

Ballot Measure E: Rent Board Vacancy

TITLE

Shall the Charter of the City of Berkeley be amended to provide that vacancies in the office of Rent Stabilization Board Commissioner shall be filled at a general municipal election and that in the interim the position shall be filled by the Rent Stabilization Board by appointment?

Financial Implications: Savings of approximately \$400,000 in avoiding the calling of a special election currently required for vacancies in office where the unexpired term is over one year.

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TEXT OF CHARTER AMENDMENT

AMENDMENT TO SECTION 12.2 OF THE BERKELEY CITY CHARTER RELATING TO FILLING A VACANCY IN OFFICE OF RENT STABILIZATION BOARD COMMISSIONER.

Section 12.2. Vacancy in Office of Rent Stabilization Board Commissioner.

(1) If a vacancy shall occur in the office of Rent Stabilization Board Commissioner:

~~(a) If the unexpired term is less than one year, An election shall be held at the next feasible general municipal election to elect a successor, as provided in subsection (b). In the interim, the remaining members of the Rent Stabilization Board shall appoint a successor with requisite qualifications to fill the vacancy until such election. for the unexpired term. Such interim appointment shall be made only at a regular meeting of the Rent Stabilization Board after reasonable notice of intent to fill the vacancy has been given to the remaining members of the Board by any Rent Stabilization Board Commissioner by placement on the Rent Stabilization Board agenda. The term of such appointed Commissioner shall expire on November 30 of the year that an election is held to elect a successor, as provided in subsection (b).~~

~~(b) If the vacancy occurs within the first two years of the four year term of the office being vacated, and there is sufficient time to nominate and elect a successor at the next general municipal election, the Commissioner elected shall serve the remaining two years of the term of the vacated office. At any general municipal election that includes an election to fill the unexpired term of a Rent Stabilization Board Commissioner, the Commissioner elected with the fewest votes shall serve the remaining two years of the unexpired term. If the vacancy occurs after the first two years of the four year term of the vacated office, the election for that office shall be held at the next general municipal election as required by this Charter even if the office was not vacant. Vacancies shall be filled only at a regular meeting of the Rent Stabilization Board after reasonable notice of intent to fill the vacancy has been given to the remaining members of the Board by any Rent Stabilization Board Commissioner by placement on the agenda. Should the Rent Stabilization Board fail to fill any vacancy within 60 days after its occurrence, the City Council shall, within 10 days, order a special municipal election to be held not less than 60 or more than 90 days after the date of the order~~

~~However, if any regular, statewide or general municipal election is to be held in the City not more than 180 days nor less than 80 days from the date of the occurrence of the vacancy in a case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy, in the case of a general municipal election, then the vacancy shall not be filled by the Rent Stabilization Board nor by special election, but at the regularly occurring election.~~

~~(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the City Council within 10 days after the occurrence of the vacancy and to be held not less than 60 or more than 90 days after the date of the order; provided, however, if any regular statewide or general municipal election is to be held in the city not more than 180 nor~~

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~~less than 80 days from the date of the occurrence of the vacancy in the case of a regular statewide election, or not more than 180 days nor less than 60 days from the date of the occurrence of the vacancy in the case of a general municipal election, the vacancy shall not be filled by special election, but at the regularly occurring election.~~

(2) If at any municipal election the required number of Rent Stabilization Board Commissioners are not elected by reason of a tie vote among any of the candidates, then the Rent Stabilization Board, after the qualification of the persons, if any, elected at the election, shall appoint the necessary number of the persons receiving the tie vote to fill any office vacant by reason of the tie vote. In this case, any person so appointed shall hold office, subject to the provisions of a recall, to and including November 30, following the next general municipal election.

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CITY ATTORNEY'S ANALYSIS

AMENDMENT TO SECTION 12.2 OF THE BERKELEY CITY CHARTER RELATING TO FILLING A VACANCY IN OFFICE OF RENT STABILIZATION BOARD COMMISSIONER.

The proposed charter amendment would require that all vacancies in the office of Rent Stabilization Board Commissioner must be filled by election at the next feasible general municipal election. Such elections currently occur every two years, in November of even numbered years. In the interim, the Rent Stabilization Board would be authorized to fill the position by appointment. The interim appointee would serve until November 30 of the year that the election to fill the vacant office occurs. When the election for the vacant office takes place with two years remaining in the term of the vacant office, the Commissioner who is elected with the fewest votes at the election for Rent Stabilization Board Commissioner assumes the vacant office with the unexpired two-year term. Under the current provisions of the charter, a vacancy in office that occurs when there is more than a year left in the four-year term can only be filled at a special election.

Financial Implications: There will be a savings of approximately \$400,000, which is the estimated cost of calling a city wide special election to elect a Rent Board Commissioner to fill a vacant office with an unexpired term of more than one year.

ARGUMENT IN FAVOR OF MEASURE E

Measure E continues the process begun in 2004 of updating and enhancing how the existing Rent Stabilization Ordinance is implemented and how the elected Rent Board is selected.

The Mayor, a unanimous City Council and Rent Stabilization Board placed Measure E on the ballot to eliminate the necessity of a costly, off-season, citywide special election if a vacancy occurs on the Rent Stabilization Board.

The current City Charter rules are outdated, complicated and impractical. Under the Charter, there is a very high probability that a vacancy on the Board would need to be filled by a special election. If there are multiple vacancies between general elections, we could be forced to pay for the costs of several elections (up to four a year) – each costing taxpayers nearly \$400,000, and burdening an already overextended City Clerk's staff. Measure E provides a more fiscally responsible and simpler alternative.

Measure E requires that until a successor can be elected by the voters at the next general municipal election, the remaining members of the Board shall appoint a successor. Other cities in California, such as Santa Monica use the same practice.

By requiring that the election be at a November general election, rather than an off-season special election, we are also ensuring greater voter access and participation. Traditionally, Berkeley has had a very high voter turnout for November general elections. Special elections especially those held after students leave in May, draws the participation of a narrower, generally unrepresentative group of voters.

Measure E is a common sense, good government reform that will ensure that all voices are heard and represented in our government. VOTE YES ON MEASURE E.

s/LONI HANCOCK, Assemblymember

s/DONA SPRING, City Councilmember

s/GORDON WOZNIAK, City Councilmember

s/HOWARD CHONG, Chair, Rent Stabilization Board

s/JASON OVERMAN, Rent Stabilization Board Commissioner

Ballot Measure F: Gilman Street Playing Fields

TITLE

Shall a Resolution adopting an amendment to the General Plan, Waterfront Plan and Waterfront Specific Plan to establish an “As Of Right” use for public or commercial recreation sports facilities and exempting such use from the requirements for a Master Development Plan (MDP) and Use Permit to accommodate the proposed Gilman Street Playing Fields be adopted by the voters?

