

Ballot Measure H: Public Financing of Election Campaigns

TITLE

Shall the City Charter and Code be amended to: authorize Council to implement public financing of elections for mayor, city council, school board and auditor for candidates who voluntarily agree to spending limits; establish related regulations and require \$498,000 in annual General Fund appropriations when deemed economically feasible by Council.

Financial Implications

\$498,000 in annual costs; likely increases in taxes (upon voter approval), fees, fines or assessments and/or reduction in City services or programs.

TEXT OF CHARTER AMENDMENT AND ORDINANCE

**AMENDMENT TO CITY OF BERKELEY CHARTER ARTICLE III (ELECTIONS) AND
MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM ACT) TO CREATE A
VOLUNTARY SYSTEM OF PUBLIC FINANCING OF ELECTION CAMPAIGNS**

Section 1. FINDINGS

The People of the City of Berkeley find that the City of Berkeley's current campaign finance system:

- A. Discourages many otherwise qualified candidates from running for office because of the need to raise substantial sums of money to be competitive.
- B. Fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions.
- C. Creates a danger of actual corruption by encouraging elected officials to take money from private interests that are directly affected by governmental actions.
- D. Forces candidates to raise larger and larger percentages of money from interest groups that have a specific financial stake in matters before Berkeley City government to keep pace with rapidly increasing campaign costs.
- E. Diminishes elected officials' accountability to their constituents by compelling them to be disproportionately accountable to the contributors who finance their election campaigns.
- F. Violates the rights of all citizens to equal and meaningful participation in the democratic process.
- G. Disadvantages challengers, because campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive.
- H. Burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities.
- I. Enables independent campaign spenders to disproportionately influence the political process by funneling money through independent expenditure committees and political parties in an effort to skirt the contribution limitations laws.
- J. The People further find that a system of public financing of elections is necessary to address these concerns.

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Section 2. That Section 5 ½ is added to Article III (“ELECTIONS”) of the City of Berkeley Charter to read as follows:

Section 5 ½. Fair Elections Fund.

(1) Establishment of Fair Elections Fund.

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the Mayor and Council for the purpose of:

- (a) Providing public financing for the election campaigns of certified participating candidates during general, runoff and special election campaign periods; and
- (b) Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission and City staff related to the Fair Elections Fund public campaign financing program, including, if feasible, the development of a system to allow electronic filing of campaign finance statements and reports.

(2) Appropriations to the Fair Elections Fund.

- (a) The Mayor and City Council shall annually appropriate \$498,000 from the City General Fund to the Fair Elections Fund upon Council initiation of the public financing program in Article 7 of Berkeley Municipal Code Chapter 2.12 adopted at the November 2004 general municipal election as provided in Section 10 of the ballot measure enacting this section at the same municipal election. The Council’s duty to appropriate funds for the public financing program shall cease upon the termination of the public financing program.
- (b) Other sources of revenue to be deposited in the Fund shall include:
 - 1) The qualifying contributions required of candidates seeking to become certified as participating candidates and candidates’ excess qualifying contributions;
 - 2) The excess seed money contributions of candidates seeking to become certified as participating candidates;
 - 3) Unspent funds distributed to any participating candidate who does not remain a candidate until the general election, special election or runoff election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the general election, special election or runoff election for which they were distributed;
 - 4) Fines levied by the commission against candidates for violation of election laws;
 - 5) Voluntary donations made directly to the Fair Elections Fund;
 - 6) Other funds appropriated by the Mayor and City Council;
 - 7) Any interest generated by the Fund; and

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8) Any other sources of revenue determined as necessary by the Mayor and City Council.

(c) The amount in the Fair Elections Fund shall not exceed \$1.8 million. In order to comply with this limitation, revenue which would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.

(d) The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

(3) Cost of Living Adjustments.

The commission shall adjust the dollar amounts specified in subsections (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

Section 3. Be it Ordained by the People of the City of Berkeley that Berkeley Municipal Code, Title 2, Chapter 2.12, Election Reform Act, is hereby amended as follows:

That Article 2 (“Definitions”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.097 Competitive Special Election.

“Competitive special election” means:

- A. A special election in which at least two candidates for a single office are participating candidates; or
- B. A special election in which at least one non-participating candidate for a single office has raised, spent or has cash on hand in an amount equal to at least 20% of the public funding grant amounts specified in Section 2.12.515(A) of this chapter; or
- C. A special election in which a participating candidate is opposed by the incumbent in that office, whether or not the incumbent receives public funding.

2.12.098 Competitive General Election.

“Competitive general election” means:

- A. A general election in which at least two candidates for a single office are participating candidates; or
- B. A general election in which at least one non-participating candidate for a single office has raised, spent or has cash on hand in an amount equal to at least 20% of

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the public funding grant amounts specified in Section 2.12.515(A) of this chapter;
or

C. A general election in which a participating candidate is opposed by the incumbent in that office, whether or not the incumbent receives public funding.

2.12.128 Excess Expenditure.

“Excess expenditure” means the amount of money spent or obligated to be spent by a non-participating candidate in excess of the Fair Elections amount available to a participating candidate running for the same office.

2.12.133 Exploratory Period.

“Exploratory period” means the period beginning on the first day of the 12th month before the general election and ending at the close of the nomination period for the general election.

2.12.136 Fund.

"Fund" means the Fair Elections Fund created by City Charter Article III Section 5 ½.

2.12.137 General Election.

“General election” means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4.

2.12.138 General Election Campaign Period.

“General election campaign period” means the period beginning at the close of the nomination period for the general election and ending on the day of the general election.

2.12.155 2.12.153 Measure.

2.12.153.5 Nomination Period.

“Nomination period” means the period specified by state law during which candidates must submit nomination papers for City offices.

2.12.154 Non-Candidate Expenditure.

“Non-candidate expenditure” means:

- A. An independent expenditure as defined by Section 2.12.142;
- B. A payment made pursuant to Cal. Govt. Code Section 85312 for the purpose of supporting or opposing a candidate for Berkeley elective office; or
- C. A payment totaling \$250 or more, that is made without cooperation or consultation with any candidate, for a communication that clearly identifies a

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candidate for Berkeley elective office but does not expressly advocate the election or defeat of the candidate, which is disseminated, broadcast, or otherwise published in the City within 45 days of an election.

2.12.155 Non-Competitive Special Election.

“Non-competitive special election” means a special election not meeting the definition of “competitive special election” in Section 2.12.097 of this chapter.

2.12.156 Non-Competitive General Election.

“Non-competitive general election” means an election not meeting the definition of “competitive general election” in Section 2.12.098 of this chapter.

2.12.157 Non-Participating Candidate.

“Non-participating candidate” means a candidate who is on the ballot but has chosen not to apply for Fair Elections campaign funding, or a candidate who is on the ballot and has applied but has not satisfied the requirements for receiving Fair Elections funding.

2.12.158 Participating Candidate.

“Participating candidate” means a candidate who qualifies for Fair Elections campaign funding. Such candidates shall be eligible to receive Fair Elections funding during general and runoff election campaign periods.

2.12.160 2.12.159 Period covered.

2.12.165 2.12.160 Persons.

"Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

2.12.161 Petty Cash.

“Petty cash” means cash amounts of one hundred dollars (\$100) or less per day that are used to pay expenses of no more than twenty-five dollars (\$25) each.

2.12.162 Qualified Elector.

“Qualified elector” means a person who is properly registered to vote pursuant to state law.

2.12.163 Qualifying Contribution.

“Qualifying contribution” means a contribution of five dollars (\$5) that is received during the designated qualifying period by a candidate seeking to become eligible for Fair Elections

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campaign funding. A person shall not be employed or compensated to solicit or collect qualifying contributions on behalf of a candidate. A qualifying contribution shall be:

- A. in the case of a candidate for citywide office, from a qualified elector in the City; and
- B. in the case of a candidate for a district-based office, from a qualified elector in the district to be represented by the candidate.

2.12.164 Qualifying Period.

“Qualifying period” means the period during which candidates are permitted to collect qualifying contributions in order to qualify for Fair Elections funding. It begins 210 days before the beginning of the general election campaign period and ends at the beginning of the nomination period for the general election.

2.12.165 Runoff Election.

“Runoff election” means an election held pursuant to City Charter Article V Section 9, in the event that no candidate for Mayor, Auditor or Council office receives the votes required by law to be elected to that office in the initial election. The initial election may be either a general election or a special election.

2.12.166 Runoff Election Campaign Period.

“Runoff election campaign period” means the period beginning the day after the general election and ending on the day of a runoff election required by City Charter Article V Section 9.

2.12.167 Seed Money Contribution.

“Seed money contribution” means a contribution of no more than \$250 made by an individual adult resident of the City during the exploratory period.

2.12.168 Special Election.

“Special election” means a special municipal election held pursuant to City Charter Article III Section 4 but does not include a runoff election held pursuant to City Charter Article V Section 9.

2.12.169 Special Election Campaign Period.

“Special election campaign period” means the period beginning on the day the election is called and ending on the day of the special election.

Section 4. That Section 2.12.205 of Berkeley Municipal Code is amended to read as follows:

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2.12.205 Administrative responsibility.

The commission has the primary responsibility for the impartial, effective administration of this chapter. The commission may delegate its responsibility for administration of this chapter to City staff.

Section 5. That Article 4 (“Disclosure Requirements and Procedures”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.297 Report of Excess Expenditures.

If a non-participating candidate’s total expenditures or obligations to make expenditures exceed the amount of Fair Elections funding allocated to the candidate’s Fair Elections opponent(s), the candidate shall report every excess expenditure which, in the aggregate, is more than two hundred and fifty dollars (\$250) to the commission within 24 hours using a form specified by the commission.

2.12.298 Report of Non-candidate Expenditures.

- A. In addition to any other report required by this Chapter, a person that makes non-candidate expenditures of \$250 or more during an election cycle in connection with a candidate for Berkeley elective office shall file a report disclosing the making of the non-candidate expenditure. This report shall disclose the same information required by Section 2.12.280 and shall be filed within 24 hours of the time the non-candidate expenditure is made using a form specified by the commission.
- B. The report shall include a signed statement under penalty of perjury by the person or persons making the non-candidate expenditure identifying the candidate or candidates whom the non-candidate expenditure is intended to support or oppose and affirming that the non-candidate expenditure is totally independent and involves no cooperation or coordination with a candidate. Any individual or organization that fails to file the required report or provides materially false information in that report may be fined up to three times the amount of the non-candidate expenditure upon a two-thirds vote of the commission following a hearing held pursuant to Section 2.12.230.

2.12.299 Report of Contributions and Expenditures.

- A. Non-participating candidates shall file a campaign statement for the period ending at the close of the nomination period, five days thereafter, that contains the same information required by Section 2.12.280, if the following criteria are satisfied:
1. The non-participating candidate is opposed by a candidate that has applied for and is eligible for public funds;

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2. The non-participating candidate's most recently filed campaign statement shows that the candidate has not raised, spent or has cash on hand of at least 20% of the applicable grant; and

3. Since the campaign statement specified by subsection A(2) was filed, the non-participating candidate has raised, spent or has cash on hand of at least 20% of the applicable grant.

B. If the criteria specified in subsections A(1) and A(2) are satisfied but subsection A(3) is not, the non-participating candidate shall, by the deadline specified in section A, file a statement under penalty of perjury to this effect on a form specified by the commission. If at any time following this date the non-participating candidate satisfies the criteria specified in subsection A(3), the candidate shall file the campaign statement required by section A within 24 hours.

Section 6. That Article 6 ("Limitations on Contributions") of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

Article 6. Limitations on Contributions and Non-candidate Expenditures

2.12.420 Prohibition of Non-candidate Expenditures By Candidate Controlled Committees.

A controlled committee of a candidate may not make non-candidate expenditures and may not contribute funds to another committee for the purpose of making non-candidate expenditures to support or oppose other candidates.

Section 7. That Berkeley Municipal Code Chapter 2.12 Article 7 is amended to read as follows:

Article 7. Berkeley Fair Elections Act of 2004

2.12.445 Title and Purpose.

This Article shall be known as the Berkeley Fair Elections Act of 2004. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.

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- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Reverse the escalating cost of elections that increase far beyond the increases in the cost of living.
- I. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties.
- J. Ensure that non-candidate expenditures are not used to evade contribution limits.

2.12.450 Offices Covered.

Candidates for the offices of Mayor, Auditor, City Council, and School Board Director shall be eligible to participate in the public campaign financing program established by this chapter.

2.12.455 Eligibility for Fair Elections Campaign Funding.

- A. A candidate qualifies as a participating candidate for the general election campaign period:
 - 1) If the candidate files a declaration that the candidate has complied and will comply with all of the requirements of this Act, including the requirement that during the exploratory period and the qualifying period the candidate not accept or spend private contributions from any source other than seed money contributions and Fair Elections qualifying contributions;
 - 2) The candidate meets all requirements of applicable law to be listed on the ballot; and
 - 3) The candidate meets the following qualifying contribution requirements before the close of the qualifying period:
 - a) A candidate must collect at least the following number of qualifying contributions:
 - i) 500 qualifying contributions for a candidate running for the office of Mayor;
 - ii) 200 qualifying contributions for a candidate running for the office of Auditor;
 - iii) 100 qualifying contributions for a candidate running for the office of City Council;
 - iv) 100 qualifying contributions for a candidate running for the office of School Board Director;
 - b) Each qualifying contribution shall be acknowledged by a receipt to the contributor, with a copy to be filed by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the

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candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualifying contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

- c) A contribution submitted as a qualifying contribution that does not include a signed and fully completed receipt shall not be counted as a qualifying contribution.
- d) All five dollar (\$5) qualifying contributions, whether in the form of cash, or checks or money orders made out to the candidate's campaign account, shall be deposited by the candidate in the candidate's campaign account.
- e) All qualifying contributions' signed receipts shall be filed and shall be accompanied by a check from the candidate's campaign account for the total amount of qualifying contribution moneys received for deposit in the Fair Elections Fund. This submission shall be accompanied by a signed statement from the candidate indicating that all of the information on the qualifying contribution receipts is complete and accurate to the best of the candidate's knowledge and that the amount of the enclosed check is equal to the sum of all the five-dollar (\$5) qualifying contributions the candidate has received.
- f) The City shall verify that a candidate's qualifying contributions are from appropriate qualified electors as required by Sections 2.12.162 and 2.12.163 prior to the disbursement of public funds to the candidate.

B. A candidate qualifies as a participating candidate for the runoff election campaign period if:

- 1) The candidate has met all of the applicable requirements and has filed a declaration that the candidate has fulfilled and will fulfill all of the requirements of a participating candidate as stated in this Act; and
- 2) The candidate qualifies for a runoff election pursuant to City Charter Article V Section 9 to compete in a runoff election.

2.12.460 Transition Rule for Current Election Cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions or making of expenditures from private funds before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any private funds accepted but not expended before the effective date of this Act shall be:

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- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or,
- C. Submitted to the City for deposit in the Fair Elections Fund.

2.12.465 Special Elections.

The provisions of this chapter apply to special elections. The commission shall adjust the deadlines in this Act to account for the circumstances of the special election.

2.12.470 Continuing Obligation to Comply.

A participating candidate who accepts any benefits during the general election campaign period or special election campaign period shall comply with all the requirements of this Act through the runoff election campaign period whether the candidate continues to accept benefits or not.

2.12.475 Contributions and Expenditures.

- A. During general, runoff and special election campaign periods, a participating candidate who has voluntarily agreed to participate in, and has become eligible for, Fair Elections benefits, shall not accept private contributions from any source.
- B. No person shall make a contribution in the name of another person. A participating candidate who receives a qualifying contribution or a seed money contribution that is not from the person listed on the receipt required by Section 2.12.455(A)(3)(b) of this chapter shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.
- C. During the general election, special election and runoff election campaign periods, a participating candidate may pay for all of the candidate's campaign expenditures, except petty cash expenditures, by means of a "Fair Elections Debit Card" if issued by the City, or by check, if authorized by Section 2.12.540.
- D. Eligible candidates shall furnish complete campaign records, including all records of seed money contributions and qualifying contributions, to the City upon request by the commission. Candidates shall cooperate with any audit or examination by the commission or any enforcement agency.

2.12.480 Campaign Accounts for Participating Candidates.

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign account required by Section 2.12.250.

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- B. A participating candidate may maintain a campaign account other than the campaign account described in subdivision (A) if the other campaign account is for:
 - 1) the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of “other campaign account” described in subdivision B shall not be considered “contributions” to the candidate’s current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

2.12.485 Use of Fair Elections Funds.

- A. Participating candidates shall use their Fair Elections funds only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds for:
 - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act;
 - 2) Indirect campaign purposes, including but not limited to:
 - a) The candidate’s personal support or compensation to the candidate or the candidate’s family;
 - b) Clothing and other items related to the candidate’s personal appearance;
 - c) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - d) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 - e) An independent expenditure;
 - f) Any payment or transfer for which compensating value is not received.

2.12.490 Use of Personal Funds.

- A. Personal funds contributed as seed money by a candidate seeking to become eligible as a participating candidate or adult members of the candidate’s family shall not exceed the maximum of two hundred and fifty dollars (\$250) per contributor.

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- B. Personal funds shall not be used to meet the qualifying contribution requirement except for one five dollar (\$5) contribution from the candidate and one five dollar (\$5) contribution from the candidate's spouse, provided that the candidate's spouse is a qualified elector pursuant to Sections 2.12.162 and 2.12.163.

2.12.495 Seed Money.

- A. The only private contributions a candidate seeking to become eligible for Fair Elections funding shall accept, other than qualifying contributions, are seed money contributions contributed by individual adults prior to the end of the exploratory period.
- B. A seed money contribution shall not exceed two hundred and fifty dollars (\$250) per donor, and the aggregate amount of seed money contributions accepted by a candidate seeking to become eligible for Fair Elections funding shall not exceed 10% of the competitive general election Fair Elections funding amount available for the office sought, pursuant to Section 2.12.515(A).
- C. Receipts for seed money contributions under fifty dollars (\$50) shall include the contributor's signature, printed name, street address and ZIP Code. Receipts for seed money contributions of fifty dollars (\$50) or more shall also include the contributor's occupation and name of employer. Contributions shall not be accepted if the required disclosure information is not received.
- D. Seed money shall be spent only during the exploratory and qualifying periods. Seed money shall not be spent during the general or runoff election campaign periods.
- E. Within 72 hours after the close of the qualifying period, candidates seeking to become eligible for Fair Elections funding shall:
- 1) Fully disclose all seed money contributions and expenditures to the commission, and
 - 2) Turn over to the City for deposit in the Fair Elections Fund any seed money the candidate has raised during the exploratory period that exceeds the aggregate seed money limit.

2.12.500 Certification.

- A. A candidate who wishes to be certified as a participating candidate shall, before the end of the qualifying period, file an application in a form specified by the commission.
- B. The application shall identify the candidate, the office that the candidate plans to seek, and shall contain the candidate's signature, under oath, certifying that:
- 1) The candidate has complied with the restrictions of this chapter during the election cycle to date.

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- 2) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate.
 - 3) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, will not accept private contributions.
- C. At the earliest practicable time after a candidate applies for Fair Elections benefits, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the candidate commits a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. Such a determination shall be made by the commission upon a two-thirds vote following a hearing held pursuant to Section 2.12.230. A candidate shall be certified as eligible contingent on the City's determination that the candidate has met all requirements to be listed on the ballot as required by Section 2.12.455(A)(2).
- D. The candidate's request for certification shall be signed by the candidate and the candidate's campaign treasurer under penalty of perjury.
- E. The commission's determination is final except that it is subject to a prompt judicial review.
- F. If the commission determines that a candidate is not eligible, the candidate's qualifying contributions shall be returned and deposited into the candidate's campaign account, unless the candidate elects to donate the contributions to charity or to the Fair Elections Fund. Regardless of whether the contributions are returned to the candidate or donated to charity or the Fund, they shall be treated as campaign contributions in accordance with state and local law.

2.12.503 Administrative Modification of Timelines.

Notwithstanding any provision in this chapter to the contrary, the commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter.

2.12.505 Benefits Provided to Candidates Eligible to Receive Fair Elections Funding.

- A. Candidates who qualify for Fair Elections funding shall:
- 1) Receive Fair Elections funding for each election, the amount of which is specified in Section 2.12.515 of this chapter. This funding may be used to finance any and all campaign expenses during the particular campaign period for which it was allocated.
 - 2) Receive additional Fair Elections funding pursuant to Section 2.12.520 to match any excess expenditure amount spent by a non-participating candidate, as disclosed pursuant to Sections 2.12.297 or 2.12.520 of this chapter.

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- 3) Receive additional Fair Elections funding pursuant to Section 2.12.525 to match any non-candidate expenditure made in opposition to their candidacies or in support of their opponents' candidacies, as disclosed pursuant to Sections 2.12.298 or 2.12.525, provided that the dollar value of the non-candidate expenditure, combined with the amount raised or received thus far by any opposing candidate who benefits from the non-candidate expenditure, exceeds the original Fair Elections funding amount received by the participating candidate.
- 4) Be identified as Fair Elections program participants by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6 ½.

2.12.510 Schedule of Fair Elections Funding Payments.

- A. An eligible candidate shall receive the candidate's Fair Elections funding for the general election upon certification by the City of the candidate's eligibility for public funds and the City's review and approval of the candidate as meeting all requirements to be listed on the ballot.
- B. A candidate's application for public funds shall include the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that the candidate has complied with all other requirements for eligibility as a participating candidate.
- C. An eligible candidate shall receive the candidate's Fair Elections funding for the runoff election campaign period as soon as reasonably practicable after certification of the general election results.
- D. An eligible candidate shall receive the candidate's Fair Elections funding for a special election upon certification by the City of the candidate's eligibility for public funds and the City's review and approval of the candidate as meeting all requirements to be listed on the ballot. A candidate's application for public funds shall include the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that the candidate has complied with all other requirements for eligibility as a participating candidate.

2.12.515 Determination of Fair Elections Funding Amounts.

- A. The amount of Fair Elections funding for an eligible candidate in a competitive general election or competitive special election is:
 - 1) \$160,000 for a candidate running for the office of Mayor;
 - 2) \$20,000 for a candidate running for the office of Auditor;
 - 3) \$20,000 for a candidate running for the office of City Council;
 - 4) \$12,000 for a candidate running for the office of School Board Director.

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- B. The amount of Fair Elections funding for an eligible candidate in a non-competitive general election or non-competitive special election is 20% of the competitive general election Fair Elections funding amount available for the office sought.
- C. The amount of Fair Elections funding for an eligible candidate in a runoff election is 50% of the competitive general election Fair Elections funding amount available for the office sought.

2.12.520 Matching Funds for Excess Spending by Non-Participating Candidates.

- A. In addition to receiving reports of excess expenditures pursuant to Section 2.12.297, the commission may make its own determination as to whether excess expenditures have been made by non-participating candidates.
- B. Upon receiving an excess expenditure report or determining that an excess expenditure has been made or obligated to be made, the commission shall as soon as practicable release additional Fair Elections funding to the opposing participating candidate(s) equal to the excess expenditure amount the non-participating candidate has spent or has obligated to spend.

2.12.525 Matching Funds for Non-Candidate Expenditures.

- A. In addition to receiving reports of non-candidate expenditures pursuant to Section 2.12.298, the commission may make its own determination as to whether non-candidate expenditures have been made.
- B. Upon receiving a report that a non-candidate expenditure has been made or obligated to be made, the commission shall as soon as practicable release additional Fair Elections funding, equal in amount to the cost of the non-candidate expenditure, to any participating candidate opposed by the non-candidate expenditure, or to any participating candidate whose opponent is supported by the non-candidate expenditure, provided that the total dollar value of the amount raised or received thus far by any opposing candidate who benefits from the non-candidate expenditure, combined with all non-candidate expenditures benefiting opposing candidates, exceeds the original Fair Elections funding amount received by the participating candidate.

2.12.530 Maximum Fair Elections Funding.

The maximum aggregate amount of additional funding a participating candidate shall receive to match non-candidate expenditures and excess expenditures by non-participating candidates shall be no more than two hundred percent of the participating candidate's initial Fair Elections funding allocation for the relevant office.

2.12.540 Dispersal of Money from the Fund.

- A. Upon determination that a candidate has met all the requirements for becoming a participating candidate as provided for in this Act, the City may, if feasible, issue

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to the candidate a card, known as the “Fair Elections Debit Card,” and a “line of debit” entitling the candidates and members of the candidate’s staff to draw Fair Elections funds from a City account to pay for all campaign costs and expenses up to the amount of Fair Elections funding the candidate has received.

- B. The commission may establish regulations and procedures to allow participating candidates and members of the candidate’s staff to pay campaign expenses by check. Records of all such expenditures shall be maintained by candidates and provided to the commission upon request.
- C. Petty cash amounts of one hundred dollars (\$100) or less per day may be drawn on the Fair Elections Debit Card, if issued, and used to pay expenses of no more than twenty-five dollars (\$25) each. Records of all such expenditures shall be maintained and reported to the commission.

