merchant areas and have slowed the downward spiral that comes with living on the sidewalks. **Yes on S will help people get the critical services they NEED to transform their lives.**

Similar ordinances have improved commercial areas in Santa Cruz, Santa Monica, San Francisco and 60 cities. It has passed extensive judicial review and only Berkeley's version includes both outreach from our Ambassadors and waiving citations in exchange for services.

It is not a progressive value to watch people wither away on sidewalks day after day, becoming more unstable and abusing their bodies with alcohol and drugs.

It is not responsible to disregard that reality and ignore its impact on neighborhood businesses. Local jobs are critical for working families who are barely staying afloat in an economy that has been too harsh for too long.

It is not compassionate to do nothing about a harmful situation and support the status quo.

Yes on S will help people get the services they need to transform their lives. Berkeley spends over \$2,800,000 on comprehensive social services **and we have real solutions to help people transition from the streets to stable environments. That will continue.**

Measure S will help people and will save local jobs. Measure S encourages alternatives to street life and safer sidewalks for everyone.

Vote Yes on S, Berkeley Civil Sidewalks

Berkeleycivilsidewalks.com

s/Laurie Capitelli
Berkeley City Councilmember

s/James C. Young
Partner - Paul's Shoe Repair

s/Erin Rhoades
Chair, Livable Berkeley

s/Craig Becker
Owner, Caffè Mediterraneo

s/Tom Bates
Mayor, City of Berkeley

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

**AN ORDINANCE OF THE CITY OF BERKELEY
ADOPTING NEW SECTION 13.36.025 OF THE
BERKELEY MUNICIPAL CODE TO PROHIBIT
SITTING ON SIDEWALKS IN COMMERCIAL
DISTRICTS**

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN
AS FOLLOWS:

Section 1. Findings

The People of the City of Berkeley find as follows:

A. In FY 2012 the City of Berkeley devoted more than \$2.8 million to services for the homeless, mentally ill, and other disadvantaged residents, including meals, shelters, transitional and permanent housing with supportive services, daytime drop-in centers, health services, employment programs, alcohol and other drug treatment and rehabilitation, case management, and legal services. Residents, taxpayers, and business owners of Berkeley share the consensus that the City should continue to provide this funding subject to resource constraints and taking into account other needs such as public safety and our City's infrastructure.

B. Public spaces in commercial districts have become increasingly inhospitable due to groups of individuals, often with dogs, having created encampments on sidewalk areas on our commercial streets. These encampments obstruct pedestrian access, and result in litter, debris, and waste left on our sidewalks.

C. City parks are open and available during the day for everyone's use.

D. As a result of the sidewalk encampments, residents and visitors tend to avoid some of our commercial areas, which threatens the viability of Berkeley's businesses that are already struggling. This in turn threatens the City's overall economic health. Reduced economic activity results in fewer resources available for homeless services.

E. Although state and local laws address various specific problematic behaviors and actions associated with encampments of people and dogs on the sidewalks, enforcement of such laws to an extent sufficient to reverse the trend described above is infeasible, as it would require a level of police resources that are simply not available, and would divert public safety resources from more serious crimes.

F. The only practical solution is to limit sitting on sidewalks only in commercial districts at certain hours of the day, and to require a warning before citation.

G. The purpose of this ordinance is solely to address the deleterious impacts of encampments on public sidewalks. Accordingly, it is the intent of the voters that the ordinance be interpreted and applied in a manner that does not discriminate against homeless, mentally ill or other residents of the City based on their status.

H. Because the intent of the voters is not to criminalize persons for sitting on the sidewalk given that other options

are available (permanently-affixed public benches, bus stop benches, low walls, etc.), this ordinance shall not take effect until July 1, 2013, so that comprehensive outreach and education can be conducted, involving homeless and youth service providers, merchants, community agencies and City staff including police. Other methods, such as signage, will also be employed.

Section 2. Adoption of Ordinance.

That a new Section 13.36.025 is hereby added to the Berkeley Municipal Code to read as follows:

Section 13.36.025 - Prohibiting Sitting on Commercial Sidewalks at Certain Times - Exceptions.

A. Prohibiting Sitting on Commercial Sidewalks at Certain Times. No person shall sit on a Commercial Sidewalk or on any object brought or affixed to said sidewalk, from 7:00 a.m. until 10:00 p.m., except as provided in this Section.

B. Exceptions. This Section shall not apply to any person sitting on a commercial sidewalk:

1. Due to a medical emergency;
2. On a wheelchair or other device that is needed for mobility;
3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or
4. As authorized by a City-issued permit, such as a permit for a Street Event, a permit under Sections 14.48.170 or 14.48.200, or other City permit.

This Section shall not be construed to prohibit persons from obtaining such City permits.

These exceptions shall not be construed to allow conduct that is prohibited by other laws.

C. This Section shall not be applied or enforced in a manner that violates the United States or California constitutions. Prior to enforcement of this Section, the City shall develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or California constitutions.

D. Necessity of Warning Prior to Citation. No person may be cited for a violation of this Section until a peace officer first warns said person that his or her conduct is unlawful and said person is given a chance to stop said conduct. One warning by a peace officer to a person who is violating this Section is sufficient for a 30-day period as to any subsequent violations of this Section by said person during said period.

E. Commercial Sidewalk - Definition. As used in this Section, "Commercial Sidewalk" means all sidewalks in front of or adjoining property designated on the City's Official Zoning Map with a "C" prefix.

F. Violation - Infraction or Misdemeanor. A first violation of this Section shall be charged only as an infraction subject to either a \$75 fine or community service. Subsequent violations may be charged as either an infraction or a misdemeanor.

Section 3. Amendment of Ordinance.

Section 13.36.025 of the Berkeley Municipal Code as adopted by this Ordinance may be repealed or amended by the City Council without a vote of the people.

Section 4. Severability.

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

Section 5. Majority Approval; Effective Date; Execution.

This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect on July 1, 2013. The Mayor and City Clerk are hereby authorized to execute this Ordinance to give evidence of its adoption by the voters.

CITY OF BERKELEY MEASURE T

<p>T Shall the West Berkeley Plan and the Zoning Ordinance be amended to allow development flexibility on up to 6 large sites, each under the same ownership, during the next 10 years, allowing a maximum height of 75’ with a site-wide average height of 50’, and only if community and environmental benefits are provided to West Berkeley?</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE T

This measure would amend the West Berkeley Plan (“Plan”) and the Zoning Ordinance to allow more flexibility in development of large parcels in West Berkeley that are under the same ownership, if they are approved through the Master Use Permit (“MUP”) process.

Currently, only sites of at least four acres under the same ownership are eligible for MUPs. This measure would make sites under 4 acres under the same ownership that also comprise a full city block eligible, and would limit MUPs to parcels that were eligible on August 1, 2011.

Only 6 MUPs could be approved during the next 10 years; after that there would be no limitation.

Material amendments:

Increased residential density in Mixed Use – Residential (“MU-R”) areas within MUP sites. Currently, the density in MU-R areas is one unit for every 1,250 square feet of land area. The amendments would remove that limitation for MU-R areas that are part of a MUP site.

Additional development flexibility. Development standards for MUP sites would be revised to allow alteration of nine lot development standards if certain findings are made. The main development standards that could be altered are:

- Height could be increased in areas of MUP sites zoned for manufacturing from 45 feet to 75 feet. Height limits in areas of MUP sites zoned for commercial uses would be unchanged (maximum of 50 feet for a mixed use building except as allowed by state density bonus law). Height limits in areas of MUP sites in the MU-R district would be increased to a maximum of 45 feet except as allowed by state density bonus law, with additional limitations on height at the property line for areas adjacent to MU-R areas that are not part of the MUP site.
- MUPs would be limited to a site – wide average height of 50’.
- Required parking could be reduced by up to 50%.
- The floor area ratio of an MUP site would be increased from 2.0 to a maximum of 3.0, except in MU-R portions where the maximum would be 1.5.

- Certain uses allowed in Mixed Use – Light Industrial (“MU-LI”) zones but not in MU-R zones could be placed anywhere within a MUP site, subject to findings and limitations. Four types of uses would be excluded from MU-R areas: construction products manufacturing; pharmaceutical manufacturing; testing and commercial biological research laboratories; and commercial excavation. No Research and Development allowed in a MU-LI district could be located in a MU-R district without specific findings of compatibility.

Community benefits. No MUP could be approved until the City Council has adopted requirements for community benefits that would have to be provided by any MUP, but which could not otherwise be required.

Aquatic Park protections. No MUP would be approved adjacent to Aquatic Park until the City Council has adopted specific protection measures for Aquatic Park.

The Council could amend this measure but could not increase the aggregate amount of development allowed.

s/ZACH COWAN

Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE T

Measure T is neither a tax increase nor an approval of a specific development project.

Measure T is a creative, community-based initiative that will allow hundreds of good paying jobs, affordable housing opportunities and improvements in West Berkeley, with the potential to generate millions of dollars in revenue for enhanced amenities and services to the community.

Measure T will amend the original, restrictive West Berkeley Plan that is now out of step with today's global and regional economy. **Recent analysis indicates more than 1500 jobs were lost in West Berkeley due to outdated zoning.** More than 75 open public meetings have been held to discuss West Berkeley zoning over the past seven years. In 2011, the Council approved allowing new types of uses in West Berkeley including research and development. Now, as proposed Under Measure T, owners of large sites could either use existing zoning laws or choose the new zoning and gain the flexibility to mix uses (light manufacturing, residential, artist work space, research and development) in exchange for community benefits.

Each proposed site would be discussed in numerous public meetings and follow the city's planning and review process: **design review, landmark approval, planning commission approval, and City Council approval.**

There are large West Berkeley industrial sites that are underutilized; Measure T provides the tools to revitalize these properties. If property owners use the new flexible zoning, millions of dollars of new funds would become available to support needed city amenities and services such as job training, good paying jobs, affordable housing, and artists work space, public safety, education, parks and enhanced transportation and environmental improvements.

Join us in voting Yes on Measure T to bring needed changes to West Berkeley and necessary revenue to support the entire city. Together, we can move Berkeley into the 21st century.

s/Nancy Skinner
Assemblymember

s/Joseph Slusky
Artist, Sculptor

s/Susan Medak
Managing Director, Local Theatre Company

s/Linda Schacht
University Lecturer

s/Tom Bates
Mayor, City of Berkeley

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE T

Vote NO on Measure T

The arguments in favor of Measure T are **false and misleading.**

Far from being "community-based," Measure T is **backed by a few large landholders** in West Berkeley who would profit greatly from its passage. Thousands of people living and working west of San Pablo **never received a single notice** about this proposed rezoning of their homes and businesses.

Measure T's proponents say "large West Berkeley industrial sites are underutilized." In fact, West Berkeley industry is thriving. **West Berkeley manufacturing space has a vacancy rate of 2.9%**, the lowest manufacturing vacancy rate in the East Bay.

Thanks to existing zoning that keeps space affordable, West Berkeley is **home to hundreds of skilled light manufacturers, artists and artisans**—bakers, brewers, printers, filmmakers, painters, potters, woodworkers, makers of musical instruments, scientific glass and many other specialized products.

West Berkeley **has 850,000 square feet of R & D** occupied by **numerous cutting edge firms.**

What Measure T's proponents call "**flexibility**" is really **a deregulation of land use** that would invite real estate speculation and **displace many established businesses and good jobs.**

The claim that Measure T provides "**new funds**" to "**support the entire city**" is **fantasy.**

But Measure T would affect all of Berkeley—negatively—by damaging the city's environment. Massive development would pollute Berkeley's air, darken West Berkeley streets, block views of the bay and hills and clog major intersections with traffic.

For the sake of Berkeley's economy and environment,

Vote NO on Measure T.

Visit SaveWestBerkeley.org.

s/Steven Sullivan
President and Co-Founder, Acme Bread

s/Mark Liolios
Director, Aquatic Park EGRET; Environmentalist

s/Klein Lieu
ASUC Senator

s/N. Jed Riffe
West Berkeley Resident, Homeowner; Independent
Filmmaker & New Media Producer

s/C. Mark Humbert
President, Claremont Elmwood Neighborhood
Association

**ARGUMENT AGAINST MEASURE T
VOTE NO on MEASURE T.**

Protect Aquatic Park and a thriving community from drastic, needless rezoning.

West Berkeley is home to diverse neighborhoods and an array of artisans and businesses providing 16,000 jobs—a **center of commerce and innovation** where things are invented and produced.

Measure T is **unnecessary for growth**. Recent zoning changes provide ample opportunity for development compatible with existing businesses and neighborhoods.

Measure T would confer extraordinary benefits on a handful of corporate developers, **encouraging land speculation** and higher rents that would force out many artisans, artists and businesses that contribute to Berkeley's economy.

Measure T would alter the zoning in West Berkeley on at least 109 acres (about **50 city blocks**). After 10 years **the number of eligible sites is indefinite**.

Measure T would allow **75-foot high multi-block office parks** and 6-story apartment buildings **next to modest single-family homes**.

Measure T would allow **huge buildings next to Aquatic Park**. The **City Council rejected protections for the park and its wildlife that were recommended by Citizens for East Shore Parks, the Audubon Society and the Sierra Club**.

Measure T **betrays Berkeley's commitment to environmental leadership**. The City's Environmental Impact Report showed that the allowable new development would worsen air pollution, block views of the Bay, shadow large parts of West Berkeley and **gridlock major intersections on Gilman, San Pablo, Ashby and University**.

Measure T provides **no guaranteed community benefits** to compensate for the damage to the local environment and quality of life.

Measure T was advanced without notifying the thousands of residents and business owners west of San Pablo Avenue, yet it was **overwhelmingly opposed by citizens** at numerous City Council meetings.

Join us in opposing this harmful measure.

Save Aquatic Park and West Berkeley's unique, vibrant neighborhoods and economy.

VOTE NO on MEASURE T.

s/Sylvia McLaughlin
Co-founder, Save San Francisco Bay Movement

s/Jesse Arreguin
Berkeley City Councilmember

s/Max Anderson
Berkeley City Councilmember

s/Judy Dater
Photographer/Artist/West Berkeley Resident

s/Isabelle Gaston
President of NEBA (Northeast Berkeley Association)

**REBUTTAL TO ARGUMENT AGAINST
MEASURE T**

ARGUMENTS AGAINST MEASURE T ARE OUTRAGEOUS DISTORTIONS AND HALF-TRUTHS.

Measure T does not include Aquatic Park. Aquatic Park was specifically removed from Measure T when the Citizens for East Bay Shoreline Park, Sierra Club and the Audubon Society raised concerns. It is disingenuous for opponents to say Aquatic Park will change under Measure T. They know full well it is not included in this measure.