Financial Implications: None

Ballot Measure F: Gilman Street Playing Fields

TEXT OF RESOLUTION

ADOPTING AN AMENDMENT TO THE GENERAL PLAN, WATERFRONT PLAN AND WATERFRONT SPECIFIC PLAN TO ESTABLISH AN “AS OF RIGHT” USE FOR PUBLIC OR COMMERCIAL RECREATION SPORTS FACILITIES AND EXEMPTING SUCH USE FROM THE REQUIREMENTS FOR A MASTER DEVELOPMENT PLAN (MDP) AND USE PERMIT TO ACCOMMODATE THE PROPOSED GILMAN STREET PLAYING FIELDS

WHEREAS, in 1986 the voters of the City of Berkeley enacted Measure Q adopting the Waterfront Specific Plan, which strictly regulated development on the Berkeley Waterfront; and

WHEREAS, the Waterfront Specific Plan, is incorporated by reference into the Berkeley Waterfront Plan Amendment to the City’s Master Plan of 1986, and thereby by reference into the City’s General Plan, which was adopted in 2002; and

WHEREAS, subsequent to the passage of Measure Q in 1986, since that time, the State Parks Department has established the Eastshore State Park and acquired over 80% of the waterfront lands for which the Waterfront Plan and Specific Plan were prepared in 1986 and has incorporated them into the Eastshore State Park; and

WEHEREAS, the East Bay Regional Park District subsequently acquired approximately 16 acres of land adjacent to the Eastshore State Park, south of Gilman Street for the development of playing fields;

WHEREAS in November 2002, the voters adopted Measure N, which authorized the City Council to amend the Waterfront Specific Plan to address these changed circumstances as long as such amendments did not increase development potential; and

WHEREAS, Measure N also required that any amendments be placed before the voters at the next general election; and

WHEREAS, on October 18, 2005, the Council adopted amendments to the Waterfront Specific Plan that established an “as of right” use for public or commercial recreation sports facilities, thus permitting development of the proposed playing fields on the 16 acre Gilman Street parcel acquired by the East Bay Regional Park District; and

WHEREAS, these amendments are specific to the approximately 16-acre remaining parcel south of Gilman Street that was not incorporated into the Eastshore State Park, but will not affect the regulations for the remaining privately held approximately 29-acre land area north of Gilman Street.

NOW THEREFORE, BE IT RESOLVED by the people of the City of Berkeley, that the Berkeley Waterfront Specific Plan, adopted October 7, 1986, and by reference the General Plan, adopted April 23, 2002 and the Berkeley Waterfront Plan, adopted October 7, 1986, are amended as set forth below.

Ballot Measure F: Gilman Street Playing Fields

Section 1. A new section 3.5.12 is added to Chapter 3 (Land Use/Open Space) of the Waterfront Specific Plan to read as follows:

3.5.12. Allow public or commercial recreational sports facilities and ancillary facilities, such as field houses, restrooms, play equipment, fences, screening, outdoor light, and parking. These uses shall be permitted as a matter of right and shall not require Master Development Plans and Use Permits.

Section 2. A new section 7.3.1.1 is added to Chapter 7 (Plan Implementation) of the Waterfront Specific Plan to read as follows:

7.3.1.1. Recreational Developments exempted. Consistent with Open Space Policy 13 (OS-13) of the 2002 Berkeley General Plan, projects involving recreational, open space and environmental uses are encouraged in the Waterfront area. Projects proposed by public agencies and for public purposes involving recreation, open space and environmental uses shall not require a Master Development Plan (MDP) and Use Permit.

Ballot Measure F: Gilman Street Playing Fields

CITY ATTORNEY'S ANALYSIS

GENERAL PLAN, WATERFRONT PLAN AND WATERFRONT SPECIFIC PLAN AMENDMENTS

In 1986, through Measure Q, the voters adopted the Waterfront Specific Plan, which strictly controlled and limited development on privately owned lands at the Berkeley Waterfront (generally the area between Interstate 80 and the Berkeley Marina). Since that time, most of that land was acquired by the State of California for the East Shore Park and the Gilman Street Playing Fields. In November 2002, the voters adopted Measure N, which authorized the City Council to amend the Waterfront Specific Plan to address changed circumstances as long as such amendments did not increase development potential. Measure N also required that any amendments be placed before the voters at the next general election following their adoption by the Council.

On October 18, 2005, the Council adopted amendments to the Waterfront Specific Plan, which is incorporated by reference into the Berkeley Waterfront Plan Amendment to the City's Master Plan of 1986, and thereby by reference the General Plan. These amendments established an "as of right" use for public or commercial recreation sports facilities, thus permitting development of the proposed Gilman Street Playing Fields. Adoption of this measure by the voters would "lock-in" these amendments so that they could not subsequently be changed without voter approval.

Financial Implications: None

ARGUMENT IN FAVOR OF MEASURE F

Support open space and sports fields by voting YES on Measure F.

Vote YES on Measure F to support the construction of five new playing fields.

Over \$5 million has been raised to turn an old parking lot on Gilman Street near Interstate-80 into five new sports fields. The desperately needed fields will allow thousands of people to play softball, baseball, soccer, and other sports.

Vote YES on Measure F to support building the new sports fields with state and private money. The entire cost of constructing the Gilman Playing Fields comes from state and private grants. Measure F does not raise taxes or spend a dollar in City money.

Vote YES on Measure F to support a unique regional partnership that will provide recreation opportunities for thousands of Berkeley residents. The fields represent a unique regional partnership with our neighboring cities. Mayor Tom Bates spearheaded the creation of the fields and is now the chair of the five-city body that is planning for the new fields along with community representatives.

Vote YES on Measure F to support waterfront open space protection. In 2002, Berkeley voters passed Measure N to ensure that all major changes to our waterfront area would come before the voters for review. Measure F is a technical measure that will "lock-in" the changes that allow the conversion of an old and little-used parking lot into new sports fields.

Please Join Mayor Tom Bates and a unanimous City Council in voting YES on Measure F.

s/TOM BATES, Mayor

s/BETTY OLDS, Berkeley City Council

s/NANCY SKINNER, East Bay Regional Park Director

s/MARGARET GURDZIEL, Chair, Parks and Recreation Commission

s/FEDERICO CHAVEZ, Administrative Law Judge

Ballot Measure G: Greenhouse Gas Emissions

TITLE

Should the People of the City of Berkeley have a goal of 80% reduction in greenhouse gas emissions by 2050 and advise the Mayor to work with the community to develop a plan for Council adoption in 2007, which sets a ten year emissions reduction target and identifies actions by the City and residents to achieve both the ten year target and the ultimate goal of 80% emissions reduction?

Financial Implications: Unknown costs, plan dependent.

Ballot Measure G: Greenhouse Gas Emissions

TEXT OF ADVISORY RESOLUTION-GLOBAL WARMING

EXPRESSING THE PEOPLE'S GOAL OF 80% REDUCTION IN GREENHOUSE GAS EMISSIONS BY 2050 AND ADVISING THE MAYOR TO WORK WITH THE COMMUNITY TO DEVELOP A PLAN FOR COUNCIL ADOPTION WHICH SETS A TEN YEAR EMISSIONS REDUCTION TARGET AND IDENTIFIES ACTIONS FOR THE CITY AND ITS RESIDENTS TO TAKE TO ACHIEVE BOTH THE TEN YEAR TARGET AND THE ULTIMATE GOAL OF 80% REDUCTION IN EMISSIONS

The People of the City of Berkeley hereby resolve as follows:

WHEREAS, scientific consensus has determined that Carbon Dioxide (CO₂) and other greenhouse gas emissions released into the atmosphere through the burning of fossil fuels are having disruptive effects on the Earth's climate; and

WHEREAS, this understanding of humanity's impact on the Earth's climate is supported by the following international and national bodies:

- The Intergovernmental Panel on Climate Change, the international climate research community's most respected assemblage of scientists;
- The National Academy of Sciences, America's most respected scientific institution;
- The American Meteorological Society, the American Geophysical Union, and the American Association for the Advancement of Science;

WHEREAS, the effects of global warming that we are now experiencing and the magnitude of the effects that are predicted by the scientific community are already causing a significant disruption of human and natural systems throughout the world; and

WHEREAS, the Intergovernmental Panel on Climate Change (IPCC) has determined that atmospheric concentrations of carbon dioxide need to be kept below 400 to 500 parts per million to avoid irreversible impacts of climate change; and

WHEREAS, a majority of the scientific community believes that there is a window within the next ten years whereby significant emissions reductions need to be achieved in order to avoid the most dangerous climate changes and keep atmospheric concentrations below the most damaging levels; and