2.12.545 Insufficient Funds in the Program.

If the commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all candidates eligible for Fair Elections funds, the commission shall prioritize the distribution of grants disbursed pursuant to Section 2.12.515 over the distribution of matching funds pursuant to Sections 2.12.520 and 2.12.525. If there are insufficient funds in the program necessary to distribute grants under Section 2.12.515, the commission shall reduce the grants proportionately to all eligible candidates. If the commission determines that there are insufficient funds to provide a candidate with the funds for which he or she is eligible under this Act, such a candidate may collect contributions up to the public funding grant amounts specified in Section 2.12.515 or up to the amount of total public funds the candidate could have received pursuant to Sections 2.12.520, 2.12.525 and 2.12.530. If, at a later point, the commission determines that adequate funds have become available, candidates who have not raised private funds shall receive the funds owed to them.

2.12.550 Cost of Living Adjustments.

The commission shall adjust the dollar amounts specified in Sections 2.12.495(B) and 2.12.515(A) for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest one hundred dollars (\$100) for Section 2.12.495(B) and to the nearest one thousand dollars (\$1,000) for all other provisions.

Section 8. That Section 2.12.435 of Berkeley Municipal Code is amended to read as follows:

2.12.435 Excess amounts—Payment to City Auditor required.

If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City ~~Auditor~~ for deposit in the ~~general fund~~ Fair Elections Fund of the City.

Ballot Measure H: Public Financing of Election Campaigns

Section 9. That Article 7 (“Enforcement—Penalties for Violation”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

~~Article 7.~~ **Article 8. Enforcement—Penalties For Violation**

~~2.12.445~~ **2.12.600 Complaints—Filing, investigation and commission action.**

~~2.12.450~~ **2.12.605 Actions for compliance—Who is authorized to institute.**

~~2.12.455~~ **2.12.610 Actions for compliance—Procedure required and commission authority.**

Before instituting an action pursuant to Section ~~2.12.450~~ 2.12.605, a person must file a written request with the commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the commission is dismissed without prejudice. If the commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter.

~~2.12.460~~ **2.12.615 Violation—Deemed misdemeanor—Penalty.**

~~2.12.465~~ **2.12.620 Actions for compliance—Disposition of amounts recovered.**

If a judgment is entered against the defendant or defendants in an action brought under Section ~~2.12.450~~ 2.12.605, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the ~~general fund~~ Fair Elections Fund of the City. In an action brought by the commission or the City Attorney, the entire amount recovered shall be paid to the ~~general fund~~ Fair Elections Fund of the City.

~~2.12.470~~ **2.12.625 Violation—Candidate’s office forfeited when.**

~~2.12.475~~ **2.12.630 Violation—Candidacy terminated when.**

~~2.12.480~~ **2.12.635 Violation—Persons ineligible for candidacy—Time limit.**

~~2.12.485~~ **2.12.640 Late filing penalties.**

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections 2.12.270, ~~or~~ 2.12.295, 2.12.297, 2.12.298 or 2.12.299 of this chapter and who files such report or reports after the deadlines imposed in these Sections, shall, in

Ballot Measure H: Public Financing of Election Campaigns

addition to any other penalties or remedies established by this chapter, be liable for the penalties enumerated in California Government Code Section 91013, which is incorporated herein.

2.12.645 Fair Elections Act Penalties.

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled, spend more than the amount of Fair Elections funding they have received, or misuse such benefits or Fair Elections funding.
- B. If a participating candidate spends or obligates to spend more than the Fair Elections funding the candidate is given, then the candidate shall repay to the Fair Elections Fund an amount equal to the excess.
- C. If a participating candidate knowingly or willfully spends or obligates to spend more than the Fair Elections funding the candidate is given, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of the excess. There shall be a rebuttable presumption of knowing or willful intent if the applicable spending limit is exceeded by more than ten percent.
- D. The commission shall, after a hearing held pursuant to Section 2.12.230, have the authority to impose the fine created by this section upon a two-thirds vote.

2.12.650 Violation—Persons Ineligible for Public Funds—Time Limit.

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section 2.12.230. The commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation.

Section 10. EFFECTIVE DATES

Section 2.12.550 of this Act shall take effect January 1, 2005. City Charter Article III Section 5 ½ shall take effect immediately upon a vote by a majority of the members of the City Council to effectuate the Section and may be suspended as provided therein. If the next City election following such City Council vote includes a Mayoral election, all provisions of this Act related to the office of Mayor shall take effect immediately upon the City Council vote to effectuate City Charter Article III Section 5 ½ and provisions of this Act related to all other offices shall take effect January 1 of the calendar year following the Mayoral election. If the next City election following such City Council vote does not include a Mayoral election, all provisions of this Act related to the office of City Council member shall take effect immediately upon the City Council vote to effectuate City Charter Article III Section 5 ½ and provisions of this Act related to all other offices shall take effect January 1 of the calendar year following the City Council election; provided that the City Council may vote to defer the implementation of this Act with respect to

Ballot Measure H: Public Financing of Election Campaigns

the offices of City Council, School Board Director and Auditor to a later date if there are insufficient funds available to fund such campaigns at the time such offices would otherwise be entitled to funding under this section.

Section 11. SEVERABILITY

In the event any court of competent jurisdiction holds any provision of this Act invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.

CITY ATTORNEY'S ANALYSIS

AMENDMENT TO CITY OF BERKELEY CHARTER ARTICLE III (ELECTIONS) AND MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM ACT) TO CREATE A VOLUNTARY SYSTEM OF PUBLIC FINANCING OF ELECTION CAMPAIGNS

This measure would amend the City Charter and Municipal Code to have the following material effects:

The Council would be authorized to implement this measure to create a voluntary public financing program to fully fund election campaigns in general, special and runoff elections for the offices of mayor, city council, auditor and school board, administered by the Fair Campaign Practices Commission (FCPC). Upon the Council's decision to implement this measure, the Council must annually appropriate \$498,000 (adjusted for inflation) from the General Fund to a new Fair Elections Fund (Fund). The Fund would be capped at \$1.8 million, with excess revenue to be deposited into the General Fund. Current law provides no public funds for City election campaigns or mandates appropriations for specific purposes. Campaign contributions and expenditures are currently regulated by the BERA and enforced by the FCPC.

The Council may suspend the public financing program for up to one year for a fiscal emergency by a two-thirds vote. The program would become effective first for mayor and then on January 1 after the mayoral election for all remaining City offices. If the first election after Council implementation were not a mayoral election, Council offices would be funded first. Based upon the unavailability of funds, the Council could also defer funding the offices of city council member, school board director and auditor to a later election.

Grants for each general or special municipal election would be as follows: mayor (\$160,000), city council and auditor (\$20,000) and school board (\$12,000). Candidates seeking public funds must raise \$5 "qualifying contributions" from a specified number of persons per office, namely, mayor (500), auditor (200), city council and school board (100) in order to receive public funds.

These grants would be reduced to 20% if all opposing candidates who had not received public funds failed to raise, spend or have cash on hand of at least 20% of such grant amount. In runoff elections, eligible candidates would receive 50% of the general election grant award. The FCPC would decrease grants proportionately, within specified priorities, in the event of insufficient funds.

The City grant would be increased by no more than twice the original grant to match expenditures of an opponent without public financing and/or certain independent expenditures. Expenditure of public funds would be restricted to defined direct campaign expenses, and would be adjusted to reflect changes in the cost of living.

Ballot Measure H: Public Financing of Election Campaigns

Publicly-funded candidates must limit spending to the amount of the City grant and forego other sources of funding except for the raising and spending of “seed money” in individual contributions of no more than \$250 each during an initial exploratory period, capped at 10% of the City grant.

Financial Implications

Upon Council implementation, likely increases in taxes (subject to voter approval), fees, penalties or assessments or reductions in City services/programs in an amount corresponding to the required annual general fund appropriation of \$498,000 plus an inflation adjustment.

ARGUMENT IN FAVOR OF MEASURE H

Over a billion dollars will be spent by all sides in the presidential election this year, most by big-money contributors! Tired of politics dominated by money? Join the Sierra Club, Common Cause, the Public Campaign Action Fund, the California Clean Money Campaign, the Center for Voting and Democracy, Assemblywoman Loni Hancock, and hundreds of others by supporting Measure H.

- **Increase the Diversity of Candidates**

Without public financing, only those with personal wealth or access to wealthy contributors are able to run for public office.

Our current mayor spent \$236,000 to win election. The average cost of a winning city council campaign is \$35,000. Winning a school board seat costs an average of \$16,000.

- **Level the Playing Field**

With Measure H, all candidates will have the same amount of money to spend. Elections will be based on ideas, experience, and community support, not money!

- **Proven, Tested, and Sound**

Measure H is sensible and well-tested. It is currently in place in Arizona and Maine with more states considering the system each year. In Arizona, from 1998 to 2002:

- Statewide voter turnout increased over 20%.
- The number of minority candidates tripled.
- There have been more candidates, more competition, and more voter choice in all elections!

- **Responsive Elected Officials**

When campaigns are paid for by voters, instead of special interests, elected officials are responsive to voters, not beholden to special interests! Since enacting their Clean Money, Fair Elections law, Maine passed **universal health-care**, as legislators have become independent of insurance industry campaign contributions.

- **Help Make History in Berkeley!**

Help make Berkeley the first city in the country to adopt full public financing of elections. Passing Measure H in Berkeley is an important step towards state and national reform.

Please support Measure H – because Democracy Matters!

s/TOM BATES, Mayor, City of Berkeley

s/GORDON WOZNIAK, Councilmember

s/KITTY McLEAN, individually and on behalf of, The Sierra Club

s/DARRYL G. MOORE, Trustee, Peralta Community College Board

s/SANTIAGO CASAL, Co-Chair, Latinos Unidos

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE H

If it is such a good idea, why do Berkeley's neighborhood associations oppose Measure H?

The money isn't there.

- On this very same ballot, the Mayor and Council ask for millions in new taxes to fund existing programs.
- Their own Budget Review Commission predicts deficits rising from \$10,000,000 to \$21,000,000 over the next five years.
- The last thing we need is a new \$500,000/year program without an identified source of funding.

Programs we DO need will suffer.

- This expense will be written into the Charter – our local equivalent of a Constitution.
- Other critical programs – like fire, police, health, youth services – have no such protection. If money is tight (and they say it is now), paying for politicians will come first. Fire, police, and programs for the elderly will suffer.

Berkeley doesn't have a problem.

- The problems cited by the national organizations sponsoring this very complicated measure simply don't exist here.
- We already have the toughest campaign laws in the country.
- We already have diverse candidates, funded by small contributions from interested citizens.

No other city anywhere has adopted such an ordinance. It's an experiment which Berkeley CAN'T afford. VOTE "NO" ON MEASURE H.

s/LAURIE BRIGHT, individually and on behalf of, President, Council of Neighborhood Associations

s/JIM HULTMAN, individually and on behalf of, Board Member, LeConte Neighborhood Association

s/BETTY J. HICKS, Treasurer, San Pablo Neighborhood Council, individually and on behalf of, Oregon Street Neighborhood Watch

s/ROBERT C. BAUM, individually and on behalf of, Co-Chair, Blake and California Streets Neighborhood Association

s/JOAN BURNETT, President, Dwight-Hillside Neighborhood Association

ARGUMENT AGAINST MEASURE H

Perhaps a good idea, but where is the money coming from?

The City Council wants us to fund their future campaigns for public office. This would cost \$500,000 a year. Simultaneously, the Council claims that the City is threatened with annual deficits of \$10,000,000 or more, and asks for massive new taxes.

How can the Council square this new, expensive program with repeated promises not to incur new costs without a source of revenue? It can't.

- Measures K, L, and M, would raise taxes on a typical \$500,000 home to nearly \$10,000 a year. Measure J would increase taxes on essential utility services to several hundred dollars a year.
- The Council claims these taxes are needed for existing programs. *They would not provide funds for the campaign financing proposal.*
- The Council's Budget Review Commission has found that the budget deficit is "structural" and will continue even with new taxes. It recommends "zero-based budgeting": existing programs must be reviewed and new programs barred unless there are *revenues to support them.*

This is a runaway Council which refuses to tighten its belt and looks to the voters to bail it out. If Measure H passes, it would be locked into the City Charter. Once put into effect, it would take precedence over all other programs. When deficits recur, candidates would have a legal right to campaign money while other essential programs suffer (like fire, police and senior programs).

Much may be said for public funding of political campaigns. But so far no other City has such a program. Indeed, Berkeley's existing laws on campaign financing are already the toughest in the nation.

Until we solve more pressing problems, public funding is a luxury we cannot afford.

Vote "No" on Measure H. Vote "No" on Measures K, L, and M.

s/LAURIE BRIGHT, individually and on behalf of, President, Council of Neighborhood Associations

s/DEAN METZGER, individually and on behalf of, President, Claremont Elmwood Neighborhood Association

s/ELEANOR PEPPLES, individually and on behalf of, President, North East Berkeley Association Board

s/GREGORY HARPER, individually and on behalf of, Block Captain, Neighbors of Stanton Street

s/MICHAEL WILSON, individually and on behalf of, President, Berkeley Property Owners Association

REBUTTAL TO ARGUMENT AGAINST MEASURE H

The opponents of Measure H are penny wise and pound foolish.

Voting Yes on Measure H means endorsing a process where candidates no longer have to spend their time dialing-for-dollars or depleting their retirement accounts. **Instead, they can talk with voters and respond to the needs of their constituents.**

Voting No would maintain the status quo where competitive mayoral candidates have to raise \$150 daily for four years to run for office. *This expense*—which is paid for by wealthy candidates and their friends—is the expense our opponents should worry about.

Meanwhile, *we* pay a huge price by sacrificing many would-be candidates who can't afford to run for office. **To ensure proper oversight over the city's budget, we must attract the best and broadest possible range of candidates.** This will cost only about 0.1% percent of Berkeley's budget – and would help ensure that the other 99.9% is spent responsibly.

If the city faces a fiscal emergency, the program can be temporarily suspended. But if the proven systems in Arizona and Maine are an indication, fiscal emergencies will be less likely with Measure H than without it.

It is unfortunate that the opponents of Measure H are so concerned with its meager cost that they are willing to overlook the price we pay when talented people can't afford to run.

Increase the Diversity of Candidates.

Level the Playing Field.

Make Our Elected Officials More Responsive

Help Make History in Berkeley!

Vote Yes on Measure H—Because Democracy Matters!

s/TOM BATES, Mayor, City of Berkeley

s/DONA SPRING, Councilmember

s/NANCY CARLETON, Co-Chair, Halcyon Neighborhood Association; Former Chair, Zoning Adjustments Board

s/AMIRA JESSICA DIAMOND, individually and on behalf of, West Coast Director, Democracy Matters

s/ALAN ROSS, individually and on behalf of California Common Cause

Ballot Measure I: Date of Mayoral Elections

TITLE

Shall the Charter of the City of Berkeley be amended to change the date of mayoral elections to coincide with presidential elections and to adjust the mayor's term to two years on a one-time basis, in 2006 to accomplish this result?

Financial Implications

No costs in 2006. Uncertain future costs until instant runoff voting is implemented.

Ballot Measure I: Date of Mayoral Elections

TEXT OF CHARTER AMENDMENT

AMENDMENT TO BERKELEY CHARTER RELATING TO TERM OF MAYOR

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

Section 1. Article V section 14 shall be amended to read as follows:

Section 14. Mayor's term of office.

The Mayor shall hold office for a term of four years from and after the first day of December after his or her election is certified by the City Clerk and until a successor is elected and qualified. However, the term of the mayor elected in the ~~April, 1979~~ November 2006 general municipal election shall expire on the first day of December, ~~1982~~ 2008 after a successor is elected in the November, ~~1982~~ 2008 general municipal election. Thereafter, mayoral elections shall coincide with presidential elections.

CITY ATTORNEY'S ANALYSIS

AMENDMENT TO BERKELEY CHARTER RELATING TO TERM OF MAYOR

The proposed charter amendment would change the date of mayoral elections to coincide with presidential elections. In order to accomplish this result, the mayor's term commencing in December in 2006 would have to be cut short from four years to two years so that it expires in 2008. By shortening the term to two years ending in 2008, mayoral elections will be held in 2008, at the same time as the 2008 election for president. Under the current charter, a mayor elected at the 2006 general municipal election would hold office for four years until 2010. With the exception of the mayor elected at the 2006 election whose tenure will be two years, thereafter, the mayor's term of office will be four years and mayoral elections will coincide with presidential elections.

Financial Implications

There will be no costs in 2006. Since the election for auditor will occur at a different time than the mayoral election, there is some chance that the number of runoff elections could be increased, resulting in increased election costs. However, since the vote threshold for triggering runoffs has been lowered recently, it is unclear how likely runoffs are in the future, especially if instant runoff voting is implemented, and thus financial implications are uncertain and there could be none. The mayoral election will be advanced in 2008.

ARGUMENT IN FAVOR OF MEASURE I

Moving the Mayoral election to coincide with the presidential election year will give **thousands of additional people the chance to vote for Mayor** when they come out to vote for President.

More people voting:

Every year voter registration campaigns spend thousands of dollars and hours to register many new voters. This one time simple change will increase the number of people who vote for Mayor by more voters than even the most phenomenally successful voter registration effort. Voter participation in other contested Berkeley races is already dramatically higher in Presidential election years.

Impact on Current Mayor:

The Mayor will serve out his current four year term. If he runs for re-election in 2006 it would be a two year term. Future Mayoral elections would all be four year terms elected at the same time as the U.S. President. Current Mayor Tom Bates supports this change.

Common Sense:

Opponents argue it would be too confusing to Berkeley voters to vote for the Mayor and President at the same time. However Berkeley already votes for Congress, State Assembly, School Board, Rent Board, and regional agencies at the same time as President. We have confidence in Berkeley voters that they are intelligent and capable of one more office on the presidential election ballot.

No Cost:

Because Instant Run-off voting was authorized by 72% of Berkeley voters, future Mayoral elections will bear no additional cost of conducting a run-off election.

Good Government

Let's join the many other cities who have increased voter participation by this simple but important improvement in our election process.

Please join Mayor Bates, Vice Mayor Maudelle Shirek, Councilmembers Margaret Breland, Miriam Hawley, Linda Maio, Dona Spring, and Kriss Worthington in voting YES on Measure I.

s/DARRYL MOORE, Peralta College Board of Trustees

s/NANCY CARLETON, Co-Chair, Halcyon Neighborhood Association, Former Chair, Zoning Adjustments Board

s/ELIZABETH HALL, External Affairs Vice President, ASUC

s/MAX ANDERSON, Chair, Rent Stabilization Board

s/JENNIFER GREENWOOD, typical Berkeley resident

Ballot Measure J: Utility Users Tax

TITLE

Shall the utility users tax be temporarily increased from 7.5% to 9.0% for the calendar years 2005-2008, expenditure of the additional proceeds be authorized, and prior amendments to the tax be ratified?

Financial Implications

The estimated cost in FY 2005-06 for a Berkeley resident with combined monthly utility (gas, electricity, cable, telephone and cell phone) bills of \$300 currently would be approximately \$27 per month versus \$22.50 per month.

TEXT OF ORDINANCE

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.70 AUTHORIZING INCREASE IN RATES OF UTILITY USERS TAXES AND AUTHORIZING EXPENDITURE OF PROCEEDS OF TAX

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

Section 1. This ordinance shall be known as the Temporary Economic Recovery Act of 2004.

Section 2. The City of Berkeley is currently experiencing financial difficulties due to statewide and national economic conditions. In order to remedy these difficulties, the City has made significant cuts in its expenditures. However, in order to be able to balance its budget while preserving the services desired by the people of Berkeley, the City also needs to raise additional revenues for a limited period of time, until economic conditions improve.

Section 3. That Section 7.70.076 is added to the Berkeley Municipal Code to read as follows:

7.70.076 Temporary increase in taxes.

A. For the calendar years 2005 through 2008, the tax rate in Sections 7.70.050, 7.70.060, 7.70.070, and 7.70.075 shall be increased from 7.5% to 9.0%.

B. This section shall be deemed automatically repealed and of no further force and effect as of midnight on December 31, 2008, and as of January 1, 2009, the tax rates in Sections 7.70.050, 7.70.060, 7.70.070, and 7.70.075 shall revert to 7.5%.

C. The City Council may at any time reduce or eliminate the tax increase imposed by this section.

Section 4. 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 increase in the tax rate for each of the four calendar years from 2005 through 2008.

Section 5. The voters of the City of Berkeley hereby ratify all amendments to Chapter 7.70 of the Berkeley Municipal Code (Utility Users Tax) adopted prior to November 2, 2004.

CITY ATTORNEY'S ANALYSIS

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.70 AUTHORIZING INCREASE IN RATES OF UTILITY USERS TAXES AND AUTHORIZING EXPENDITURE OF PROCEEDS OF TAX

Currently, the City's existing utility users tax raises \$13,900,000 for general governmental purposes such as police, fire, health and human services, recreation, and city administrative services, through a 7.5% tax on gas, electric, telephone, and video service bills. This amendment would increase that tax rate temporarily, beginning 2005 through 2008, to make up for existing and projected decreases in other sources of revenue. The increase in the tax would expire December 31, 2008, after which the tax would revert to the current rate of 7.5%. However, the Council could repeal the tax increase at any time. This measure would also authorize the expenditure of the additional tax proceeds resulting from the rate increase through calendar year 2008; and ratify various technical changes to the utility users taxes (Berkeley Municipal Code Chapter 7.70) that have been adopted by the City Council.

Financial Implications

The proposed tax increase would increase the annual cost for a Berkeley resident with combined utility (gas, electricity, cable, telephone and cell phone) bills currently totaling \$300 per month (or \$3,600 annually) from \$270 per year to \$324 per year.

ARGUMENT IN FAVOR OF MEASURE J

DON'T LET THE STATE'S BUDGET CRISIS DEVASTATE OUR ESSENTIAL FIRE, POLICE, HEALTH, AND COMMUNITY SERVICES.

SAVE OUR CITY -- VOTE YES ON J!

This "Budget Crisis Bridge Measure" will provide 4 years of emergency funding for front-line city services until the state returns local funding and the economy improves.

STATE ACTIONS CAUSED MOST OF THE LOCAL DEFICIT

The deficit – the largest in Berkeley's history – was caused because of reductions in state funding, dramatic increases in costs for the state-run employee retirement system (CalPERS), and the economic downturn.

BERKELEY HAS ALREADY CUT OVER \$14 MILLION AND FACES ANOTHER \$7.5 MILLION DEFICIT NEXT YEAR

The City balanced its budget and maintained the best bond rating of any city our size in the State by making tough decisions.

- Over 100 city positions eliminated.
- City employees agreed to across the board pay cuts.
- Programs have been reduced and consolidated.
- A freeze on new hires and new programs.

FRONT LINE SERVICES ARE NOW AT RISK

Without new revenue, the City can no longer protect essential services. Planned cuts include:

- The elimination of a fire truck company.
- Reductions in health and social services.
- Elimination of seven police officers.
- Cuts to senior programs, arts and community agencies

MEASURE J IS TEMPORARY, FAIR, AND ESSENTIAL

Measure J is a temporary measure to protect essential services during the crisis. It would increase the City's utility tax by 1.5%.

- Households would only pay about \$4.50 per month.
- The tax automatically EXPIRES in 4 years.

MEASURE J HAS BROAD SUPPORT

From business owners, to homeowners, to students, to seniors – Berkeley is VOTING YES on MEASURE J. Join former City Manager Weldon Rucker and Dr. Ron Adler, Chair, Community Health Commission in voting YES for maintaining our basic services.

s/TOM BATES, Mayor, City of Berkeley

s/ANDY ROSS, Owner, Cody's Books

s/GORDON J. WOZNIAK, Councilmember

s/boona cheema, Executive Director, Building Opportunities for Self-Sufficiency (BOSS)

s/REV. GEORGE E. CRESPIAN, Pastor, St. Joseph the Worker Church

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE J

If Measure J passes, total household utility taxes will be hundreds of dollars a year.

Just add up your utility bills (gas, electricity, telephone, cable, cellular and internet access). Multiply by twelve and then by 9%. This is a regressive, painful tax.

Don't Believe Them!!