Measure T (West Berkeley's voluntary plan) has been **considered for 7 years in more than 75 community meetings. Saying it hasn't been discussed by the community is not true.**

Only six sites in West Berkeley, totaling approximately 40 acres, not 150 acres as opponents would have you believe, are eligible.

Opponents say everything is fine in West Berkeley, but we have lost over 1500 jobs. Measure T is necessary to bring back jobs and provide space for emerging startup companies.

Opponents say there will be tall buildings throughout West Berkeley, but **Measure T limits building heights to designated areas and only allows buildings of up to 75 feet, with an average height of only 5 feet higher than currently allowed.**

Measure T is voluntary zoning. If property owners want to use it they must enter into a binding development agreement that guarantees community benefits like job training and affordable housing.

Measure T will help meet the goals of Berkeley's climate action plan by providing housing near jobs.

**Reject the exaggerations, distortions, and half-truths.
Vote yes on Measure T for jobs and economic progress.**

s/Susan Medak
Managing Director, Local Theater Company

s/Gordon Wozniak
Berkeley City Councilmember

s/Katie Hawkinson
Artist, Educator

s/Victoria Eisen
Planning Commission Chair, Transportation Planner

s/Laurie Capitelli
Berkeley City Councilmember

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

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN
AS FOLLOWS:

Section 1. Findings.

The People of the City of Berkeley find as follows:

A. The City of Berkeley (“City”) adopted the West Berkeley Plan in 1993; and adopted Zoning Ordinance amendments to implement that Plan in 1999.

B. Beginning in 2006, the City Council requested that staff revise land use regulations in West Berkeley to allow flexibility to facilitate development of large multi-parcel sites and to encourage building reuse and expansion.

C. In addition to various Zoning Ordinance revisions, the revised regulations include revisions to the Land Use Chapter of the West Berkeley Plan, Section VII. *Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* to reflect the proposed changes to zoning regulations.

D. The West Berkeley Plan is incorporated by reference into the General Plan, and therefore such revisions are also amendments to the General Plan.

E. The City has prepared an Environmental Impact Report (EIR) and a Supplemental Environmental Impact Report (SEIR) on the revised regulations and the City Council has certified those documents.

F. On June 12, 2012, the Council adopted Resolution No. 65,782-N.S. certifying the EIR as supplemented by the SEIR with respect to the plan and zoning amendments set forth in this measure.

G. The proposed amendments to the West Berkeley Plan Land Use Chapter, Section VII. *Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* are consistent with the Purposes of the West Berkeley Plan, including maintaining the full range of land uses and economic activities, maintaining the ethnic and economic diversity, and maintaining and improving the quality of life.

H. The proposed amendments are also consistent with West Berkeley Plan goals and policies, including, but not limited to allowing modification to zoning regulations to improve the West Berkeley industrial business climate, to attract emerging business sectors, and to retain, to the degree feasible, the economic diversity of West Berkeley businesses, and especially space for artists and crafts-people and jobs for residents of Berkeley who may be underemployed or unemployed.

Section 2. Amendment of West Berkeley Plan and General Plan.

The West Berkeley Plan is hereby amended as follows, and the General Plan, of which the West Berkeley is a part, is hereby also amended by reference in the same manner.

A. Revision to Table 1-5, “Recommended Development Standards by Zone”, page 53. The Residential Density standard for the Mixed-Use Residential zone is amended

as follows:

Residential Density: max. 1 unit/1,250 sq. ft. land, except for Master Use Permit sites.

B. The “Large Site Development Process”, page 56 is amended to read:

Rationale:

West Berkeley has a few large sites—sites of 5 acres or more under a single ownership—which present special challenges and opportunities for planning and development in West Berkeley. These large sites—such as the Miles or (ex)Colgate property—are of a scale where they have a major impact on the area around them, and noticeable impacts on West Berkeley as a whole. They also may require modification of the uses and development standards in a district to facilitate a feasible large scale project.

For these reasons, the West Berkeley Plan incorporates a concept of a Large Site Development Process. While the process remains to be defined, the concept is that a special approval process would be used for certain projects. Because of the importance of these projects, the Planning Commission would be involved in the process. The process would also provide a formal mechanism for early citizen input. The rezoning will propose a Zoning Ordinance amendment to provide for a Master Plan Permit. It would be a middle ground alternative between the Use Permit and the Development Agreement. While a master permit could be issued for a multi-building project, there would be a procedure for review of individual buildings at their time of construction. This alternative could incorporate many of the master planning features of a Development Agreement, but would be acted upon under the procedures of the Zoning Ordinance, rather than as a separate contract.

It is important to note that no special process would be required of large scale projects which conform in all substantive respects to the uses and development standard of their district. Such a project, however large, would require simply the normal Use Permit(s) and environmental review (an Environmental Impact Report or other appropriate documentation).

2012H Update: The Master Use Permit (MUP) section of the Zoning Ordinance (Chapter 23B.36) is modified. The Regulations noted in the Plan are no longer accurate. Please reference the proposed revisions to Chapter 23B.36 for the updated Master Use Permit regulations.

Regulation:

Projects which are eligible for the Large Site Development Process are those which:

- ~~On~~ Are located on sites of at least 4 (~~modified 20H~~) acres or one full City block under the same ownership; and
- ~~Proposing to incorporate~~ Incorporate uses which would not otherwise be permitted in the district, but would be permitted in other zoned land within the

Master Use Permit site; or

- Requesting an “alternative” land use entitlement, such as a Development Agreement. Another possibility is a Master Plan Permit, whereby a single permit would be issued for the development of a number of buildings and/or uses within a given range.

Section 3. Amendment of Zoning Ordinance.

Chapter 23B.36 of the Berkeley Municipal Code is repealed and reenacted to read as follows:

Chapter 23B.36

MASTER USE PERMITS

23B.36.010 Applicability

23B.36.020 Purposes

23B.36.030 Master Use Permit Application—Process

23B.36.040 Reserved

23B.36.050 Permissible Alterations of Development Standards and Permitted Uses

23B.36.060 Master Use Permit excludes other alterations of development standards

23B.36.070 Contents of Master use Permit

23B.36.080 Vesting

23B.36.090 Findings

23B.36.010 Applicability

This Chapter applies to sites that met and continue to meet the eligibility requirements set forth in this Section as of August 1, 2011, and is limited to the sites as they existed at that time.

- A. In order for a site to be eligible for a Master Use Permit (“MUP”), at least 50% of its land area must be:
 - 1. located in one or more of the MU-LI, MM, or M districts;
 - 2. the site must consist of either
 - a. at least 4 contiguous acres in area under the same ownership (whether or not in a single parcel); or
 - b. a full city block under the same ownership (whether or not in a single parcel);
- B. An MUP site may include property located in the C-W or M-UR districts subject to the additional regulations in Section 23B.36.050.A.
- C. The City may not approve more than 6 MUPs during the 10 years immediately following the effective date of this Chapter.
- D. Notwithstanding Section 23B.56.100, an MUP project shall secure a building permit within 24 months of the project’s approval. Failure to do so may result in the lapse of the MUP, pursuant to Chapter 23B.56. Once lapsed, that MUP shall not be counted for purposes of this Section.
- E. For purposes of this Chapter, parcels shall be considered to be in the “same ownership” if the same person or entity has a greater than 50% ownership of each parcel.

23B.36.020 Purposes

The purposes of this Chapter are to provide flexibility in zoning requirements for projects in West Berkeley that are located on large sites in order to:

- A. Facilitate the implementation of the West Berkeley Plan;
- B. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse;
- C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character that will benefit the occupants, the neighborhood, and the city as a whole;
- D. Consolidate the review of the impacts of the development and reuse of large and multi-user projects;
- E. Improve Berkeley’s competitiveness in attracting, incubating, retaining and growing businesses by allowing businesses to develop and commence operation on a site quickly once overall development requirements have been established;
- F. Attract and retain businesses, especially those engaged in diverse, comparatively clean, and environmentally beneficial industrial activities;
- G. Attract businesses in emerging sectors of the economy;
- H. Retain and provide space for artists;
- I. Reduce or mitigate circulation, access and parking problems by improving transportation infrastructure, reducing vehicle use by employees and providing adequate parking;
- J. Expand the availability of and access to jobs and job training programs; and
- K. Raise funds for programs and initiatives that further the goals and purposes of the West Berkeley Area Plan.

23B.36.030 Master Use Permit Application — Process

- A. Master Use Permit applications shall include:
 - 1. all materials required by Section 23B.24.030, except that they shall not be required to include architectural plans or drawings for phases subsequent to the first phase(s);
 - 2. a detailed phasing plan that shows the character, scale, general location and timing of all physical development, including on- and off-site infrastructure, and locations of proposed uses;
 - 3. a proposed benefits package that is consistent with 23B.36.090.B. The proposed benefits package must include benefits beyond what would otherwise be provided and must specify the types of benefits, the method of delivering and guaranteeing these benefits, and their net present value. In addition, the proposal must demonstrate how the proposed benefits are a reasonable exchange for the requested changes in development standards for the proposed project, recognizing that the zoning ordinance does not require the benefits to equal or exceed the full value to the developer of such modifications to

development standards. The City may require the applicant to pay for an independent consultant to provide technical assistance to the City in reviewing the information provided. Measures to mitigate the land use impacts of the proposed project shall not be considered benefits under this Chapter; and

4. the applicant's commitment to enter into a binding Community Benefits Agreement that meets the City's requirements to guarantee provision of the proposed benefits if the application is approved.
- B. Applications for Master Use Permits shall be subject to the provisions under Chapter 23B.32, except that the public notice area required by 23B.32.020 shall be expanded to five hundred (500) feet of the subject property and notice of public hearing shall be posted and mailed 30 days in advance.

23B.36.040 Reserved

23B.36.050 Permissible Alterations of Development Standards and Permitted Uses

A. An applicant for a Master Use Permit may request, and the Board may approve, the following alterations to the lot development standards and permissible uses set forth in the underlying applicable zoning district regulations:

1. Parking Requirements: Reduction of off-street parking requirements of up to 50%;
2. Height Limitations: increases in permitted maximum height up to 75 feet, except as provided in paragraph 3 below, with a site-wide average height not to exceed 50 feet, and except as further limited by the existing height limits in areas of an MUP site zoned C-W (Chapter 23E.64) and MU-R (Chapter 23E.84). Development in a MUP site is limited by the following:
 - i. buildings shall be setback five (5) feet from any property line that abuts or confronts an MU-R zone not located within the MUP site;
 - ii. in a MU-R zone within a MUP site buildings shall be no higher than 35 feet at the property line or setback line, whichever applies, and may increase to a maximum height of 45 feet provided they do not intersect a plane starting at 35 feet high and sloping on a 30 degree angle from horizontal inward toward the lot; and
 - iii. in a MU-R zone within a MUP site any height granted using the density bonus provisions may not intersect the plane described in Section 23B.36.050.A.2.ii unless the applicant can demonstrate that adherence to this provision would be in violation of state law.
3. [Reserved];
4. Floor Area Ratio (FAR) Restrictions: increases in permitted maximum FAR of up to 3.0 except in the MU-R District, where FAR is limited by the MU-R District regulations. For purposes of this section, above grade parking structures count for lot coverage calculations but not for FAR calculations;

5. Setbacks: reduced setbacks from residential uses;
6. Spacing Requirements: use separation standards may be reduced;
7. Uses: Land Uses permitted by the underlying zoning of the land that comprises a Master Use Permit site may be located within the site without regard to the zoning district boundaries, subject to the thresholds and permit requirements of the Master Use Permit, except that:
 - i. residential uses shall not be allowed in the M, MM or MU-LI portions of an MUP site,
 - ii. residential density in the MU-R portion of an MUP site shall be calculated using the standards applicable in the C-W district, although the height limits for MU-R residential uses shall conform with Section 23B.36.050(A)(2)(ii), and flexibility regarding parking may be allowed pursuant to paragraph 1, above,
 - iii. the following MU-LI uses are prohibited in MU-R portions of an MUP site: construction products manufacturing, pharmaceutical manufacturing, testing and commercial biological research laboratories, and commercial excavation, and
 - iv. any research and development use that may be allowed in an MU-R portion of an MUP site is only allowed subject to the findings in Section 23B.36.090.E;
8. The replacement of Manufacturing, Warehouse, Wholesale, or Material-Recovery activities with Other Industrial uses permitted in any of the zoning districts in which the subject property is located.
9. The maximum lot coverage allowed for an MUP site is 75% and there must be a minimum of 10% publicly accessible open space, not including surface parking.

B. The Gross Floor Area allocated for each use may vary from that set forth in the Master Use Permit by up to ten percent (10%) with a Zoning Certificate, as long as the new use allocations meet all requirements of the Zoning Ordinance. Variations of more than ten percent (10%) but less than twenty-five percent (25%) from the stated Gross Floor Area for any use may be authorized by the Zoning Officer; variations of more than twenty-five percent (25%) may be authorized by the Board. Any such change shall still be subject to the requirements set forth in the approved MUP, including the finding required by Section 23B.32.040.A.

C. Notwithstanding the conversion requirements applicable in the underlying districts within an approved MUP, spaces within an MUP site may be divided, aggregated and/or converted in any manner, as a matter of right as long as such division, aggregation or conversion is consistent with the gross floor area limitations for uses and findings and requirements set forth in the MUP.

23B.36.060 Master Use Permit excludes other alterations of development standards

The flexibility provided under this Chapter to alter development standards is exclusive and supersedes all other provisions of this Title under which development standards may be altered, except as provided under Section 23B.44.050. In cases where this Chapter applies, Chapter 23B.48 shall not apply, and *vice versa*.

23B.36.070 Contents of Master Use Permit

In addition to the information and requirements that are normally contained in a Use Permit, as well as any specific additional conditions or requirements the Board may impose, a Master Use Permit shall include the number of square feet of buildings and land to be used for Industrial (Manufacturing, Wholesaling and Warehousing), Office (exclusive of offices ancillary to other uses), Commercial (Retail and Personal Service), Live/Work Units and Residential Uses and a detailed phasing plan as described in Section 23B.36.030.A.

23B.36.080 Vesting

- A. An MUP shall be deemed to have been exercised in its entirety upon the substantial completion of the first phase thereof. Thereafter, it shall be considered to be vested in its entirety.
- B. Failure to substantially comply with the detailed phasing plan contained in the MUP shall be a violation of the MUP and subject to revocation or modification per Chapter 23B.60.