WHEREAS, achieving greenhouse gas emission reductions required to protect the climate is of overriding importance not just to the community of nations but to the people who inhabit their cities and states as well; and

WHEREAS, state and local governments throughout the United States are initiating their own emission reduction targets and programs and that this leadership represents a remarkable bipartisan response; and

Ballot Measure G: Greenhouse Gas Emissions

WHEREAS, 248 American cities, including Berkeley, have endorsed Seattle Mayor Greg Nickels' Climate Protection Agreement which was unanimously endorsed by the US Conference of Mayors in July 2005; and

WHEREAS, Berkeley and 160 more U.S. local governments participate in ICLEI's Cities for Climate Protection campaign, an effort to develop and implement greenhouse gas reductions measures in cities and counties, that collectively represent more than 55 million people; and

WHEREAS, the City of Berkeley and the State of California will face serious consequences from global climate change in the coming years, including the potential inundation of low lying areas, more intense winter storms resulting in severe flooding, shortages of drinkable water, loss of habitat and diversity of species, reduction in food production, and increased costs of energy; and

WHEREAS, greenhouse gas reduction activities can contribute substantially to the achievement of Berkeley's highest priority goals, including but not limited to: economic and quality of life benefits such as reduced energy bills, green space preservation, air quality improvements, reduced traffic congestion, solid waste reduction, affordable and reliable water supplies, improved transportation choices, and economic development and job creation through energy conservation and new energy technologies; and

WHEREAS, the City itself is engaging in actions to reduce greenhouse gas emissions from City operations and facilities; and

WHEREAS, the People of Berkeley have supported, and encourage the development of, policies to reduce community greenhouse gas emissions such as residential energy efficiency standards, incentives for residents and businesses to reduce energy use, recycling and waste reduction programs, and improved transportation options; and

WHEREAS, the City of Berkeley has set an ultimate goal of achieving climate neutral greenhouse gas emissions in its Resolution N.S. 62,783 endorsing the Kyoto Protocol and calling for cities across America to join the City in addressing the problem of global warming.

WHEREAS Berkeley's tradition of environmental leadership and the global consensus that aggressive action is needed to halt dangerous climate change impels the City to exercise additional leadership in this area; and

NOW BE IT RESOLVED that the People of Berkeley believe that the City should have a goal of achieving an 80% reduction in community-wide greenhouse gas emissions by the year 2050; and

BE IT FURTHER RESOLVED THAT the Mayor should work with the community to develop a plan for adoption by the City Council in 2007 that sets a ten year emissions reduction target and identifies the actions that the City and its residents should take both to achieve both the ten year target and the goal of 80% reduction in emissions.

Ballot Measure G: Greenhouse Gas Emissions

CITY ATTORNEY'S ANALYSIS

GLOBAL WARMING

This is an advisory measure. It expresses the People of Berkeley's opinions about the dangers to global climate from greenhouse gas emissions, and advises the Mayor of the City of Berkeley to work with the community to prepare a plan for City Council adoption in 2007 which would set greenhouse gas emissions reduction targets and lay out the significant actions that Berkeley residents and the City itself can take to achieve a significant reduction in greenhouse gas emissions over the next ten years towards achievement of a possible 80% reduction in greenhouse gas emissions by 2050.

Financial Implications: The actions to implement the plan will have a cost, which are unknown at this time and will depend on the nature of the plan developed by the Mayor, in concert with the community, and adopted by the Council.

ARGUMENT IN FAVOR OF MEASURE G

Cast your vote to help save the planet. Vote YES on Measure G.

The science is unquestionable -- greenhouse gases caused by burning fossil fuels are dramatically changing the Earth's climate. Unless we work quickly and collectively to reduce our greenhouse gas emissions, the Earth and its eco-systems will be irreversibly changed.

Measure G will provide clear direction to the City that the time has come for aggressive action to reduce our community's greenhouse gas emissions.

We are already seeing the effects of global warming -- extreme heat waves, extended droughts, melting ice caps, and the increased intensity of storms. To avoid the worst impacts of climate change, scientists have said we must reduce our greenhouse gas emissions by roughly 80%.

Measure G will set a goal for Berkeley of an 80% reduction in greenhouse gas emissions.

Berkeley is known throughout the world for its environmental leadership. In the last three years, the City has aggressively reduced its greenhouse gas emissions by adopting greener building codes, reducing its energy consumption, switching to biodiesel fuel, and replacing its automobile fleet with hybrid vehicles. Mayor Tom Bates created a regional climate protection campaign that includes 10 cities in Alameda County. But much more needs to be done.

Measure G will direct the Mayor to lead a community process to set a 10-year emissions reduction target and create a comprehensive plan to meet that target.

We can work together to tighten residential energy standards, increase recycling, provide incentives for residents and businesses to reduce energy use, and improve transportation options. It will not be easy, but the citizens of Berkeley can take meaningful steps to lead the way out of this crisis.

Please join Mayor Tom Bates and a unanimous City Council in voting YES on Measure G.

s/TOM BATES, Mayor

s/THOMAS KELLY, individually and on behalf of, Director, KyotoUSA

s/NANCY SKINNER, U.S. Director, The Climate Group

s/GORDON WOZNIAK, Berkeley City Council Member

s/JERRY MILLER, Chair, Berkeley Energy Commission

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE G

Greenhouse gasses are indeed dramatically changing the earth's climate. So why have governments not acted to stop this cataclysm? Because authoritarian environmentalism - **commands and controls** - would wreck the world's economy, causing massive unemployment, poverty, and starvation.

We can greatly reduce greenhouse emissions yet benefit the economy with a *green tax shift*. Replace taxes on income, sales, and buildings with charges on pollution, congestion, and land value. Today's taxes impose huge burdens on labor and enterprise. Green taxes offset the burden with environmental benefits. Taxes on land value benefit the economy AND the environment by minimizing the wasteful use of land and natural resources.

So WHY does the argument in favor of this measure not even mention this effective way to save the environment? Those promoting this measure could instead seek **commands and controls**, such as:

- prohibiting the ownership of more than one car.
- prohibiting residents from owning large cars and vans.
- requiring residents to avoid driving one day per week.
- forcing people to sell older cars.
- Subsidies paid for with punitive taxes.

Measure G does NOT provide "clear direction." It is an "anything goes" license to authoritarian laws with huge social costs in the name of saving the environment.

The issue is not whether to reduce emissions, but HOW to do it. Vote NO to reject this blank check. Vote NO to say you want effective "green tax" methods, not authoritarian commands and controls.

s/FRED FOLDVARY, Co-Director, Civil Society Institute

ARGUMENT AGAINST MEASURE G

This measure could backfire badly and ruin the movement to reduce greenhouse gases.

Suppose someone offers you an unripe apple. If you decline it, it doesn't mean that you don't like apples. You would reject bitter, unripe apples, not all apples. Rejecting the apple tells the person that she should only provide sweet, ripe apples.

This measure to reduce greenhouse gasses in Berkeley is like the unripe apple. In effect, it instructs the Mayor and community that it does not matter how we reduce greenhouse gasses. It's like saying we want apples, whether ripe or not. This measure should be rewritten to tell the world that we want to reduce greenhouse gasses the right way, and quickly.

Unfortunately, governments today seek to reduce pollution in mostly the wrong way, using command and control, which often backfires into worse pollution. An example of a perverse outcome is methyl tertiary-butyl ether (MTBE), a gasoline additive. The 1990 Clear Air Act Amendments require oxygenated gasoline, such as with MTBE. But MTBE leaks into ground water, which can cause cancer and other diseases. MTBE is now being phased out in California.

California also uses command and control with smog tests, a waste of money for most car owners. A better way to reduce car emissions is to measure the actual emissions with remote sensors and then fine the polluters. Pollution charges provide government revenue while also reducing pollution.