- **This tax has nothing to do with preserving “essential community services”:** Instead it frees up money now spent on essential services and re-routes it to non-essential programs.
- **The deficit has nothing to do with state actions; it comes from runaway spending.** The City's Budget Review Commission finds that Berkeley has a “structural deficit”, caused by a failure to audit old programs, overstaffing and excessive employee benefits. They recommend against new taxes.
- **The City Has Not Tightened Its Belt.**
 - Berkeley has 54 boards and commissions, each with funding demands. Not one has been cut.
 - No program has been eliminated.
 - The positions allegedly cut by the City are slots that were not filled, or where the employee was simply moved to another job.
 - Berkeley still has more employees per capita than any other California city.
- **This tax is not “temporary”.**
 - Berkeley's property tax revenues increased by 62% over the past seven years.
 - The budget (now \$300,000,000) grows faster than inflation, even while population falls.
 - Once in place, this tax will not go away.

Do not add to the high cost of living in Berkeley. Vote “No” on Measure J

s/LAURIE BRIGHT, individually and on behalf of, President, Council of Neighborhood Associations

s/JIM HULTMAN, individually and on behalf of, Board Member, LeConte Neighborhood Association

s/GREGORY HARPER, individually and on behalf of, Block Captain, Stanton Street Neighborhood Association.

s/BETTY J. HICKS, Treasurer, San Pablo Neighborhood Council, individually and on behalf of Oregon Street Neighborhood Watch

s/MIRIAM Y. NG, individually and on behalf of, Vice Chair and Past Chair, Berkeley Chamber of Commerce

ARGUMENT AGAINST MEASURE J

Measure J is a costly and regressive tax that Berkeley just doesn't need! **Vote NO.**

- **Berkeley's utility tax will cost you hundreds of dollars per year.** If this measure passes, you'll be paying a 9% tax on your utilities. That's higher than **all but one** other Bay Area city!
- The tax targets cell-phones, telephones, gas, electricity, and cable. It targets every renter, homeowner, and business in the city. Do the math on **your** bills: 9% is a lot of money!
- **The utility tax is regressive.** Rich or poor, everyone has to pay the same tax rate under Measure J. And since no one can go without utilities, **everyone pays** regardless of whether they can afford it.
- **This increase is horrible for small businesses.** Look at all the empty storefronts downtown. Businesses don't move to Berkeley, and a major factor is the high tax cost.

The City blames "statewide and national economic conditions" for its problems. Don't believe it. Berkeley's budget is already \$287 million for just 102,000 people---more than enough money.

The Budget Review Commission (appointed by the Council!) says the City's deficit won't be solved by "temporary" tax increases. They say the problem is "structural." The City **has** to stop spending more than it makes:

- Berkeley has more employees per capita than any East Bay city, with generous benefits and a permanent "no layoff" policy.
- We have 54 citizen boards and commissions.
- Unlike other cities, we don't demand Payments In Lieu of Taxes from the "non-profit" corporations that own 55% of Berkeley's real estate.

A "structural" problem needs a "structural" solution — not a tax on your cell-phone!

Vote "No" on Measure J! You already pay enough!

s/ELEANOR PEPPLES, individually and on behalf of, President, North East Berkeley Association Board

s/LAURIE BRIGHT, individually and on behalf of, President, Council of Neighborhood Associations

s/DEAN METZGER, individually and on behalf of, President, Claremont Elmwood Neighborhood Association

s/MICHAEL WILSON, individually and on behalf of, President, Berkeley Property Owners Association

s/MARIE BOWMAN, individually and on behalf of, President Berkeley Alliance of Neighborhood Associations

REBUTTAL TO ARGUMENT AGAINST MEASURE J

Measure J is **NOT A NEW TAX**. It is a modest, **TEMPORARY INCREASE** in the City's utility tax of 1.5%.

Households would only pay **ABOUT \$4.50 PER MONTH--** not hundreds of dollars.

FACT: State actions, the economy, rising healthcare and worker's compensation costs have caused major financial crises for all California cities.

FACT: Berkeley has made tough choices, CUTTING MORE THAN \$14 MILLION FROM ITS \$113,000,000 GENERAL FUND BUDGET.

FACT: CITY EMPLOYEES AGREED TO PAY CUTS to help maintain city services, saving more than \$1 million.

FACT: CITY HAS ELIMINATED OVER 100 POSITIONS AND PUT A FREEZE ON ALL HIRING AND NEW PROGRAMS.

FACT: Berkeley employs more people than other East Bay cities only because **WE DON'T CONTRACT OUT OUR HEALTH AND REFUSE SERVICES, THEREFORE ACTUALLY SAVING THE TAXPAYERS MONEY.**

FACT: THE CITY FACES ANOTHER \$7.5 MILLION DEFICIT NEXT YEAR.

FACT: Without Measure J Berkeley will need to:

- Eliminate a fire truck company.
- Reduce health and social services.
- Eliminate seven police officers.
- Cut senior programs, arts and community agencies

FACT: Measure J is FAIR since **EVERYONE PAYS A LITTLE-** not just homeowners.

FACT: Measure J will expire when the State is scheduled to stop taking the cities' property tax money.

For more information about the City's budget crisis and Mayor Tom Bates' plan for fiscal recovery, go to – www.CityofBerkeley.info/Mayor/FiscalRecoveryPlan.htm

ENSURE THE CITY KEEPS ESSENTIAL SERVICES SO BERKELEY CAN REMAIN A SAFE AND HEALTHY COMMUNITY FOR ALL OUR RESIDENTS.

PLEASE VOTE YES ON MEASURE J!

s/TOM BATES, Mayor, City of Berkeley

s/BEATRIZ LEYVA-CUTLER, Member, Latinos Unidos

s/MORRIS WRIGHT, Owner and President of BBI Construction

s/DAVID MANSON, Founding Member, Berkeley Organization of Congregations for Action
(BOCA) Youth Initiative

s/DION S. ARONER, Former Assemblywoman

Ballot Measure K: Real Property Transfer Tax for Youth Services

TITLE

Shall a special tax to fund youth services and youth safety programs, be authorized on real property transfers through December 31, 2010, at the rate of 0.5% on transfers for \$600,000 or more, and 1% on transfers for \$1,000,000 or more?

Financial Implications

Adds 0.5% to existing 1.5% transfer tax on transfers \$600,000 and over and 1% to existing tax on transfers \$1,000,000 and over.

TEXT OF ORDINANCE

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.52 TO ADD A SPECIAL TAX TO FUND YOUTH SERVICES AND YOUTH SAFETY PROGRAMS AND AUTHORIZING EXPENDITURE OF PROCEEDS OF TAX

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

Section 1. That Section 7.52.041 is added to the Berkeley Municipal Code to read as follows:

7.52.041 Additional special tax imposed to fund youth services and youth safety programs

A. In addition to the general tax imposed under Section 7.52.040, there is hereby imposed on transfers of lands, tenements, or other interests in real property located in the City of Berkeley, an additional real property transfer special tax:

1. At the rate of 0.5% of the value of consideration when the sale price is \$600,000 or more; and

2. At the rate of 1% of the value of consideration when the sale price is \$1,000,000 or more.

Except as set forth in Section 7.52.060, this special tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer.

B. The supplemental special tax imposed by this section shall be used solely to fund youth services and youth safety programs.

C. "Youth services and youth safety programs" means recreation programs, summer camps and other summer programs, school break programs, after-school programs, literacy programs, academic mentoring, cultural enrichment, crossing guards, school-based police officers, violence prevention efforts, health and mental health programs, other similar services and programs, grants to community-based agencies that provide such affordable services and programs for at-risk youth, and program evaluation and coordination.

D. The supplemental tax imposed by this section shall expire at midnight on December 31, 2010.

Section 2. That Berkeley Municipal Code Section 7.52.060.K.1 is amended to read as follows:

7.52.060 Exceptions.

K. 1. Up to one-third of the tax imposed by Section 7.52.040 of this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred on or after October 17, 1989 to "seismically retrofit" either any structure which is used exclusively for residential purposes, or any mixed use structure which contains two or more dwelling units.

Section 3. 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 increase in the tax rate for each of the four calendar years beginning 2005 through 2008.

CITY ATTORNEY'S ANALYSIS

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.52 TO ADD A SPECIAL TAX TO FUND YOUTH SERVICES AND YOUTH SAFETY PROGRAMS AND AUTHORIZING EXPENDITURE OF PROCEEDS OF TAX

The City provides various affordable youth services and youth safety programs, including, but not limited to, recreation programs, summer camps, literacy programs, after school, school break and summer programs, crossing guards, school-based police officers, violence prevention efforts, health and mental health programs, grants to community-based agencies that provide services to at-risk youth, and program evaluation and coordination. The current budget identifies significant cuts to these programs. These programs have been funded primarily out of the City's General Fund. This ordinance would authorize a supplemental real property transfer special tax on specified sales of real property. The current real property transfer tax is 1.5% of sales price regardless of the price of the sale. If approved, this amendment would increase the total rate of the City's real property transfer tax on sales of \$600,000 or more to 2.0% of the sales price, and on sales of \$1,000,000 or more to 2.5% of the sales price, in order to pay for these and other similar programs. The tax would be subject to the same exemptions as the existing transfer tax, but not the 1/3 seismic retrofit rebate. Finally, the tax would expire on December 31, 2010. This measure would also authorize the expenditure of the additional tax proceeds resulting from the tax beginning calendar year 2005 through 2008.

Financial Implications

This special tax would be imposed upon all real property with a transfer price of \$600,000 or more. It would add 0.5% to the amount of the existing transfer tax on sales of \$600,000 or more, and 1% to the existing transfer tax on sales of \$1,000,000 or more. The current rate is 1.5% of the sales price on all property regardless of transfer price. The additional transfer tax on sales of \$600,000 or more would cost \$500 for every \$100,000 in sales price of property, and the additional transfer tax on sales of \$1,000,000 or more would cost \$1000 for every \$100,000 in sales price of property.

ARGUMENT IN FAVOR OF MEASURE K

Vote Yes on Measure K - Youth Services and Youth Safety

After three years of budget cuts, thousands of Berkeley children are at risk of losing essential youth services.

Over the years Berkeley has built a network of successful educational, health, and safety programs for our youth. Our tax dollars have funded recreation and summer programs; after-school tutoring, arts and music programs; school safety; counseling services; and, the Berkeley High School Health Center.

MEASURE K is a *temporary* increase in the existing real estate transfer tax that will **generate enough funds to keep essential youth services in place.** Measure K is NOT a new tax on homeowners – it is a modest increase in the real estate transfer tax to be paid ONLY at time of sale.

Your YES VOTE will preserve the quality of life we value in Berkeley. It will protect our children during and after school and it will maintain the network of valuable youth services we depend upon.

Through employee wage concessions and program cuts, the City has made millions in cuts – and more are expected. **But we cannot afford to balance our budget on the backs of our children.**

A YES vote on Measure K will generate about \$2 million to fund programs currently scheduled for cuts:

- **After school and summer programs ;**
- **School crossing guards**, school resources officers and after school safety monitors;
- **School-based health and mental health programs ;**
- **Tutoring and mentoring** for academically challenged students;
- **Emergency services** and shelter for homeless youth

Measure K will affect about 250 corporate and private properties sold annually – only 1% of the total properties in Berkeley.

Join former City Manager Weldon Rucker, Vice Mayor Shirek, Councilmembers Breland, Hawley, Maio, Spring, and Worthington in supporting Berkeley's future.

Vote YES on Measure K – Save our city, Support our youth!

s/TOM BATES, Mayor, City of Berkeley

s/JOHN T. SELAWSKY, President, Berkeley School Board

s/DARRYL G. MOORE, Trustee, Peralta Community College Board

s/TRINA OSTRANDER, Executive Director, Berkeley Public Education Foundation

s/MARK TENENBAUM, Real Estate Broker

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE K

Measure K is bad public policy. This tax is an obstacle to home ownership.

- **This tax does not just affect a few Berkeley homes.** In 2003 over 1,300 Berkeley homes sold at an average price of over \$600,000, the threshold for the proposed tax increase. In contrast to what the city tells you, more and more Berkeley families will be impacted by this higher tax.
- **This property transfer tax increase is not “modest”.** It will increase the existing 1.5% transfer property tax rate to 2% or 2.5%. A typical home that sells in every Berkeley neighborhood for \$600,000 will pay a tax of \$12,000, a 33% increase.
- This tax will add a **significant burden** on first-time homebuyers and elderly sellers.
- **It will never be a “temporary tax”** and it is not deductible from federal or state income taxes.
- The reason for this tax increase is not compelling. **Berkeley taxpayers support Youth Services!** Berkeley taxpayers **ALREADY** fund over 55 youth programs (excluding recreational) at an annual cost of \$11 million. Shouldn't the City and the School District combine their resources before asking for additional taxes?
- In 2003-4 the City collected net revenue of about \$10.5 million through the existing property transfer tax. Why should we be taxed even more?

Berkeley taxpayers already pay the highest property taxes in the state. Don't allow the City to further tax your property with this increased Property Transfer Tax.

DON'T DISCOURAGE HOME OWNERSHIP - VOTE NO ON MEASURE K

s/KENNETH T. ROSEN, Professor of Business Administration & Chair of the Fisher Center for
Real Estate and Urban Economics, Haas School of Business, UC Berkeley

s/BETTY OLDS, Councilmember

s/GORDON WOZNIAK, Councilmember

s/SEYMOUR FROMER

s/MICHAEL WILSON, individually and on behalf of President, Berkeley Property Owners
Association

ARGUMENT AGAINST MEASURE K

Vote NO on Measure K. This tax increase further erodes the affordability of Berkeley homes by significantly increasing costs for both buyers and sellers.

- This Measure will increase the existing 1.5% property transfer tax rate so that typical homes in every Berkeley neighborhood that sell for \$600,000 and up will be taxed starting at \$12,000, a \$3,000 minimum increase.
- With this increase, Berkeley will have the highest transfer tax in the state.
- For young buyers this tax will result in an added cost to buying into an already very difficult home market. For elderly sellers it means that at the time in your life when you most need it, your equity in your home will be reduced.
- Real Estate Professionals oppose this tax and say it will depreciate the value of all Berkeley homes.
- Existing annual transfer tax revenues have increased 100% in the last seven years from \$5.1 million to over \$10 million pumping money into the City budget at an all time high. Overall property tax revenues have increased by 62% over the past seven years. Yet, the City has not learned to live within its budget.
- Over \$11 million is already spent annually by the City for youth programs. These existing programs have not been evaluated as promised by the City two years ago. Now the City wants to add new programs paid for by this tax. When youth programs are tied to this tax, what happens when the predicted real estate boom ends?

Vote NO on Measure K. Unlike a mortgage that is fixed, these taxes continue to increase each year. We **do not** need another tax.

s/BETTY OLDS, Councilmember

s/MIRIAM NG, individually and on behalf of, Chair, Local Governmental Relations Committee,
Berkeley Association of Realtors

s/CECILIA GAERLAN, Member, Berkeley Citizens Budget Review Commission

s/LAURA MENARD, Member, Berkeley High School Safety Committee

s/ELEANOR PEPPLS, individually and on behalf of, President, North East Berkeley
Association Board

REBUTTAL TO ARGUMENT AGAINST MEASURE K

Measures K will **SAVE BERKELEY'S YOUTH SERVICES.**

Measure K is **NOT A NEW TAX.**

Measure K **ONLY APPLIES TO THE SALE OF EXPENSIVE PROPERTY.**

Berkeley homes regularly have multiple bids and sell for substantially over the asking price. An increase of .5% on homes over \$600,000 and 1% increase on homes over \$1,000,000 will not slow down or prevent the sale of expensive homes in Berkeley.

Measure K is a **TEMPORARY INCREASE**- it expires when the State stops taking cities' property taxes.

MEASURE K WILL ENSURE THAT YOUTH SERVICES ARE AVAILABLE FOR ALL OF OUR YOUNG PEOPLE by increasing the transfer tax on approximately 250 sales a year.

Measure K has **NO NEW PROGRAMS.**

Measure K will RESTORE:

- After school and summer programs.
- School crossing guards and other youth safety efforts.
- Tutoring and mentoring programs.
- School-based health and children's mental health programs.
- Emergency services and shelter for homeless youth.

The City has already--

- Cut \$14 million from its current budget.
- Eliminated over 100 positions.
- Established a hiring freeze.
- Employees have agreed to wage reductions.

Berkeley still faces a deficit of \$7.5 million next year.

Without voter approval of Measure K Berkeley WILL dramatically reduce or eliminate essential youth programs.

BERKELEY MUST PUT CHILDREN FIRST. We cannot let State budget cuts harm our children's quality of life.

Join Assemblywoman Loni Hancock, Supervisor Keith Carson, Pastor Sarah Isakson, Dr. Ron Adler and School Boardmember Terry Doran in VOTING YES ON MEASURE K.

s/TOM BATES, Mayor, City of Berkeley

s/ELIZABETH HALL, Vice-President of External Affairs, Associated Students of University of
California (ASUC)

s/ROIA FERRAZARES, President, Berkeley PTA

s/REV. GEORGE CRESPIAN, St. Joseph the Worker Church

s/STEVE LUSTIG, Acting Vice Chancellor, University of California at Berkeley

Ballot Measure L: Library Services Tax

TITLE

Shall the special tax for the Berkeley Public Library be amended to: increase the per foot tax rate from \$0.132172 to \$0.1540 for residential property and \$0.2001 to \$0.2331 for other property; change the annual inflation adjustment to 5%; increase the expenditure limitation through FY 2008?

Financial Implications

The annual cost in FY 2005 would be \$292.60 for a 1,900 square foot home and \$2,331.00 for a 10,000 square foot building.

TEXT OF ORDINANCE

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.56 AUTHORIZING INCREASE IN TAX RATE OF LIBRARY RELIEF ACT OF 1980, AMENDING INFLATION ADJUSTMENT AND INCREASING EXPENDITURE AUTHORITY

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

Section 1. That Berkeley Municipal Code Section 7.56.030 is amended to read as follows:

7.56.030 Imposition of tax.

There is hereby imposed a tax on the square footage of all improvements in the City of Berkeley, except where the improvements are otherwise exempt from taxation by Section 7.56.100 and/or Section 7.56.035 of this chapter.

The rate of tax for the fiscal year ~~1989-90~~ 2005-06 to support the usual and current expenses of operating the City of Berkeley Library Services ~~shall be, is increased 5.7 percent over last year's rate, and is hereby fixed and apportioned upon the square feet of improvements, as defined below:~~

A. \$0.1540 ~~For all dwelling units, the tax shall be imposed at the rate of \$0.0761 per square foot of all dwelling units; and:~~

B. \$0.2331 ~~For all industrial, commercial and institutional buildings, the tax shall be imposed at the rate of \$0.1151 per square foot~~ of all other taxable buildings.

Section 2. That Berkeley Municipal Code Section 7.56.040 is amended to read as follows:

7.56.040 Limited authority of City Council to annually increase the tax hereby imposed to reflect cost of living and personal income growth increases.

~~A.—The City Council of the City of Berkeley is hereby authorized to increase the tax rate authorized by this Ordinance by up to 5% annually. Subject to the conditions of subsection B below, the City Council of the City of Berkeley is hereby authorized to increase the tax rates imposed by this chapter.~~

~~—B. The City Council may increase the taxes imposed hereby only upon a finding that the cost of living in the immediate San Francisco Bay Area, or personal income growth in the state of California, as verified by official United States economic reports has increased; and the increase of the taxes imposed hereby shall not exceed this verified increase in the cost of living in the immediate San Francisco Bay Area, or personal income growth in California, whichever is greater.~~

Ballot Measure L: Library Services Tax

Section 3. That Berkeley Municipal Code Section 7.56.120 is amended to read as follows:

7.56.120 Increase appropriations limit.

Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from ~~2000-01~~ 2005-06 through ~~2003-04~~ 2008-09.

CITY ATTORNEY'S ANALYSIS

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.56 AUTHORIZING INCREASE IN TAX RATE OF LIBRARY RELIEF ACT OF 1980, AMENDING INFLATION ADJUSTMENT AND INCREASING EXPENDITURE AUTHORITY

The City's main library and branch libraries are almost entirely funded by a citywide special tax of \$0.132172 per square foot on all improvements to residential real property in the City of Berkeley, and \$0.2001 per square foot on all improvements to commercial, industrial and institutional real property. In Fiscal Year 2004, the library tax raised approximately \$11,272,200. The tax is indexed to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in California. If approved, this measure would increase the tax rates on residential property from \$0.132172 to \$0.1540 per square foot, and on other property from \$0.2001 to \$0.2331 per square foot, to pay for existing library costs such as facilities, personnel, books and supplies, as well as expansion of the literacy program. It would also change the annual inflation factor from the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in California to a maximum of 5%. Finally, if approved this measure would increase the City's authority to expend the proceeds of this tax to equal the amount collected.

Financial Implications

The proposed tax rate would limit the annual cost for an average 1,900 square foot home to \$292.60 in FY 2005-06. It is estimated that the tax will cost residential taxpayers no more than the following average amounts during FY 2005-06:

<u>Square Feet</u>	<u>Annual Tax</u>
1,200	\$ 184.80
1,500	\$ 231.00
1,900	\$ 292.60
3,000	\$ 462.00
10,000	\$2,331.00

ARGUMENT IN FAVOR OF MEASURE L

This measure will restore library services. The Central Library will, once again, be open on Sundays. The branches and Central will return to their full weekday schedules. The budget for books and other materials will be restored: patrons will once again find new and best-selling adult and children's books, DVDs and CDs.

The measure will allow the Berkeley Reads Literacy Program to double the number of adults who will be taught to read each year, improving their economic prospects and those of their children.

The Library Parcel Tax has enabled Berkeley to maintain its tradition of excellent libraries for 24 years. The Central Library, since its recent renovation, has experienced a dramatic increase in use; Berkeley now has one of the busiest libraries in California, checking out over 1.5 million items each year. However, due to both the state budget crisis and increased operating costs, it is no longer possible to provide the same outstanding level of service. Berkeley has been forced to cut hours, book budgets and other services. Increased revenues will restore these services to their previous levels. The additional cost to homeowners with a 1900 sq. ft. home will be approximately \$41 per year; low-income homeowners will be exempt. Funds from this measure will be available to restore services in July 2005.

s/TOM BATES, Mayor, City of Berkeley

s/AMY ROTH, Chair, Keep Libraries Alive

s/JORGE GARCIA, Chair, Board of Library Trustees, Berkeley Public Library

s/RANKO YAMADA, President, Berkeley Public Library Foundation

s/DARRYL MOORE, Trustee, Peralta Community College Board

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE L

Why do Berkeley's neighborhood associations oppose this new tax?

- **The library now costs nearly \$300 per typical taxpaying household.**

Measure L asks for a 16.5% per cent increase, on top of a 13.9% increase taken last year, and an overall 45% increase over the past five years.

- **The City Auditor says the Library Board has failed to control runaway costs.**

The Board agrees to put the Auditor's recommendations in place, but instead of waiting for the results, again comes to the electorate for a bailout.

- **There is no end in sight.**

Measure L provides automatic, annual increases to the library tax far in excess of actual inflation. By 2015, a homeowner who now pays \$300 per year will be paying *at least* \$542.

- **We haven't been told the whole story. These figures exclude:**
 - \$1,200,000 borrowed from the City to cover previous cost overruns
 - the library's exposure in a \$6,000,000 lawsuit now set for trial, and
 - \$17,000,000 in capital improvements scheduled in just two years.

Berkeley has been generous to a fault. We all want a good Library: but it must live within its means, must be well managed, and must serve the residents of this city.

Do not yield to fear tactics! Demand accountability! Vote "No" on Measure L.

s/GORDON WOZNIAK, Councilmember

s/JIM HULTMAN, individually and on behalf of, Board Member, LeConte Neighborhood Association

s/GREGORY HARPER, individually and on behalf of, Block Captain, Stanton Street Neighborhood Association

s/ROBERT C. BAUM, individually and on behalf of, President, Blake and California Streets Neighborhood Association

s/BETTY J. HICKS, Treasurer, San Pablo Neighborhood Council, individually and on behalf of Oregon Street Neighborhood Watch

ARGUMENT AGAINST MEASURE L

Say “No” to financial mismanagement.

Berkeley’s library is a cherished institution. It also enjoys enormous inflation-protected revenues. In 2004, the library collected \$11,272,200 in taxes, 13.9% higher than in 2003, and a 45% increase over the last five years.

The City wants to increase the tax rate by another 16.5% in 2005, and by at least 5% every year thereafter. The total cost would be nearly \$300 per year per average homeowner.

Why are things out of control? The cost of living is only marginally higher than in 2003. Personal incomes have fallen. Berkeley’s population continues to shrink. Why have library costs increased so much? Why are we threatened with Sunday closures?

The answer is fiscal mismanagement:

- The Library’s Board is effectively accountable to no one.
- The City Auditor has found gross failures to follow standard accounting procedures. Often, purchase orders do not even include an amount: they are simply rubber-stamped, leaving it to the individual employee to fill in the blanks. In many cases, expenditures are made without required approvals, and without competitive bidding.
- There are nearly 160,000 Berkeley Library cards in circulation: most of these are issued to non-residents.
- Library staff is bloated, and salaries and benefits are grossly in excess of the private sector.
- New projects are begun (like an adult literacy program which will cost more than \$300,000 per year), while existing programs suffer because of alleged funding shortfalls.
- The board has also abused our trust by a 13.9% retroactive increase in the 2003-04 tax rate, when the law limited the increase to only 2.5%

Send a message! The library should be accountable to the people. Vote No on Measure L.