23B.36.090 Findings

- A. In order to approve a MUP, the Board must make both the finding required by Section 23B.32.040.A and the following additional findings:
 - 1. The proposed project will be consistent with the purposes of this Chapter;
 - 2. The proposed project includes the applicable requirements of the Mitigation Monitoring Program adopted concurrently with this Chapter; and
 - 3. All new building within the proposed project must comply with the Bird-Safe Building Design Guidelines, as specified in SEIR Mitigation Measure BIO-1, to reduce the frequency of bird collisions in the area.
- B. For alterations of development standards and permitted uses under Section 23B.36.050.A the Board must find that the proposed project would confer measurable community benefits that affirmatively advance the purposes of this Chapter or the West Berkeley Plan in accordance with the requirements adopted by the Council per Section 23B.36.040, and that the applicant has agreed to enter into a binding commitment to do so.
- C. For alterations of Permitted Uses under Section 23B.36.050.A.7, the Board must find that the proposed project will maintain the overall industrial nature of the West Berkeley Area and the MUP site.
- D. For variations in the gross floor area allocated for specific uses under subdivision C of Section 23B.36.050, the Zoning Officer or Board must find that any proposed variation is consistent with the purposes of this Chapter.

- E. In order to approve a Master Use Permit that allows uses permissible in the M, MM, or MU-LI districts that are specifically prohibited in C-W or MUR districts to be located in the C-W or MU-R portions of the site, the Board must find that the proposed locations of those uses would not increase the incompatibility of uses, either within the site itself or between the site and surrounding area.
- F. In order to approve a Master Use Permit that contains buildings within the MU-LI or within 100 feet of either MU-LI or MU-R districts, the Board must find that the project
 - 1. would not substantially degrade the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes;
 - 2. would provide appropriate transition to minimize changes in scale from existing development to higher scale and more intense development; and
 - 3. would not cause an unreasonable shadow on any sensitive area.
- G. In order to approve a Master Use Permit adjacent to the boundary of Aquatic Park, the Board must find that the project will not unreasonably create shadows upon degrade the existing visual quality or character of, or pedestrian access to Aquatic Park.

Section 4. Amendment of Measure

The amendments adopted by the voters in this measure may be repealed or amended by the City Council without a vote of the people as long as any such amendments do not increase the aggregate amount of development allowed by this measure.

Section 5. Effectiveness

- A. Sections 2 and 3 of this measure shall not take effect until the Council adopts an ordinance that requires any development under Section 3 to provide at least one of the following community benefits:
 - 1. Retain and provide affordable work space for artists or funds for that purpose.
 - 2. Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.
 - 3. Provide access to and participation in jobs training programs designed to advance employment prospects for Berkeley residents, especially those living near or below the poverty line.
 - 4. Provide affordable work force housing in West Berkeley or funds for that purpose.
 - 5. Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
 - 6. Payment of prevailing wages for all construction work under the MUP.
 - 7. Provision of privately owned but publicly accessible

open space as part of the MUP.

8. Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
9. Require local sourcing of building materials to the extent feasible.
10. Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

B. Sections 2 and 3 of this measure shall not take effect until the Council adopts an ordinance that adopts:

1. a formula for determining the value of community benefits that will be required;
2. a process under which applicants for master use permits under Section 3 are required to demonstrate meaningful attempts to meet and consult with the affected community prior to filing an application; and
3. mechanisms for ensuring that the affected community is involved in evaluation of the adequacy of any proposed community benefits, that community benefits inure primarily to the benefit of West Berkeley, and that there is community involvement in overseeing provision of promised community benefits.

C. No MUP may be approved for any site abutting, confronting or adjacent to Aquatic Park until the Council adopts an ordinance adopting measures to protect and where possible improves the environmental, recreational and aesthetic qualities of Aquatic Park. Such measures shall include, but are not limited to the following elements:

1. Height limitations;
2. Floor area ration (FAR) limitations;
3. Setbacks;
4. Controls on runoff and site drainage;
5. Mitigation measures to avoid or lessen shadowing of Aquatic Park; and
6. Protection of significant views of and from Aquatic Park.

Section 6. Severability.

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

CITY OF BERKELEY MEASURE U

<p>U Shall an ordinance be adopted: establishing new agenda and meeting requirements for the City’s legislative bodies (Council, Rent Stabilization Board and all 36 commissions), including earlier agenda deadlines; increased disclosure requirements for public records; and creating a new commission with authority to take enforcement action against the City in case of violations? <u>Financial Implications:</u> Uncertain; annual costs are estimated between \$1,000,000 to \$2,000,000 depending on level of enforcement by commission and number of Council meetings.</p>	YES
	NO

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE U

This ordinance would add new agenda, meeting and records requirements on the City Council, Rent Stabilization Board, Board of Library Trustees and all 35 other boards and commissions (“Legislative Bodies”), and create a new commission.

It could be amended only by the voters, except time limits for public comment could be modified by consent of the City Council and the new commission.

New Commission

It would create a new commission that would have authority to sue the City to enforce the ordinance and would require the City to provide staff and legal counsel to the commission at City expense, apparently outside the normal budget process.

Agenda Process

It would:

- change the agenda process for all Legislative Bodies to conform to the longer Council agenda process;
- require additional notice for special meetings;
- allow the public by petition to add items to agendas (100 signatures for Council and Rent Stabilization Board; 50 for commissions).

Meetings

It would:

- expand public comment to allow speakers three minutes on each item;
- require the parliamentarian to make a recommendation as to any matter during a meeting that is challenged by the public as being out of order;
- require additional public notification of meetings where certain types of actions are proposed;
- increase testimony at hearings in land use, zoning, building and landmarks appeals;
- require Legislative Bodies to change venues or cancel and reschedule meetings if the number of

attendees exceeds the room’s capacity.

The ordinance would require all Legislative Bodies that conduct closed sessions to immediately report in open session all positions reached either by consensus or vote, the results of any vote, and then revote, even when disclosure is not otherwise required because no final action was taken.

Records

It would:

- define as “Lobbyists” all persons paid to influence City policy;
- require elected and appointed officials, Library Trustees, the City Manager and all department heads to post weekly calendars of all City-related meetings they attend, including by telephone;
- require disclosure of a greater range of documents, including some attorney-client communications; personnel records except as protected by state or federal law; staff drafts and memoranda; and contractor/vendor financial information;
- require conversion of City website and electronic information to formats accessible with open standards based software; and
- require the City to help persons requesting confidential information about third parties to request consent to disclosure of that information.

Material Effects

The ordinance would require the Council to meet more often, and may prevent or delay Council action on certain items due to the room capacity requirement noted above.

It would require disclosure of information that would adversely affect the City’s negotiating position in litigation settlements and possibly other matters.

Provisions granting the new commission authority to sue the City are inconsistent with Charter provisions granting sole authority over litigation to the Council.

City staff estimate the initial costs of compliance to be approximately \$35,000, with annual costs between \$1,000,000 and \$2,000,000.

s/ZACH COWAN

Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE U

Vote Yes on Measure U, the Sunshine Ordinance

No matter what the issue, or your opinion, you deserve *timely access to the same information* available to elected officials and City staff, the *opportunity to comment* in open meetings *before decisions are made*, and *prompt access to public records*.

Why is Sunshine Needed?

- The State has defunded the key Brown Act requirement to give notice of public meetings.
- Too many times people wait for hours in overcrowded spaces before being allowed to speak for a minute or two on complex issues that differ from those previously announced, or they are locked out entirely and silenced. Too often reasonable requests for public records are denied.
- Enforcement is absent except through costly lawsuits and referenda.

Is Sunshine Enforcement Expensive?

Measure U provides for an Early Alert System to *immediately correct sunshine violations*, and a Commission process to fairly resolve disputes *without* costly lawsuits.

Will Sunshine Bring Berkeley to a Halt? NO!

Measure U respects the public by allowing 3-minute public comment, requiring advance planning, ensuring an adequate sized meeting place, providing for equal time for all sides in land use public hearings, and a method to adjourn meetings by 11:00 pm. If the comment rule results in unreasonably longer meetings, the Measure provides a way to change it. Requiring advance planning for an adequate sized meeting place is common sense.

Is Sunshine Environmentally Friendly?

ABSOLUTELY!

Council packets are now printed form. Going paperless saves trees and reduces waste collection costs. City employees will no longer need to retrieve records from storage in Livermore.

Measure U saves money, helps the environment and ensures your inalienable right to know what your government is doing.

Vote Yes on Measure U, the Sunshine Ordinance,

Everyone Needs It!

s/Shirley Dean

Former Mayor, City of Berkeley

s/Patrick Sheahan

Planning Commissioner, City of Berkeley

s/Martha Nicoloff

Author – Neighborhood Preservation Ordinance

s/Jacquelyn McCormick

Mayoral Candidate, Berkeley Council Watch, Berkeley Budget SOS

s/Dean Metzger

Chair Person – Berkeley Sunshine Committee, & Pass President of CENA

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE U

Measure U is NOT needed. Berkeley has always encouraged resident participation. Everyone already has access to the information that Measure U purports to provide. Berkeley has complied with the requirements of California's Brown Act for decades and has gone further, mandating government transparency with our own 2011 Open Government Ordinance. Measure U adds nothing but layers of bureaucracy.

Is Measure U expensive? The City Manager's cost estimate is \$1 to 2 million per year – or more – depending on how much new litigation results because of Measure U. Given the city's limited resources, how can we justify spending so much on unnecessary requirements that will waste staff time and inevitably delay the performance of essential day-to-day government service?

Will Measure U bring Berkeley to a halt? Not to a halt. But, the many unreasonable requirements placed on public officials and staff will take time away from managing the City's services, projects, and finances effectively and efficiently. The proposed Measure U Commission would exercise authority over all City employees, elected officials, and volunteer board members and commissioners, but would be accountable to no one.

Does Measure U make Berkeley more environmentally friendly? Berkeley has received national recognition for being at the forefront of environmental action. The City Clerk's work plan already includes paperless Council packets in 2013. We don't need Measure U to get us there.

Measure U is expensive, extreme, unnecessary and destructive.

Vote NO on Measure U.

s/Sherry Smith

President, League of Women Voters of Berkeley, Albany & Emeryville

s/Ann-Marie Hogan

City Auditor

s/Winston Burton

Chair Berkeley Board of Library Trustee

s/Karen Hemphill

Berkeley School Board Director

s/Loni Hancock

State Senator

ARGUMENT AGAINST MEASURE U MEASURE U IS BAD FOR BERKELEY

Measure U would shift funds away from essential services at a time when budget shortfalls have already forced the City to make huge cuts. It would cost \$1-2 million/year or more to comply with the new requirements and create a new commission with costly unlimited access to legal counsel (Section 1.30.440).

It would create a new Commission with unprecedented power and no accountability.

And the Measure is not necessary. Berkeley already has an Open Government Ordinance and commission with a similar purpose.

The new Commission would have unreasonable power, accountable to no one. It could:

- Remove and replace commissioners, normally a function of *elected* councilmembers. (1.30.400)
- Take court actions affecting city staff, boards and commissions. (1.30.480)
- Hire costly outside counsel – at taxpayer expense – and sue the City, councilmembers, volunteer commissioners, or staff, based on commission decisions, complaints, meetings procedures, or other requirements of the measure. (1.30.440; 1.30.480)

Gridlock would result from laborious new requirements to:

- Assign staff to comply with every citizen request, regardless of staff's other duties or the urgency of the request. Under state law, cities may balance one person's request with the broader community interest. (1.30.340)
- Provide written reports of all meetings – even one-on-one informal phone and email contacts – with any member of local, regional, or state bodies. (1.30.210)
- Allow anyone to place items on agendas of Berkeley's boards/commissions with a small number of unverified signatures. (1.30.080 C)

Creating mountains of paperwork, a maze of requirements, and a commission with unprecedented powers is no way to improve government responsiveness. These provisions – creating so much unproductive work – would waste resources and compromise essential service delivery.

No other city has such extreme and expensive provisions. SAY "NO" TO MEASURE U.

s/Loni Hancock
State Senator

s/Linda Maio
Vice Mayor

s/Weldon Rucker
Former City Manager

s/Ann-Marie Hogan
City Auditor

s/Sherry Smith
President, League of Women Voters of Berkeley, Albany & Emeryville

REBUTTAL TO ARGUMENT AGAINST MEASURE U

DON'T FALL FOR THEIR FEAR OF CHANGE YES ON MEASURE U

Would you trust a banker to write banking regulations? Claiming that the existing ordinance makes Sunshine unnecessary does just that. Sunlight is the only antidote to secrecy.

Myth: *It's unnecessary, "Berkeley already has an Open Government Ordinance."*

Fact: There is no enforcement under the existing ordinance to hold City officials accountable for violating citizens' rights.

Myth: *"U" takes money from essential services.*

Fact: Freedom of information is an essential service. Projected costs are inflated and do not account for the costs of the existing ordinance, or the savings from putting records online.

Myth: *Moving meetings to appropriately-sized venues disrupts the City.*

Fact: "U" requires advance planning so that citizens won't be locked out and silenced.

Myth: *"No other city has such extreme and expensive provisions".*

Fact: Making existing open government laws enforceable, "U" will be the strongest ordinance of its kind.

Myth: *"U" will lead to costly court battles.*

Fact: The Sunshine Ordinance has checks and balances to prevent lawsuits.

Myth: *Responding to "every citizen request" for public information is an unfair burden.*

Fact: California law already requires that every citizen's request be answered. "U" requires an explanation for withholding records.

Myth: *Everyone will have to write reports even for informal contacts.*

Fact: Reports are only required for meetings at which someone is officially representing Berkeley.

Measure U removes the maze that citizens face obtaining information, guarantees rights at public meetings and eliminates paper.

"YES"ON U

www.berkeleysunshine.org

s/Ronald Yee
MBA-Tax, Certified Public Accountant

s/Adolfo Cabral
Candidate for City Council District 2

s/Shannon R. Brown
Retired University Administrator

s/Beverly Doane
Treasurer, Claremont-Elmwood Neighborhood Assn.

s/Dean Metzger
Chair Person – Berkeley Sunshine Committee

FULL TEXT OF MEASURE U

Introduction

Section 1.30.010 Title of Chapter.

This Chapter of the Berkeley Municipal Code shall be known as the Berkeley Sunshine Ordinance.

Section 1.30.020 Findings.

A. Democracy in our representative form of government requires thoughtful and meaningful public participation. To fulfill this requirement, the people must have timely access to the same information on issues as is available to our elected officials and City staff, the opportunity to comment in open meetings on these issues before decisions are made, and prompt access to all public records.