This measure does not specify what kind of plan Berkeley should adopt. Unfortunately, the environmental gurus of Berkeley could end up using dysfunctional command and controls unless instructed otherwise.

Don't give them a blank check! Let's not reap bitter fruit! Vote "no" on this measure, to instruct officials and community leaders that we want sweet pollution charges, not bitter commands and controls.

s/FRED FOLDVARY, Co-Director, Civil Society Institute

REBUTTAL TO ARGUMENT AGAINST MEASURE G

Now is not the time to sit around and hope for the best. We can work together to lead the nation in our efforts to stabilize the climate and protect our environment.

Measure G does not adopt a specific policy. It sets an aggressive target for reducing emissions and launches a broad community process to develop a strategy to meet that target. Following this community process, the City Council will be asked to adopt the community strategy.

The City of Berkeley has had great success with new initiatives that reduce emissions and save money.

- Berkeley created an innovative new program to share its fleet of hybrid cars with the community in partnership with City CarShare. We reduced emissions, took cars off the road, and saved the city \$450,000.
- Berkeley partners with community agencies to provide free energy retrofits to any homeowner and subsidizes retrofits for small businesses, reducing emissions and saving hundreds of thousands of dollars in energy costs every year.

In 2005, Berkeley documented a 14% reduction in municipal greenhouse gas emissions. But we have much more to do. Measure G will send a clear signal that our community is ready to take on this challenge.

We should not just wait for the perfect solution to the global warming crisis. We have only a few years to make major changes. It is time to get to work. **Please join Mayor Tom Bates and a unanimous City Council in voting YES on Measure G.**

s/TOM BATES, Mayor of Berkeley

s/OREN GABRIEL, President, ASUC

s/HELEN BURKE, individually and on behalf of the Sierra Club

s/LINDA MAIO, City Council Member

s/GORDON WOZNIAK, City Council Member

Ballot Measure H: Impeachment of President Bush and Vice President Cheney

TITLE

Shall the City of Berkeley petition the United States House of Representatives to initiate proceedings for the impeachment and removal from office of President George W. Bush and Vice President Richard B. Cheney and call upon the California State Legislature to submit a Resolution in support of impeachment to the United States House of Representatives?

Financial Implications: Minimal

Ballot Measure H: Impeachment of President Bush and Vice President Cheney

TEXT OF ADVISORY RESOLUTION

CALLING FOR THE IMPEACHMENT OF PRESIDENT BUSH AND VICE PRESIDENT CHENEY

The People of the City of Berkeley do hereby resolve to adopt the following advisory measure:

Section 1 Title

This Advisory Measure shall be known and may be cited as the Berkeley Citizens' Measure to Protect the Constitution and Impeach President George W. Bush and Vice President Richard B. Cheney.

Section 2 Findings and Declarations

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

1. President George W. Bush and Vice President Richard B. Cheney have committed High Crimes and Misdemeanors, included those enumerated herein, that warrant their impeachment and removal from office under Article II of the Constitution of the United States, which provides that "the President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors."
2. They have violated the Constitutional rights of citizens, impaired the due and proper administration of justice and the conduct of lawful inquiries, violated laws governing agencies of the Executive Branch, and failed to take care that the laws were faithfully executed, in contravention of their Constitutionally prescribed duties and their Oaths of Office in that:
 - A. They have directed the National Security Agency and various other agencies to conduct electronic surveillance in violation of the Fourth Amendment to the Constitution of the United States, which prohibits "unreasonable searches and seizures," and in violation of the Foreign Intelligence Surveillance Act (FISA) and other statutes in which Congress has prescribed conditions for such surveillance. They have declined to seek or obtain judicial authorization for such surveillance, as required under FISA, with violators subject to criminal and civil penalties including imprisonment and fines. They have periodically reauthorized such surveillance without judicial review. They have subverted the Congress's ability to fulfill its Constitutional role of oversight over the Executive Branch by refusing to provide substantive reports to Congress required under FISA and other laws of the land.
 - B. They have detained citizens and non-citizens both inside and outside of the United States, without charges, without due process, and with little or no access to counsel or courts.

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3. They have usurped unto the Executive Branch powers Constitutionally reserved for the Judicial Branch in contravention of basic Constitutional principles of the separation of powers between the Executive, Legislative, and Judicial branches of government in that:
 - A. They have caused electronic surveillance to be conducted upon United States citizens within the United States without informing the courts or seeking required authorization therefrom.
 - B. They have engaged in indefinite detentions, both within and outside of the United States, without permitting independent review of such detentions, even after the Supreme Court of the United States ruled that detainees were entitled to such review.
4. They have usurped unto the Executive Branch powers constitutionally reserved for the Legislative Branch in that:
 - A. In undertaking to invade and occupy Iraq, they misled the Congress and the People of the United States. They claimed, and the President asserted in the 2003 State of the Union address before a joint session of Congress that Iraq was attempting to purchase uranium for a nuclear weapon from Niger, even after being advised by the Director of the Central Intelligence Agency (CIA) that such claims were not credible. They claimed that the United States had incontrovertible proof that Iraq possessed weapons of mass destruction, even that the United States Government had knowledge of their exact locations — claims subsequently proven false. They claimed that certain mobile facilities in Iraq were for the purpose of manufacturing weapons of mass destruction, even after United States and British operatives had examined those facilities and declared that they could not be used for such purpose. These statements and others misled the Congress and the People of the United States, denying the Citizens and their elected representatives the opportunity to make informed choices, and thereby subverted democracy.
 - B. They have declared that the Executive Branch is not bound by the Detainee Treatment Act of 2005, which prohibits the cruel, inhuman, or degrading treatment of detainees; and on more than 750 occasions, President Bush has executed "Signing Statements" asserting the Executive's right to ignore provisions of Acts of Congress as his Administration sees fit, including provisions requiring the Executive to report its activities to Congress and provisions enacted specifically to prohibit activities the Bush Administration had previously undertaken.
5. They have violated Article VI of the Constitution of the United States, which provides that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land" in that:
 - A. They have permitted the torture of detainees in violation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the Third and Fourth Geneva Conventions.

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- B. They have refused the International Committee of the Red Cross access to detainees, in violation of the Geneva Conventions. They have denied access to detainees' lawyers and to their families, and have refused to say where detainees are being held.
6. In violation of federal statutes, they have caused to be published the identity of a CIA covert agent after that agent's husband published a newspaper article revealing that his official investigation had shown that claims Iraq was seeking to purchase uranium for nuclear weapons from Niger were not reliable.
 7. They have engaged in "extraordinary rendition," capturing persons and transporting them to countries where detainees are routinely deprived of due process, and where torture is known to be practiced.
 8. In all of this, George W. Bush and Richard B. Cheney have acted in a manner contrary to their trust as President and Vice President of the United States and subversive of Constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the People of the United States of America.
 9. For all these reasons, the People of Berkeley do hereby petition the United States House of Representatives to initiate an investigation into High Crimes and Misdemeanors, including those listed herein; and upon finding that such allegations may be true, to submit Articles of Impeachment regarding President George W. Bush and Vice President Richard B. Cheney to the Senate of the United States.
 10. The People of Berkeley further call upon the Senate of the United States, upon finding that High Crimes and Misdemeanors were conducted by President George W. Bush and Vice President Richard B. Cheney, to convict them and remove them from office.
 11. The People of Berkeley further call upon the Legislature of the State of California to submit a Resolution in support of impeachment regarding President George W. Bush and Vice President Richard B. Cheney to the United States House of Representatives.
 12. Within 30 days of passage of this Measure, the City Manager should transmit to all members of the United States House of Representatives and all members of the California State Legislature a letter advising of this measure's passage by the voters, and shall include in such transmittal a copy of this measure in full.