Vote No on Measure L. This is the only way to make the Library Board accountable to the people.

s/GORDON WOZNIAK, Councilmember

s/ELEANOR PEPPLES, individually and on behalf of, President, North East Berkeley Association Board

s/LAURIE BRIGHT, individually and on behalf of, President, Council of Neighborhood Associations

s/DEAN METZGER, individually and on behalf of, President, Claremont Elmwood Neighborhood Association

s/MICHAEL WILSON, individually and on behalf of, President, Berkeley Property Owners Association

REBUTTAL TO ARGUMENT AGAINST MEASURE L

The Berkeley Public Library, a cherished community resource for lifelong learning, is soundly managed and fully accountable to the people of Berkeley.

FACTS about the Library:

- City Council appoints the Board of Library Trustees, sets its annual tax increases, approves its budget, and holds it accountable to Berkeley's residents.
- 1.5 million items are checked out each year -- one of the highest in the state. Award winning services -- Children's, Teen and Literacy -- keep Berkeley reading! Your \$41/year increase protects these services.
- The City Auditor's report to Council praised the library for "requesting this audit and the many significant steps implemented even before the issuance of the report." It identified no gross failings.
- The Library's reduced hours and collections are the result of the City's higher salaries, benefits' costs and retirement costs, in turn caused by unanticipated statewide economic conditions, not Library fiscal policy or management.
- Last year, Berkeley residents used over 57,600 Library cards, about 60% of the total used annually. Moreover, over 1 million items, about 70% of the total, were checked out by Berkeley residents.
- Total Library staffing remains static, though the downtown Library doubled in size. Salaries are comparable with other libraries in the region.
- Measure L would double the 1987-initiated Literacy Program's number of people served, at less than \$278,000/year.
- City Council legally and appropriately approved the 2003 tax increase to protect your library services.
- Your Library preserves your democratic freedoms and access to information.

Keep Libraries Alive and Support Measure L!

s/LONI HANCOCK, Assemblymember

s/BETTY OLDS, Councilmember

s/DARRYL G. MOORE, Trustee, Peralta Community College Board

s/JEANIE L. RUCKER

s/LAURIE CAPITELLI, Candidate, District 5

Ballot Measure M: Emergency Medical Services Tax

TITLE

Shall the special tax for paramedic services be amended to: increase the tax rate from \$0.02626 to \$0.041634 per square foot; add personal income growth as an alternative inflation adjustment; and authorize the expenditure of the additional proceeds?

Financial Implications

The annual cost in fiscal year 2005-06 would be \$79.10 for a 1,900 square foot home, \$124.90 for a 3,000 square foot home and \$416.34 for a 10,000 square foot building.

TEXT OF ORDINANCE

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.90 INCREASING RATE OF EMERGENCY MEDICAL SERVICES TAX, ALLOWING ANNUAL ADJUSTMENT BASED ON INCREASE IN PER CAPITA PERSONAL INCOME GROWTH AND AUTHORIZING EXPENDITURE OF ADDITIONAL TAX PROCEEDS

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

Section 1. The City of Berkeley is currently experiencing financial difficulties due to statewide and national economic conditions. In order to remedy these difficulties, the City has made significant cuts in its expenditures. However, in order to be able to balance its budget while preserving the services desired by the people of Berkeley, the City also needs to raise additional revenues. In particular, Berkeley residents benefit from paramedic services provided by the Berkeley Fire Department, and desire to increase the existing special tax that funds these services to make up an anticipated deficit, and to enable paramedic services to be expanded so that they are available from all of the City's fire stations.

Section 2. That Berkeley Municipal Code Section 7.90.020 is amended to read as follows:

7.90.020 Tax authorized--Tax rate—Indexing —~~Reduction of tax if County measure passes.~~

- A. The City Council is hereby authorized to impose a special tax of up to ~~\$0.0329~~ \$0.041634 per square foot of improvements in the City of Berkeley.
- B. The tax imposed by this chapter shall be operative on July 1, ~~1997~~ 2005.
- C. The City Council of the City of Berkeley is hereby authorized to increase the tax rate authorized by this Ordinance to the extent that the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in California has increased, whichever is greater.

Section 3. 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 increase in the tax rate for each of the four fiscal years from 2005-06 through 2008-09.

CITY ATTORNEY'S ANALYSIS

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 7.90 INCREASING RATE OF EMERGENCY MEDICAL SERVICES TAX, ALLOWING ANNUAL ADJUSTMENT BASED ON INCREASE IN PER CAPITA PERSONAL INCOME GROWTH AND AUTHORIZING EXPENDITURE OF ADDITIONAL TAX PROCEEDS

Ambulance-based paramedic service, which is also referred to as Advanced Life Support (ALS), is provided by three Fire Department ambulance transport units. Approximately 40% of the cost of this service is funded by a special tax of \$ 0.02626 per square foot on all improvements to real property in the City of Berkeley, which raised approximately \$1,965,000 in FY 2004. This tax, if approved, will increase the paramedic special tax to a rate of \$0.041634 to cover the projected FY 2005 deficit in the ALS program of \$1 million, and provide an additional \$200,000 that can be used to expand paramedic service to all of the City's fire stations. Paramedics with the equipment, skills, and training to provide ALS intervention prior to the arrival of an ambulance would be assigned to each of the City's seven fire engines. At present, this tax may be increased annually by the cost of living in the immediate San Francisco Bay Area. This measure would allow it to be increased by the greater of the increase in the cost of living or per capita personal income growth in California. This measure would also authorize the expenditure of the additional tax proceeds resulting from the rate increase through fiscal year 2008-09.

Financial Implications

The proposed tax rate would limit the annual cost for an average 1,900 square foot home to \$79.10 in FY 2005-06. It is estimated that the tax will cost residential taxpayers no more than the following average amounts during FY 2005-06:

<u>Square Feet</u>	<u>Annual Tax</u>
1,200	\$ 49.96
1,500	\$ 62.45
1,900	\$ 79.10
3,000	\$ 124.90
10,000	\$ 416.34

ARGUMENT IN FAVOR OF MEASURE M

Make sure medical help is there when you call for it. Vote YES on MEASURE M.

City of Berkeley paramedics provide emergency medical treatment and transport for over 8900 people every year. Countless lives are saved by their heroic and difficult work.

Measure M guarantees funding for this vital service and improves medical service to all Berkeley residents by placing trained Paramedics on fire engines at all of Berkeley's seven fire stations.

The Paramedic Services Measure accomplishes two important goals.

First, Measure M closes a \$1 million deficit in the City's paramedic services fund and protects funding for this essential service. As with nearly all health care costs, the expense of providing paramedic services has increased in the last few years. The City of Berkeley ensures that no one is ever denied paramedic services because they cannot afford to pay. In prior years, the City has redirected other funds to cover this deficit, but is now dealing with a serious deficit of its own.

Second, Measure M provides funding for the equipment and training for firefighters to serve as Paramedics on fire engines at each of the City's seven fire stations. Fire engines usually arrive before ambulance units when responding to an emergency medical call to 911. If Measure M passes, emergency medical help will arrive faster and lives will be saved.

To accomplish these two important goals, Measure M would cost \$79 per year for the average homeowner.

HELP SAVE LIVES. VOTE YES ON MEASURE M.

s/MAUELLE SHIREK, Vice Mayor, City of Berkeley

s/GORDON WOZNIAK, Councilmember

s/DONA SPRING, Councilmember

s/RUSSELL KILDAY-HICKS, Former Chair, Disaster Council; CERT Instructor

s/ANDY ROSS, Owner, Cody's Books, Inc.

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE M

Emergency Medical Care is essential

- That's why an adequately staffed Fire Department, fully prepared to provide quality emergency medical services, *must be guaranteed*.
- Measure M's supporters know you will worry if you don't have good emergency services. That's the bait.

Measure M does not guarantee new funds will be added for quality emergency medical services.

- *Nothing* in Measure M prevents replacing current funding and using the replaced funding for something else. That's the switch.
- The Council *rejected* a Berkeley Firefighter sponsored amendment to Measure M that would have guaranteed quality emergency medical services.

Don't be misled. The money is there.

- Berkeley has \$117 million annually which can be used for services like the Fire Department Paramedic Program.
- Berkeley already has the highest tax rate in the State.
- Revenue from property taxes increased 62% since 1997.

The problem is what the Council has *chosen* to do.

- Ignored the critical need to identify essential services and fund them adequately before paying for other nice-to-have services.
- Cut funding for services across-the-board without regard to whether the service was essential, or the program was effective.
- Added new programs without regard to how they will be funded.

Join with people from all over Berkeley fighting for safe and healthy neighborhoods. Let the Council know we don't want "bait and switch." Vote NO on Measure M. Then work with us to insure that essential services like emergency medical care will be adequately funded.

s/ART DAY, Berkeley Fire Safety Commissioner, and individually and on behalf of Friends of the Berkeley Fire Department

s/ROBIN WRIGHT, Member, Lorin District Neighborhood Association

s/MARTHA JONES, Former Member, Berkeley Disaster Council, and individually and on behalf of Claremont Elmwood Neighborhood Association

s/ELEANOR PEPPLES, individually and on behalf of President, North East Berkeley Association Board

s/SHIRLEY DEAN, Former Mayor, City of Berkeley

ARGUMENT AGAINST MEASURE M

Vote NO on Measure M. This 59% increase to your existing Paramedic Tax doesn't guarantee that quality emergency response medical services will be provided by an adequately staffed Fire Department.

Berkeley Firefighters provide paramedic services paid for by patient fees, an existing special Paramedic Tax, and General Funds in the Fire Department budget. Measure M doesn't guarantee that all the \$1,200,000 **extra** money raised by this new increase will be used to provide paramedic services in addition to those we already have. In fact, the City Council actually rejected a Berkeley Firefighter sponsored amendment to Measure M that would have **required** that all the extra money be spent on additional services!

Instead, Measure M allows the City Council to simply **replace General Fund money it's already spending on fire and paramedic services with these new funds.** The funds that have been replaced could then be used to pay for some other purpose. You could end up with fewer emergency medical response services than what you voted for and thought you were getting. This kind of *political "Bait and Switch" game* has happened before. If the Council wants money to pay for other services, they should ask for your vote to pay for them directly.

Proponents claim that Measure M is needed to close a \$1,000,000 deficit in the paramedic program. **No such deficit is identified in the City's budget.** The closest thing is a shortfall in the Paramedic Fund, but that's only \$178,000 counting both last year and this year.

Vote NO on Measure M. Then join with us, a coalition of neighbors, committed to working to include in the regular budget an adequately staffed Fire Department that is fully trained and equipped to provide the emergency medical services we need. These are essential services. No more games.

s/TRUDY WASHBURN, Chair, Berkeley Fire Safety Commission

s/LAURA MENARD, Chair, ROC (Russell-Oregon-California) Neighborhood Group

s/LAURIE V. BRIGHT, individually and on behalf of, President, Council of Neighborhood Associations

s/FRANK DAVIS, JR., Chair, Black Property Owners Association

s/SHIRLEY DEAN, Former Mayor, City of Berkeley

REBUTTAL TO ARGUMENT AGAINST MEASURE M

Don't be fooled by the insulting and inaccurate assertions against Measure M.

This straightforward proposal **will ensure that trained emergency medical services will be available for every Berkeley resident AND help keep enhanced First Response Companies in service.**

MEASURE M WILL SAVE LIVES.

Berkeley has a \$1,000,000 shortfall in the existing Emergency Medical Services Tax - a tax dedicated for paramedic services.

Measure M will provide an additional **\$200,000 to adequately equip and train our firefighters.**

Years ago voters established Berkeley's paramedic service through a special parcel tax.

Over the years, costs have risen beyond the income. **The City was able to cover the deficit in 2004 by drawing \$1,000,000 from the General Fund – NOW THESE FUNDS ARE EXHAUSTED.**

Berkeley is a well run City that spends taxpayer money wisely. Even in these troubled fiscal times the City has maintained a balanced budget and received Moody's highest bond rating.

With ongoing State cutbacks we cannot afford to continue to take general funds to cover these deficits.

MEASURE M WILL SUSTAIN AND IMPROVE PARAMEDIC SERVICES.

MEASURE M WILL ENSURE THAT ALL FIRE STATIONS HAVE TRAINED PARAMEDIC FIRST-RESPONDERS.

Average homeowners (1900 square foot home) will only add \$30 per year, for a total annual cost \$79 - or **23 cents a day - for first-rate paramedic services.**

Please **vote for our Paramedic Restoration and Service Tax to keep and improve our excellent paramedic services.** If Measure M isn't approved, we must cut our emergency paramedic services.

Please VOTE YES on Measure M.

s/TOM BATES, Mayor, City of Berkeley
s/LONI HANCOCK, Assemblywoman - District 14
s/KARL REEH, Commissioner, Disaster Council
s/SANTIAGO CASAL, Member, Latinos Unidos
s/GORDON WOZNIAK, Councilmember

Ballot Measure N: Gann Override

TITLE

Shall the appropriation limit under Article XIII B of the California Constitution (or ceiling on city expenditures) be increased to allow for the expenditure of taxes previously approved by voters for parks maintenance; libraries; emergency medical services, and emergency services for severely disabled persons for fiscal years 2005 through 2008?

Financial Implications

Not a tax increase, authorizes expenditure of existing voter-approved taxes.

CITY ATTORNEY'S ANALYSIS

**GANN LIMIT OVERRIDE FOR PARKS MAINTENANCE, LIBRARY RELIEF
AND EMERGENCY MEDICAL SERVICES AND EMERGENCY SERVICES FOR
SEVERELY DISABLED PERSONS TAXES**

This measure would authorize the City to continue to spend the proceeds of the Parks Maintenance Tax, Library Relief Tax, Emergency Medical Services Tax, and the Emergency Services for Severely Disabled Persons 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 again obtain voter approval of this expenditure. After that the tax proceeds would have to be returned to the taxpayers within two years. This measure seeks to raise the expenditure limit by the aggregate amount of all four taxes. Submitting the measures individually would cost \$5,000 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.

Financial Implications

This 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 measures for fiscal years 2005 through 2008.

ARGUMENT IN FAVOR OF MEASURE N

Join a unanimous Berkeley City Council in voting YES ON MEASURE N.

The State of California requires that all cities periodically ask voters for permission to spend tax revenue that was previously approved. Years ago, funding for the City's libraries, parks, and emergency medical services were approved by more than two-thirds of Berkeley voters. However, to continue collecting and spending these funds, Berkeley voters must vote yes on Measure N.

Measure N **does not** create a new tax or increase taxes by one penny.

Measure N only authorizes the City to continue using existing tax dollars to fund Berkeley's libraries, parks, and emergency medical services.

If Measure N does not pass, the City will lose millions of dollars in already approved tax revenue – forcing dramatic reductions in city services.

It's unanimous – Vote Yes on Measure N.

s/TOM BATES, Mayor, City of Berkeley

s/BETTY OLDS, Councilmember

s/GORDON J. WOZNIAK, Councilmember

s/MAUELLE SHIREK, Vice Mayor, City of Berkeley

s/SARA MacKUSICK, Vice Chair, Budget Commission

Ballot Measure O: Rent Ceilings - Annual General Adjustments

TITLE

Shall the Berkeley Rent Stabilization and Good Cause for Eviction ordinance be amended to provide that the Annual General Adjustment (AGA) of base rent ceilings be 65% of the increase in the prior year's Consumer Price Index in the San Francisco-Oakland-San Jose area with a cap of 7% and a floor of 0% per year?

Financial Implications

Annual costs savings of \$15,000 to \$20,000 for cost study required for setting of current AGA.

TEXT OF ORDINANCE

**AMENDMENT TO BERKELEY MUNICIPAL CODE (BMC) SECTION 13.76.110
RELATING TO ANNUAL GENERAL ADJUSTMENTS OF RENT CEILINGS**

BE IT ORDAINED by the People of the City of Berkeley that Berkeley Municipal Code section 13.76.110 shall be amended as follows:

13.76.110 Annual general adjustment of rent ceilings.

A. ~~Once each year, the board shall consider setting and adjusting~~ Effective January 1 of each year, the rent ceiling for all rental units covered by this chapter for which the landlord did not establish an initial rent during the prior calendar year ~~in general and/or particular categories of rental units covered by this chapter deemed appropriate by the board.~~ shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent (7%). The board shall ~~hold at least two public hearings prior to making any annual general adjustment of the rent ceilings.~~ The board shall publish and publicize notices of the date, time, and place of the public hearings at least thirty days prior to the hearing date. The two required public hearings shall be conducted and the annual general adjustment shall be set between September 1 and on or about October 31st of each year. The annual adjustment shall become effective the following January 1.

B. ~~In making annual general adjustments of the rent ceiling, the board shall:~~

~~1. Adjust the rent ceiling upward by granting those landlords who pay for utilities a utility adjustment for increases in the city of Berkeley for utilities.~~

~~2. Adjust the rent ceiling upward by granting landlords a property tax, maintenance and operating expense increase adjustment (exclusive of utilities) for increases in the city of Berkeley for property taxes and maintenance and operating expenses.~~

~~3. Adjust the rent ceiling downward by requiring landlords to decrease rents for any decreases in the city of Berkeley for property taxes.~~

~~4. Adjust the rent ceiling downward by requiring landlords who pay for utilities to decrease rents for any decreases in the city of Berkeley for utilities.~~

~~In adjusting rent ceilings under this subsection, the board shall adopt a formula or formulas of general application. This formula will be based upon the annual rent registration forms, surveys, information and testimonies, presented at public hearings, and other available data indicating increases or decreases in the expenses relating to the rental housing market in the city of Berkeley set forth in this subsection. For maintenance and operating expense adjustments, the board may also use survey data from surrounding communities where appropriate. The board shall make no more than one annual adjustment of rent ceilings per rental units per year.~~

~~Adoption of a formula greater than forty five percent of the increase in the Consumer Price Index for the twelve months ending the previous June 30 shall require the affirmative vote of six~~

Ballot Measure O: Rent Ceilings - Annual General Adjustments

~~commissioners, other provisions notwithstanding. Adoption of such a formula shall be a specific and special exception to the requirement of only five affirmative votes to make a decision. For the purposes of this subsection, the Consumer Price Index shall mean the Consumer Price Index for all urban consumers in San Francisco-Oakland, all items (1967 equals 100), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor, as it pertains to the City of Berkeley.~~

~~C.~~ An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a thirty days written notice of such rent increase and the notice period expires.

~~D.~~ If the board makes a downward general adjustment in the rent ceilings, landlords of rental units to which this adjustment applies shall give tenants of such rental units written notice of the rent decrease to which they are entitled. Such rent decreases shall take effect not later than thirty days after the effective date set by the board for the downward general adjustment.

~~E.~~C. If the maximum allowable rent specified under this chapter for a rental unit is greater than the rent specified for such unit in the rental agreement, the lower rent specified in the rental agreement shall be the maximum allowable rent until the rental agreement expires. If the maximum allowable rent specified under this chapter for a rental unit is less than the rent specified for such unit in the rental agreement, the lower rent specified under this chapter shall be the maximum allowable rent.

~~F.~~D. No rent increase pursuant to an upward general adjustment of a rent ceiling shall be effective if the landlord:

1. Has continued to fail to comply, after order of the board, with any provisions of this chapter and/or orders or regulations issued thereunder, or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or
3. Has failed to make repairs as ordered by the housing inspection services of the City of Berkeley, or
4. Has failed to completely register by July 1, except as provided in Subsection ~~G~~ E. below.

~~G.~~E. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten percent per month for each month beyond October 1 for which the landlord fails to register.

~~H.~~F. A landlord who is ineligible to raise rents under an upward general adjustment for an entire calendar year shall not be eligible to raise rents under that particular general adjustment in future years.

CITY ATTORNEY’S ANALYSIS

**AMENDMENT TO BERKELEY MUNICIPAL CODE (BMC) SECTION 13.76.110
RELATING TO ANNUAL GENERAL ADJUSTMENTS OF RENT CEILINGS**

The proposed ordinance would change the process by which the Berkeley Rent Stabilization Board annually increases base rent ceilings under the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance. Under the proposed amendment, the base rent ceiling for each rental unit eligible for an annual adjustment would be automatically increased by 65% of the increase in the prior year’s Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose area. Any annual increase would be capped at 7% and the rent ceiling could not be reduced by the annual adjustment.

Under current law, the formula for granting an annual adjustment of the base rent ceiling is established by the Rent Board after it conducts a study of rental housing-related costs increases and obtains input from the public.

Financial Implications

The Rent Stabilization Board expects to save approximately \$15,000 to \$20,000 per year in economic consultant and administrative costs for preparing the cost study and conducting the public process that results in establishment of the Annual General Adjustment each year.

ARGUMENT IN FAVOR OF MEASURE O

Measure O will provide a **simple, clear, and straightforward process** for determining the Annual General Adjustment or AGA that **is fair to both tenants and property owners**.

Measure O was placed on the ballot by **the unanimous vote of the City Council**.

The last twenty years have seen a seemingly endless dispute between Berkeley tenants and property owners over the amount of the annual rent increase allowed for rent-controlled housing units, known as the AGA. **Measure O is the product of good faith negotiations between the Berkeley Rent Stabilization Board and the Berkeley Property Owners Association**. It will **end years of expensive litigation** and eliminate the likelihood of more litigation over the AGA in the future.

Under Measure O, the AGA for each year will be set at 65% of the increase in the past year's Bay Area Consumer Price Index (CPI). This method is **similar to the process used in San Francisco and other rent-control cities**. The current AGA system requires the Rent Board to hire costly private consultants, analyze large quantities of operating cost data and conduct a series of public meetings before determining the amount of the AGA. This expensive process has been contentious, cumbersome and, over the years, has drawn criticism as well as lawsuits from both property owners and tenants.

Adoption of **Measure O will streamline the AGA process**, eliminate the annual rancor between the competing interests, **and save tens of thousands of dollars a year** in outside consultant and Legal costs.

Measure O is fair to everyone, reduces the cost of government and is supported by all sectors of the community.

Assemblymember Loni Hancock, Mayor Tom Bates, and Councilmembers Breland, Hawley, Maio, Olds, Shirek, Spring, Worthington, Wozniak and The League of Women Voters, all urge your YES vote for Measure O

s/TOM BATES, Mayor, City of Berkeley

s/BETTY OLDS, Councilmember

s/MAX ANDERSON, Chair, Berkeley Rent Stabilization Board

s/MICHAEL WILSON, individually and on behalf of, President, Berkeley Property Owners Association

s/SHERRY SMITH, individually and on behalf of, President, League of Women Voters of Berkeley, Albany & Emeryville

Ballot Measure P: Rent Stabilization and Eviction for Good Cause Ordinance

TITLE

Shall the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance be amended to: regulate Section 8 rent above the federal payment standard; exempt certain subsidized units; specify rent deposit interest rate reimbursement; permit City use of Rent Board information; set base rent for certain units; limit eviction of tenant for replacement roommate; and eliminate most criminal penalties?

Financial Implications

Revenue loss up to \$20,000 FY 2006 to Rent Stabilization Board.

TEXT OF ORDINANCE

AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO REGULATE SECTION 8 RENT ABOVE FEDERAL STANDARD, EXEMPT CERTAIN SUBSIDIZED UNITS, SPECIFY RENT DEPOSIT INTEREST RATE REIMBURSEMENT, PERMIT CITY USE OF RENT BOARD INFORMATION, SET BASE RENT FOR CERTAIN UNITS, LIMIT EVICTION OF TENANT FOR REPLACEMENT ROOMMATE, AND ELIMINATE MOST CRIMINAL PENALTIES

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

Section 1. That Section 13.76.040.A of the Berkeley Municipal Code is amended to read as follows:

13.76.040 Definitions.

A. "Board" refers to the ~~appointed~~ elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.

Section 2. That Section 13.76.050.D and the introductory sentence to Section 13.76.050 of the Berkeley Municipal Code, listing exemptions from the Rent Stabilization ordinance, are amended and subsections "L" and "K" are added to Section 13.76.050 to read as follows:

13.76.050 Applicability.

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

D. ~~Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 U.S.C. Section 1421b) or rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. However, e~~Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

Ballot Measure P: Rent Stabilization and Eviction for Good Cause Ordinance

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

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

Section 3. That Section 13.76.070 of the Berkeley Municipal Code is amended to read as follows:

13.76.070 Security deposits.

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be placed held by the landlord, in an interest bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation a fiduciary capacity for the benefit of the tenant and shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by insured commercial banks until such time as the payment or deposit is returned to the tenant or entitled to be used by the landlord as provided in Civil Code Section 1950.5. The interest earned accrued by said payment or deposit on monies through October 31st of each year shall be returned to the tenant annually in December of each year, either through a rent rebate or cash payment, in December of each year. and shall be at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by insured commercial banks as published by the Federal Reserve Board on the first business day of each month for the prior 12 months ending on November 1st, rounded to the nearest tenth. On or before November 15th of each year, the board shall give public notice of the rate to be effective for the following December. Upon the tenant's departure from the premises, the balance of any interest accrued earned by said payment or deposit on monies since the last October 31st shall be paid at the average monthly rate from the last November 1st to the date of departure and shall be returned to

Ballot Measure P: Rent Stabilization and Eviction for Good Cause Ordinance

the tenant along with the appropriate part of the principal and any prior unpaid interest, to the tenant upon departure from the premises. The board shall compute and publicize the interest rate applicable under this section on an ongoing basis.