B. Because these requirements are not currently being met, a deficit of trust in government has occurred and is growing. State laws like the Brown Act and California Public Records Act help, but do not go far enough. Too many requests for public records are denied. Not enough time is given to the public and decision-makers to read and understand essential reports and testimony regarding issues. Inadequate information leads to escalating misunderstandings and a lack of civility in interactions between City staff, elected and appointed officials, and the public. Important actions are announced rather than arrived at in open meetings. The public has been denied access to open meetings too many times. Speaking rules at meetings constantly change. Important regional government decisions that greatly affect the quality of life and economic well-being of our residents and businesses are made without their knowledge.

C. Despite requests, our City government has not demonstrated interest in finding solutions that will correct these problems. Today, the only redress available to people is through expensive private lawsuits or referenda that are wasteful and costly for both City and citizens.

D. We have the opportunity to lessen environmental impacts by reducing the mounting use of paper while also reducing operating expenses through greater reliance on electronic systems. In today's atmosphere of rapidly changing technology we are in urgent need of a careful guide into a future that ensures governmental transparency and provides more and quicker access to information at significantly less expense.

Section 1.30.030 Purpose.

The purpose of this Chapter is to codify the City's policy regarding public participation in the deliberations of the City's Legislative Bodies, to ensure public access to Public Records, to declare the intent to expand such participation and access beyond that required by current City law and practice and to the maximum extent permitted by State and Federal law, and to establish a mechanism for the enforcement of the rights set forth in this Ordinance.

Section 1.30.040 Applicability.

The provisions of this Ordinance supersede other Berkeley ordinances that address the same issues to the extent they are inconsistent with this Ordinance.

Section 1.30.050 Definitions.

The words and phrases defined in this Section shall, for the purpose of this Ordinance, have the meanings specified below.

A. "Agenda" means a document that informs the public about a Meeting, published in advance of the Meeting which at a minimum (1) identifies the Legislative Body conducting the Meeting, (2) specifies the time and location of the Meeting, (3) lists each item of business to be discussed or transacted and describes the proposed action for each such item, and (4) lists all relevant Supporting Documents for each such item.

B. "Agenda Packet" means the Agenda of a particular Meeting with all its relevant Supporting Documents.

C. "City" means the City of Berkeley, California.

D. "City Council" means all members of the principal Legislative Body of the City as described in the City's Charter.

E. "Closed Session" means a Meeting that begins with a public comment period, followed by a session that excludes the public under the requirements of State and Federal law, and ends with an open session at which a public report is made regarding that part of the Meeting that excluded the public.

F. "Commission" means the Sunshine Commission established in Section 1.30.380.

G. "Community Newspaper" means a newspaper that is published at least forty-five (45) times per year, distributes at least ten thousand (10,000) copies of each issue in the City of Berkeley, and devotes at least fifty (50) percent of its news coverage to Berkeley issues on a regular basis. If no newspaper meeting this definition exists, the Sunshine Commission shall determine what constitutes a Community Newspaper.

H. "The Custodian of Records" means the City Manager.

I. "A Custodian of Records" means a person or persons appointed or approved by the City Manager to be in charge of the records of any department or other entity subject to this Ordinance.

J. "Deadline" means the time and/or date by which an action is required to be completed. Unless otherwise specified, the time period allowed for an action shall be computed in calendar days. When computing a Deadline forward from a Meeting or other event, the first day counted shall be the day after the Meeting or event, and if City offices are closed on the last day counted, the following work day shall be the Deadline. When computing a Deadline backward from a Meeting or other event, the first day counted shall be the day before the Meeting or event, and if City offices are closed on the last day counted, the preceding work day shall be the Deadline.

K. "Legislative Body" means any of the following: All governing bodies of the City, including but not limited to, the City Council, Rent Stabilization Board, Library Board of Trustees, Redevelopment Agency, Housing Authority, and all City commissions, committees, and boards including private corporations or entities such as the Energy Services Corporation or similar bodies, or other bodies as

defined in California Government Code Section 54950 - 54960 and its successor Sections.

L. "Legislative Committee or Subcommittees" means a temporary, informal committee or subcommittee of less than a Quorum of members of the Legislative Body, which meet at least two times with members of other Legislative Bodies and/or Staff about a particular issue for the express purpose of formulating recommendations regarding that issue to the Legislative Body.

M. "Lobbyist" means a person or entity that receives compensation for influencing legislative or administrative action or that compensates its employees or members for their lobbying activities.

1. "City Lobbyist" means a person or entity that is designated to represent the City before any person, office, Legislative Body, or other entity.
2. "Special Interest Lobbyist" means a person or entity that is paid by and represents any non-City agency, organization, or entity seeking to influence City policy.

N. "Meeting" means a gathering of a Quorum or more of the members of a Legislative Body at a specified time and place, including by teleconferencing or other technology, to hear, discuss, deliberate, or act on any matter that is within the subject matter jurisdiction of the Legislative Body, as defined in California Government Code Section 54950— 54563 as of the effective date of this Ordinance and their successor Sections.

O. "Minor Correction" means a correction that consists only of a change in spelling or grammar with no significant change in meaning.

P. "Public Records" means any writing containing information relating to the conduct of the public's business regardless of its physical form or characteristics, which is prepared, owned, used, or retained by any State or local agency.

Q. "Quorum" means a majority of the total authorized membership of a Legislative Body, but may be more than a majority if expressly required by this or another ordinance.

R. "Staff" means the City Manager, department heads, employees of all entities in the City Charter, directors and employees of Legislative Bodies, employees and volunteers in the offices of elected officials, and contractors.

S. "Supporting Documents" means all Public Records, regardless of form or medium or author, which are provided to members of a Legislative Body for their use in considering Agenda items for a particular Meeting, along with all communications that have been timely received for that Meeting.

Meetings

Section 1.30.060 Meetings to be Open.

A. All Meetings of Legislative Bodies and Legislative Committees and Subcommittees shall be open and public, except as required in Section 1.30.180 regarding Closed Sessions or by applicable State or Federal law. No payment shall be required from those desiring to attend a Meeting.

B. No decision shall be made by a Legislative Body in

other than open and noticed Meetings, except as specified by State or Federal law. Any use of direct communication, personal intermediaries, or technological devices that is employed by a Quorum of a Legislative Body to develop a collective concurrence as to action to be taken on an item by the members of that Legislative Body is prohibited. No Staff member or member of a Legislative Body shall lobby or privately brief a majority of the members of that same Legislative Body, either as a whole or serially, to propose, oppose, or otherwise discuss any recommendation or Agenda item pending or to be submitted to such Legislative Body.

C. To ensure that business is conducted in the open, Legislative Bodies shall meet continuously during discussion of each Agenda item, except as shall be necessary for the person retained to provide captioning services for the Meeting.

D. When an item is continued to a future Meeting of a Legislative Body, each member of the body shall, at that subsequent Meeting, disclose the content of any intervening conversations with other members of the body, Lobbyists, and Staff pertaining to the held-over item that took place during the continuance, and as provided for in 1.30.170.

Section 1.30.070 Time, Place, and Frequency of Meetings.

A. Each Legislative Body shall establish a time for regular Meetings when a significant portion of the public is able to attend. Meetings shall be held in a place that is of sufficient size for those attending, is accessible for the physically disabled, provides for adequate amplification, and where possible, has video transmission capability, audio, and video-streaming.

B. All Meetings shall be held in the City of Berkeley, unless the City Council finds, in advance of a Meeting, that the City's interest is likely to suffer if the Meeting is held within the city limits.

C. If a Meeting is likely to be attended by a large number of members of the public, the Agenda scheduling process for each Legislative Body shall provide for holding the Meeting in a venue large enough to accommodate the numbers anticipated to attend and that meets the requirements of this Section.

D. Where a Legislative Body determines that the regular Meeting location does not meet the requirements of Subsection A above, the Legislative Body shall, by its own motion, either cancel or change the location of the Meeting provided that prominent and timely notices are posted at the original site.

E. A meal or other gathering of a Quorum of a Legislative Body immediately before or during a Meeting of the Legislative Body is part of that Meeting and the public shall be permitted to hear and observe the gathering.

F. A sufficient number of regular Meetings of Legislative Bodies shall be held throughout the calendar year to ensure the City's business is completed in a public and timely manner in accordance with the provisions of this Ordinance.

Section 1.30.080 Submitting Items for the Regular Meeting Agendas.

A. Each Legislative Body shall establish a process for placing items, including presentations, on its own regular Meeting Agendas and designate a contact person responsible for receiving proposed Agenda items and Supporting Documents. Applicable procedures shall appear on the City's website and on each Agenda.

B. Any procedure for setting the Agenda by a Legislative Body shall provide for public participation with timely notice in compliance with this Ordinance.

C. With the exception of appeals from a quasi-judicial decision, any member of the public may place an item under the purview of a Legislative Body on the Agenda of that body by presenting the item to the designated Agenda contact person, with one hundred (100) or more signatures of Berkeley residents for an elected Legislative Body or fifty (50) or more signatures of Berkeley residents for a non-elected Legislative Body. Items submitted by the public shall be placed on the Action Calendar and cannot be moved to the Consent Calendar. Once such an item has been acted upon by the Legislative Body, subsequent items that are substantially the same may not be submitted for a period of one year, except on a showing of significantly changed circumstances.

D. All proposed Agenda items submitted in accordance with the Deadlines specified in Subsection E below shall appear on a regular Agenda of the Legislative Body that takes into consideration the timeliness of the item.

E. Deadlines for submission of Agenda items and related Supporting Documents for regular Meetings of Legislative Bodies shall be as follows:

1. Except for old business and citizens' petitions for recalls, initiatives, and referenda that have been certified as having qualified for the ballot, all items to be considered for placement on the regular Meeting Agenda of a Legislative Body shall be furnished to the Agenda contact person no later than 12:00 noon, twenty (20) or more days prior to the Meeting for which the items shall appear on the Agenda.
2. Information regarding all items submitted for an Agenda shall be available to the public no later than 5:00 PM, twenty (20) or more days prior to the Meeting for which the items shall appear on the Agenda. This information shall be in the form of a list that includes the sponsor's name, title, and proposed action for each item. The information shall be posted on the City's website and placed in written form in the office of the Agenda contact person and shall include the date, time, and place of any Meeting at which the draft Agenda will be discussed and the final Agenda determined.
3. All Supporting Documents for Agenda items shall be submitted to the Agenda contact person no later than noon, fifteen (15) days prior to the Meeting for which the items shall appear on the Agenda.

4. The Agenda contact person shall not accept any new or revised item or revised Supporting Document for inclusion on the Agenda of a regular Meeting after the established Deadline.
5. Draft Agendas shall be finalized by noon, twelve (12) days prior to a Meeting.

Section 1.30.090 Agenda Content

A. Every Agenda shall contain statements regarding disability-related accommodations and a statement regarding the right of all persons to address the Legislative Body or Committee/Subcommittee in accordance with the requirements of this Ordinance.

B. Agenda items shall be written in easily understood language without undefined abbreviations or acronyms and should at a minimum provide the following information: an accurate description of the subject matter, recommended action, fiscal impact, the website, and other locations at which Supporting Documents and related documents can be found, and contact information.

C. When items are withdrawn from the Agenda of a Legislative Body before publication of the final Agenda, the Agenda shall state the reason for withdrawal. Notice of such withdrawals shall also be posted on the City's website as soon as possible.

Section 1.30.100 Documents Submitted by Members of the Public, Addressed to a Member or Members of a Legislative Body or to the Secretary of the Legislative Body for Distribution.

A. Documents that are received at least twelve (12) days before a regular Meeting shall be included in the Agenda Packet to be issued eleven (11) days in advance of the Meeting and shall be posted as described in Section 1.30.260.

B. Documents received after the twelfth (12th) day and through the fifth (5th) day prior to a regular Meeting shall be included in Supplemental Agenda Communications Packet #1, placed in a viewing binder available to the public, and made available as described in Section 1.30.260.

C. Documents received after the fifth (5th) day and prior to 12:00 noon on the day of the regular Meeting shall be included in Supplemental Agenda Communications Packet #2 which shall promptly be posted on the City's website and made available to the public in the appropriate department office. Copies shall be available at the Meeting.

D. Documents received after 12:00 noon on the day of the regular Meeting, including during the Meeting, shall be included in Supplemental Agenda Communications Packet #3. When a document is submitted by a member of the public at the Meeting, it shall be distributed to members of the Legislative Body immediately upon submission, if thirty (30) copies have been provided: twenty (20) for the Legislative Body and Staff, plus ten (10) copies for the public. If fewer than thirty (30) copies have been provided, the document shall be placed in Communication Packet #3. All such documents shall be available for review by members of the public by 3:00 PM, two (2) business days

following the Meeting.

Section 1.30.110 Draft Agendas for Regular Meetings of Legislative Bodies.

A. On the fourteenth (14th) day prior to the regular Meeting, the Agenda contact person shall post a draft Agenda for that Meeting, as described in Section 1.30.260.

B. The draft Agenda for a regular Meeting shall contain a prominent notification that the Agenda is subject to change up until noon of the twelfth (12th) day prior to the subject Meeting.

C. The Agenda contact person shall maintain a record indicating the location, date, and time of posting of each draft Agenda.

Section 1.30.120 Final Agendas for Regular Meetings of Legislative Bodies/Legislative Committees or Subcommittees.

A. On the eleventh (11th) day prior to the Meeting of a Legislative Body to which it applies, the final Agenda and links to obtain Supporting Documents in the Agenda Packet shall be posted as described in Section 1.20.260.

B. Seventy-two (72) hours prior to the meeting to which it applies, the Agenda of a Legislative Committee or Subcommittee shall be posted as described in Section 1.30.260.

C. Each Agenda contact person shall maintain a record indicating the location, date, and time of such posting.

Section 1.30.130 Distribution of Final Agendas and Agenda Packets for Regular Meetings of Legislative Bodies.

No later than eleven (11) days prior to a regular Meeting, the Agenda contact person shall distribute the Agenda Packet to each member of the Legislative Body, and if requested, to members of the press. A copy shall also be placed in a viewing binder in the office of the Agenda contact person and in each Berkeley public library. Copies of the Agenda shall be mailed to any person who has requested it in writing.

Section 1.30.140 Action Requirements for Legislative Bodies.

A. No ordinance, resolution, or motion of a Legislative Body shall be deemed approved without receiving at least the number of affirmative votes equal to that of a Quorum for that body, except as may be specified by other provisions of this Ordinance.

B. No discussion or action by the Legislative Body shall be taken on any item not appearing on the Agenda. However, the Legislative Body may refer such a matter to Staff or request that the matter be placed on a subsequent Agenda.

C. No Agenda item shall be considered at the Meeting if the item's Supporting Documents are not included in an Agenda Packet that is timely received in accord with Section 1.30.100.

D. With the exception of Minor Corrections, no change to Agenda items or their Supporting Documents may be made once the final Agenda has been published as specified above.