Ballot Measure H: Impeachment of President Bush and Vice President Cheney

CITY ATTORNEY'S ANALYSIS

CALLING FOR THE IMPEACHMENT OF PRESIDENT BUSH AND VICE PRESIDENT CHENEY

This is an advisory measure. The People of Berkeley would by adopting the measure:

1. Express their views that the President and Vice President of the United States have committed impeachable offenses;
2. Outline the impeachable offenses which warrant impeachment;
3. Call upon Congress to pursue impeachment;
4. Call upon the State legislature to support Congressional impeachment proceedings; and
5. Call upon the City Manager to advise members of Congress, the Senate and the State Legislature of adoption of the measure and transmit the measure to them.

Financial Implications: Minimal costs of transmitting the measure to federal and state legislators.

ARGUMENT IN FAVOR OF MEASURE H

On September 17, 1787, as Benjamin Franklin signed the new Constitution of the United States with tears streaming down his face, memories of oppression by an imperial King George were fresh. Today, George Bush and Dick Cheney are decimating that Constitution.

Bush and Cheney have committed grave crimes against the Constitution that require us to *speak up now*:

- **WARRANTLESS SPYING ON AMERICANS:** They refuse to obtain required court approval while spying on millions of Americans' phone and Internet communications, violating the Constitution's prohibition on "unreasonable searches" as well as several laws.
- **KIDNAPPINGS, INDEFINITE DETENTIONS, TORTURE:** They have ordered detentions without charges, kidnapping and transport of persons to other countries, and torture of detainees, violating the Constitution's requirement of "due process of law" for "all persons" and various treaties and laws.
- **DECLARING THEMSELVES ABOVE THE LAW:** Bush has issued "signing statements" claiming the White House isn't bound by more than 750 laws passed by Congress, violating the Constitution's separation of powers and his Oath of Office.

BERKELEY IS DIRECTLY AFFECTED. Federal agents attempted (unsuccessfully) to collect data on Internet usage by city library patrons without a warrant, and spied on nonviolent anti-war activists at UC-Berkeley.

WE MUST SPEAK OUT. These are serious threats, yet many people have been afraid to speak up. Someone must say "enough is enough."

We as citizens have an obligation to stand up for the Constitution — otherwise, it has no meaning. Measure H is our opportunity to take a stand.

Once again, Berkeley is called upon to lead. Time Magazine headlined its report, "Will the Berkeley Impeachment Resolution Catch On?" *That's up to you.*

A unanimous City Council, Cindy Sheehan, and Daniel Ellsberg urge you to vote YES on Measure H.

More information: www.berkeleyimpeachment.org

s/STEVE FREEDKIN, individually and on behalf of, Chairperson, City of Berkeley, Peace and Justice Commission

s/LONI HANCOCK, California State Assembly Member

s/GEOFFREY KING, individually and on behalf of, President and Co-Founder, Constitution Summer

s/RABBI JANE R. LITMAN, Past President, East Bay Council of Rabbis

s/TOM BATES, Mayor, City of Berkeley

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE H

The backers of Measure H do not argue that it will accomplish anything, because they know it won't. It won't protect the US Constitution, and it won't remove George Bush from office.

If Berkeley was not facing major problems of its own, Measure H might be a harmless publicity stunt for the City Council. But Berkeley is facing major problems, and we need more from the City Council than empty promises at election time. Councilmembers worked on Measure H for as long as a year, time that could have been spent making Berkeley a better place to live.

Tell the City Council to focus on the serious issues we are facing in Berkeley, education, commerce, and crime. We can make a difference in our own community if we make the effort here.

Vote NO on Measure H.

s/WILLIAM BLOMQUIST, Longtime Berkeley resident, attended Berkeley public schools
s/RUSS TILLEMANN, Witness to Willis-Starbuck murder

ARGUMENT AGAINST MEASURE H

Whether Measure H passes or fails will have no effect on whether George Bush is President. It will not solve any of the problems in the United States or in the world. And it won't solve any of the real problems we have right here in Berkeley.

Berkeley is experiencing disasters in public safety, commerce, and education. Instead of making a real attempt to solve these problems that affect our lives, our futures, and our children, the City Council is trying to solve the problems of the world. We need the City Council to be working for us, solving our problems.

Take a good look at Berkeley these days. Shattuck and Telegraph sport vacant storefronts left behind by businesses that have failed or moved out of Berkeley. Hard drug sales and prostitution are rampant. Berkeley is in the 99th percentile of property crime in California. Roughly 80 percent of the minority and low income students in Berkeley's public schools cannot pass either the reading or math achievement tests.

We have personally seen crime in Berkeley, in the form of murder, kidnapping, and depraved violent assaults on innocent people. Watching a young woman bleed to death on the sidewalk recently was not much fun, and we don't want to see more of that in Berkeley. Coming home and finding that well known drug dealers crashed a stolen car on our street, after using it to run down and disable a Cal student, is not acceptable in Berkeley. Watching a woman be violently kidnapped and forced into a getaway car should not be a part of living in Berkeley.

Vote NO on Measure H. Make it clear to the City Council that we want them to focus their energy, and our money, on solving the many real problems here in Berkeley.

s/RUSS TILLEMANN, Witness to Willis-Starbuck murder

s/JONATHAN TSANG, Owner of car destroyed by drug dealers

REBUTTAL TO ARGUMENT AGAINST MEASURE H

The policies of George Bush and Dick Cheney have increased crime and decimated public education. These are *not* reasons to support Bush and Cheney.

The work of developing this referendum was performed by volunteers. The City Council voted unanimously to place it on the ballot.

• WHY WE MUST SPEAK OUT:

It is our duty as citizens to go on record against the lawlessness of this Administration.

For too long, U.S. citizens have tolerated an Administration that misled us into a disastrous war, conducts torture in violation of U.S. laws and treaties, and oversteps its authority on a daily basis.

Yes on Measure H focuses attention on the illegal actions of Bush and Cheney.

Measure H highlights the misdeeds of the Administration, and has already generated increased news coverage of those misdeeds nationwide.

YES ON MEASURE H supports a growing mainstream movement. Citizens are voting on impeachment Nov. 7 in cities from Champaign-Urbana (Illinois) to San Francisco. Polls show a sizeable and growing number of citizens — Democrats, Republicans, and others — agree Congress should look into impeachment.

MOVEMENTS THAT START IN BERKELEY CATCH ON. The divestment movement that started in Berkeley brought down South African apartheid. Berkeley's Free Speech Movement fostered political freedom on campuses nationwide. Today, our city's leadership remains crucial in human rights, civil liberties, social justice, environmental protection, and disability rights.

As Daniel Ellsberg said in supporting Measure H, "If not here, where? If not now, when?"

DEFEND THE CONSTITUTION: VOTE YES ON MEASURE H.

www.BerkeleyImpeachment.org

s/BETTY OLDS, City Council Member, District 6 (Northeast Berkeley)

s/MAX ANDERSON, City Council Member, District 3 (Southwest Berkeley)

s/JONATHAN SIMON, J.D., Ph.D., Associate Dean of Jurisprudence and Social Policy, Boalt School of Law, University of California-Berkeley

s/RITA MARAN, Ph.D., Lecturer on International Human Rights Law, University of California-Berkeley; vice president, United Nations Association-USA, East Bay

s/LONI HANCOCK, California State Assembly Member

Ballot Measure: Amending Condominium Conversion Ordinance

TITLE

Shall an ordinance be adopted to: 1) increase annual condominium conversions from 100 to 500 units; 2) increase the ability to evict tenants of converted units; 3) significantly reduce per unit the affordable housing fee; 4) entitle tenants to purchase their unit at a 5% discount; and 5) eliminate certain existing restrictions on conversion?