Section 4. That Section 13.76.090 of the Berkeley Municipal Code is amended to read as follows:

13.76.090 Use and Confidentiality of information submitted to board.

~~A. All information and forms required by this chapter and submitted to the board shall not be used by any other governmental unit of the City of Berkeley for the enforcement of the City of Berkeley ordinances other than this chapter.~~

~~B.~~ The board shall adopt rules and regulations providing for the confidentiality of information submitted to the board in support of a petition for an individual rent ceiling adjustment under Section 13.76.120 of this chapter when such confidentiality is deemed necessary by the board and where otherwise permitted by state law.

Section 5. That Section 13.76.100 of the Berkeley Municipal Code is amended to read as follows:

13.76.100 Establishment of base rent ceiling and posting.

A. Base Rent Ceiling. Upon adoption of this chapter, no landlord shall charge rent for any rental unit covered by the terms of this chapter affecting rents in an amount greater than the lawful rent which was actually due and payable on, or last preceding, May 31, 1980, under the periodic term of the rental agreement, in accordance with the provisions of the Temporary Rent Stabilization Ordinance, No. 5212-N.S., except as permitted by the board under Sections 13.76.110 and 13.76.120 of this chapter. Such lawful rent in effect on May 31, 1980, is the base rent ceiling and is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120. For such rental units where no rent was in effect on May 31, 1980, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on May 31, 1980, or during the six months preceding that date and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be ~~a good faith estimate of the median rent in effect for comparable units in the City of Berkeley on May 31, 1980~~ the first periodic rent charged following May 31, 1980.

B. Posting. The board may establish reasonable rules and regulations for the posting of rent ceiling and other relevant information to further the purposes of this chapter.

C. Previously Exempt Units. For rental units specified in Section 13.76.050.F., the base rent ceiling shall be the rent in effect on December 31, 1981. For such rental units where no rent was in effect on December 31, 1981, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on December 31, 1981, or during the six months preceding that date and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be ~~a good faith estimate of the median rent in effect for comparable units, located in the same census tract, and similar in age, size,~~

Ballot Measure P: Rent Stabilization and Eviction for Good Cause Ordinance

~~maintenance, upkeep, and services~~ the first periodic rent charged following December 31, 1981.

Section 6. That Section 13.76.130.A.2 of the Berkeley Municipal Code is amended to read as follows:

13.76.130 Good cause required for eviction.

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

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

a. The landlord has unreasonably withheld consent to the subtenancy; and

b. The tenant remains an actual occupant of the rental unit; and

c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.

d. Withholding of consent by the landlord shall be deemed to be unreasonable where:

(i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;

(ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and

(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and

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

Section 7. That Section 13.76.190 of the Berkeley Municipal Code is amended to read as follows:

1

Ballot Measure P: Rent Stabilization and Eviction for Good Cause Ordinance

13.76.190 Criminal penalties.

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of Section 13.76.130 of this chapter shall be subject to up to a ~~five hundred dollar~~ \$500 fine and/or ~~ninety~~ 90 days in jail for a first offense and up to a ~~\$1000~~ three thousand dollar fine and/or ~~one year~~ six months in jail for any subsequent offenses.

CITY ATTORNEY'S ANALYSIS

AMENDING CHAPTER 13.76 OF THE BERKELEY MUNICIPAL CODE TO REGULATE SECTION 8 RENT ABOVE FEDERAL STANDARD, EXEMPT CERTAIN SUBSIDIZED UNITS, SPECIFY RENT DEPOSIT INTEREST RATE REIMBURSEMENT, PERMIT CITY USE OF RENT BOARD INFORMATION, SET BASE RENT FOR CERTAIN UNITS, LIMIT EVICTION OF TENANT FOR REPLACEMENT ROOMMATE, AND ELIMINATE MOST CRIMINAL PENALTIES

The proposed ordinance, if adopted, would amend the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance to have the following material effects:

1. The measure would regulate units rented under the federal Section 8 program where the rent exceeds the maximum rent that is subject to federal subsidy i.e. “the payment standard”. Under current law all Section 8 units are exempt because under the old federal Section 8 program, the rent that could be charged was limited to the payment standard.
2. Subsidized units rented by non-profit housing corporations to low-income tenants pursuant to a regulatory agreement with a governmental agency would be exempt from the registration and rent regulation provisions of the Rent Stabilization Ordinance.
3. Transitional housing units rented by non-profit organizations as an incident to recovery and shelter programs would be exempt from all but the Good Cause for Eviction provisions of the Rent Stabilization Ordinance except as preempted by the Transitional Housing Participant Misconduct Act. The eviction controls would continue to apply as long as the tenant remains eligible for the organization’s program.
4. Interest on security deposits would have to be paid to tenants at the Federal Reserve rate for 6-month certificates of deposit. Current law requires landlords to place security deposits in federally insured bank accounts and pay tenants the actual amount of interest earned.
5. The City would be allowed to use information in Rent Board files for the enforcement of other City ordinances. The current ordinance prohibits such use of this information.
6. The base rent ceiling for a unit that was not rented on the operative base date would be the first rent charged, unless another rent was previously certified by the Rent Board. Under current law, the owner is required to set the base rent as a good faith estimate of the median rent for comparable units.
7. A landlord may not evict a tenant for violation of a lease’s prohibition on subletting if the tenant replaces a roommate with a tenant who meets the landlord’s customary occupancy qualifications and the landlord fails to articulate a well-founded reason for the refusal. Current law does not expressly restrict eviction under these circumstances.
8. Criminal penalties for violations of the Rent Stabilization Ordinance would be mostly eliminated except where a landlord is found guilty of willfully violating the eviction controls and the maximum penalty would be modified to conform to state law. Under current law, a landlord is subject to criminal penalties for the willful violation of any provision of the Rent Stabilization Ordinance.
9. Obsolete references to an “appointed” Rent Board will be eliminated.

Ballot Measure P: Rent Stabilization and Eviction for Good Cause Ordinance

Financial Implications

The Rent Stabilization Board revenue may decrease by up to \$20,000 annually due to loss of registration fees from units newly exempted from registration.

ARGUMENT IN FAVOR OF MEASURE P

The Mayor, a unanimous City Council, and the Rent Board placed Measure P on the ballot to update the Rent Stabilization Ordinance and address issues raised since its enactment in 1980. Measure P is balanced and non-partisan – it benefits both tenants and property owners.

Yes on Measure P **guarantees tenants that they won't be evicted for replacing a roommate** with someone who **the landlord does not have good reason to reject**. This protection is important because shared housing is the only affordable housing option for many tenants, especially students.

Yes on Measure P **helps low-income Section 8 tenants** keep rent increases within the federal affordability standard. This protection is **necessary because of harmful Section 8 changes implemented by the Bush Administration**.

Yes on Measure P **protects property owners from extreme “criminal” penalties** for violating the Ordinance's registration, security deposit interest and rent control provisions.

Yes on Measure P **removes inappropriate requirements** from non-profit organizations that provide subsidized and transitional housing for low-income tenants.

Yes on Measure P **simplifies the method for setting the base rent** for previously exempt units, thereby **eliminating a process owners have complained is onerous** and confusing.

Yes on Measure P **streamlines the process for calculating and refunding interest** on tenants' security deposits, **removing the complexities and uncertainties that have lead to disputes in the past**. All tenants will receive the same interest rate and landlords will be relieved from the current restrictions on use of the deposits.

Yes on Measure P **permits many City functions to be coordinated and** operate more efficiently by allowing city agencies to use data already compiled by the Rent Board.

Assemblymember Loni Hancock, Mayor Tom Bates, and Councilmembers Breland, Hawley, Maio, Shirek, Spring, Worthington, and Wozniak all urge you to **VOTE YES ON MEASURE P**.

s/TOM BATES, Mayor, City of Berkeley

s/GORDON WOZNIAK, Councilmember

s/MIRIAM HAWLEY, Councilmember

s/MAX ANDERSON, Chair, Berkeley Rent Stabilization Board

s/MISHA LEYBOVICH, ASUC Student Body President

Ballot Measure Q: Enforcement of State Prostitution Laws (Angel's Initiative)

TITLE

Shall an ordinance be adopted to: 1) make enforcement of prostitution laws the lowest priority; 2) oppose state laws making prostitution a crime; and 3) require semi-annual reporting of prostitution-related Berkeley Police Department law enforcement activities?

Financial Implications

Possible increases in law enforcement costs as a result of potential increase in prostitution-related crime and increased reporting requirements.

TEXT OF INITIATIVE ORDINANCE

INITIATIVE ORDINANCE TO MAKE ENFORCEMENT OF STATE PROSTITUTION LAWS THE LOWEST PRIORITY; OPPOSE STATE LAWS MAKING PROSTITUTION A CRIME; AND REQUIRE SEMI-ANNUAL REPORTING OF PROSTITUTION-RELATED LAW ENFORCEMENT ACTIVITIES BY BERKELEY POLICE DEPARTMENT

Shall the City of Berkeley help stop violence against women, demand that the State of California repeal laws that prohibit private consensual adult sexual behavior and that treat women unfairly, make enforcing those laws a low police priority, and cease wasting vital funds?

WHEREAS, Persons should never be forced into having sex or doing any other act against their will, whether by force or fraud, and whether they are adults or children.

WHEREAS, Laws that make criminals of adults for having consensual sex have a profound effect on the safety and well being of those adults, with all that imports for the dignity of the persons charged. When victims of such laws receive criminal convictions, collateral consequences always follow; and

WHEREAS, Such consequences include the marginalizing of those individuals, negatively impacting their safety and access to health education and services, and preventing them from obtaining other employment due to the stigma and status of a criminal conviction; and

WHEREAS, The State of California, and the City of Berkeley face a severe financial crisis, and should not allocate precious resources for the senseless enforcement of victimless crimes; and

WHEREAS, Persons who provide sexual services should have the right to report any crimes perpetrated against them, and any crimes they witness, without fear of subjecting themselves to prosecution for admitting to being sex workers; and

WHEREAS, The harms of such sanctioned discrimination are best evidenced by the brutal hate crimes perpetrated against prostitutes and women. A recently convicted serial murderer confessed that he “picked prostitutes as my victims because I hate most prostitutes and because I thought I could kill as many of them as I wanted without getting caught.” Prostitutes are human beings. Criminalizing their work implies they are second class citizens subhuman and thus legitimate targets of physical violence and hatred; and

WHEREAS, Persons who provide sexual services should have the right to declare sex work as a legitimate vocation and source of income to financial institutions including lending organizations, credit facilities, and the California Franchise Tax Board; and

WHEREAS, The American Law Institute promulgated a Model Penal Code and made clear that it did not recommend or provide for “criminal penalties for consensual sexual relations conducted in private.” It justified its decision on three grounds: (1) The prohibitions undermined

Ballot Measure Q: Enforcement of State Prostitution Laws (Angel's Initiative)

respect for the law by penalizing conduct many people engaged in; (2) the statutes regulated private conduct not harmful to others; and (3) the laws were arbitrarily enforced and thus invited the danger of blackmail; and

WHEREAS, Article I of the Constitution of California decrees that all people are by nature free and independent and have inalienable rights. Among these are pursuing and obtaining safety, happiness, and privacy; and

WHEREAS, The Supreme Court of the United States has recently lauded “emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex,” that people “are entitled to respect for their private lives,” and the “State cannot demean their existence or control their destiny by making their private sexual conduct a crime.”

NOW THEREFORE BE IT RESOLVED by the City of Berkeley that a new chapter 12.27 entitled “Angel’s Initiative” is added to the Berkeley Municipal Code to read as follows:

Chapter 12.27 “Angel’s Initiative”

12.27.010 Purpose.

The unjust laws criminalizing consensual sexual activity among adults in private whether for money or any other consideration must be repealed.

Brutal hate crimes routinely perpetrated against prostitutes reveal how such laws disenfranchise and foster discrimination against persons, especially women, and do more to harm Berkeley citizens than protect them.

We demand the reform of sex laws, and the return of our basic freedoms of life, liberty, and the pursuit of happiness.

The ordinance codified in this chapter will:

A. Decrease tensions between the police and members of the community who are made to feel like criminals as a result of engaging in consensual adult sexual activity in private;

B. Require the Police Department to submit semi-annual reports on the amount of arrests made by law enforcement in Berkeley;

C. Instruct the City government to support efforts toward the statewide repeal of prostitution laws.

Ballot Measure Q: Enforcement of State Prostitution Laws (Angel's Initiative)

12.27.020 Definitions.

For purposes of this chapter, “prostitution” means any consensual sexual activity among or between adults whether for money or any other consideration.

For purposes of this chapter, nonconsensual sex acts, whether perpetrated by fraud, threat of force, or force, as well as any sex acts perpetrated against minors are not “prostitution,” and are referred to instead as “criminal sexual acts,” collectively.

For purposes of this chapter, “prostitution laws” mean the portions of Sections 266, 266d, 266e, 266f, 266h, 266i, 315, 316, 318, 647, 653.20, 653.22, 653.23, and 653.28 of the California Penal Code which criminalize sexual activity among or between consenting adults whether for money or any other consideration.

For purposes of this chapter, “prostitution laws” does not mean the portions of those sections, or any other sections of California law that prohibit criminal sexual acts as defined in this chapter.

12.27.030 Efforts to decriminalize prostitution in California.

It is the desire of the people of Berkeley that laws prohibiting or regulating private consensual sexual activity between or among adults be repealed in California. In this context, the people of Berkeley fully support the present statewide efforts to repeal prostitution laws. The City Council is directed to lobby in favor of the repeal of these laws.

12.27.040 Law enforcement priority of prostitution statutes.

The City Council shall seek to ensure that the Berkeley Police Department gives lowest priority to the enforcement of prostitution laws. If other portions of the Berkeley Municipal Code require “lowest priority” enforcement levels, such as the enforcement of marijuana laws, this section shall not be construed to elevate enforcement efforts against those acts. Instead, this section shall be interpreted to require equally low priority for the enforcement of “lowest priority” acts.

12.27.050 Berkeley Police Department reporting requirement.

The City Council shall ensure that the Berkeley Police Department reports semiannually to it and the Berkeley Police Review Commission regarding all prostitution law enforcement activities, if any, engaged in by the Berkeley Police Department, and by county, state, and federal, and/or other law enforcement agencies within Berkeley.

Ballot Measure Q: Enforcement of State Prostitution Laws (Angel's Initiative)

12.27.060 Severability.

If any provision of this ordinance, or the application of such provision to any person or circumstance, shall be held invalid by any court, the remainder of this ordinance to the extent that it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the sections of this ordinance are severable.

BE IT FINALLY RESOLVED, that the City Clerk is directed to transmit this resolution to all City departments, the courts, the Governor and the Attorney General of the State of California, to all members of the California Congressional delegation, the United States Attorney General, and the President of the United States of America.

CITY ATTORNEY'S ANALYSIS

INITIATIVE ORDINANCE TO MAKE ENFORCEMENT OF STATE PROSTITUTION LAWS THE LOWEST PRIORITY; OPPOSE STATE LAWS MAKING PROSTITUTION A CRIME; AND REQUIRE SEMI-ANNUAL REPORTING OF PROSTITUTION-RELATED LAW ENFORCEMENT ACTIVITIES BY BERKELEY POLICE DEPARTMENT

This ordinance would: 1) declare that the people of the City of Berkeley oppose California state laws making prostitution a crime; 2) direct the City Council to lobby in favor of the repeal of such laws; and 3) make enforcement of existing prostitution laws the lowest priority of the Berkeley Police Department. (“BPD”) BPD would also be required to report semi-annually to the City Council and the City’s Police Review Commission regarding all prostitution law enforcement activities by the BPD. According to the BPD, its failure to enforce prostitution laws in Berkeley could draw prostitution and related crime to the City. The BPD reports that the City could experience an increase in robberies, sexual assaults, thefts, batteries/assaults, noise/disturbing the peace calls, litter, and other such crimes, associated with prostitution, in affected areas of South and West Berkeley and possibly other parts of the City.

Financial Implications

Possible increases in prostitution-related crime and related law enforcement costs.

ARGUMENT IN FAVOR OF MEASURE Q

- **Stop violence against women.** Did you know that the number one cause of death for prostitutes is homicide? Prostitutes are extremely vulnerable targets for rape, robbery and murder. These crimes go largely under-reported because of current prostitution laws. Protecting prostitutes doesn't mean condoning prostitution; it means equal protection under the law and safer streets for everyone.
- **Improve public health.** Condoms are currently used as evidence of a crime against prostitutes. Laws should encourage condom use as they saves lives and protects everyone's health. Regulating prostitution decreases incidence of HIV, AIDS and STD's.
- **Improve public safety** by focusing on violent and serious crime. Redirect valuable police resources, in the process empowering women to fight sexual slavery. Trafficking and slavery are easier to detect when prostitution is regulated.
- **Education not incarceration.** According to estimates Berkeley spends nearly \$1,000,000.00 annually on prostitution enforcement. We need to redirect funds toward health services and job training to create options and opportunities for prostitutes. Criminal records make transitioning out of prostitution very difficult.

Putting women in jail doesn't stop prostitution. Prosecution is no solution to controlling prostitution.

Join State Senator John Burton, Alameda County Supervisors Keith Carson and Nate Miley, Former S.F. District Attorney Terence Hallinan and the Alameda Co. Green Party leading the way toward more humane, effective policy in their support of this ground breaking initiative.

Don't Forget: Great Change Begins in Berkeley.

Vote YES on Measure Q

s/AVAREN IPSEN, Ph.D. Candidate (G.T.U.) and Berkeley Commission on Status of Women
s/LOIS ROWAN, Retired Union Journalist, International Federation of Engineers (IFPTE) AFL-CIO
s/boona cheema, Executive Director, Building Opportunities for Self-Sufficiency (BOSS)
s/BEATRICE MORRIS, Physician Assistant, Mdivinity Pacific School of Religion
s/JERRY THREET, Former President, Harvey Milk LGBT Democratic Club

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE Q

VOTE NO ON MEASURE Q

Street prostitutes are exposed to dangerous exploitation, physical abuse, drug addiction, and HIV. This is what motivated the well-intentioned supporters of this measure to place it on the ballot. But **reduced enforcement against street prostitution will not accomplish their goals.**

If passage of one simple ballot measure could end violence against women, improve public health and safety, and substitute education for incarceration, we'd have passed it long ago.

Much deeper reform is needed. And that is a tall order that reduced enforcement will not achieve.

Instead, **reduced enforcement will expose our children to more open sex acts in cars and alleys**, more used condoms and needles littering their streets. This really happens in Southwest Berkeley neighborhoods.

Reduced enforcement will increase street prostitution and only make it easier.

Thanks to Berkeley's successful Options Recovery Program, some street prostitutes have a choice: the courts can say "enter the Options program or go to jail." The program often leads to meaningful work, clean and sober living, reunion with families--a wonderful thing to witness. Only judges' orders keep clients in the program and **only enforcement produces those orders.**

Supporters mistakenly claim that funds can be switched from police to health care, but Berkeley must pay the same number of police no matter what they do.

This measure spotlights the horrors of street prostitution but it doesn't advance the goals of safe sex-work. It doesn't make street prostitutes or neighborhoods any safer. PLEASE VOTE NO ON MEASURE Q.

s/MAUDELLE SHIREK, Vice-Mayor, City of Berkeley

s/DESTINY CASTELLANOS, Teaching Assistant, Center for the Education of the Infant Deaf

s/EUGENE AGRESS, CEO, Berkeley Mills and Furniture Company

s/FRANKIE LEE FRASER, President, San Pablo Park Neighborhood Council

s/MARGARET BRELAND, Councilmember

ARGUMENT AGAINST MEASURE Q

VOTE NO ON MEASURE Q

Street prostitution is nothing to celebrate. Prostitutes, often among the most vulnerable people in our society, risk violence, exploitation, sexually transmitted disease, and drug addiction. Shelter and drug counselors report that children as young as 12 are being recruited into prostitution.

Berkeley is a humane city. We recognize that consenting adults should be free to engage in sexual activity without harassment. We sympathize with the plight of street prostitutes. We want to ensure that they are not forced into prostitution through desperation and that they have other options. **This simplistic measure does not accomplish that.** Instead, it weakens the one vehicle we have for getting people help and into programs: the courts. We need to strengthen these programs and create protections for prostitutes. **This measure does nothing more than ask us to look the other way.**

Measure Q does not improve the appalling conditions that entrap prostitutes and is bad for Berkeley. Because this measure qualified for the ballot, CNN and other TV stations carried the story that Berkeley allows prostitution. Our Police Chief has since reported a marked increase in prostitution along San Pablo, west Berkeley neighborhood streets, and on University Avenue. South Berkeley neighborhoods, deluged by open sexual acts near homes and schools (including the Center for the Education of the Infant Deaf and the East Bay French American School) in cars and on porches, report that condoms and needles litter their sidewalks.

As Oakland cracks down on prostitution, Berkeley appears to be opening its arms. This measure sends the message that exploitative, dangerous street prostitution is acceptable in Berkeley. It weakens our existing court diversion program. It sends the wrong message for sex workers, for our children, and for Berkeley.

Measure Q is not for Berkeley. VOTE NO ON MEASURE Q

s/REV. GEORGE CRESPIAN, Pastor, St. Joseph the Worker Church

s/DR. DAVIDA COADY, Options Recovery Services

s/MARGARET BRELAND, Councilmember

s/DION ARONER, Former State Assemblywoman

s/JOHN SELAWSKY, President, Berkeley Unified School District

REBUTTAL TO ARGUMENT AGAINST MEASURE Q

- **No prison for prostitutes.** Police should deal with criminal matters, removing violent and serious felons from our streets. Focus on abuse of children, coercive and exploitative behavior not consensual adult sexual activity.
- **Encourage statewide reform.** Angel's Initiative will help create a favorable political environment for changing state prostitution laws; however it won't stop police from responding to neighborhood complaints or enforcing state laws.
- **Regional approach to prostitution.** Berkeley won't be alone as we join the international ranks of humane leadership on the issue of prostitution. The U.K., Canada, New Zealand, Australia, the Netherlands, Germany and Nevada have already realized the law enforcement approach is harmful and ineffective. Let's work toward a regional approach with Oakland and San Francisco.

Don't Look the other way, look *another way* at this issue. Angel's Initiative puts Berkeley in a leadership role to stop violence against women and enhance public health in our communities. It's time we increased the value placed on women's lives, take the time and work together to create real solutions not temporary ones. **Focus on Problems not Prostitutes.**

Please join State Senator John Burton, Alameda County Supervisors Keith Carson and Nate Miley, Former S.F. District Attorney Terence Hallinan, the Alameda Co. Green Party, Dean of the Pacific School of Religion, Delwin Brown and Berkeley Physician Dr. Frank Lucido laying the groundwork for meaningful social change in California.

Vote YES on Measure Q

Visit www.swop-usa.org or call **1-877-776-2004** for more info.

Great Change Begins in Berkeley!

s/YING LEE, Former Councilmember, City of Berkeley

s/DEBORAH COHAN, M.D., MPH, Asst. Clinical Professor, UCSF

s/LEE TRAMPLEASURE AMOSSLEE, Berkeley High School Teacher, 1996-2004

s/AVAREN IPSEN, Ph.D. Candidate, Graduate, Theological Union, Commission on the Status of Women

s/JANE MAXWELL, Mourning Mothers, Code Pink

Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004

TITLE

Shall the City's ordinances be amended to require the City to issue a permit to medical marijuana dispensaries as a matter of right and without a public hearing, eliminate limits on the amounts of medical marijuana possessed by patients or caregivers; and establish a peer review group for medical marijuana collectives?

Financial Implications

Possible increase in law enforcement costs and possible zoning related cost savings from change in public hearing requirement for marijuana dispensary permits.

TEXT OF INITIATIVE ORDINANCE

THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2004

The People of the City of Berkeley do hereby enact as follows:

THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2004

SECTION 1 TITLE

This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2004.