E. Staff may not make oral reports to Legislative Bodies in lieu of written reports, but shall be available at Meetings to answer questions.

Section 1.30.150 Legislative Body Meeting Agenda Sequence.

A. Each Legislative Body shall set its own Meeting Agenda sequence of business. This sequence may be amended from time to time by a majority vote of the body after holding a noticed public hearing.

B. However amended, the Meeting Agenda Sequence for every Legislative Body must always satisfy the following:

1. Public comment on each Agenda item and Non-Agenda items shall be as set forth in this Ordinance. At regular Meetings, public comment on Non-Agenda items by up to ten (10) speakers shall occur at the beginning of the Meeting with priority given to individuals with disabilities and special needs, the elderly, and those accompanied by small children. Additional speakers wishing to speak on Non-Agenda items shall be accommodated during the latter part of the Agenda under the same protocol.
2. Ceremonial matters, if any, shall be limited to a maximum of fifteen (15) minutes.
3. Reports on meetings of regional bodies and other agencies as described Section 1.30.210 if any, shall be placed on the Agenda as information items where they are subject to public comment and movement to action for discussion at the request of a single member of the Legislative Body.
4. Decisions regarding appeals, if any, shall not be placed on the Consent Calendar.

C. The order of individual Agenda items shall not be changed during the Meeting, except by a majority vote of the Legislative Body, before which members shall state their reasons for the record.

D. It is the intent of this provision that all Agenda items be completed prior to 11:00 PM. At approximately 10:00 PM, the Legislative Body shall assess what Agenda items remain to be completed and whether any need to be continued to another Meeting. The Meeting may be extended by a two-thirds (2/3) affirmative vote of the members of the Legislative Body. Any motion to extend the Meeting shall include a list of Agenda items to be covered during the extended time and shall specify the order of those items. Speakers on Non-Agenda items shall be heard after Agenda items, even if after 11:00 PM. The Legislative Body shall not adjourn until public comment on Non-Agenda items has been completed.

Section 1.30.160 Public Speech Rights During Meetings.

A. At the beginning of each Meeting of a Legislative Body, the presiding officer shall inform the public that their rights under this Section are posted on the Agenda and at the entrance of the Meeting room.

B. Any person attending a Meeting of a Legislative Body shall be provided an opportunity to speak for three

(3) minutes on each Agenda item prior to any action by the body and in the case of a regular Meeting for two (2) minutes on a Non-Agenda item. Up to four (4) speakers on Agenda or Non-Agenda items may combine their time when each of such speakers is present at the Meeting. The provision for public speaking times in this Section may be amended by an affirmative, unanimous vote of the membership of the Sunshine Commission and an affirmative, unanimous vote of the membership of the City Council following a public hearing on the subject.

C. Any person attending a meeting of a Legislative Committee/Subcommittee shall be provided an opportunity to speak for a time as determined by the members of the Legislative Committee/Subcommittee.

D. Legislative Bodies shall not prohibit orderly public criticism of the body either by verbal comment or by holding signs.

E. Speakers have the right to use presentation tools, which shall be provided by the City, if available, and when requested five (5) business days in advance of a Meeting date.

F. The public has the right to alert a Legislative Body or a Legislative Committee/Subcommittee about a violation of this Ordinance or other procedural regulations by the following means:

1. At any time up to and including during the Meeting of a Legislative Body, if a matter is considered to be a violation of this Ordinance or the Legislative Body's procedural requirements, a member of the public may submit a complaint to the secretary of the Legislative Body on a Sunshine Alert form developed by the Commission.
 - a. If the Alert is received before the Meeting, the secretary shall transmit the Alert form to appropriate Staff who shall inform members of the body in question.
 - b. If the Alert is received during the Meeting, the secretary shall submit the Alert to Staff designated to act as Parliamentarian. The Parliamentarian shall announce the substance of the Alert when the item in question is before the body and his/her recommendation as to what action, if any, should be taken.
 - c. The Alert and the action which followed shall be reported to the Commission.
2. Alerts received either before or during a meeting of a Legislative Committee/Subcommittee shall be submitted directly to the Commission with a request for their recommendation as to how to proceed.
3. The Commission shall prepare a follow-up report on each Alert received and place it on the Agenda for the next Meeting of the appropriate body that satisfies the requirements of Section 1.30.080.

Section 1.30.170 Procedures for Public Hearings.

A. For all public hearings, Staff shall introduce the public hearing by briefly summarizing their submitted report.

B. For Legislative Bodies that hold public hearings on zoning, land use, landmarks, and building code matters, following the Staff summary each member of the Legislative Body shall verbally disclose all *ex parte* contacts concerning the subject-of the hearing. Members shall also submit a report of such contacts in writing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the secretary to the Legislative Body prior to the Meeting and placed in a file available for public viewing at the Meeting.

C. In City Council consideration of whether land use or building code appeals should be dismissed, remanded, or set for public hearing or in holding a public hearing on these matters, the procedure shall be as follows:

1. Applicants, appellants and real parties in interest shall be considered to be the primary speakers.
2. Primary speakers may be represented by others for all or part of their statement times.
3. In some cases the applicant may be an appellant. There may also be cases in which there are multiple appellants and/or real parties in interest. Real parties in interest may either support or oppose the position of the applicant.
4. The intent of this provision is to ensure that primary speakers have equitable treatment and sufficient time to present their cases. The Council shall not lower the time limits for statements given below, but if any party speaks more than the time allocated, then the other party or parties shall be given the same amount of time.

D. In determining whether an appeal should be dismissed, remanded, or set for public hearing, the times for statements shall be as follows:

1. All primary speakers shall have five (5) minutes to make a statement restricted to which of the three (3) options before the Council should be chosen.
2. Public comment shall follow as provided for in this Ordinance.

E. When a public hearing is held by the City Council regarding a land use or building code appeal, the speaking times for primary speakers shall be as follows:

1. The applicant and any primary speaker supporting the applicant's position shall each have five (5) minutes to present his/her case. Following this, each primary speaker opposing the applicant's position shall have five (5) minutes to present his/her case.
2. Following this, all primary speakers shall each have at least five (5) minutes to rebut the issues raised with the following stipulations: The total time granted to the applicant and primary speakers in favor of the applicant's position shall be equal to the total time granted to primary speakers opposing the applicant's position. Furthermore, the time shall be divided equally between all parties on each side.
3. Members of the public shall then comment.

4. After all public comment has been received, one (1) person representing the applicant, one (1) person representing each appellant (when different from the applicant), and one (1) person representing each, real party in interest are entitled to sit with Staff at the Staff table with opportunity to answer questions and respond to comments made by members of the Staff or the Council.

F. After hearing testimony and public comment, the Legislative Body may close a public hearing or continue it to another specified date. Action following the close of a public hearing shall take place at the next Meeting of the Legislative Body to allow members of the Legislative Body time to consider the testimony and any new information received at the hearing. If it is legally required to take action at the same Meeting following the receipt of testimony, the Legislative Body shall state the reason for doing so before acting upon the subject of the public hearing.

Section 1.30.180 Closed Sessions.

A Legislative Body shall only meet in Closed Session when doing so is specified by State or Federal law. The procedures for Closed Session shall be as follows:

A. Before any Closed Session, a Legislative Body shall meet in open session for the purpose of taking public comment solely on the subject(s) of the Closed Session.

B. Any member of a Legislative Body attending a Closed Session by teleconferencing is required to state at the beginning and end of the Closed Session that he/she is participating with no other person present and to file a signed statement to that effect under penalty of perjury, except that for the following circumstances. If a member of a Legislative Body is disabled and needs assistance to participate in a Closed Session, the City shall provide a Staff assistant who is authorized to attend the Closed Session. Additionally, any specialized attendant or assistant, whom a disabled Council Member needs to have present in order to participate fully in the Closed Session shall be allowed to attend the Closed Session.

C. For Closed Sessions on litigation matters, the Agenda shall list the parties involved, the actions being considered, and court case numbers, if assigned.

D. For Closed Sessions on real property negotiations, the Agenda shall identify the property by address, parcel number, and proposed purpose. Disclosure of the source(s) of payment for the property must be specified when negotiations are complete.

E. All Closed Sessions of any Legislative Body shall be audio recorded in their entirety and made a part of a record of the Meeting. Closed Session tapes shall be archived in the custody of the City Attorney. These recordings and any other records of the Closed Session shall be made available whenever all rationales for keeping the records confidential are no longer applicable.

1. Recordings of Closed Sessions of a Legislative Body convened due to anticipated legislation shall be released to the public under any of the following circumstances:
 - a. Two years after the Meeting if no litigation is

filed.

- b. Upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed.

- c. As soon as the controversy leading to anticipated litigation is settled or concluded.

F. All agreements for the purchase or sale of real estate, contracts with employees, and agreements with other Legislative Bodies and regional agencies discussed in Closed Session shall not be deemed approved until the vote is taken in an open Meeting. Agreements between the City and other entities regarding land use and transportation issues that have been discussed in Closed Session shall not be deemed approved or rejected until a public hearing has been held and a vote is taken following the hearing. Such items shall be placed on the Agenda of a subsequent regular Meeting in the same manner that any new item is placed on the Agenda of the Legislative Body.

G. Immediately following the end of the Closed Session, the Legislative Body shall make a report in open session describing all matters reached either by consensus or voted upon and the results of such votes, whether approved or not. This shall be followed by a re-vote in full view of the public.

H. The location of reports to the public after a Closed Session has ended shall be in a venue that is open to the public, and where possible, one that supports video transmission, audio, and video-streaming. The report on Closed Session actions shall be posted no later than the end of the following business day to the City's website and to all other places where the Agenda of the Legislative Body in question is posted.

Section 1.30.190 Special Meetings.

A. A presiding officer or three (3) members of a Legislative Body may call a Special Meeting with four (4) calendar days notice, but only for the purpose of considering a single item based on information that has come to light after the Agenda deadline for the last regular Meeting of the Legislative Body, which requires action prior to the next regular Meeting of the Legislative Body and which will do irreparable harm to the City if action is not taken before the next regular Meeting.

B. The reason and timing for the Special Meeting shall be printed on the Agenda for the Special Meeting. The Agenda along with its Supporting Documents shall be posted and available to the public, as provided for Section 1.30.260 no later than seventy-two (72) hours in advance of the Special Meeting.

C. At the beginning of the Special Meeting, after public comment is received, the Legislative Body shall vote on whether to proceed with the Special Meeting. The Special Meeting shall proceed only if two thirds (2/3) or more of the members are present and a Quorum of the Legislative Body votes affirmatively to proceed. Lacking the vote to proceed, the item on the Agenda will be deferred to the next regular Meeting that satisfies the requirements in Section 1.30.080.

Section 1.30.200 Emergency and Dire Emergency

Meetings.

State law defines the circumstances and procedures for noticing and holding two (2) levels of emergency meetings: an Emergency Meeting and a Dire Emergency Meeting. At the beginning of either an Emergency or a Dire Emergency Meeting, a majority of attending members of the City Council shall confirm the nature of the emergency or dire emergency and the business which is to be transacted. The circumstances under which such meetings may be held and the procedures for holding Emergency and Dire Emergency Meetings in the City shall be at a minimum those that were in effect under State law as of the effective date of this Ordinance.

Section 1.30.210 Reporting Requirements for Meetings of Local, Regional, State, and National Agencies, Institutions, and Other Entities.

A. When one or more persons acting as a representative of the City or any of its Legislative Bodies, attends a meeting in person or by use of technology at which an item affecting the City is discussed with another representative of or members of local, regional, state or national agencies, including but not limited to, Legislative Bodies, the University of California, Lawrence Berkeley National Laboratory, the University of California Board of Regents, and other institutions and entities, such representative shall, within five (5) business days following the meeting, provide a written report to be placed on the Agenda of the appropriate Legislative Body or Bodies. The report shall state the name of the person or group, the time, place, and purpose of the meeting, a summary of the discussion of any item that impacts the City, the positions expressed by the Berkeley representative, any action(s) or non-action (s) taken, and the vote(s), if any, of the Berkeley representative.

B. Within six (6) months after the enactment of this Ordinance, Staff, working in consultation with the Commission, shall include on the City's website, up-to-date, organized information on the ongoing activities of regional bodies and the University of California, Lawrence Berkeley National Laboratory, and the University of California Board of Regents, including website links to these agencies, their agendas and minutes, the City representatives' meeting reports, and information about activities of those entities that may be of significant interest to the residents of Berkeley.

Section 1.30.220 Audio or Video Recording and Broadcast of Meetings.

A. All Legislative Bodies shall record their Meetings with an audio recorder. Such recordings shall be permanently retained, be archived on the City's website and available to the public.

B. All regular and Special Meetings of the City Council, Redevelopment Agency, Rent Stabilization Board, and Zoning Adjustments Board held in the venue regularly used shall be audio recorded, televised and video-streamed live and archived for replay on the local government cable channel and on the Internet. Such web broadcasts shall be captioned with the captioned text displayed on the cable broadcast and as part of the video-stream. The captioner's

transcript of the Meeting shall be retained with the video recording.

C. The City shall annually make a good faith effort to add Meetings of the Planning Commission, Board of Library Trustees, Housing Authority, Landmarks Preservation Commission, and Housing Advisory and Appeals Board to those Meetings that are televised and video-streamed.

D. The requirement to cable broadcast and video-stream Meetings shall not apply if necessary equipment malfunctions or if a public Meeting is changed to a location that does not have the technological capacity to accommodate the cable, web broadcast, and captioning. However, an audio recording of the Meeting shall be made, and a written transcript shall be produced.

E. Any person attending a Meeting of a Legislative Body may record the proceedings with an audio, video recorder, a still or motion picture camera, or broadcast the proceedings; unless or until the body makes a finding that the recording creates an unreasonable and persistent disruption of the proceedings.

Section 1.30.230 Meeting Minutes.

A. For Legislative Bodies, the secretary of that body shall prepare the minutes of each Meeting. The minutes shall state the date and place of the Meeting, the time the Meeting was called to order, the names of the members present at the time the Meeting was called to order, the names and times of arrival or departure of any member of the Legislative Body arriving or leaving the Meeting after the call to order and before adjournment, the names of presenters and Staff who provided reports or comments, the names of other persons attending any Closed Session, Closed Session announcements, disclosures of any conflicts of interest and *ex parte* communications, a list of those members of the public who spoke on each matter (and their names, if the speakers identified themselves) a brief summary of each person's statement during the public comment period, the vote by name of each member on each matter considered by the body at the Meeting, and the time the Meeting was adjourned.