Financial Implications: Substantially reduced per unit affordable housing mitigation fee; substantially increased tax revenues; increased administrative costs possibly offset by fees.

Ballot Measure: Amending Condominium Conversion Ordinance

TEXT OF INITIATIVE ORDINANCE

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE AMENDING THE CONDOMINIUM CONVERSION ORDINANCE

Section 21.28.010. Requirements of chapter, additional to other legal requirements.

In addition to any other applicable requirements of state or federal law, and of local law not inconsistent herewith, conversions of rental housing to condominiums, community apartments, and stock cooperatives, shall be subject to the requirements provided by this chapter. For purposes of this chapter a parcel map is also considered a tentative and/or final map.

Section 21.28.020. Findings and purposes.

- A. The People of the City of Berkeley find that:
1. There are not enough opportunities for lower and middle income people to purchase their own homes in Berkeley.
 2. People who work in Berkeley—including teachers, firefighters, police officers, and other valuable public servants—should be able to own a home in Berkeley.
 3. There is presently an ample supply of rental housing in Berkeley, with between 5% and 10% of the total rental stock (approximately 26,000 units) currently vacant.
 4. The conversion of some existing rental units to condominiums, with incentives for tenants to buy their own units at a reduced price, would create new home ownership opportunities for low and middle income Berkeley residents.
 5. Current law prevents condominium conversions by imposing extreme fees; at the same time, recent court decisions mean that rental units can be converted into "tenancies-in-common" without any limitation at all.
 6. Condominiums are better than "tenancies-in-common" because condominium conversion causes fewer evictions, offers greater protections to new owners, and permits the City to regulate the conversion process in a way that protects current tenants and prospective buyers alike.
 7. By regulating the condominium conversion process, the City can generate funding to create new affordable rental housing for low income, senior, and disabled tenants.
- B. In order to create home-ownership opportunities for all economic segments of the City, the People of the City of Berkeley declare that the purposes of this chapter are:
1. To ensure a healthy balance between rental and ownership housing in the City;
 2. To increase opportunities for individual choice in the tenure, type, cost and location of housing;
 3. To create opportunities for low and middle income residents to own their own homes.
 4. To affirm and expand protections for tenants who reside in housing that is converted to condominium status.
 5. To ensure the continued availability of affordable rental housing stock in the City of Berkeley.
 6. To encourage condominium forms of ownership rather than tenants-in-common forms of ownership.

Ballot Measure: Amending Condominium Conversion Ordinance

Section 21.28.030. Definitions.

As used in this chapter:

- A. "Cohousing communities." A type of development that fosters community by at least the following means:
 - 1. The layout around common open space encourages resident interaction.
 - 2. Extensive commonly owned living facilities, which amount to a minimum of ten percent of the total building square footage and which include a common kitchen and dining area suitable for seating all of the residents at one time and may include other common facilities such as children's play rooms, workshop(s), living room, guest room(s) and laundry facilities.
 - 3. Resident owners participate fully in planning the community including decision-making with regard to (a) the design of a new development or any design changes in the renovation of existing housing, (b) the improvement, use and management of common property and (c) the content of any deed restrictions and the management documents of the association.
 - 4. Residents will engage in joint decision making on and, by written agreement, commit to participate in other community activities such as preparing community dinners at least weekly, supporting residents with special needs such as childcare, and maintaining community gardens, shared open space and common facilities.
- B. An "elderly tenant" is a tenant who is sixty years of age or older.
- C. "Limited equity housing cooperative" means a corporation that meets the criteria of Business and Professional Code Section 11003.2 and which also meets the criteria of Health and Safety Code Section 33007.5.
- D. "New tenant" means a person, who is a party to a rental agreement with the owner, and who began to occupy a unit as a principal residence with actual knowledge of a pending or approved conversion application, as described below. For purposes of these sections 21.28.010 through 21.28.110, a "new tenant" shall not include a subtenant.
- E. A "notice" where required herein shall be in writing, and sent by first class mail, with a proof of mailing issued by the United States Post Office, or may be sent by an overnight delivery service providing proof of delivery.
- F. "Owner" means the holder of a record or beneficial interest in a unit sought to be converted hereunder, as reflected in the public record.
- G. "Pre-existing tenant" means a person who became a party to a written rental agreement with the owner and who began to occupy a unit as a primary residence without actual knowledge of the filing or approval of a conversion application, as described below. For purposes of these sections 21.28.010 through 21.28.110, a "pre-existing tenant" shall not include a subtenant.
- H. "Price index" means the index for all urban consumers, San Francisco Bay Area Average, as published by the United States Bureau of Labor Statistics, or in the event such index is discontinued, any comparable index.
- I. "Unit" means any residential dwelling unit or apartment containing its own bathroom and kitchen facilities and used primarily for residential accommodations and joint living and working quarters. For purposes of this chapter dormitories, fraternity and sorority houses, boarding houses, and residential hotels, shall not be considered units and shall not be subject to this chapter.

Ballot Measure: Amending Condominium Conversion Ordinance

Section 21.28.040. Conversion of residential property to condominiums and related forms of ownership occupancy.

The record owner or owners of one or more units may apply for approval of a tentative map or parcel map to create a condominium project, community apartment project or stock cooperative subject to the conditions set forth hereafter, and subject to the conditions generally applicable under state and local law for subdivisions. No fee shall be charged for the filing, processing or approval of such application except as specifically provided herein, or except as generally applicable to other applications for approval of a tentative map or parcel map which do not involve the conversion of rented units to condominiums. In no event shall a conversion fee exceed the reasonable cost incurred by the City in processing the subject application.

The City of Berkeley shall approve a tentative map or parcel map to create a condominium project, community apartment project or stock cooperative where the record owner or owners pay an affordable housing fee into a Housing Trust Fund to be administered by the City of Berkeley for affordable housing development, first-time and/or low-income homebuyer assistance, or such other housing assistance programs for low income persons as the City shall deem appropriate. Accordingly, a conversion shall be approved, subject to applicant's agreement to the other provisions hereof, and of state law, and to pay, upon approval, an affordable housing fee not exceeding \$8 for each square foot of living space sought to be subdivided (measured between inside walls and excluding common areas, unroofed appurtenant spaces, uninhabited attic space, storage areas not accessible from within the unit, and parking garages). The above described fee may be increased annually at a rate not to exceed the annual increase in the Consumer Price Index, as published for all consumers in the San Francisco Bay Area by the Bureau of Labor Statistics.

The approval of a conversion application shall also be conditioned on the applicant's agreement that it shall not exercise its right, if any, to evict pre-existing tenants under California's Ellis Act from a converted unit until and unless there has been an opportunity to make an election to buy the unit in question pursuant to the procedure described in Section 21.28.070 below.

Section 21.28.050. Limit on conversions; Moratorium on conversions in emergency situations.

The City shall not in any calendar year approve more than five hundred conversion applications hereunder. Where an impartial survey by the City's Housing Department has determined that less than three percent of available rental housing stock in the City of Berkeley is vacant, the Council may limit new applications until such time as the vacancy rate equals or exceeds three percent, as found by an impartial survey. In no case may the City Council limit new applications to fewer than one hundred units per year. In the event that no subsequent vacancy survey is available, any limit on new applications shall expire automatically 12 months after it is imposed by the City Council. For purposes of this Section 21.28.050 the "impartial survey" shall mean conclusions reached by a third party entity, identified by a vote of two thirds of the members of the City Council, which publishes information relating to the rental market in the San Francisco Bay Area as a regular part of its business.

Ballot Measure: Amending Condominium Conversion Ordinance

Section 21.28.060. Notice to pre-existing and new tenants of their rights.