SECTION 2 FINDINGS AND DECLARATIONS

The People of the City of Berkeley find all of the following to be true:

A. We strongly support the right of seriously ill patients to use medical cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. We strongly oppose the arrest, prosecution, and incarceration of persons legally-qualified under the Compassionate Use Act of 1996 (Proposition 215) by local, state, or federal law enforcement.

C. There is a need in our community for safe and affordable access to medical cannabis.

D. In the absence of meaningful state regulation, it is necessary for local governments to adopt policies and guidelines for the purpose of facilitating safe access and protecting patients.

E. The provision of medical cannabis should occur in a safe and orderly manner in order to protect patients and the community. In the absence of clear guidelines, there has been a lack of consistency in the permitting and regulation of medical cannabis dispensing.

F. There is a need for specific instructions for City officials and staff in order to eliminate this inconsistency.

G. There are no scientifically valid studies that determine the yield of medicine based on specific numbers of plants or the quantity of medication necessary for a patient. Berkeley's arbitrarily-low cultivation limits place undue burdens on local patients, and therefore require revision based on patient's needs.

H. The People of the City of Berkeley further find and declare that we enact this initiative pursuant to the powers reserved to the State of California, the City of Berkeley, and its people under the Tenth Amendment to the United States Constitution.

SECTION 3 AMENDMENTS TO BERKELEY MUNICIPAL CODE CHAPTER 12.26

Chapter 12.26 of the Berkeley Municipal Code is hereby amended to read:

Section 12.26.010 Purposes.

The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996. The Compassionate Use Act is the state law removing state law penalties for qualified patients, and primary care givers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

- A. To help ensure that seriously ill Berkeley residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate and recommended or approved by a physician who has determined that the patient’s health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.
- B. To help ensure that qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient’s medical treatment with the recommendation or approval of a physician are not subject to criminal prosecution or sanction.
- C. To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of medical cannabis to patients whose medical doctors approve or recommend medical cannabis to treat a serious illness or condition. (Ord. 6620-NS § 1, 2001)

Section 12.26.030 Definitions.

- A. “Cannabis” shall have the same meaning as the definition of “Marijuana” provided in California Health and Safety Code Section 11018 at this time, but if that definition is amended by state law in the future, as amended. Currently, under Health and Safety Code Section 11018, “marijuana means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.”
- B. “Qualified patient” shall mean a person who has a written or oral recommendation or approval from a licensed medical doctor to use cannabis for medical purposes.
- C. “Primary caregiver” shall mean the individual person or persons designated by a qualified patient, provided that said individual person or persons has consistently assumed responsibility for the housing, health, or safety of the qualified patient.
- D. “Medical cannabis collective” shall mean a cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients, the purpose of which is to provide education, referral, or network services to qualified patients, and to facilitate or assist in the cultivation and manufacture or acquisition of medical cannabis for qualified patients. (Ord. 6620-NS § 1, 2001)

Section 12.26.040 Medical cannabis collectives.

- A. Pooling of Resources Recognized. The City of Berkeley recognizes that some qualified patients may not have primary caregivers and also may not be able to undertake all the physical

Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004

activities necessary to cultivate cannabis for personal medical use. Accordingly, this section recognizes that qualified patients may join together with or without their primary caregivers to form medical cannabis collectives for the purpose of acquiring or cultivating and manufacturing medical cannabis solely for the personal medical use of the members who are qualified patients. The City recognizes that not all members of a medical cannabis collective will perform the same tasks or contribute to the collective in an equal manner. Accordingly, medical cannabis collectives are free to decide how to best pool their resources and divide responsibilities in cultivating medical cannabis for the personal medical use of their members who are qualified patients.

B. Restriction on Membership. Membership in a medical cannabis collective must be restricted to qualified patients and their primary caregivers. However, primary caregivers shall not be allowed to obtain cannabis for their own personal use. In addition, a primary caregiver cannot be a member of a medical cannabis collective, unless the primary caregiver's qualified patient is also a member.

C. Restriction on Distribution to Non-Members. Medical cannabis collectives and each member thereof, shall not sell, barter, give away, or otherwise distribute cannabis to non-members of the medical cannabis collective.

D. Amount of Dried Cannabis and Plants. Medical Cannabis Collectives may possess a reasonable quantity of dried cannabis and cannabis plants to meet the needs of their patient members. Medical Cannabis Collectives shall not accumulate more cannabis than is necessary to meet the personal medical needs of their Qualified Patients.

~~—D. Amount of Dried Cannabis and Plants. The limits on quantity of dried medical cannabis and cannabis plants set forth in this chapter for qualified patients are not increased by membership in a medical cannabis collective. Medical cannabis collectives are subject to the same quantity limits on possession of dried medical cannabis and limits on the number of cannabis plants that are set forth in this chapter, multiplied by the number of qualified patients in the collective, but are also subject to maximum cap amounts set forth below. Thus, if a medical cannabis collective has five qualified patients, then the total amount of dried medical cannabis that the medical cannabis collective can possess is 7.5 pounds of cannabis cultivated indoors or 12.5 pounds of cannabis cultivated outdoors, minus the amount of dried medical cannabis that each qualified patient and/or his or her primary caregiver possesses individually. In addition, a medical cannabis collective cannot possess more than 12.5 pounds of dried cannabis at any one time, regardless of the number of members. Similarly, if a medical cannabis collective has five qualified patients, then the total amount of cannabis plants that the medical cannabis collective can possess is 50 in compliance with Section 12.26.040(E) of this chapter, minus the number of cannabis plants that each qualified patient and/or his or her primary caregiver possesses individually. In addition, a medical cannabis collective cannot cultivate more than 50 cannabis plants at any one time, regardless of the number of members.~~

E. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of medical cannabis will create a risk of theft and violence due to the high monetary value of a large number of cannabis plants and the relative ease of theft by trespassing. Large-scale outdoor cannabis cultivation will also unfairly create tension and fear among the surrounding residents of trespassing, thefts, and violence. Accordingly, any medical cannabis collective or Collectives that cultivate medical cannabis plants outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is

Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004

visible with the naked eye from any public or other private property, can only cultivate 10 such plants at one time on a single parcel or adjacent parcels of property.

~~— F. Size of Indoor Cannabis Gardens That Are Not Visible. A medical cannabis collective can cultivate 10 cannabis plants per qualified patient up to a maximum of 50 cannabis plants total at one time, provided however, that no more than 10 of those plants are planted outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property. Nothing in this chapter shall be construed as creating an exemption for the cultivator or cultivators of any such cannabis garden from complying with any permit or other requirements imposed by local law that may be applicable. (Ord. 6620-NS § 1, 2001)~~

F. Restriction on Excessive Cultivation and Possession. Nothing in this Section shall authorize any individual, organization, affiliation, collective, cooperative or other entity to (1) cultivate or possess a quantity of medical cannabis that is inappropriate for the personal medical need of the patient(s) for whom it is intended; or (2) cultivate or possess any quantity of cannabis for non-medical purposes. (Ord. 6620-NS § 1, 2001)

Section 12.26.050 Availability in pharmacies.

To encourage the standardization of medical cannabis, the City of Berkeley urges the federal government to reschedule cannabis so that it may be made available to qualified patients through legally licensed pharmacies and urges the state government to urge the federal government to do so as well. (Ord. 6620-NS § 1, 2001)

Section 12.26.060 Quality control encouraged.

The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis collectives to consult the available cannabis cultivation literature to ensure that the medical cannabis lawfully cultivated under state law is free of undesired toxins or molds. The City of Berkeley cautions that natural molding from improper storage, certain soils for indoor growing, foreign materials that unintentionally becomes lodged in cultivated cannabis, and pesticides, can all potentially render the medical cannabis totally unsafe for consumption. Collectives are encouraged to use their best effort to determine whether or not cannabis is organically grown. (Ord. 6620-NS § 1, 2001)

Section 12.26.070 Permissible quantities of medical cannabis.

The Compassionate Use Act allows Qualified Patients or their Primary Caregivers to possess or cultivate cannabis for the Qualified Patient's "personal medical purposes." Because each Qualified Patient will have different needs regarding appropriate Personal Medical Use, this Section seeks to ensure that each Qualified Patient or his or her Primary Caregiver can possess enough cannabis to meet the Qualified Patient's personal medical need.

A. Cultivation of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all cultivation of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said cultivation is conducted solely for the personal medical purposes of Qualified Patients. Such lawful cultivation may include the cultivation and possession of both female and male plants at all stages of growth, clones, seedlings, and seeds, and related cultivation equipment and supplies. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may cultivate individually or collectively.

Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004

B. Possession of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all possession of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said possession is undertaken solely for the personal medical purposes of Qualified Patients. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may possess individually or collectively.

C. Property and Equipment. The rental, leasing, or providing of equipment or space utilized for cultivation, processing, or storage of medical cannabis in accordance with this Section shall be deemed lawful.

D. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of cannabis may create a risk of theft. Accordingly, any Medical Cannabis Collective that cultivates cannabis plants outdoors (excluding secure rooftops, balconies, or other locations that are not visible from other buildings or land) or in a place that is visible with the naked eye from other public or private property, may cultivate no more than ten such visible plants at one time on a single parcel of property.

~~—The Compassionate Use Act allows qualified patients or their primary caregivers to possess or cultivate medical cannabis for the qualified patient’s “personal medical purposes.” While each qualified patient will have different needs regarding appropriate personal medical use, this section seeks to standardize the maximum allowable amounts of medical cannabis that qualified patients and their primary caregivers can possess or cultivate under state law, in the absence of a medical doctor’s authorization to possess or cultivate a greater amount of cannabis as a result of the patient’s particular illness or health condition.~~

~~—A. Dried Cannabis Cultivated Indoors. Qualified patients who cultivate cannabis indoors may possess up to 1.5 pounds of dried cannabis for personal medical use. This 1.5 pound allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients’ primary caregiver(s), but the total amount of dried cannabis possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 1.5 pounds for that qualified patient.~~

~~—B. Indoor Cannabis Plants. In addition, qualified patients may also possess up to 10 cannabis plants for personal medical use. This 10 cannabis plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients’ primary caregiver(s), but the total amount of plants possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 10 cannabis plants for that qualified patient.~~

~~—C. Dried Cannabis Cultivated Outdoors. Qualified patients who cultivate cannabis outdoors may possess up to 2.5 pounds of dried cannabis for personal medical use. This 2.5 pound allotment may be possessed by the qualified patient, or may be held in trust by the qualified patient and his or her primary caregiver(s), but the total amount of dried cannabis possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 2.5 pounds for that qualified patient.~~

~~—D. Outdoor Cannabis Plants. In addition, qualified patients who cultivate cannabis outdoors may also possess up to 10 cannabis plants, for personal medical use, provided that such cultivation meets the guidelines set forth in Section 12.24.040(E) of this chapter. This 10 plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients’ primary caregiver(s), but the total amount of plants possessed by the qualified patient~~

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~~and his or her primary caregiver(s) shall not exceed 10 plants for that qualified patient. (Ord. 6620-NS § 1, 2001)~~

Section 12.26.080 Transportation of medical cannabis.

A qualified patient or a primary caregiver of a qualified patient may transport medical cannabis within the City of Berkeley to the extent that the quantity transported and the method, timing, and distance of the transportation are reasonably related to the qualified patient's current medical need at the time of transport. (Ord. 6620-NS § 1, 2001)

Section 12.26.090 Medical cannabis paraphernalia.

A qualified patient and the primary caregiver of a qualified patient may possess paraphernalia that the qualified patient needs to smoke or otherwise consume medical cannabis. (Ord. 6620-NS § 1, 2001)

Section 12.26.100 Police procedures and training.

A. Within six months of the date that this chapter becomes effective, the training materials handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

B. Medical cannabis-related activities shall be the lowest possible priority of the Police Department.

C. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if they are in compliance with the provisions of this chapter.

D. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, primary caregiver, or medical cannabis collective, but are otherwise in compliance with the provisions of this chapter, will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim to be a qualified patient, primary caregiver, or medical cannabis collective is credible; and (3) proof of status as a qualified patient, primary caregiver, or medical cannabis collective can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 6620-NS § 1, 2001)

Section 12.26.110 Peer Review Committee.

The purpose of this Section is to ensure that medical cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

A. Peer Review Committee. The Medical Cannabis Collectives and dispensaries in operation at the time this Chapter becomes effective shall each designate no more than two spokespeople to serve on a peer review committee that shall meet at least one time each month for the purpose of overseeing the operation of Medical Cannabis Collectives and dispensaries and ensuring their compliance with operational and safety standards published annually by the committee.

B. New Dispensaries. The peer review committee shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical

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Cannabis Collective or dispensary. The peer review committee shall certify that the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

C. New Members on the Peer Review Committee. Upon commencing lawful operation in Berkeley, each new Medical Cannabis Collective or dispensary shall designate no more than two spokespeople to serve on the peer review committee.

D. Operational Oversight. The peer review committee will monitor the compliance of all Medical Cannabis Collectives or dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be removed from membership on the peer review committee and shall be deemed in violation of this Chapter and referred to the City for appropriate action.

E. Immunity. Individuals operating Medical Cannabis Collectives or dispensaries represented on the peer review committee shall be deputized by the City of Berkeley as Drug Control Officers for the purpose of providing immunity under the provisions of Section 885(d) of Title 21 of the United States Code.

Section 12.26.120 Emergency Distribution.

The City of Berkeley strongly opposes the federal prosecution of medical cannabis patients, caregivers, and providers. The City shall make all reasonable accommodation for the provision of medical cannabis to Qualified Patients or their Primary Caregivers in the event that access to medical cannabis is interrupted or severely diminished as the result of civil or criminal federal law enforcement activity. The City shall accommodate distribution of medical cannabis as early as possible following such a disruption and no later than thirty (30) days after the disruption.

SECTION 4 PERMITTING OF DISPENSARIES

Sections 23C.16.060 and 23E.16.070 shall be added to the Berkeley Zoning Code as follows:

Section 23C.16.060 Medical Cannabis Residential Cultivation

No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property.

Section 23E.16.070 Medical Cannabis Collectives

As proper regulation is crucial to the safety of our community, medical cannabis collectives that operate dispensaries from which medical cannabis is dispensed to members shall be issued a Zoning Certificate for as long as it complies with Chapter 12.26. This section does not apply in districts where retail sales uses are prohibited. Zoning Certificates for medical cannabis dispensaries shall be issued without undue delay and following normal and expedient consideration of the permit application.

SECTION 5 SEVERABILITY

If any provision of this initiative, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this initiative

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that can be given without the invalid provision or application; and to this end, the provisions or applications of this initiative are severable.

CITY ATTORNEY'S ANALYSIS

THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2004

This measure would amend the Berkeley Municipal Code to have the following material effects:

1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to possess or cultivate more. The amendment retains but modifies the current limit of 10 **outdoor** cannabis plants on a single parcel, to only count plants that are visible from other property.
2. The ordinance would eliminate the existing limits of 12.5 pounds of dried cannabis and 50 cannabis plants that a collective composed of qualified patients and primary caregivers can possess, and provide instead that such a collective may possess a reasonable quantity of dried cannabis and cannabis plants to meet the medical needs of patient members as long as no more cannabis is accumulated than is necessary to meet such needs.
3. The ordinance would establish a Peer Review Committee composed to certify that any new cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee, and to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.
4. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as "Drug Control Officers" for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), and reasonably accommodate the provision of medical cannabis to patients and their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law.
5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.
6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City's existing zoning ordinance, BMC Title 23, in districts where such uses are otherwise

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permitted. Under current law such uses would be subject to a use permit and thus require a public hearing.

Financial Implications

Uncertain possible increase in law enforcement costs if the additional marijuana permitted result in robberies of dispensaries or requires other law enforcement response. Uncertain limited cost savings as a result of changing the permit requirement for medical marijuana dispensaries from a use permit requiring a public hearing to a zoning permit issued as a matter of right if the dispensary otherwise meets zoning standards.

ARGUMENT IN FAVOR OF MEASURE R

Berkeley's medical marijuana law is outdated and needs revision. Measure R, the Patients Access to Medical Cannabis Act of 2004 (PAMCA), will bring Berkeley's law into compliance with state law and recent court rulings. This measure was written by patients, doctors, caregivers, and concerned citizens to protect patients' rights and safeguard access to medical marijuana in Berkeley.

PAMCA will (1) replace Berkeley's arbitrary limits on medical marijuana with those supported by doctors and based on personal medical need, (2) establish a formal peer-review committee to publish and enforce protocols at local dispensaries, (3) create a review process and zoning certificate for medical marijuana dispensaries, and (4) provide a forum for community input and oversight into medical marijuana implementation in Berkeley. Unlike the current law, PAMCA contains strong language prohibiting for profit cultivation and diversion for non-medical use.

In 1996, 86% of Berkeley voters approved the statewide medical marijuana initiative, Proposition 215. Since then, the Berkeley City Council, Health Department, and Zoning Department have been reluctant to implement this law. The local medical marijuana ordinance (BMC 12.26), passed by the City Council in 2001, is one of the most restrictive in the state. It places both patients and caregivers at risk of arrest, and leaves the city of Berkeley vulnerable to lawsuits and costly legal challenges. It passed against the recommendation of the City Health Commission and Police Review Commission, and was actively opposed by local doctors, medical marijuana patients, and their caregivers.

Patients and caregivers need your help now to change this outdated law. Protect safe access to medical marijuana in Berkeley. Vote yes on the Patients Access to Medical Cannabis Act, Measure R.

s/JAMES BLAIR, Patient Advocate and Measure Proponent
s/CHARLES PAPPAS, Berkeley Medical Cannabis Patient
s/DR. TOD MIKURIYA, Berkeley Physician and Scientist
s/DR. FRANK LUCIDO, Berkeley Physician
s/OMAR FIGUROA, Esq., Berkeley Defense Attorney

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE R

VOTE NO ON MEASURE R

We all want to ensure that patients get their medicine and have no problems acquiring it. There have been no reports that Berkeley's framework for dispensing medical cannabis is causing problems.

Berkeley's ordinances are very close to Oakland's. Berkeley requires that medical marijuana outlets go through the City's standard permit-approval process. Oakland requires similar business-license approval.

Measure R would eliminate Berkeley's approval process entirely.

Currently, the City can review and approve the location and operation of a new outlet, and place conditions on its operation. Measure R would discard this approval entirely!

We've had a dangerous experience with one outlet, where several armed robberies, with guns, happened in a Berkeley neighborhood.

This measure would allow the medical marijuana outlets themselves, using "peer review," to approve new applications and **under this measure the City would have no choice but to permit an "approved" outlet.**

We need a review process the City can control.

Measure R would remove all limits on the amounts of medical marijuana a patient or an outlet could have on hand. Berkeley allows a patient up to 2.5 lbs. of medical marijuana at any time. Oakland's limit is 3 lbs.

If this measure passes Berkeley will have no limits at all.

The combination of **removing limits** on the amounts and **eliminating City review and approval** of new outlets, is too drastic a change.

This measure simply goes too far. Join eight City Council members and PLEASE VOTE NO ON MEASURE R.

s/DAVIDA COADY, M.D., Executive Director, Options Recovery Services

s/SANTIAGO CASAL, Director, Cesar Chavez Solar Calendar Project

s/BARRY KRISBERG, President, National Council on Crime and Delinquency

s/CARRIE SPRAGUE, Member, Zoning Adjustments Board

s/REV. GORDON CHOYCE, Pastor, Missionary Church of God in Christ

ARGUMENT AGAINST MEASURE R

RETAIN CITY OVERSIGHT - VOTE NO ON MEASURE R

Berkeley supports medical marijuana, and our existing medical cannabis outlets, **but Measure R takes us in the wrong direction.**

Measure R would exempt new medical marijuana outlets from City review and approval, and that is bad for Berkeley.

Berkeley voted overwhelmingly for Prop. 215 to make medical marijuana legal in California. Our support for patient needs in Berkeley is strong, but so is our support for safe neighborhoods through our permitting process. Businesses in Berkeley are required to go through a City review and approval process. Medical marijuana outlets should be no exception.

Medical marijuana outlets operate as businesses where cannabis is bought and sold to caregivers and patients at market rates. Berkeley's three existing outlets have operated responsibly and are well-managed. However, a former club had several armed invasion robberies and was shut down. The City's use-permit process will ensure that new outlets that apply to locate in Berkeley are well-managed and operated responsibly.

By law a patient in Berkeley can have a maximum of 2.5 lbs of medical marijuana and a club can have on hand a maximum of 12.5 pounds. **Measure R erases these limits entirely.**

The combination of large amounts of marijuana readily on hand and no City review or permitting process presents a dangerous combination for Berkeley.

We support medical marijuana within reasonable limits to ensure adequate supplies for those in need. Berkeley can have medical marijuana for patients without compromising the safety of our neighborhoods and exposing us to more crime. Retain City oversight and our use permit process.

Join former City Manager Weldon Rucker and David Manson, Executive Director of Berkeley Boosters. VOTE NO ON MEASURE R

s/MARGARET BRELAND, Councilmember

s/TED GARTNER, Channing Way Neighbors

s/JANET LEVENSON, Teacher, Berkeley Unified School District

s/MAUELLE SHIREK, Vice Mayor, City of Berkeley

s/DAVIDA COADY, M.D., Executive Director, Options Recovery Services

REBUTTAL TO ARGUMENT AGAINST MEASURE R

SUPPORT ACCESS TO SAFE MEDICINE - VOTE YES ON MEASURE R

Berkeley's current medical marijuana law is not working. Patients and caregivers need your assistance now to guarantee access to safe medicine.

Patients Access to Medical Cannabis Act of 2004 (PAMCA) will:

- * regulate Berkeley medical marijuana dispensaries, which currently operate without formal oversight
- * establish a Zoning process for dispensaries that includes citizen input and allows the City to close problem locations,
- * set non-arbitrary plant limits supported by doctors and based on patients' medical needs,
- * bring the outdated Berkeley law into compliance with state medical marijuana laws and federal and state court rulings,
- * allow citizens to take the lead on implementing the medical marijuana law

Currently, patients must violate local law to assure safe access to medical marijuana. The City has already been successfully sued after arresting a local patient for growing more than the 10 plant limit. This cost Berkeley taxpayers \$30,000.

Arbitrary limits on plant numbers are not scientific. There is no established average yield for a cannabis plant. Likewise, personal use patterns vary widely between patients. That is why no specific limits were set in Proposition 215.

Berkeley's dispensaries are safe and effective. There has been absolutely no increase in crime associated with medical cannabis. These fears are unfounded.

It has been eight years since Proposition 215, the medical cannabis law, passed statewide, and Berkeley patients are still at risk of arrest. Protect your neighbors and neighborhoods. Vote yes on Measure R.

s/ANGEL McCLARY RAICH, Medical Cannabis Patient
s/DEBBY GOLDSBERRY, Berkeley Patients Group
s/DONALD O. TOLBERT, Patient Advocate
s/JAMES BLAIR, Proponent

Ballot Measure S: Public Tree Act of 2004

TITLE

Shall an ordinance be adopted: 1) creating a 13-18 member Tree Board with up to two full-time staff, which is empowered to oversee the ordinance's prohibition on alteration, topping or removal of established nonhazardous public trees (except in limited circumstances) establish City tree contractors licensing requirements, approve tree plantings; and 2) creating related regulations?

Financial Implications

Annual costs up to \$250,000, additional annual \$100,000 consultant costs in early years; possible increased liability.

TEXT OF INITIATIVE ORDINANCE

INITIATIVE ORDINANCE ADDING CHAPTER 12.43 “THE PUBLIC TREE ACT OF 2004” TO THE BERKELEY MUNICIPAL CODE, REGULATING THE PLANTING, ALTERATION, AND REMOVAL OF TREES ON PUBLIC PROPERTY

THE PEOPLE OF THE CITY OF BERKELEY DO ORDAIN AS FOLLOWS:

12.43.010 Name

This measure shall be known as the Berkeley Public Tree Act of 2004.

12.43.020 Purpose

The purpose of the Berkeley Public Tree Act of 2004 is to protect healthy public trees from unnecessary removal and oversee the planting and maintenance of a biologically diverse mix of trees that provide shade, create beauty, support wildlife, improve air quality, and reduce global warming, while increasing the overall value of the real property within the City of Berkeley.

12.43.030 Summary

This measure will establish a Berkeley Tree Board to help preserve and protect existing public trees by collecting and disseminating information regarding tree related issues, working with neighborhoods, concerned citizens and the City to create area plans for the maintenance, planting and replacement of public trees and associated landscapes, limit, except in emergency, the circumstances in which healthy public trees can be removed, address the danger of fire in the Berkeley Hills, and license persons engaged in public tree care to insure adherence to standards necessary to prevent the spread of tree borne diseases. The Board would also be entitled to raise private funds for the planting of additional trees.