B. No later than six (6) business days after a Meeting draft minutes of a Meeting of a Legislative Body shall be posted on the City's website and be available for inspection and copying upon request. The minutes of a Meeting shall be officially adopted within sixty (60) days and available to the public no later than six (6) business days after the Meeting at which they are adopted.

C. For Legislative Committees/Subcommittees, a member or Staff, as designated, shall prepare minutes of each meeting. The minutes shall state the date, time, and place of the meeting, the names of all those present, a brief description of the discussion, and any action taken. Minutes shall be prepared for adoption at the next subsequent meeting, posted on the City's website and made available to the public in the office of the contact person of the appropriate Legislative Body.

Access to Public Information

For the purposes of this Ordinance, California

Government Code Sections 5260— 5270 (California Public Records Act) as of the effective date of this Ordinance, and their successor Sections, shall apply in addition to those provisions in this Ordinance.

Section 1.30.240 Responsibilities of Staff.

A. In addition to the duties assigned in other Sections of this Ordinance, whenever the City Manager issues an Annual Report on the City, such Report shall contain information on the rights of residents under this Ordinance, how those rights may be exercised, a summary of complaints filed under the Ordinance, and the results of any complaints. Further, the City Manager shall ensure that Staff is trained regarding their obligations under this Ordinance. The City Manager (herein referred to as The Custodian of Records) shall also designate in each department/office a departmental Custodian of Records (herein referred to as A Custodian of Records), who shall ensure that all Staff who have contact with the public are prepared to provide written and oral information to the public.

B. A Custodian of Records shall, during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s).

C. A Custodian of Records shall, as soon as possible and within ten (10) days following receipt of a request for a Public Record, comply with such request. If A Custodian of Records believes the record requested is not a Public Record, he/she shall state in writing the express provisions of law that justify withholding the record.

D. When a member of the public submits a written request for information to any paid or elected agent of the City, that agent shall respond to said request within two (2) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt of such referral.

E. Nothing in this Section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communication between members of the public, Staff, and members of Legislative Bodies.

Section 1.30.250 Responsibilities of the Mayor.

If the Mayor delivers a State of the City address, it shall be given in a disabled accessible venue with audio and video-streaming and transmission capabilities. The event shall be noticed, recorded, free to the public and open to all. The address shall include a report on the previous year's Sunshine complaints, how they were resolved, and a summary of any actions taken or pending related to provisions of this Ordinance.

Section 1.30.260 Notices and Posting of Information.

A. At a minimum, the following shall be posted on the City's website and provided in written form in the City Clerk's Office and at the reference desk of each Berkeley public library:

City Charter
Berkeley Municipal Code

Building Code
General Plan and Area Plans
Zoning Ordinance
Landmarks Preservation Ordinance
Sunshine Ordinance
Citizen's Guide to Public Information
Records Index
Records Retention Schedule
Council Rules of Procedure (when revised to comply with this Ordinance)
Commissioner's Manual (when revised to comply with this Ordinance)
Conflict of Interest Code
Statements of Economic Interest
Appointment Calendars
Agendas and Minutes of the Meetings of all Legislative Bodies

B. Each Legislative Body shall designate one or more physical locations to post notices. Designated posting locations shall be freely accessible to members of the public twenty-four (24) hours per day, visually prominent, and readable from the public right of way. Notices and Agendas shall be posted indicating links as to where Supporting Documents and other Agenda related documents may be found on the City's website. In addition, such documents shall be placed in each Berkeley public library.

C. At a minimum, within six (6) months after enactment of this Ordinance, each Legislative Body shall have posted on the City's website all current Meeting Agendas, minutes, and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each Legislative Body shall make reasonable efforts to ensure that its portion of the City's website is updated on at least a weekly basis.

D. Large documents, such as drafts and final copies of City budgets and records concerning environmental impacts, including but not limited to, those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website and made available at designated City offices with copies available for borrowing by the public at each Berkeley public library.

E. Notices shall be written in easily understood language without undefined abbreviations or acronyms and give a full description of the subject, applicable regulations, significant consequences of taking action or non-action, when and where the subject will be considered, opportunities for public comment, and where to obtain further information.

F. The Commission shall review public notices to ensure that they conform to the requirements of this Ordinance and work to improve publicly accessible information databases to ensure consistency, equity, timing, and extent of noticing for Meetings and other matters of public interest.

G. Right to notice regarding matters that may impact the physical environment shall be equivalent for residen-

tial and commercial tenants and property owners.

H. Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for Meetings on said projects.

Section 1.30.270 Public Records Index.

A. The City shall maintain a Public Records Index that identifies types of records maintained by departments and offices, including those of elected officials and Legislative Bodies. The Index shall be available to the public and organized under a uniform reference system that permits a general understanding of the types of records maintained, in which offices and departments, and for what periods of retention. The Index shall be sufficient to aid the public in making a focused inquiry regarding Public Records. The Index shall be posted on the City's website and available in written form in the City Clerk's office and in each Berkeley public library.

B. The Index shall classify each type of record as either: (1) "Open," meaning accessible to the public without exception and subject to immediate disclosure; or (2) "Partially Open," meaning possibly containing some exempt content, such that: review is required; or (3) "Closed," meaning that disclosure of the document is prohibited by State or Federal law. Each classification of a record as "Partially Open" or "Closed" shall identify the specific legal authority relied upon in assigning that classification.

C. The Custodian of Records shall be responsible for preparing and maintaining the Index. He/she shall report on the progress of developing the Index to the Commission on at least a quarterly basis until it is completed, which shall be no later than twelve (12) months from the enactment of this Ordinance. In identifying the types of records to be maintained, each department, office, Legislative Body, and public official is encouraged to solicit public participation in developing a meaningful Records Index. The completed Index shall be reviewed by the Commission and submitted for approval by the City Council.

D. The Index shall be periodically reviewed by Staff and Commission for accuracy and completeness.

E. A list of any change in the Index shall be noted on the City's website and posted in each Berkeley public library for a period of at least three (3) months.

Section 1.30.280 Public Review File.

Any document relating to City business sent or received by a member of a Legislative Body shall be part of the Legislative Body's Public Review File, which shall be organized in a manner that facilitates public access to the material. The Public Review File shall be maintained by a designated person for each Legislative Body and be accessible to any person during normal office hours. The City Clerk shall maintain a central registry of locations where Public Review Files can be accessed.

Section 1.30.290 Records of Officials: Appointment Calendars and Statements of Economic Interest.

A. All documents connected with City business that are prepared, received, or maintained by any elected or appointed City official, while in office, or by every department head are the property of the City. The originals of these documents shall be maintained in a professional manner and disclosed consistent with the Records Retention Ordinance and this Ordinance.

B. A calendar shall be maintained by all elected officials, the City Manager, the City Attorney, the Library Director and Trustees, the Rent Stabilization Program Director, and all department heads, listing by date, place, and time, all City-related meetings, appointments they make and meetings and conferences that they attend in person or by technological means. Such calendars shall be Public Records subject to disclosure, except for those parts, if any, specifically exempted by State and Federal law and shall be posted to the City's website prior to the close of business each week.

C. No later than April 15th of each year, the City Clerk shall post on the City's website all current and prior Statement of Economic Interest forms of members of Legislative Bodies, the City Manager, City Attorney, Rent Stabilization Program Director, and department heads.

Section 1.30.300 Contributions to the City.

A. Any gift of funds, goods, or services worth more than one hundred dollars (\$100.00) in aggregate, which may be accepted or collected by the City or any of its functionaries or Legislative Bodies, for the purpose of carrying out or assisting any City function, shall be disclosed and approved on the Agenda of a regular Meeting of the City Council.

B. A list of such donations by donor, type, and amount shall be part of the Public Review File of the City Council.

C. A record of any gift of any size, distributed to any office or department, shall be part of the Public Review File of that office or department.

Section 1.30.310 Reports of Lobbying.

A. Any City Lobbyist shall file a quarterly report with the City Clerk, which shall be a Public Record. Each quarterly report shall identify all City-related financial expenditures by the Lobbyist, including name of each recipient, date, and the action that the Lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be cause for termination of the contract for representation. The City Clerk shall post on the City's website a direct link to the disclosure forms that the City's Lobbyists file with the appropriate State and/or Federal agencies.

B. Special Interest Lobbyists shall file a report with the City Clerk, specifying by City-related issue all the dates, places, and names of the members of the Legislative Body they have contacted and the direct and indirect compensation received from their clients for such matters. This report shall also include, but not be limited to, fundraising activities conducted on behalf of elected City officials, contributions to persons and organizations, and payments received for services as a consultant to any City Legislative Body. No person who qualifies as a Special Interest Lobbyist shall contact any elected official of the City

without first registering with the City Clerk and complying with the disclosure requirements of this Section. The City Council may establish a registration fee.

Section 1.30.320 Types of Information Accessible by the Public.

It is the intent of this Ordinance to provide for the disclosure, upon request, of all Public Records in printed or electronic form to the maximum extent permitted by State and Federal law and, wherever permitted, to waive the City's right under State law to withhold disclosure in certain circumstances. Accordingly, disclosure shall be made in all cases where not specifically forbidden by State and Federal law, including but not limited to, the following:

A. Drafts and memoranda or written communications or drafts thereof between Staff, members of Legislative Bodies, and/or third parties shall be subject to disclosure at the time a final recommendation is delivered. Draft versions of an agreement being negotiated between the City and third parties must be preserved and made available for public review beginning fifteen (15) days prior to the presentation of the agreement for approval by a Legislative Body.

B. Litigation records and attorney-client communications shall not be subject to disclosure to the extent that they are protected from disclosure by State and Federal law. Other communications relating to the subject matter of such protected communications are Public Records, including without limitation pre-litigation claims against the City, records received or created by a department in the ordinary course of business that were not subject to the attorney-client privilege at the time of their creation, and amounts paid by or to others in connection with claims by or against the City. When litigation involving the City is finally adjudicated or otherwise settled, the text and terms of any settlement shall be subject to disclosure. No attorney representing the City shall solicit or agree to any settlement provision that would restrict disclosure of terms or communications between each party after settlement and any such provision shall be void.

No communication with a legal advisor to the City shall be exempt from disclosure as confidential attorney-client communication to the extent that it concerns an actual or potential conflict of interest, analyzes a proposed legislative position or administrative action of the City, or reports on the status of negotiations relating to a claim by or against the City.

C. Personnel Records, including but not limited to, those listed below shall be disclosed, except for those portions which are exempt from disclosure under State or Federal law.

1. Job descriptions.
2. Salary, benefits, and overtime pay provided to each current employee by name and position.
3. Pension and benefits provided to each retired employee by name and position.
4. Communications with a recognized employee organization.

D. Law enforcement reports prepared by the Berkeley

Police Department are Public Records and must be disclosed, except as barred under State and Federal law, particularly as related to juveniles, domestic violence, and sex-related crimes and as specified below.

1. Identifying information of a victim of a crime of sexual assault shall not be made public without the express written permission of that person.
2. Parts of non-exempt police reports may be redacted to exclude material that would endanger the safety of a person or compromise the completion of an investigation. When such a redaction is made, a written explanation shall be provided.

E. Responses and other financial and qualifying documents relating to contracts, bids, and Requests for Proposals or Qualification shall be open to inspection immediately after the deadline for submittal has closed or the City has decided not to proceed.

F. All records concerning potential environmental impacts generated or received by the City, including but not limited to documents resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), for projects wholly or partially within the City of Berkeley shall be made available to the public in any requested available format in accordance with Section 1.30.370.

Section 1.30.330 Access to Records.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of State or Federal law. If the record requested contains both exempt and non-exempt information, then the exempt information shall be masked, but not removed and the masked portion shall be keyed by footnote or other reference to the justification for withholding the information.

B. Nothing in this Section shall require programming a computer to respond to a request for information or to release information that would violate a licensing agreement or copyright law, provided that the provision in the agreement or legal authority precluding release is quoted and cited to the requestor.

C. The intent of this provision and its requisite open standards are to ensure the accessibility of all City information, which is not specifically exempted from public disclosure by State or Federal law. Technology will change over time; standards; standards bodies, and operating systems are noted here for reference only. To provide accessibility of information in electronic media, the City shall as soon as possible:

1. Use open, non-proprietary, cross-platform, standards-based text, image, audio, video, and other data exchange formats on public-facing computers and information systems.
2. Make an alternate format available when commercial, non-standard, or otherwise platform-listed formats must be used.
3. Meet or exceed the guidelines for accessibility specified by the Federal General Services Administration (Section 508, <http://section508.gov>).

4. Avoid binary document formats (such as image-based PDF or OOXML) when ASCII (PDF/A or ISO-8859-1) or other text-based formats are available. Rich-text documents should contain all fonts needed for their viewing. All document formats should be easily and entirely index able for accurate searching.
5. Make audio available for both download and streaming using open, cross-platform, standards-based formats (such as OGG or MP3), which can be accessed from any computer (having Windows, Mac, Linux, Unix operating systems) or portable device (PDA or cell phone).
6. Use open, cross-platform, standards-based image formats such as those published by the ISO and W3C (PNG, JPEG).
7. Make video available for downloading and streaming using open, cross-platform, standards-based formats (such as Theora or MPEG). Make the audio portion of video-streams available separately.
8. Maintain websites and URLs with fixed and logical tree structures that do not change unnecessarily. Once posted, data should remain online.
9. Prohibit the use of tracking technologies (such as cookies, xss, and Google Analytics) in accessing public information.
10. Avoid web content-types that are not compatible across browsers, including older browsers (avoiding Flash and platform or browser-specific HTML, CSS, and Javascript).
11. Make substantive website changes track able by title and synopsis in an open, cross-platform, standards-based journal format (such as RSS or Atom). Update these journals at least once per business day.
12. Index large files and make available by subsection, so that all elements can be downloaded or viewed on speed or size-limited platforms. Subsections should be no more than ten (10) pages of text and should be identifiable and accessible from their larger parent document. Audio and video files must have separate text indexes so that subsections can be quickly located and navigated to whether streamed or downloaded.

D. Access to non-exempt City information should not require action by Staff. Documents such as Agendas, minutes, bids, and requests for bids, should be digitized or converted to an open digital format (if necessary) and placed online when received. Staff and the public shall access non-exempt data from the same source. Exempt data should continue to be stored on separate internal computer systems.

Section 1.30.340 No Public Interest Balancing Test or Deliberative Process Privilege.

Neither the City nor any officer, employee, agent, or elected or non-elected official may assert California Public Records Act Section 6255 as of the effective date of this

Ordinance, and/or its successor Section or any other provision of law that prohibits disclosure as the authority for withholding any information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure or on a claim of “deliberative process” privilege. Any denial of access to information must be based on an express provision of this Ordinance or on a specific exemption provided by State or Federal law.