When an owner files an application to convert a unit that is occupied by one or more pre-existing tenants or new tenants, such pre-existing tenants or new tenants shall be provided with written notice of such application, as provided by California Government Code Section 66427.1, and shall further state that in the event the application is granted, and the owner seeks to terminate the tenancy, the pre-existing or new tenants may have certain rights under local and state law, including without limitation:

- A. The right to remain in possession for the remaining term of the lease or rental agreement,
- B. The right under the laws of the City of Berkeley not to be evicted except for just cause, as defined by the City of Berkeley and the State of California.
- C. The right to continued protection under Berkeley's Rent Stabilization Ordinance (Berkeley Municipal Code Section 13.76).
- D. The right to advance notice and certain payments in the event the owner elects to move into the unit as his or her own residence, and to added rights in the event the tenant is disabled or an elderly tenant, as defined by local law,
- E. The right to advance notice and certain payments in the event the owner elects to terminate the tenant's occupancy pursuant to the state's Ellis Act (citation), or wishes to move into the unit as the owner's own residence.
- F. A right of first refusal for a pre existing tenant to buy his or her own unit if the owner elects to sell the unit separately from other units in the same property to a third party at a time when the tenant still occupies it, and to a payment which may be taken in cash or applied as a credit toward the purchase price of the unit, as set forth below, and
- G. The right to a cash payment in the event the tenant does not qualify for, or does not elect to accept the right of first refusal, as set forth below.

The owner who has provided a pre-existing tenant with the notice specified above shall provide additional notice in writing of any material change in the conversion application, or of the withdrawal of such application, and of any final action by the City approving or disapproving of the same.

Section 21.28.070. Right of first refusal with cash payments for pre-existing tenants.

The notice requirement described in this Section 21.28.070 shall also apply where the owner of a converted unit desires to transfer separately such unit to a third party. It shall not apply where there is a transfer of a single property containing subdivided units to a third party, provided that such third party shall be subject to the provisions hereof when and if it desires to individually transfer converted units in which pre-existing tenants reside.

Where a separate sale is proposed, the owner shall provide notice to all pre-existing tenants who continue to reside in the unit. The notice shall state the terms on which it is proposed to make such transfer. The pre-existing tenants, or any of them ("electing tenants") shall have no less than thirty days from receipt of the notice to enter into a written agreement to buy such unit as their own principle residence on the terms described by the owner's notice. The owner shall at the closing of the transaction pay the electing tenants a sum equal to five percent of the purchase price of the unit (including real estate commissions and the reasonable cash value of any non-monetary consideration, but not including transfer taxes or other government charges, title

Ballot Measure: Amending Condominium Conversion Ordinance

insurance, inspection fees or other closing costs). This payment may at the electing tenants' option be applied against the down payment required at the closing. In the event no pre-existing tenant elects in writing to exercise this right of first refusal, the owner may proceed to complete the third party transaction on the terms described in the original notice to the pre-existing tenants, but may not materially alter such terms and conditions without providing further notice to the pre-existing tenants, and providing them with an additional right of first refusal as to the modified transaction.

Where there are more than two pre-existing tenants in the unit, the right of first refusal described herein may be exercised by any one or more of them as they shall agree among themselves. Where the right is exercised by fewer than all of the pre-existing tenants, the non-electing tenant(s) may (in lieu of any other rights they may have under local or state law) elect to vacate the unit in consideration of a payment by the exercising tenant(s) of a sum equal to that which they would have received if all pre-existing tenants elected not to exercise their right of first refusal but had instead chosen the cash payment described in Section 21.28.080 below. Said payment shall then be deducted by the owner from the payment to the electing tenants.

Section 21.28.080. Right of non-electing pre-existing tenant to cash payment.

Where a pre-existing tenant declines to exercise the right of first refusal described in Section 21.28.070 above, said pre-existing tenant may elect to voluntarily surrender possession of the unit prior to the closing of the third party transaction and at that time receive a cash payment equal to 2% of the full purchase price of the unit (calculated as set forth above). Said payment shall be divided equally where there is more than one pre-existing tenant, and shall be made upon departure of all tenants from the unit and shall be in lieu of any payments or benefits that the pre-existing tenant might otherwise have under the provisions of Berkeley Municipal Code Sections 13.76.130A.9.f and 13.77.055, but shall be in addition to any other relief to which the pre-existing tenant may be entitled under the terms of the then current lease or rental agreement, including without limitation the return of the unused portion of any security deposit.

Section 21.28.090. Right of new tenant to cash rebate.

A new tenant, who occupies the unit having had written notice from the owner of a pending or approved conversion application, may elect to voluntarily vacate the affected unit, without liability under any existing lease, and receive as additional consideration a cash payment equal to three months' rent. Said payment shall be divided equally where there is more than one new tenant, and shall be made upon departure of all tenants from the unit and shall be in lieu of any payments or benefits that the pre-existing tenant might otherwise have under the provisions of Berkeley Municipal Code Sections 13.76.130A.9.f and 13.77.055, but shall be in addition to any other relief to which the new tenant may be entitled under the terms of the then current lease or rental agreement, including without limitation the return of the unused portion of any security deposit.

Where there are pre-existing and new tenants occupying the affected unit, the payment to an electing tenant under Section 21.28.070 above shall be reduced by any amount required to be paid to new tenants under this Section 21.28.090.

Ballot Measure: Amending Condominium Conversion Ordinance

Section 21.28.100. Exemptions.

The provisions of Sections 21.28.010 through 21.28.090 shall not apply to co-housing communities, as defined, or to the categories of properties exempted under the former version of Section 21.28.040 (C),(D),(E) or (F).

Section 21.28.110. Procedure for obtaining preapplication notice of compliance with local laws.

Persons who wish to obtain a determination that their building complies with applicable local laws, for purposes of obtaining approval for a conversion, may file an application with the zoning office. The zoning office will perform a compliance review and provide a notice of local law compliance. The notice of local law compliance will state whether the property complies with the requirements of this ordinance and whether all units and any building additions or modifications were legally constructed with the permits required at the time of construction and will state what, if anything, must be corrected in order to bring the property into compliance prior to the City's approval of a final map. Such compliance measures will be pre-conditions to approval of any conversion application to the extent they materially and adversely affect the habitability of the property. A fee to cover the reasonable and necessary costs of the notice procedure may be set by the City Council by resolution and amended from time to time. If the zoning office fails to take final action on any application within 12 months of its having been submitted and any fees paid, then that application shall be deemed granted and a notice of local law compliance shall immediately be issued.

Ballot Measure: Amending Condominium Conversion Ordinance

CITY ATTORNEY ANALYSIS

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE AMENDING THE CONDOMINIUM CONVERSION ORDINANCE

The initiative would replace Berkeley's existing condominium conversion ordinance, which is designed to preserve rental housing or mitigate its loss from conversion, with a measure that would facilitate condominium conversions. The proposed measure would:

1. Increase the annual number of units that can be converted to condominiums from 100 to 500. (500 units represent about 2% of the City's rental housing stock.) The Council is permitted to reduce the number of allowable conversions to no less than 100 units if an impartial survey by the City's Housing Department establishes that the vacancy rate is under 3%;
2. Eliminate the current right of existing tenants to remain in their units after conversion if they do not or cannot purchase them, thereby permitting the owner of a converted building to evict the tenants under the State Ellis Act or purchasers of converted units to evict tenants in order to occupy the unit for themselves or designated relatives under Berkeley's "just cause ordinance";
3. Eliminate the current rule that a property may not be converted to condominiums if: the owner has gone out of the rental business and evicted the tenants under the State Ellis Act within the preceding 20 years; tenants have been evicted for owner-occupancy within the previous 10 years; or the owner has opted out of the Section 8 rental assistance program within the previous 5 years;
4. Reduce by 90% the per unit affordable housing fee for most units, which is used to mitigate the effect on conversions, and make it payable on conversion rather than sale of the condominium;
5. Reduce the time for pre-existing tenants to exercise their right of first refusal to purchase their unit under the Berkeley Municipal Code from one year to thirty days, but provide for a 5% discount in the purchase price;
6. Provide for tenants to accept a cash payment of 2% of the sales price instead of relocation benefits under other City ordinances, to be shared if there are multiple tenants. Currently, relocation payments are only due where the landlord goes out of the rental business. The cash payment under the proposed measure will generally exceed the amount currently payable under the City's Ellis Act implementation ordinance;

Financial Implications: The per unit affordable housing fee would decrease substantially. The impact on the total amount of revenues from the affordable housing fee will depend on the number of units converted. Revenues from the real property transfer tax and property tax are likely to increase substantially. Staffing costs will rise to process the additional conversions. These costs may be offset by the Council's imposition of processing fees.