12.43.040 Findings

- A. The voters of Berkeley hereby find that the preservation of existing trees and the promotion of new tree planting is a public good that improves the environment and aesthetics of the City of Berkeley in the following ways:
- 1) Conserving energy, by providing climate controlling wind breaks, shade and evaporative cooling through transpiration;
 - 2) Improving local and global air quality by filtering pollutants, dust and particulate matter;
 - 3) Enhancing visual and aesthetic qualities of Berkeley by improving the beauty of our community and improving the quality of life;
 - 4) Creating an ecology that is physically, psychologically and spiritually fulfilling;
 - 5) Reducing global warming by absorbing carbon dioxide;
 - 6) Producing life-sustaining oxygen;
 - 7) Reducing wind speed and directing air flow;

Ballot Measure S: Public Tree Act of 2004

- 8) Providing food and habitat for wildlife;
 - 9) Reducing storm runoff and soil erosion;
 - 10) Reducing noise pollution; and
 - 11) Increasing the value of real property.
- B. To maintain these benefits it is vital that Berkeley respond to a variety of threats that have emerged over the past several years and that are contributing to the unnecessary loss of public trees. Specifically:
- 1) The removal of mature healthy public trees;
 - 2) Failure to replace removed trees;
 - 3) The sealing over of tree wells with asphalt and concrete;
 - 4) The use of public funds to redesign parks and other public spaces in a manner that results in the removal of mature healthy public trees;
 - 5) Spending over \$2.5 million in Measure S bond money to remove over 100 mature trees from downtown and replace them with saplings which both wasted tax funds and deprived the community of mature trees;
 - 6) The removal of 8 additional downtown trees from in front of the Library in March 2001 despite a Council Resolution to preserve them;
 - 7) Plans to remove approximately 12 trees from Martin Luther King Jr. Civic Center Park;
 - 8) The removal of 7 Evergreen Ash trees from the 1500 block of Woolsey Street without adequate notification of the residents, combined with plans to replace the Ash trees with species that are smaller in size than the removed trees. Since studies show large healthy trees over 30" in diameter remove 70 times more pollution annually than smaller trees, the policy of replacing mature healthy trees with saplings, or varieties that are smaller deprives the City of Berkeley of the environmental benefits and beauty of mature large trees;
 - 9) Plans to remove 98 trees from the Marina Area.
- C. In this manner Berkeley is losing trees, sometimes a few at a time, and sometimes in large numbers, thus depriving ourselves and future generations of the enjoyment and benefit of tree-lined streets.
- D. For all these reasons, we the People of the City of Berkeley hereby find it necessary to enact this measure to protect Berkeley's public trees from unnecessary removal, inappropriate treatment, and practices that contribute to the spread of arboreal disease.

12.43.050 Protection of All Public Trees

It is hereby decreed by the People of the City of Berkeley, that from this day forward no established public tree shall be subject to removal unless such tree is found to pose a tree emergency, except for certain reasonable exemptions as stated herein, including those involving a danger to public health or safety.

12.43.060 Berkeley Tree Board

- A. The voters of Berkeley do hereby establish the Berkeley Tree Board to promote the planting of desirable trees and landscapes on public spaces throughout the City of Berkeley. The voters therefore entrust the unpaid members of the Berkeley Tree Board with the responsibility to implement this measure, accomplish the purposes set forth herein, oversee City policy with regard to the proper protection, maintenance and planting of trees, and to raise additional funds independent of City monies for acquiring open space and planting additional trees.
- B. The Berkeley Tree Board shall schedule and attend public meetings and hearings necessary for the purpose of implementing this measure, organize and attend training relevant to tree-related issues. It shall conduct business based upon Robert's Rules of Parliamentary Procedure, the Brown Act, and other procedures consistent with those used by most City Commissions and Boards, although the Berkeley Tree Board may adopt other such rules and procedures for the conduct of business that are not inconsistent with the law. In addition to regular meetings open to the public, the Berkeley Tree Board shall schedule at least one public hearing annually, in the spring, to enable all residents of this City to comment upon and bring problems or issues related to trees to the attention of the Berkeley Tree Board.
- C. The Berkeley Tree Board shall enforce this measure and may accordingly develop rules for:
 - 1) The safe and sanitary routine maintenance, pruning and trimming of trees to which all persons engaged in public tree work must adhere;
 - 2) The conduct of hearings in a manner that assures due process and legal appeals;
 - 3) Establish criteria for the issuance of a tree work license.
- D. The Berkeley Tree Board shall solicit neighborhood input and work with public spirited citizens in the development and approval of tree and landscape plans for particular blocks, parks, public greens, community orchards, official Berkeley Paths, and/or pathways along daylighted creeks. The use of native and drought tolerant species suited to the environment of Northern California shall be encouraged.
- E. The Berkeley Tree Board shall also seek the assistance of volunteers with expertise on landscaping, arboreal disease, and other tree-related issues.
- F. The Berkeley Tree Board as a whole may constitute Urban Forestry Panel(s) composed of two or more Berkeley Tree Board members for the purpose of forming teams for tree-related inspections, or to conduct properly noticed meetings for the purpose of implementing this measure or determining if a violation of this measure has occurred. The Berkeley Tree Board and its Urban Forestry Panel(s) shall be permitted to request information, issue subpoenas for testimony or records and take testimony under oath.
- G. Education and Information

Ballot Measure S: Public Tree Act of 2004

The Berkeley Tree Board shall collect information and undertake efforts to educate people about tree related issues, including

- 1) The dissemination of news and information to educate the community regarding public trees, tree care and other tree-related issues.
- 2) The recommendation to the Berkeley City Council and other branches of government of policy and legislation concerning tree related issues.
- 3) The compilation of data regarding existing public trees, with the goal of developing a tree-census indicating the location, geographic distribution and identification of various species of trees, as well as locations suitable for planting additional public trees.
- 4) The creation of a list of trees that are known to be hazardous, known to be invasive exotics, or known to create a nuisance so as to avoid planting such trees inappropriately.

For the purpose of this list, “hazard” shall be defined narrowly to include trees known to present a danger to safety or the environment because of known properties that promote the spread of disease, create a fire hazard, grow wood that is brittle or otherwise results in branches with a known propensity for breaking and falling, or present other serious threats to health or safety. “Nuisance” trees shall include trees known to present difficulties on streets such as lifting of sidewalks, dropping of leaves or fruit and aphid infestation resulting in sticky dew for which no reasonable remedy is available.

- 5) The list may designate some trees as suitable for park use as opposed to street use and designate some trees as undesirable for any public plantings. The public would have the opportunity to comment on creation of such a list, and trees on this list shall not be planted with City funds or on City space. Although the Berkeley Tree Board may choose not to purchase and plant certain aesthetically undesirable varieties, no tree shall be designated a hazard or nuisance solely for that reason.
- 6) The Board shall publish information regarding hazardous, invasive exotic, and nuisance trees to educate the public as to why the planting of such trees may be problematic in this environment.
- 7) The Berkeley Tree Board may help organize volunteers to help raise and plant trees, conduct fundraising of non-City monies, educate the public about tree care and other tree related issues, and otherwise assist in the implementation of this measure.
- 8) The Berkeley Tree Board shall undertake other such actions that are necessary and proper to accomplish the purposes of this measure.

Ballot Measure S: Public Tree Act of 2004

- 9) Nothing in this measure shall be interpreted or construed as authorizing the Berkeley Tree Board to require removal or prohibit the planting of any type of tree on private property.

H. Appointments to Berkeley Tree Board

- 1) The Berkeley Tree Board shall be composed of residents of the City of Berkeley who shall serve without pay, are committed to carrying out the purpose of this measure, and are not affiliated with any developer, or development contractor or subcontractor, or have any other conflict of interest with the purposes of this measure. A person formally employed by any entity having a conflict of interest shall not be allowed to serve on the Berkeley Tree Board until one year has elapsed since completion of employment creating a conflict of interest with the purpose of this measure. Each appointment shall be for a term of three years, and appointees may not be removed during the duration of their term except for misconduct.
- 2) The Mayor and each member of the City Council may each make an appointment. The Landmarks Preservation Commission, Planning Commission, Parks & Recreation Commission, and the Waterfront Commission shall each be entitled to appoint one sitting commissioner to the Berkeley Tree Board. Commission appointments shall be at the will of the Commissions and not subject to terms. The Berkeley Tree Board itself may make additional appointments to fill positions that remain unfilled for thirty days or more.
- 3) Should the Berkeley Unified School District agree to comply with the requirements of this measure and grant the Berkeley Tree Board jurisdiction over trees on properties under its jurisdiction, then the size of the Berkeley Tree Board shall be enlarged to permit each School Board Director to designate an appointee to the Berkeley Tree Board.

12.43.070 Raising Funds for Planting of Public Trees

- A. The Berkeley Tree Board may raise funds and secure donations for the purpose of purchase and planting of trees, shrubs and vegetation on public land, the acquisition of land for the purpose of creating green open space landscaped with trees and plants, and to secure and make donations of plants and trees to individuals and groups engaged in activities to improve creek habitats, open space, and community gardens.
- B. The Berkeley Tree Board may, from time to time, allocate a portion of such funds to the City for purposes as the Berkeley Tree Board may direct, provided such funding is only used for the planting of trees, landscaping, or acquiring open space for such purposes. Such funds may not be used in a manner so as to become encumbered with other City funds, for purposes of development, or for purposes other than those specified by the Berkeley Tree Board. The Berkeley Tree Board may also require an accounting that shows with specificity the manner in which any such funds were spent and may require the City Auditor to investigate and report on such funds.

Ballot Measure S: Public Tree Act of 2004

- C. Funds collected by the Berkeley Tree Board shall be deposited in a Trust Account(s) for the purposes of planting trees and associated landscapes, or acquiring open green space suitable for trees and not subject to further development, as well as for the planting of trees and landscapes along daylighted areas of creeks within the City of Berkeley, and such account(s) shall be subject to oversight by the Auditor.
- D. Similarly, any funds paid for restoration shall be placed in Trust Account(s) and used only for restoration work that involves the planting of trees and landscaping as may be directed by the Berkeley Tree Board.

12.43.080 Tree Removal

The Berkeley Public Tree Act prohibits the cutting, topping or removal of any established public tree(s) except in a manner provided by this measure. In any case of removal the City shall undertake restoration deemed appropriate by the Berkeley Tree Board.

- A. Any person other than the City, including persons hired by the City, that are engaged in tree work must have a valid license and permit(s) approved by the Berkeley Tree Board. Failure to have a valid license and permit(s) and/or failure to display permit(s) will be deemed a violation of this measure.
- B. The cutting, destruction, mutilation, removal or topping of any established public tree, by any person, except in those reasonable exceptions specifically provided for in this measure, are strictly prohibited. Failure to comply with this section will be deemed a serious violation of this measure.
- C. The Berkeley Tree Board may also take action, including selective removal of public trees if necessary, to address the danger of fire in the Berkeley Hills. Such action shall include working with appropriate agencies and neighborhood groups to create a plan of successive planting so as to phase out fire prone species and replace them with native trees which are more resistant to fire.
- D. Other than for purposes of routine maintenance, no established public tree may be subject to tree work, unless the work is required due to a tree emergency, or is determined to be necessary and is authorized by the Berkeley Tree Board.
- E. In exceptional circumstances, the Berkeley Tree Board may approve removal or alteration of a specific public tree if the Berkeley City Council passes an ordinance articulating with specificity the public service that will be served by removal or alteration of said tree, its location, the species of the tree, and further facts and circumstances that make action upon the tree necessary. Upon passage of such an ordinance the Berkeley Tree Board may approve removal or such other action, along with a plan for restoration. Following the Berkeley Tree Board's submission of a restoration plan, the City Council may pass an ordinance approving implementation of a specific restoration plan, after which said tree may be subject to removal and restoration.

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- F. Under the following circumstances a tree may be subject to removal without prior permission from the Berkeley Tree Board:
- 1) Fire Department personnel actively engaged in fighting a fire may remove, or otherwise alter, any tree necessary for the safe and effective performance of their duties.
 - 2) During any emergency that poses an immediate danger to life, health, safety or property, a police officer, fire fighter, paramedic, or any other employee or official of the City of Berkeley, acting in their official capacity, may order the immediate removal or alteration of the tree, or order any other action necessary to address the immediate danger.
 - 3) Trees damaged by thunderstorms, windstorms, floods, earthquakes, landslides, fires or other natural disasters that are determined to be dangerous by a police officer, fire fighter, paramedic, or any other employee or official of the City of Berkeley, acting in their official capacity, may be subject to removal or other action to alleviate the hazard posed.
 - 4) Within five business days of the emergency alteration or removal of any public tree, a written report describing the action taken, precise location of the public tree altered or removed (if a street tree, the street address adjacent to where the public tree was altered or removed), the nature of the emergency, the name of the individual that ordered or carried out the action and time and date of such action shall be provided to the Berkeley Tree Board so as to enable the Berkeley Tree Board to take restorative action.
 - 5) In situations where a police officer, fire fighter, paramedic, or any other employee or official of the City of Berkeley, acting in their official capacity, determines a tree involves a hazard or danger that does not pose an immediate danger they may require emergency action by marking the tree with paint or other visible means, take steps to ensure the area surrounding the tree is safe for the public, and filing a Dangerous Tree Report. The report shall describe the exact location of the tree, the specific danger posed by the tree, and may order emergency action. In such circumstances the Berkeley Tree Board shall act as soon as possible to have an Urban Forestry Panel inspect the tree and to take action, which may include removal, cutting, topping, or other corrective action necessary to address and alleviate the hazard or danger.
 - 6) Nothing in this measure shall be deemed to authorize or be interpreted in a manner that weakens existing tree protection laws.

12.43.090 Licensee and Permits Required for Tree Work

- A. Sudden Oak Death Syndrome threatens Oaks and Redwoods, and could cause the loss of tens of thousands of trees over the next decade. Although many factors regarding the prevention and spread of tree borne diseases remain unknown, avoiding contamination by proper sanitary and disposal methods is known to help prevent the spread of such diseases.

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Accordingly, education of tree care workers and the public and requiring proper sanitary procedures can play a significant role in preventing Sudden Oak Death Syndrome and other tree borne diseases.

- B. With the exception of tree work done by the City, no tree work on public trees may take place in the City of Berkeley unless the person engaging in such tree work has a valid tree work license. Additionally, any tree work involving public trees requires a permit describing the location and the type of work authorized. Such permits may only be issued by the City after approval by the Berkeley Tree Board or an Urban Forestry Panel thereof. Except that private person(s) seeking to do tree work on their own property need not obtain such a license or permit.
- C. Persons not possessing a tree work license shall not be entitled to collect monetary or any other compensation for public tree work within the City of Berkeley, and no contract for tree work shall be enforceable in absence of a proper tree work license.
- D. Any owner of real property in the City of Berkeley may petition the Berkeley Tree Board for a permit for the trimming or alteration of a public tree located within 300 feet of their residence based on a significant impact, including an impact resulting, or likely to result in, physical damage to structures on real property. All neighbors and persons within 600 feet of the property, and any area neighborhood association must be advised of the request, and the Berkeley Tree Board may approve such a permit for trimming or alteration provided it is done in a manner that best protects the public tree. In such circumstances all expenses for arboreal reports necessary to assist the Berkeley Tree Board in reaching its decision, as well as the cost of tree work and/or restoration itself, shall be paid for by the property owner. In the event of significant alteration restoration may be required.
- E. No permit for work on a public ancient tree or heritage tree shall be valid if it fails to properly designate the tree as such or fails to name the species of tree, and no work on such trees may take place, in absence of said permit. In absence of a Dangerous Tree Report no permit shall be granted for the thinning, cutting, topping or removal of any Ancient or Heritage Tree in absence of a Public Hearing duly noticed before the Berkeley Tree Board.
- F. A copy of any permit authorizing tree related work shall be conspicuously displayed either in the window of the vehicle or otherwise in proximity to the work to be done. Failure to post or display a copy of the permit shall be a violation, and shall result in the immediate halt of all work on site until proof of a valid permit and tree work license and permit can be verified. The staff of the Berkeley Tree Board shall make copies of such permits available to the public, and arrange to have copies transmitted to the City Clerk and to each branch of the Berkeley Public Library, where they shall be maintained for public copying or inspection.
- G. The City shall not be required to get permits for routine maintenance that is part of a previously authorized plan, but all contractors or subcontractors doing tree work for the City shall be required to obtain proper permits. All non-emergency tree work involving the cutting, topping or removal of public trees shall require authorization by the Berkeley Tree

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Board. This requirement shall not apply to tree work ordered by police officers, paramedics, or fire fighters on the scene in response to a specific emergency.

- H. The Berkeley Tree Board may develop standards for the issuance and approval of tree work licenses and permits. Until such standards are developed any person wishing to do tree work in the City of Berkeley must apply to the City for a temporary tree work license which shall be valid for up to six months. Persons doing work on public trees must also obtain a permit. Persons doing tree work without such a permit and/or temporary license shall be deemed in violation of this measure. The Berkeley Tree Board may suspend, limit, or prohibit the use or issuance of a tree work license to any person who violates this measure.

12.43.100 Oversight of Planting and Maintenance

- A. The City of Berkeley shall have control of all established street trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way or easement, or other public place within the City limits, and shall have the power to plant, care for, maintain, and replace such trees, shrubs and other plantings.
- B. The Department of Parks Recreation and Waterfront shall continue to be the primary agency responsible for the care, routine maintenance, planting of trees and landscaping within the City of Berkeley. The Department of Parks Recreation and Waterfront shall work and cooperate with the Berkeley Tree Board in the implementation of this measure, and shall follow the criteria set forth in this measure and to the extent this measure applies shall be subject to direction from the Berkeley Tree Board.
- C. The City shall carry out routine maintenance, pruning and trimming in a manner, and during times of season, that will have a minimum impact upon trees. Such work shall be based upon proposals submitted and standards to be developed by the City in consultation with the Berkeley Tree Board. Each month such work is to take place the City shall provide a work schedule showing the geographic areas the tree work will occur with sufficient detail to enable members of the Berkeley Tree Board an opportunity to inspect the areas and call attention to specific tree related issues, specific trees that need special attention, and to otherwise enable the monitoring of such work so as to insure it is done in a proper manner most protective of the health of the trees.
- D. The City Manager shall assure that members of the Berkeley Tree Board and their support personnel receive cooperation of all City employees and that the City responds promptly and fully to requests for information from the Berkeley Tree Board or its staff.
- E. The Berkeley Tree Board shall work with the City to protect and maintain public trees in a healthy and non-hazardous condition and encourage good arboricultural practices.
- F. The Berkeley Tree Board shall work with concerned residents and the City to authorize, on a seasonal basis, the “routine maintenance” of trees within a park, neighborhood, or stated geographic area, and may set forth additional conditions it deems necessary to supervise

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such maintenance. Review of past seasonal maintenance shall be a factor in future determinations of applications for “routine maintenance.”

- G. The Berkeley Public Tree Act of 2004 shall not require the City Council to raise taxes or spend any additional funds to implement this measure. The City shall provide, from existing resources, space for offices for support personnel, use of existing facilities for meetings of the Berkeley Tree Board, the use of existing City resources, including existing office equipment, such as computers, copy machines, fax machines and telephones as is necessary to enable the Berkeley Tree Board to function effectively. Consistent with its practice regarding all Berkeley boards and commissions the City shall provide from existing personnel unto two Full Time Equivalents as necessary to enable the Berkeley Tree Board to fulfill their responsibilities. In assigning personnel to work with the Berkeley Tree Board the City Manager shall work with the Berkeley Tree Board in choosing personnel that are acceptable to the members of the Board.
- H. Although tax increases shall not be necessary for support of this measure, the City shall uphold its responsibility to care for and plant trees at least current levels. To accomplish this goal the number of public trees planted annually shall not fall below the number of such trees planted in 2003. In the year 2020 this specific provision shall be evaluated by the Berkeley Tree Board to determine if the rate of new tree plantings should be altered. This provision relating to the number of trees planted annually is the only provision or requirement of this measure which may be subject to change in absence of a ballot provision seeking to alter this measure.
- I. To assure proper maintenance of public trees, landscapes and parks the Berkeley Tree Board shall work with the City to report to the City Council regarding how funding levels for landscape and forestry service compare to amounts appropriated in the fiscal year 2003, as adjusted to compensate for inflation. Accordingly an annual report upon the tree issues, including the number of trees planted level of personnel devoted to landscape or tree maintenance work, and number of such positions as compared with fiscal year 2003.
- J. Prior to the issuance of any proposal the Request for Proposals for any tree-related work shall be reviewed by the Berkeley Tree Board to insure it includes language appropriate to insure the tree work is done in a proper manner, and contains no clauses that permit excessive fees to be charged to the City. Furthermore, to prevent entities that violate this law from receiving City contracts, one of the criteria necessary to bid on a Request for Proposal shall be that the person seeking the contract shall hold a valid tree work license that is not in a state of suspension, and is otherwise in good standing with the Berkeley Tree Board. Any such contract entered into that fails to comply with this section shall be null, void and unenforceable.
- K. Any contract to trim, thin, cut, remove, treat, top or plant any public tree or trees, or contract for landscaping or stump removal within the City of Berkeley that is entered into or paid, directly or indirectly by the City of Berkeley may only utilize persons or companies whose licenses have been approved and are in good standing with the Berkeley Tree Board.

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- L. Should a difference over policy develop between the City Department of Parks Recreation and Waterfront, or any other City agency or department, and the Berkeley Tree Board regarding the maintenance, care, planting or removal of trees or landscaping in any part of the City, or any specific situation, the City may retain the services of tree experts, scientists or other such personnel, agreeable to both the Berkeley Tree Board and the City, who shall help the parties better understand the issues and mediate any differences.

12.43.110 Violations

- A. Any person other than an authorized City employee, or private person doing work on private land, engaged in public tree work, including but not limited to thinning, treating, cutting, topping, removing, or damaging trees in absence of a tree work license and/or appropriate permit or permits or in a manner that fails to adhere to safe and sanitary tree practices shall be deemed in violation of this measure.
- B. Determinations regarding violations of this measure shall be made by the Berkeley Tree Board. Any person charged with violation of this measure shall be entitled to a hearing which shall be recorded by audiotape or a stenographic record. The Berkeley Tree Board may create rules necessary to assure a fair hearing that provides due process and rules for appeal.
- C. All such violations which are of a continuing nature shall constitute a separate offense for each day of such continuance. Any violation of this measure may also be deemed to constitute a public nuisance and may be enjoined administratively by the Berkeley Tree Board or any panel thereof.
- D. The Berkeley Tree Board may take whatever equitable measures it deems necessary to protect, prevent, or deter persons from further damaging protected trees, and to restore the viability and ecology of any protected trees or grounds where protected trees are located.
- E. There shall be three classes of violation of this measure:
 - 1) A “violation,” shall subject the violator to a fine and/or equitable remedy including restoration or payment of restoration cost and/or suspension of a tree work license. Fines shall be calculated to deter future wrongful conduct in a manner that discourages persons from considering the payment of such fines to be nothing more than a cost of doing business. If trees have actually been altered as a result of such work fines shall be calculated according to criteria of the International Society of Arboriculture.
 - 2) A “serious violation,” shall be subject to the same penalties and/or equitable remedies including, but not limited to, restoration or payment of restoration cost, as those for a violation.

Fines for both “serious violations,” and “serious violations subject to enhanced penalties” shall be severe, so as to deter future wrongful conduct, and shall be calculated to exceed the value of any benefit received by the violator. Calculation of

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such fine(s) shall be based upon a combination of two factors: first, the value of the tree(s) according to criteria of the International Society of Arboriculture, and second the value of any benefit or effect upon any real property affected by the violation. Serious violations may additionally be subject to payment of administrative cost, the cost of the expert consultation, the suspension and/or the revocation of any tree work license and the halting of all work on any project, the temporary confiscation of any vehicles or equipment alleged to be used in committing the serious violation until the facts are determined.

- 3) A “serious violation subject to enhanced penalties” shall consist of:
 - a) The alteration, cutting, destruction, mutilation, topping or removal of any heritage and/or public ancient tree; and/or
 - b) The alteration, cutting, destruction, mutilation, topping or removal, of two or more protected trees within a period of five years or less.

- 4) A “serious violation subject to enhanced penalties” shall be subject to the same penalties as those for a “violation” or “serious violation,” and may be subject to enhancement of those penalties by any one or more of the following enhancements:
 - a) The immediate replacement of at least three appropriately spaced trees of approximately the same age or size of each tree improperly removed, in the area near where the original tree was destroyed or damaged.
 - b) The halting of all work on any project which is alleged to have resulted from a serious violation subject to enhanced penalties until the facts are determined and a plan to protect the replaced trees is created.
 - c) A freeze, for a specified time, on any development project.
 - d) Forfeiture of vehicles, and/or other equipment found to have been used in the mutilation, topping, or removal of any protected tree(s), subject to due process protections.
 - e) The suspension, or revocation of any use permits or other approvals of any person involved in a serious violation subject to enhanced penalties. The revocation of such permits for serious violations subject to enhancement may be instituted by the Berkeley Tree Board, but may also be instituted immediately upon the direction of the City Manager, with the ratification of the Berkeley Tree Board at its next regular or special meeting. This ratification shall be considered a Public Hearing at which all interested parties shall have notice and an opportunity to be heard and to be represented by legal counsel.