Section 1.30.350 Process for Obtaining Records.

A. A person seeking access to information need not state his/her identity, reason for making the request or the use to which the information will be put, unless such disclosure is required by State or Federal law. However, for redress under this Ordinance, a person seeking such access is encouraged to make his/her request, in writing.

B. A Custodian of Records shall assist a requester in identifying the existence, form, and nature of the information sought. When requested, this Custodian shall provide within three (3) business days following receipt of the request, a written statement as to the existence, quantity, form, and nature of the records relating to a particular subject or question with enough specificity to enable the requester to identify and request the relevant records.

C. A Custodian of Records shall permit all portions of a Public Record that are not exempt from disclosure to be inspected by any person and shall provide copies thereof upon request.

D. Where the request is for a specific, readily identifiable, and available Public Record, the record shall be provided no later than the close of business on the next business day.

E. Where materials to be released are voluminous or in multiple locations, the materials may be released in stages, as they are gathered, but no later than the tenth (10th) business day following the request.

F. If the information requested involves more than one office or department, then the request shall be forwarded to the City Manager. The City Manager or his/her designee shall coordinate the timely response to the requester in accordance with this Ordinance.

G. If The Custodian of Records reasonably believes that part or all material requested is not a Public Record, The Custodian shall state in writing the basis for such denial within three (3) business days of receiving the request and shall, to the extent possible, suggest alternate ways of obtaining the desired information. The written explanation shall cite all facts and authority relied upon in denying the request.

H. Where State or Federal law gives the City discretion to withhold a particular Public Record, the City shall waive its right to withhold the record, except as specifically provided for in this Ordinance.

Section 1.30.360 Request for Waiver of Confidentiality.

A. Whenever The Custodian of Records asserts a justification for nondisclosure of a Public Record, an exemption based upon the interests of the individual or entity, he/

she shall cooperate with the requester's efforts to communicate with the individual or entity using a blind-mailing process. This process includes the following elements:

1. The requester provides postage-paid envelopes for each of the individuals or entities sought to be contacted, with each envelope containing a letter explaining why the information is being sought and asking the person or entity to contact the requester, and
2. The City maintains confidentiality of the information by affixing all reasonably accessible addresses of involved subjects and mailing the envelopes, after including in each a statement that the subject of the information request must be legally competent to waive his or her privacy interests, but need not do so, and that the City is a disinterested party merely facilitating communication between citizens on matters that may be of public or private interest and is not liable for the result of any such communication. If the subject of the information request is legally competent and signs a privacy waiver for all or part of the information withheld, the City shall promptly release the information.

B. The City shall not be liable for any consequences of fulfilling its obligations under this Section.

Section 1.30.370 Fees for Records.

A. No fee shall be charged for making Public Records available for review.

B. No fee shall be charged for documents routinely produced in multiple copies for distribution to the public, e.g. Meeting Agendas.

C. Fees for documents copied on the order of the requester shall not exceed bulk rates charged by commercial copying services within the City for comparable services.

D. Copying of Public Records stored in electronic form shall be made available to the public in any medium at a charge no greater than the cost of the medium on which it is duplicated. Inspection of such records shall be at no cost.

E. Large documents that many members of the public are likely to want to study, such as City budgets and environmental review documents, including but not limited to those related to the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website and made available for inspection at designated City offices and each Berkeley public library, where copies shall be made available for borrowing by the public.

Enforcement

Section 1.30.380 Sunshine Commission.

A Sunshine Commission ("the Commission") is established by this Ordinance. The responsibilities of the Commission include:

A. Ensuring that the City's business is conducted in full view of the public to the maximum extent allowed by State and Federal law and this Ordinance;

B. Educating members of Legislative Bodies, Staff, and the public on the role of Sunshine in the City of Berkeley; and

C. Advising the Council and Staff on open government issues and suggest municipal ordinance changes as appropriate.

Section 1.30.390 Commission Membership.

A. The Commission shall consist of a number equal to the number of City Council members, one each appointed by every member of the City Council.

B. Each appointee shall be a resident of the City of Berkeley, but may not be an employee or volunteer in any City office, department, an elected official's office, or a contractor, vendor, or the holder of an ownership interest in an entity that is a contractor or vendor of the City. In addition, an appointee shall not have committed an ethics violation that has led to loss of a professional license or been convicted of a felony.

C. All appointees shall have completed an application form which shall be developed by the City Clerk within ten (10) business days of the effective date of this Ordinance, and modifiable thereafter by the Commission. Such application shall include: i) a listing by the applicant of specific qualifications showing a demonstrated interest in participatory democracy in local government, ii) a statement signed by the applicant that he/she has read, understands, and supports the Ordinance and pledges to make decisions that are independent of the appointer and to work the number of hours required to ensure the Ordinance is fairly and fully implemented, and iii) a personal statement on why the applicant wants to serve on the Commission. All Commission applications are Public Records.

D. During the period of initial appointments and thereafter whenever there is a vacancy, the City Clerk shall publish notice of the vacancy in all Community Newspapers and on the City's website. The City Clerk shall maintain a standing file of individuals who have submitted applications and groups that have requested to be notified of vacancies. When a vacancy arises, the City Clerk shall promptly notify all contacts in the standing file. All applications received by the City Clerk from any source shall be submitted to the Mayor and Council Members for their consideration.

E. There shall be no term limits for Commissioners. Terms shall run concurrently with the appointing Council Member's term. Within sixty (60) days of the effective date of this Ordinance and thereafter after taking office, each Council Member shall appoint a new Commissioner or re-appoint an existing Commissioner, failing which the current Commissioner shall be deemed to be automatically reappointed. Once appointed or re-appointed, no Commissioner may be removed from office except in accordance with Section 1.30.450.

F. Substitute appointments are prohibited.

Section 1.30.400 Commission Vacancies and Removal for Cause.

A. A Commissioner's service shall terminate upon:

1. Death or voluntary resignation.

2. Conviction of a felony.
3. Unexcused absence from three (3) consecutive, properly noticed regular Meetings of the Commission or from 50% or more of all regular Meetings in a six-month reporting period as provided for in the City of Berkeley Commissioners' Manual.
4. Expiration of the term of office of the appointing Council Member.

B. A Commissioner may also be removed for cause by a three quarters (3/4) vote of the whole Commission, which shall occur at a public Meeting noticed in accord with this Ordinance. Such removal shall be reflected in a written finding that the Commissioner in question:

1. Is no longer able or willing to perform the duties of a Commissioner, or
2. Has failed to meet one or more of the conditions described in Section 1.30.390 B and C, or
3. Has participated in and voted on an issue that constitutes a material conflict of interest for the Commissioner, or
4. Has communicated, except in a public Meeting, with members of a Legislative Body regarding the merits of a disputed matter that is currently before the Commission or its Enforcement Committee.

C. Where a vacancy has been created for any of the reasons stated in this Section, it shall be filled within thirty (30) days by the appointing Council Member from the pool of applicants for Commission positions maintained by the City Clerk as described in Section 1.30.399. Failure to do so will result in the Commission making the appointment within thirty (30) days after the Council Member fails to make an appointment.

Section 1.30.410 Organizational Period.

A. The first Meeting of the Commission shall take place within sixty (60) days after the Ordinance is enacted into law. By the conclusion of the first Meeting, the Commission shall, by majority vote, elect a Chair and a Vice Chair, each to a term of one (1) year. Thereafter, at the conclusion of each Chair's and Vice Chair's term, the Commission shall elect replacements. No Chair or Vice Chair shall serve for more than two (2) consecutive terms. Should a Chair or Vice Chair leave the Commission, the Commission shall elect a new Chair or Vice Chair to finish that term.

B. Within thirty (30) days of the election of the Chair and Vice Chair, the Commission, by a majority vote, shall appoint three-member Enforcement Committees (each hereinafter referred to as a "Committee") so that each Commissioner shall serve on at least one Committee and the duties of the Committees shall be divided in an equitable manner.

C. Within six (6) months after the election of the Chair and Vice Chair, the Commission shall, with public input, determine and publish the procedures governing its activities and Meetings, which shall be consistent with the provisions of this Ordinance.

D. Within thirty (30) days of its first Meeting, the Commission shall develop a Sunshine Alert Form for use in accord with Section 1.30.160.

Section 1.30.420 Commission Staffing.

The City shall provide a part-time Staff person to the Commission to act as its secretary. The Commission shall review and make recommendations to the City Manager regarding the qualifications and job description for this position. Two (2) members of the Commission, selected by a majority vote of the Commission, shall sit on the interview panel and make recommendations to the City Manager regarding the applicants.

Section 1.30.430 Role of City Attorney.

A. The City Attorney may publish legal opinions in response to a request from any person as to whether a record is public.

B. All communications to or from the City Attorney's Office with regard to this Ordinance, including but not limited to petitions, requests for opinion, and opinions, shall be Public Records unless specifically determined to be subject to the attorney-client privilege.

Section 1.50.440 Commission Legal Counsel.

The City Attorney shall, upon request, provide legal counsel for the Commission. If a majority of the Commission or the City Attorney determines that there is a conflict of interest, which the Commission declines to waive, the City shall, at the Commission's request, provide the reasonable fees and expenses of outside counsel chosen by the Commission, from the City Attorney's budget to retain outside counsel.

Section 1.30.450 Enforcement: General Procedures.

A. In addition to any other remedies available under the law and subject to procedures established by the Commission in a form consistent with the provisions hereof, any interested party may file a petition for relief with the Commission alleging a violation of the Ordinance.

B. Petitioner and the City as respondent shall appear at the initial hearing of any petition brought hereunder or appeal thereof and may be represented by counsel. Each shall be given the opportunity to present evidence and argument and to cross-examine any witness for the other party. All participants shall be under oath.

C. Such petitions shall be heard by an Enforcement Committee at a public Meeting within seven (7) business days of receipt, or at a later date agreed to by petitioner and respondent.

1. The Committee shall render a written decision within five (5) business days of the close of the hearing and inform all interested parties of the decision. Unless appealed, the decision of the majority of the Committee shall be deemed to be that of the Commission as a whole.
2. Where such decision is made by the Enforcement Committee, any dissenting member thereof or the petitioner or respondent may file a written appeal to the Commission within five (5) business days of the issuance of the notice decision.

D. The Commission shall hear such appeal at its next

scheduled public Meeting that satisfies the notice requirements in Subsection F below.

1. By a majority vote, the Commission shall issue its decision on an appeal based on this Ordinance, the record that was made before the Commission, and information received at the Meeting.
2. If the Commission fails to reach a decision within five (5) business days, the initial decision by the Committee shall stand.

E. Decisions of the Commission may be appealed to the City Council by any party to the relevant dispute.

1. Any such appeal must be filed with the City Clerk within five (5) business days of the issuance of the notice of decision; otherwise the decision of the Commission shall stand.
2. Within thirty (30) days after the date the appeal first appears on the Agenda of the City Council, the Council must either affirm the decision of the Sunshine Commission and dismiss the appeal, or set the matter for public hearing. Consideration of any such appeal shall not be moved to the Consent Calendar.
3. Within thirty (30) days after the date on which the public hearing was opened, the Council must make a decision which shall be based on explicit findings, this Ordinance, and the record. This decision must be accompanied by a specific recommendation and/or statement regarding any corrective action and/or whatever other matters the Council wishes to place before the City Manager regarding the subject of the appeal.
4. If the Council overturns the Commission's decision, the Commission may review the decision to determine further action.

F. Commission or Committee Meetings to review petitions and appeals require at least seventy-two (72) hours public notice which shall, be given in writing to the petitioner and The Custodian of Records. Other deadlines for Meeting notices and Agendas specified in this Ordinance do not apply to Sunshine Ordinance enforcement procedures due to their time-sensitive nature and the necessity to conduct City business in a timely way.

G. The Commission and each Committee shall maintain records consisting of all written submissions, testimony, and other evidence of all hearings and appeals, including video and/or audio recordings.

H. The Commission shall prepare an annual report of alleged violations of the Ordinance brought to its attention during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the disposition or current status thereof, and the location of all records relevant to each petition. With advance notice to The Custodian of Records, the Commission may also request a tally of records requests for statistical or comparative purposes.

Section 1.30.460 Enforcement: Public Records Access Denials.

- A. Any one who believes the City has not fully com-

plied with a request for Public Records may file a written petition with the Commission. The merits of such petition and of any appeal shall be determined in the manner described in Section 1.30.450.

B. The Commission shall immediately forward a copy of the petition to The Custodian of Records.

C. Where a document has been reasonably identified and is in City custody, it shall be presumed to be a Public Record, and A Custodian of Records or The Custodian of Records shall have the burden of overcoming such presumption.

D. If the determination is that the record is public, and no appeal has been taken, A Custodian of Records or The Custodian of Records shall comply with the request immediately.

E. If A Custodian of Records or The Custodian of Records fails to comply with a decision requiring production within three (3) business days of its issuance, any interested party or the Commission itself may notify the City Attorney, Grand Jury and/or District Attorney, who may take further action as appropriate.

F. Staff who have used the procedures and definitions set forth in this Ordinance shall not be disciplined for complying with a request for Public Records.

Section 1.30.470 Enforcement: Public Meeting and Noticing Violations.

A. Any interested party, within seven (7) business days of an alleged violation of the Meetings provisions of this Ordinance, may file a petition with the Commission. The merits of the petition or of any appeal shall be determined by the Commission or Enforcement Committee, as described in Section 1.30.450.

B. Where the Committee or Commission finds that an action has been taken in violation of this Ordinance and available appeal rights have been exhausted, the City shall suspend implementation of the action pending judicial review or take a new action in conformance with this Ordinance. Nothing herein shall limit the jurisdiction of the Court on review to award interim equitable relief at the request of either party or on its own motion.

C. In the event of an action under Section 1.30.480 or related to a Closed Session, allegedly privileged tapes shall be discoverable by a plaintiff subject to the respondent's right to seek a protective order and pending review by the court *in camera* to determine the conditions under which production may occur.

Section 1.30.480 Judicial Review.

A. The Commission, and/or the City may seek a Writ of Mandate from the Superior Court of the State of California for the County of Alameda regarding issues including but not limited to a petition to identify and/or produce Public Records; a legislative or other action allegedly taken in violation of the provisions of this Ordinance; a timely decision that has not been rendered; or an allegation that the City has failed to comply with a decision made by a Committee or the Commission. The Court's review may be *de novo* and based on the full record maintained by the Committee and/or Commission. Where a violation is

found, the Court may award appropriate relief which could include the voiding of any legislative or other action taken in violation of this Ordinance.

B. The provisions of Section 1.30.440 shall govern attorney's fees paid by the City in any legal action taken before the Superior Court by the Commission pursuant to this Ordinance. Other petitioners, if partly or fully successful, shall be awarded reasonable attorneys' fees. The City may be awarded its fees only if it is successful in defeating a petition found to be frivolous.

C. In the event of an action under this Section or related to a Closed Session, allegedly privileged tapes shall be discoverable by a plaintiff subject to the respondent's right to seek a protective order and pending review by the court *in camera* to determine the conditions under which production may occur.

D. The remedies provided under this Section shall in no way limit any person's right to seek a Writ of Mandate or use of other available administrative or judicial remedies.

Section 1.30.490 Penalties.

The willful failure of any elected official or City employee to discharge any duties imposed by any State or Federal statute or this Ordinance shall be punishable as provided by existing Federal, State and local law.

Severability

Section 1.30.500 Severability.

If any part or provision of this Ordinance is found by a court of law to be in conflict with or in violation of the Berkeley City Charter or any applicable State or Federal statute or administrative or judicial decision, and if a court should declare such portion, provision, or provisions of the Ordinance to be illegal, invalid, unlawful, void, or unenforceable as written, then such portion, provision, or provisions shall be given force to the fullest possible extent that they are legal, valid, and enforceable, and the remainder of this Ordinance shall be considered to be legal, valid and enforceable.

To the extent this Ordinance directly or indirectly incorporates provisions of State law, and such law is repealed or changed in a way that materially limits the rights of the people under Sections 6250 - 6276 or 54950 - 54963 of the California Government Code, this Ordinance shall be construed as continuing in full force and effect to the fullest possible extent, including as a part hereof the relevant portions of State law as they existed on the effective date of this Ordinance.

End of Chapter

CITY OF BERKELEY MEASURE V

<p style="font-size: 2em; margin: 0;">V Shall an ordinance requiring the City to publish certified biennial reports of its 20-year financial obligations for employee/retiree expenses, capital assets, and “productive capacity of City services”, the present value of those obligations, and the annual expenses needed to meet them, and prohibiting any new or increased debt financing, property-related fee, assessment or tax absent certification of the report by the City Manager or other, independent professional, be adopted? <u>Financial Implications:</u> Uncertain.</p>	YES
	NO

- annual tax revenue anticipation notes, which are issued to maintain the City’s cash flow pending receipt of property taxes from Alameda County; and
- refunding bonds (to refund outstanding bonds at lower interest rates).

The ordinance provision preventing approval debt financing, taxes assessments and property-related fees absent a certified Report would conflict with the City Council’s authority under the City Charter by delegating Council authority to the City Manager or another party who is a “competent, independent professional”, and appears to limit the rights of voters and property owners under the California Constitution to approve taxes, bonds, benefit assessments and fees.

CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE V

The proposed ordinance would require the City to prepare and publish by March 1, 2013, a Certified Financial Report (“Report”) of the City’s financial obligations for the next twenty year period for employee and retiree expenses, capital improvements and capital assets, and the “productive capacity” of City services (collectively “Long Term Obligations”). It would also require an evaluation of the present value of these Long Term Obligations and the yearly expenses needed to meet them. The proposed ordinance requires an updated Report be prepared and published by the first Monday in March of each odd-numbered year.

The proposed ordinance would require that either the City Manager or an independent professional who has audited a Report certify in writing that the information in the Report or updated Report is reasonably accurate and complies with the requirements of the ordinance.

The proposed ordinance purports to prohibit the City Council and the voters from incurring or approving any debt financing, or imposing any new tax, assessment or property-related fee, or increasing any existing tax, assessment or property-related fee, or scheduling any election to impose or increase any tax, assessment or property-related fee, unless the City has prepared and published a biennial financial Report and such Report has been certified, except as required by the City Charter or state law.

Examples of debt financing, taxes, assessments and property-related fees that would be affected by the proposed ordinance and could not be adopted, renewed or increased in the absence of a certified Report, would include, but not be limited to:

- annual voter-approved inflation adjustments for special taxes (e.g. the library tax, parks tax, emergency medical services tax, etc.)
- business improvement district assessments;
- refuse fees;
- sewer fees;

s/ZACH COWAN
 Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE V

Vote YES for the FACTS – Fiscal Accountability, Clarity, Transparency and Sustainability.

Berkeley faces insolvency or worse. We have at least \$1.2 billion in unfunded obligations which will grow, exponentially, if not properly addressed. The City has no plan to deal with this crisis. The FACTS Ordinance is the critical first step and would require the City to tell us the truth. Good government requires accurate facts and transparency. Only then can Berkeley residents, working together, develop a comprehensive plan to solve this problem.

Commitments have been made that cannot be kept. Through well-meaning but misguided generosity our City has paid its employees' contribution toward their retirement while total employee costs are eating up an ever-increasing percent of the operating budget leaving fewer dollars for other vital City needs. For too many years the City has balanced the annual budget by cutting safety net services for our young, elderly and poor residents, by allowing our parks streets, pools, storm drains and buildings to decay and by draining emergency fund reserves.

In January 2010, under citizen pressure, Council passed a resolution requiring the City Manager to prepare a full report on the City's financial obligations. The resolution was ignored; no report has been made. Resolutions can be ignored. This ordinance cannot.

Without the truth and a plan it is premature to impose new taxes.

Join us in supporting Measure V

Committee for FACTS

Claremont-Elmwood Neighborhood Association (CENA)

Northeast Berkeley Association (NEBA)

Berkeley Budget SOS

Council of Neighborhood Associations (CNA)

LeConte Neighborhood Association

s/Mark Humbert

President – Claremont Elmood Neighborhood Assn

s/Isabelle Gaston

President, Northeast Berkeley Association (NEBA)

s/Ted Edlin

President, Council of Neighborhood Associations (CNA)

s/Shannon R Brown

Director, Berkeley Budget SOS

s/Jesse Arreguin

Berkeley City Councilmember

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE V

Our City does not face insolvency. We have substantial reserves and a AA+ bond rating. Though virtually everyone agrees that we have significant unfunded liabilities that must be addressed, **Measure V is not the answer.**

Measure V could cripple the City's ability to pay its own bills, damage its credit rating and cost the City millions of dollars in higher interest rates. The issue is not the report itself but the required 'certification' of the report and the likely possibility that it will be challenged thereby freezing the ability of the City to manage its financial affairs. **Because Measure V does not define "certification", it will be open to interpretation and controversy.**

The City Council is committed to implementing recommendations from the City Auditor to increase transparency in providing the relevant information. In May of 2012, the City Council instructed the City Manager to provide a single report containing all of this information in a transparent format on a biennial basis. It must be published in a single accessible document, available to the public and Council as they begin the biennial budget process.

Addressing the issue of our unfunded liabilities will take the goodwill and effort of all of us: our leaders, our citizens and our employees. **The threat of crippling our City financially will do nothing toward advancing this process.**

Measure V could cripple the City financially.

Measure V could cost the City millions of dollars.

Measure V is bad government.

Vote No on Measure V.

s/Sherry Smith

President, League of Women Voters of Berkeley, Albany & Emeryville

s/Winston Burton

Chair, Berkeley Board of Libraries Trustees

s/Paul W. Hammond

Certified Public Accountant

s/Laurie Capitelli

Berkeley City Councilmember

s/Loni Hancock

State Senator

ARGUMENT AGAINST MEASURE V MEASURE V IS BAD FISCAL POLICY

It could put Berkeley at financial risk because the measure is poorly written with undefined terms. There is a serious risk that disputes could delay “certification” plunging the City into a fiscal nightmare. If the required biennial report showing a 20 year projection of expenses is not “certified” on time, the City could not collect any tax or fee increase – even those approved by voters – or restructure debt.

THE RISK OF FISCAL CONSEQUENCES IS TOO HIGH.

- Inevitable lawsuits surrounding “certification” would prevent the city from conducting municipal business until lawsuits are resolved.
- If certification is delayed through no fault of the City, the City cannot secure trans-financing – the short term loans the City routinely takes – at very favorable rates – to smooth cash flows.
- Inability to finance loans would negatively affect our bond rating, currently at AA+.
- Opportunities to refinance bonds at favorable rates could be delayed or missed, leading to potentially significant losses.
- There is no provision for possible need of emergency funds in the event of disasters, such as wildfires or earthquakes.

OTHER REQUIRED REPORTS ALREADY FULFILL THE OBJECTIVE.

- On May 29, 2012, the City Council passed an ordinance requiring that similar reports be compiled: a report on infrastructure and asset costs covering a 5-Year projection; and a report on employee and retiree costs covering a 10-Year projection.
- Measure V requires reporting on the same expenses as the May 29, 2012 ordinance, but for a 20 year period, which is largely conjectural in the out years, and therefore of limited additional value.

Putting in place an onerous – and potentially dangerous – enforcement provision, for a report that is already essentially available does nothing to better plan our financial obligations and future.

VOTE “NO” ON MEASURE V.

s/Sherry Smith
President, League of Women Voters of Berkeley, Albany & Emeryville

s/Loni Hancock
State Senator

s/Susan Wengraf
Berkeley City Council Member

s/Judith L Bloom
C.P.A.

s/Gordon Wozniak
Berkeley City Councilmember

REBUTTAL TO ARGUMENT AGAINST MEASURE V

FACTS IS GOOD POLICY and GOOD GOVERNMENT

FACTS opponents argue: The FACTS Ordinance is unclear and unnecessary and reports require risky “certifications.”
Nonsense!

FACTS Reporting Requirements Are Clear.

- FACTS reporting requirements are substantially the same as those found in the resolution Council passed unanimously in January 2010. (See, www.committee4facts.com)
- For 2-1/2 years, the Council and City Manager have ignored the reporting requirements in their January 2010 resolution.
- In April 2011, *Councilmember Wozniak explained: We pass resolutions all the time and don't expect them to be followed.*

FACTS Ordinance Is Necessary.

- FACTS addresses Berkeley's staggering \$1.2+ billion in unfunded obligations.
- Berkeley residents need to know what is behind our increasing expenses, decreasing services and crumbling infrastructure.
- **Mayor Bates conceded: “I don't think the [FACTS] initiative does anything that we don't want to do anyway”** (May 29, 2012 Council meeting).
- Only after the FACTS initiative was filed with enough signatures to qualify, did Council pass by split vote an unenforceable, watered-down resolution mimicking the FACTS initiative.
- As before, the new Council resolution can be ignored. The FACTS Ordinance cannot.

FACTS Requires No Risky Certification.

- “Certification” is clearly defined in Paragraph B (“I have read the report and believe the report...is reasonably accurate...”).
- The City Manager can certify the reports.
- If Berkeley prepares FACTS reports as they must, Council's freedom to tax or finance debt will not be restricted.

INSIST on the FACTS!

VOTE “YES” ON MEASURE V

s/L. Tim Wallace
Economist and Former California Director of Food and Agriculture; and, on behalf of Steering Committee, Berkeley Budget SOS

s/Karl J. Reeh
President, Le Conte Neighborhood Association

s/Carmine Guerro
Partner (Retired) Big 4 Accounting Firm and Qualified Audit Committee Financial Expert as Defined by SEC Rules

s/Isabelle Gaston
President, Northeast Berkeley Association (NEBA)

s/Jacquelyn McCormick
Mayoral Candidate, Berkeley Council Watch, Berkeley Budget SOS

FULL TEXT OF MEASURE V

THE BERKELEY FISCAL ACCOUNTABILITY, CLARITY, TRANSPARENCY AND SUSTAINABILITY ORDINANCE OF 2012

Section xxx.xx Title of Chapter.

This Chapter of the Berkeley Municipal Code shall be known as The Berkeley Fiscal Accountability, Clarity, Transparency and Sustainability Ordinance of 2012 (“The Berkeley FACTS Ordinance”).

Section xxx.xx Findings.

A. The City needs to plan better for its long-term financial needs.

B. The City needs to avoid short-term measures that worsen its long-term financial problems.

C. Early planning for baseline expenditure changes is critical to ensuring continued financial stability.

D. Years of limited funding and deferred maintenance have resulted in an aging City infrastructure that desperately needs replacement, repair and improvement.

E. The City’s projected revenue growth will not keep up with current and projected expenditures for City employees, and unless significant changes are made, there will be substantial decreases in available funding for vital City services.

F. The City needs to reduce its unfunded liabilities for employee costs, physical infrastructure and capital improvements, better manage its expenditures, and set aside funds adequate to meet long-term financial needs.

Section xxx.xx Purpose.

The purpose of this Chapter is to ensure that a reasonably accurate evaluation of the City’s long-term financial obligations is regularly prepared and certified so that the City Council, Berkeley residents, City employees and retirees, and City creditors have the reliable financial information needed for responsible budget preparation and evaluation, prudent City management, and sensible tax, debt and other revenue planning.

Section xxx.xx Report on City’s Long-Term Obligations.

A. By March 1, 2013, the City of Berkeley shall prepare and publish a certified report (the “Report”) of the City’s twenty-year obligations for all employee and retiree expenses, and the City’s obligations for prudent capital improvements of the City’s physical infrastructure, capital assets, and productive capacity of City services (the “Long-Term Obligations”). The Report shall include a comprehensive evaluation of the Long-Term Obligations and their present value and shall include the likely yearly expenses reasonably needed to meet the City’s exposure to such Long-Term Obligations. The Report shall include an appendix that clearly sets forth all significant assumptions relied upon in the Report. On the first Monday in March of each odd-numbered year after 2013, the City of Berkeley shall prepare and publish an updated Report that extends the period covered for an additional two years so that each updated report covers the next twenty-year time period (the “Updated Report”).

B. At the time of its publication, the City Manager shall certify in writing that each Report or Updated Report, including its underlying facts, opinions and assumptions, is reasonably accurate and complies with paragraph A above, or in the alternative, the City of Berkeley shall have obtained a certification from a competent, independent professional who has audited the Report or Updated Report, and has found it, including its underlying facts, opinions and assumptions, to be reasonably accurate. The certification shall read: “I have read the report and believe the report, including its underlying facts, opinions and assumptions, is reasonably accurate and complies with paragraph A of The Berkeley FACTS Ordinance.”

C. Except as otherwise required by the Charter of the City of Berkeley or the general law of the State, after March 1, 2013, the City of Berkeley shall not incur any debt financing, or impose any new tax, assessment or fee, or increase any existing tax, assessment or fee, or schedule any election to impose or increase any tax, assessment or fee, unless at the time of such action a Report or Updated Report has been prepared, certified and published in compliance with paragraphs A and B above. The term “fee” includes only those property-related fees covered by State Proposition 218.

Section xxx.xx Severability.

If any sentence, clause, section or part of this Chapter is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such sentence, clause, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Chapter.

End of Chapter