12.43.120 Landscaping, Trees and the Spending of Public Monies for Such Purposes

- A. From this day forward, with the exception of small permanent structures to house public restrooms, and/or space for purposes of park maintenance or community use, no additional development may take place that covers the green space in parks, public squares, or the landscaped area of City buildings, with asphalt, concrete or other material that blocks water from being absorbed. All development of benches, tables, paths, and children’s play equipment must be built upon environmentally suitable water permeable materials suitable for the creation of the type of recreation, sport or play area being created.

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- B. Any proposed development, re-development, construction, or renovation which may affect any trees shall include a “tree impact report” which shall set forth the precise impact on trees, and which shall be required regardless of the preparation of any environmental report or mitigated negative declaration that is deemed to be required under the California Environmental Quality Act (CEQA) or any report or finding required under any other local, state or federal law or regulation. The Berkeley Tree Board may require a CEQA environmental impact report on any proposed project that may have a negative impact upon any public trees.
- C. The Berkeley Public Tree Act of 2004 shall not require the City Council to raise taxes or spend any additional funds to implement this measure. This Act shall, however, regulate the manner in which funds spent on trees and landscape work within the City of Berkeley shall be spent and shall require full disclosure by the City Council and City Manager as to how funds spent by the City for any projects that may affect trees must be reported, so as to assure public monies are not spent in ways that are detrimental to public trees or green space.
- D. Any City Council initiated ballot measures, proposed City Council resolutions, ordinances or budgets, as well as any City Attorney summary prepared for any ballot measure, must give an estimate of the amount of green space to be covered and/or the type and number of trees to be removed. The failure to state such information shall act as a prohibition on the removal of trees, and/or the covering of green space, and any such authorization shall be null and void, and the removal of any tree under such circumstances shall be deemed a violation of this act.

12.43.130 Accountability and Citizen Enforcement

- A. Any resident of Berkeley may seek to enforce this measure. Prior to bringing any Court action the resident must advise the Berkeley Tree Board of the violation and give the Berkeley Tree Board an opportunity to act. If the problem requires immediate injunctive relief the Berkeley resident may seek a court injunction without awaiting action by the Berkeley Tree Board. If the violation is not of a type requiring immediate attention the Berkeley Tree Board has thirty days to take action.
- B. If after thirty days, the Berkeley Tree Board fails to adequately address the problem the citizen may bring a court action seeking enforcement, including restoration. Anyone who successfully proves in a court of law that a violation of this measure has occurred shall be entitled to collect reimbursement of attorney fees, court cost, plus \$100.00 for the initial filing, and \$100.00 for each day in court, for a total of up to \$1,000.00, to be paid by the violator, for the purpose of compensating citizens who take the time and effort to protect Berkeley’s public trees. If a City Agency or Department violates this measure they shall be subject to penalties, and notice of the fine shall be sent to the City Council with a suggestion it be paid from the budget of the City Department or person that violated this measure.

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- C. Failure by a member of the Berkeley Tree Board to fulfill their obligation to conserve, protect and plant trees and act in accord with the provisions of this measure shall be grounds for censure. Censure may be sought before the Berkeley Tree Board or the Berkeley City Council, provided that only one motion to censure on the same factual basis may be sought, with whichever body first presenting the motion to decide the matter. Berkeley residents may also seek censure as part of a lawsuit to enforce this measure.

- D. Any lawsuit against the City of Berkeley seeking censure, as well as any censure motion on the part of the City Council or Berkeley Tree Board itself, shall be properly noticed, by written complaint served on the Tree Board member at least 21 days prior to any censure. The complaint shall state in specificity what actions the Tree Board member took or neglected to take that are deemed in violation of this measure, shall quote what sections of this measure that are deemed violated, and shall state what resulting harm to trees occurred (or will occur). Proof of such allegations shall be required for censure to succeed. Such evidence shall not be speculative in nature, except that a motion or petition to censure brought following a vote, but before actual action, may introduce testimony for the purpose of enjoining plans to remove or otherwise affect any trees. The Berkeley Tree Board Member subject to censure shall have the right to present evidence on his or her behalf. To discourage frivolous filings of Court petition for censure a court action seeking censure shall require at least three Berkeley residents to be parties to bring and to maintain the action. The effect of censure shall be limited to:
 - 1) Reversal of the complained of action;
 - 2) The taking of restorative measures;
 - 3) The censure shall be public information, with copies available with the City Clerk.
 - 4) Member of the Berkeley Tree Board who has been censured shall not be entitled to cast tie breaking votes for a period of one year.

12.43.140 Construction, Conflicts and Severability

- A. Any statute, measure, resolution, plan, or provision of law or regulation that authorizes the City to take any action or do any work regarding public trees is hereby subject to the additional requirement that any such action or work may only be carried out after requesting and obtaining consent for such action by the Berkeley Tree Board or a panel thereof. Such consent may be withheld, or subject to conditions deemed necessary to protect public trees from unnecessary disturbance or removal.

- B. Nothing in the Berkeley Public Tree Act shall be deemed to prevent the Berkeley City Council from strengthening tree protection measures in a manner consistent with the purposes of this measure.

- C. Furthermore, once the Berkeley City Council has adopted measures that strengthen tree protection within the City of Berkeley they may not weaken or repeal such measures without a super majority vote consisting of at least six Council members.

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- D. Any Court construing or interpreting this statute shall do so liberally in a manner that affords the most protection for trees and in a manner that advances the planting and conservation of existing trees.
- E. Nothing contained in this measure shall be construed to prohibit the City Council from providing funds they deem necessary to enable the Berkeley Tree Board to retain experts, including independent legal counsel, landscape architects, scientist and other personnel as deemed necessary to assist the Berkeley Tree Board in fulfilling its responsibilities.
- F. In the event other existing portions of Berkeley Municipal Code may be in conflict with this measure, this measure shall be controlling. Should provisions of this law conflict with existing law, or law adopted hereafter, the law providing maximum protection of trees shall prevail.
- G. If any provision, section, or part of this measure is determined to be void or invalid by any duly authorized tribunal, said provision shall be deemed severable and such invalidation shall not in any manner act to weaken or invalidate any other provision, section, or part of this measure.
- H. Should any Court determine that the Berkeley Tree Board is restricted in its ability to mandate City actions the effect shall be to require all actions by the Berkeley Tree Board to be binding unless the decision reached is appealed, within 21 days, to the Berkeley City Council. Under such circumstances the matter shall be noticed and conducted as a Public Hearing at which the Berkeley Tree Board shall be afforded ample time to present its position. In addition to this presentation any member(s) of the public wishing to comment may speak and/or submit documentary evidence. All persons wishing to speak shall be permitted to do so, and shall be permitted at least three minutes per speaker.

12.43.150 Definitions

“Ancient Tree” means any tree deemed to be 100 years or older. Heritage trees may also be deemed “ancient trees” if they are over 100 years of age.

“City” means all departments and agencies of the City of Berkeley including, but not limited to the Office of City Manager, the City, the Berkeley Police Department, the Office of City Attorney, the Departments of Planning, Public Works, any contractor hired by the City, or any subcontractor being paid by City funds, as well as the Berkeley City Council itself.

“Cut” or “cutting” means the removal of leader branch or major branch.

“Dead” means trunk and major tree arteries lack life, cannot produce leaves, and are no longer capable of growth. It is understood the tree growth sometimes slows, stops or becomes dormant. Nothing in this definition shall be interpreted in a manner so as to conclude that a tree that is dead when it is dormant or declining in vigor due to advanced age.

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“Destruction” shall mean the use of pesticide, nails, cutting, stripping of bark, or any activity detrimental to a tree that may be done in a manner that injures or destroys a tree. Enhanced Penalties may be applied to any party involved in “destruction” of a public tree.

“Diseased” means any tree harboring fungal, bacteriological, virus, or insect infestation or other phenomena that leads to the deterioration or death of trees, or that poses an actual threat to public health such as the spread of illness.

“Established Tree” means any tree which is over ten years of age, and/or over six inches Diameter at Breast Height (DBH). The Berkeley Tree Board may designate criteria to designate specific species of trees as “established trees” upon determining that such species do not typically meet the DBH requirement despite being a decade or older.

“Heritage Tree” means any tree that is designated for protection or preservation due to arboreal or historical merit no matter what terminology the merit is recognized in, by any department of City, State or Federal Government and/or any tree which has been in existence since 1878, the year of the creation of the State of California.

“Landscape Improvements” means the planting of trees, shrubs, and plants, the creation of green open space for sports or recreational activity and the setting aside of areas for community gardens. Such improvements may include benches and tables for public enjoyment, the building and maintenance of bathroom facilities, and the creation of pathways consisting of water permeable materials which comply with American Disabilities Act requirements. “Landscape Improvements” and “landscaping” specifically may not include the removal of trees or the paving over of green areas with concrete, asphalt or other non-water permeable materials.

“Mutilation” means the unauthorized cutting, topping, thinning, or trimming of a tree in a manner that reduces by 25% or more of its visible size.

“The City” shall refer to those divisions of the department or of any City Department, including, but not limited to the Department of Public Works, that are engaged in any tree work including routine maintenance, planting of new trees, removal, thinning, cutting, or treatment of trees. For purposes of this measure any change in the name of any City department, agency or entity engaged in tree work shall not affect the fact that the Berkeley Tree Board shall retain jurisdiction over any tree work done by any City Department that affects public trees.

“Person” shall mean any human being, association, business, company, partnership, corporation, entity, including the City or its departments, agencies or personnel.

“Protected Tree” shall refer to any established Public Tree, Heritage Tree and public Ancient Tree. In instances when the City Council requires that an existing tree on private land be preserved that tree shall be considered a public tree.

“Public Tree” means any tree along a sidewalk, on a parking strip, on a public square, in any park, as well as landscaping along side roads, on median strips, as part of the landscapes for

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public buildings, and any trees located as part of the landscaping along public creeks, including any trees planted in the future as part of an effort to daylight any urban creek areas.

“Removal” means the elimination of any tree from its present location.

“Resident” shall mean any human being, neighborhood association, organization, non-profit corporation, group, or entity, located within and subject to the jurisdiction of the City of Berkeley.

“Restoration” or “Restorative Action” for the purpose of this measure means the planting of replacement tree(s) or additional trees and may include successive plantings, landscaping and/or allowance of adequate time for such trees to become established. In considering restoration the Berkeley Tree Board should consider age, width (DBH) and maturity of the tree subject to removal or alteration in determining the number of replacement trees necessary if the replacement tree(s) lack the age, maturity or size of the tree being replaced.

“Routine Maintenance” includes pruning, and other practices which are necessary for the health and maintenance of the tree. Such maintenance shall be done in accord with such safe and sanitary tree care rules which may be established by the Berkeley Tree Board. The Berkeley Tree Board may further define what constitutes “Routine Maintenance” but may not so define maintenance as “cutting,” “topping” or “removal” of a tree, and may not permit “maintenance” which reduces the visible area of a tree by over 25% in absence of a reason such as hazard, danger, or evidence that a tree is in a condition likely to lead to the spread of arboreal disease.

“Support Personnel” shall mean personnel assigned to assist the Berkeley Tree Board in such functions as the scheduling of meetings in accord with the Brown Act, preparation of agendas, publishing required notices, the typing of correspondence and meeting minutes, paralegal and research duties, and other such work deemed necessary and proper for the effective operation of the council and implementation of this measure. Such personnel shall be assigned from existing personnel and may be less than, but may not exceed, 2 Full Time Equivalents.

“Thinning” means the selective removal of entire branches from a tree.

“Topping” means the elimination of the upper portion of the tree’s trunk or main leader.

“Treatment” means any procedure other than trimming, thinning, cutting, mutilation or removal that may be done to public trees other than routine maintenance.

“Tree” means any woody perennial plant, usually with one or more major trunks attaining a height of at least fifteen feet at maturity.

“Tree Impact Report” shall be a report prepared on any trees that will be removed or otherwise affected by work in the City of Berkeley. A Tree Impact Report shall state the species, width (DBH), approximate age, estimate the approximate width of the root system, and address other factors such as those on climate control, air quality and wildlife that could be affected, as well as any steps being taken to avoid the negative impact or provide for restoration.

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“Tree Work” means the trimming, thinning, cutting, topping, treatment or removal of any tree or tree stump. “Tree Work” specifically does not refer to pruning, or the removal of “suckers,” or branches that form at a height of less than eight feet above the ground, on a tree under ten years of age, which good arboreal practices require the removal of.

“Tree Emergency” means a tree that presents an imminent risk to life or health, as well as a serious imminent danger that will cause severe damage to property.

“Tree Work License” means a license which a person must have to do public tree work. Contractors or subcontractors engaged in public tree work must possess and display this license along with permits. No contractor or subcontractor may be hired for, or bid for a job without such a license, and said license may be suspended, revoked, or subject to limitations for failure to comply with safe and sanitary tree care practices, violations of the terms of any permit issued, or violation of this measure.

“Trimming” means the selective removal of portions of branches from a tree in a manner that may alter the tree’s profile or shape or alter the tree’s appearance.

“Urban Forestry Panel” means two or more members of the Berkeley Tree Board, who are assigned to accompany expert(s), City personnel and/or area resident(s) for the purpose of making on-site inspections with the objective of making recommendations and determinations regarding tree-related issues. “Urban Forestry Panel” shall also mean three or more members of the Berkeley Tree Board, assigned by the Board as a whole, to conduct duly noticed meetings, including, but not limited to, hearings regarding violations of this measure. The recommendation(s) of any Urban Forestry Panel may be approved, disapproved, or scheduled for further review by the Berkeley Tree Board.

CITY ATTORNEY'S ANALYSIS

INITIATIVE ORDINANCE ADDING CHAPTER 12.43 “THE PUBLIC TREE ACT OF 2004” TO THE BERKELEY MUNICIPAL CODE, REGULATING THE PLANTING, ALTERATION, AND REMOVAL OF TREES ON PUBLIC PROPERTY

This ordinance would have several material effects described below.

1. It would regulate public trees which are ten years old or have a trunk diameter of six inches by prohibiting the topping or removal of such non-hazardous public trees or the cutting of a leader or major branch, except in the course of fighting fires, to prevent fire danger in the Berkeley Hills pursuant to a plan authorized by a new Berkeley Tree Board, or if the Council adopts an ordinance finding that the tree action was in the public interest and the Tree Board approves. This prohibition conflicts with the Fire Department’s Fire Code enforcement authority as to public trees, PG & E’s obligation to trim street trees with power lines running through them and may also violate the City Charter by delegating the City Council’s legislative and administrative powers to a Tree Board without standards, and is likely unenforceable to that extent.
2. It would prohibit, subject to limited exceptions, additional coverage of open space in parks, squares or landscaping around City buildings with impervious material. This provision would prohibit new projects, such as most current park pathways, play structures, basketball and tennis courts and the Skate Park.
3. It would require the City to plant at least the same number of trees annually as were planted in 2003, through the year 2020 and require a tree census of every public tree.
4. It’s provisions would be implemented by a Tree Board, of up to 18 members - nine city council appointees, four appointees of boards and commissions and five School District appointees, if the School District consents to be bound by the ordinance provisions. Since, under the Charter, only the Council has power to appoint members of advisory quasi-legislative bodies, it appears that granting appointment power to advisory commissions may conflict with the Council’s charter powers and these appointments may be invalid.
5. The Tree Board is entitled to obtain up to two full-time staff, and other necessary resources from the City and may raise private funds for acquiring open space and planting trees. This provision is likely invalid to the extent it conflicts with the Council’s budgetary charter powers.
6. The Tree Board has broad and unfettered power to establish licensing requirements for all persons engaged in work on public trees, adopt tree management rules, approve plantings, conduct inspections and create plans for public trees. Some of these powers may conflict with the Charter-reserved powers of the City Manager, who is entrusted with day-to-day operation of the City, and the City Council, which has the power to establish policy.

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7. A “tree impact report” would be required for developments affecting public trees and the Tree Board could require an environmental impact report under state law when any public trees are affected, imposing additional costs on projects affecting public trees.

Financial Implications

Initial annual costs up to \$350,000 funded by corresponding reduction in park maintenance services. Possible increased liability from deferred maintenance or removal of trees.

ARGUMENT IN FAVOR OF MEASURE S

Berkeley wastes enormous amounts of tax money removing mature, healthy public trees. Plans to clear-cut 98 trees from the Berkeley Marina have already been approved.

- Measure S will prevent the removal of mature, healthy public trees.

Planting and protecting public trees is an effective step local government can take to address global warming. Even if the U.S. signs treaties, reducing emissions will take years. Why wait? We can improve the environment today, simply by planting trees. Trees absorb CO₂, the gas that causes global warming.

- **BERKELEY CAN PROVIDE LEADERSHIP, ACTING LOCALLY TO REDUCE WARMING GLOBALLY.**
- Trees produce life sustaining oxygen and cooling shade.
- TREES FILTER POLLUTANTS, IMPROVING LOCAL AIR QUALITY.

Measure S will create a Tree Board to insure government doesn't ignore dangerous trees. Measure S allows removal of dangerous or diseased trees, expands fire safety programs, adds a requirement to make the area under a hazardous tree safe until the danger is addressed. Measure S will prohibit future planting of invasive exotics, trees that lift sidewalks or cause other hazards like brittle branches likely to fall.

MEASURE S WILL BEAUTIFY BERKELEY WITHOUT TAX INCREASES BY RAISING PRIVATE FUNDS TO CREATE PARKS & PLANT TREES DESPITE THE BUDGET CRISIS.

Measure S ENCOURAGES PLANTING NATIVE SPECIES, gives neighborhoods more control over the types of trees planted, and will address excessive pruning.

Measure S is reasonable:

- it applies only to public trees
- it allows tree removal to accomplish a public service
- permits homeowners to request tree trimming
- requires a plan to remove fire prone trees in the Hills, requiring restoration with native, more fire resistant trees.

For years our elected officials promised a tree ordinance, but accomplished nothing. Now it's our chance.

Join School Board President John Selawsky, the Green Party, and the many others who support Measure S.

Call 510-594-4088 or WWW.BERKELEYISSUES.ORG

s/JANET SANTOS COBB, President, California Oak Foundation

s/KARL LINN, President, Berkeley Eco-House and Fellow, Society of Landscape Architects

s/LISA STEPHENS, Former Chair, Parks and Recreation Commission

s/ZASA SWANSON, Board Member, Alliance Leadership Group/Alameda County of

Education; Board Chair, Berkeley Partners for Parks; PTA President, Berkeley Arts Magnet School

s/G. S. ORAM, JR., Elmwood Realty Investments (ERI Realty)

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE S

Berkeley is ALEADY VERY tree friendly WITHIN THE CURRENT BUDGET.

Measure S will cost TAXPAYERS \$350,000 to duplicate existing City tree protection efforts AT A TIME WHEN WE ARE IN A BUDGET SHORTFALL.

Measure S will plant the SAME NUMBER of trees as the City is currently planting!

BERKELEY HAS over 40,000 public trees, with thousands more on private land. OUR trees are working 24 hours a day; generating life sustaining oxygen, removing carbon dioxide (a greenhouse gas), filtering pollutants, and providing cooling shade. Everyone loves trees in Berkeley.

Berkeley has existing strong protections for its public trees.

- Berkeley's Department of Forestry typically plants 800 new trees a year, more than twice the number removed.
- The City's Forester, a licensed arborist, ALREADY REVIEWS AND APPROVES ALL requests to remove dead, diseased, and damaged trees on city property, AND SOME ON PRIVATE PROPERTY.
- BERKELEY'S Parks Commission, with nine CITIZEN members appointed by the City Council, has a standing Tree Subcommittee, which regularly reviews City tree policy as well as controversies and disputes over the planting or removal of public trees.
- The City's Parks Department aggressively pursues tree-planting grants and has been awarded a number of grants to plant NEW trees.

Berkeley does not need a massive new, expensive Tree Bureaucracy, to duplicate what the City is already doing!

Vote against spending \$350,000 - to plant the same number of trees!

VOTE NO ON MEASURE S.

s/SHERRY SMITH, individually and on behalf of the League of Women Voters of Berkeley,
Albany & Emeryville

s/SYLVIA McLAUGHLIN, Co-Founder, Save the Bay

s/CARL FRIBERG, Multiple-Use Forester

s/MARGARET BRELAND, Councilmember

s/BETTY OLDS, Councilmember

ARGUMENT AGAINST MEASURE S

Vote No on the Massive New Tree Bureaucracy. Vote No on Measure S.

We all love trees and want to protect them, but Measure S is not just about protecting trees. It is about creating a new Berkeley tree bureaucracy with enormous powers over the City Council, City Manager, Fire Department, and others.

Read the fine print about Measure S. According to the City Attorney's non-partisan analysis:

- Measure S would have “initial annual costs up to \$350,000.”
- Measure S would create a Tree Board with “broad and unfettered power to establish licensing requirements for all persons engaged in work on public trees.”
- Measure S's Tree Board would be “entitled to up to two full-time staff, and other necessary resources from the City.”
- Measure S “conflicts with the Fire Department’s Fire Code enforcement authority.”
- Measure S conflicts with “PG&E’s obligation to trim street trees with power lines running through them.”
- Measure S may “violate the City Charter by delegating the City Council’s legislative and administrative powers to a Tree Board without standards.”
- Measure S would require a “tree impact report” for any project affecting public trees, subject to review and approval by the new Tree Board.

There’s more. Look closely at Section 12.43.060 of Measure S and you’ll find a provision that allows the Tree Board to appoint its own members. Or Section 12.43.110 which calls for the “forfeiture of vehicles” of people involved in unauthorized “alteration, cutting, destruction, mutilation, topping, or removal” of two or more protected trees.

Is this the kind of tree protection you had in mind?

VOTE NO ON MEASURE S - Join Mayor Tom Bates, Vice-Mayor Maudelle Shirek, and Councilmembers Margaret Breland, Miriam Hawley, Linda Maio, Betty Olds and Gordon Wozniak.

s/TOM BATES, Mayor, City of Berkeley

s/MAUDELLE SHIREK, Vice Mayor, City of Berkeley

s/MICHAEL VENEZIANO, Arborist and Former Chair, Parks and Recreation Commission

s/BETTY OLDS, Councilmember

s/GORDON WOZNIAK, Councilmember

REBUTTAL TO ARGUMENT AGAINST MEASURE S

Ironic! Councilmembers supporting four tax increases want you to fear Measure S, which doesn't even raise taxes! The \$350,000 figure is designed to scare you into opposing a measure that prevents wasteful spending on pork barrel tree removal projects. The estimates cite no basis, fail to consider reduced expenditures, and assume maximum spending on personnel.

On 7/13/04 COUNCIL APPROVED \$290,000 IN TREE REMOVAL CONTRACTS WITHOUT DISCUSSION!!!

Measure S:

- requires tree related contracts be reviewed to prevent wasteful spending
- will save many times it's cost by preventing unnecessary tree removal
- does not raise taxes, and specifically limits itself to existing resources.
- the tree board will increase accountability and cost nothing.

Implying Measure S affects fire safety is misleading. Measure S can not interfere with the Fire Code or PGE's tree trimming, which are mandated by state law.

MEASURE S IMPROVES FIRE SAFETY.

The biggest danger to Berkeley is a Hills firestorm. Global warming increases danger every summer. For over a decade the City has done nothing.

- Measure S seeks to replace fire prone species in the Hills with native, fire resistant trees.
- MEASURE S ONLY REQUIRES LICENSING OF COMPANIES THAT WANT CITY CONTRACTS
- a revocable license creates accountability for shoddy work or overcharges. That makes better sense then raising taxes.
- Forfeiture only applies to those illegally destroying multiple public trees.

DON'T BELIEVE THE LIES, READ OUR REPLIES - www.berkeleyissues.org

Join Kirk Lumpkin, Farmer's Market (Ecology Center) and others supporting Measure S.

s/DEAN METZGER, President, Claremont Elmwood Neighborhood Association;
Commissioner, Zoning Adjustments Board (ZAB)

s/ZASA SWANSON, Berkeley Partners for Parks; President, Parents Teachers Association
(Berkeley Arts Magnet School); Board Member, Alliance Leadership Group/Alameda
County Board of Education

s/ELLIOT COHEN, Author, Berkeley Public Tree Act; Commissioner, Peace and Justice

s/CHARLES BETCHER, Former Chair, Commission on Aging, Former Vice Chair of both the
Disability and Transportation Commissions

s/REVEREND SARAH W.B. ISAKSON, Pastor, Lutheran Church of the Cross