ARGUMENT IN FAVOR OF MEASURE I

Measure I turns tenants into homeowners. Most tenants today can't hope to buy a home in Berkeley. Teachers, artists, and blue-collar workers can't buy here. Our children can't buy here. Measure I makes it possible for lower- and middle-income people to buy homes and build equity for their futures.

Measure I creates affordable home ownership:

- **Measure I** allows a limited number of apartments to become condominiums, which can then be bought, sold, and owned. Condominiums are much less expensive than a typical Berkeley house. After taxes, owning a condo can cost less than renting.
- **Measure I requires landlords to pay 5% of the sales price to any tenant who buys his/her apartment as a condominium.** For many people, that will cover the down payment! This makes Measure I the most progressive condominium conversion law in California.
- **Measure I also protects tenants who don't buy their apartments.** Tenants who move out receive 2% of the actual sale price, in cash. Tenants who stay put are protected by the Ellis Act, Measure Y (owner move-ins), and all "just cause eviction" laws.
- **Measure I limits the number of units that can be converted.** Don't believe the "500 unit" scare tactics: the City Council can reduce that number any time the vacancy rate falls too low.
- **Measure I increases funding for the Affordable Housing Fund,** which builds permanently affordable low-income apartments. It requires immediate Fund payments, not years or decades later when a sale occurs.
- **Measure I creates financial security for the entire city.** Berkeley's Finance Department says Measure I will generate \$215 MILLION from transfer taxes alone. Property taxes and conversion fees will raise many millions more.

VOTE YES ON MEASURE I!!

s/ELEANOR PEPPLES, individually and on behalf of, President, NEBA
s/DEAN METZGER, President, Claremont Neighborhood Association
s/JIM SMITH, West Berkeley Community Organizer
s/SHIRLEY DEAN, Former Mayor, City of Berkeley
s/DORIS MASLACH, Former Rent Board Commissioner

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE I

Community leaders, clergy, and elected officials, oppose Measure I because **it harms our community**.

It's a **cruel hoax** to tell tenant families that Measure I would enable them to purchase their units. Only a handful even approach the income needed to buy their units.

Measure I **is about evicting tenants so owners can sell their units for windfall profits**. If Measure I wins, landlords' profits could exceed \$100 million annually, evicting nearly 500 families.

The revenue promised to City coffers is only realized after over 16,000 tenants are displaced-- **not a price our community should pay!**

This measure won't help "teachers . . . and blue-collar workers" purchase homes. Berkeley's average small condominium costs \$500,000, requiring a yearly income of \$120,000.

This measure **reduces payments for affordable housing by 85%**. Rentals will decrease. **Rents will skyrocket**. Workers and students will have to commute into Berkeley, many by car.

This measure kills our existing condo law, adopted unanimously by the City Council and viewed statewide as a model because it creates ownership opportunities, provides incentives to sell to tenants, protects renters who cannot purchase their units, **and replenishes** lost affordable housing.

Many renters won't receive the 2% relocation benefit. The measure **allows owners to escape paying that 2% by filing an Ellis Act eviction of all tenants**.

Read the objective staff analysis (www.condofacts.info).

Join City Council, School Board, Rent Board, Library Board members, community and student leaders - **Protect low-income families**. Protect Berkeley's balanced condo ordinance. **VOTE NO ON MEASURE I**.

s/LONI HANCOCK, Assemblymember

s/ARLENE KEY, Chair, San Pablo Neighborhood Council

s/LINDA LAZZARESCHI, Executive Director, Women's Daytime Drop-in Center

s/LINDA MAIO, Councilmember

s/FR. GEORGE CRESPIN, St. Joseph the Worker Church

ARGUMENT AGAINST MEASURE I

VOTE NO ON MEASURE I

Home ownership opportunities shouldn't be created by evicting families from their homes.

That's why Measure I is such a **BAD IDEA**.

If adopted, up to 500 households (about 1,000 people) will be forced from their homes every year.

Those displaced will clearly be the most **financially vulnerable: seniors, the disabled, low and moderate income families and children.**

Roughly 60% of public school children in Berkeley are in renter households.

Current Berkeley law, **adopted unanimously** by City Council, already allows conversion of over 100 units a year while protecting renter families from eviction. **The City Attorney's objective analysis confirms Measure I eliminates these essential protections.**

Measure I backers claim it preserves tenant rights and gives renters an opportunity to acquire their units. **NOT SO!** According to City staff analysis, only a small fraction (less than 15%) of Berkeley tenants earn enough to even consider purchasing their unit in Berkeley's escalating real estate market.

Measure I:

- **Creates incentives to evict all tenants** from a building before initiating condominium conversion.
- Decreases the overall supply of rentals, causing rents to rise on the remaining units.
- Eliminates the City's requirement to disclose seismic conditions to prospective buyers.
- Prohibits the City Council from modifying any portions of the law that do not work.
- For the few tenants who might be able to purchase their unit, Measure I **slashes the "right of first refusal" period down to only 30 days!**

Measure I violates Berkeley's commitment to fairness, compassion, and economic diversity. Preserve the ability of people of modest means to continue to live in Berkeley.

Prevent widespread evictions. Join Supervisor Keith Carson, Pastors Marvis Peoples, Michael T. McBride and Sarah Isakson, former Councilmember Mim Hawley, School Board President Terry Doran. **VOTE NO ON MEASURE I.**

s/LONI HANCOCK, Assemblymember

s/HOWARD CHONG, Chair, Rent Stabilization Board

s/TOM BATES, Mayor of Berkeley

s/FR. GEORGE CRESPI, St. Joseph the Worker Church

s/LAURIE CAPITELLI, City Councilmember

REBUTTAL TO ARGUMENT AGAINST MEASURE I

Don't be fooled by politicians' scare tactics.

Measure I won't lead to wholesale evictions. No one would propose anything that stupid. Measure I's proponents include tenants!

Measure I actually decreases evictions, by making condominiums more attractive than Tenancies-In-Common. TICs cause more evictions, sooner, and are beyond City control.

Why all the hysterical predictions? Because Measure I takes money away from the politicians:

- **Their law forces condo purchasers & sellers to pay 12.5% of the sales price to the City.** That increases the cost of housing and gives nothing to tenants.
- **Measure I reduces the fee and gives money directly to tenants.**

Limited condo conversions are needed because Berkeley **needs** affordable homeownership -- not because politicians need a cash machine.

Our opponents admit that at least 15% of tenants can afford to own condominiums. Measure I modestly permits just 2% of units to convert. The real question should be: why aren't the politicians doing more to help?

Homeownership is the surest path to financial security in America. Seven of nine Councilmembers **own** homes; one is a real estate millionaire. **If it's good enough for them, isn't it good enough for you?**

Visit www.YesOnMeasure5.org

VOTE YES ON I!

s/DORIS MASLACH, Former Rent Board Commissioner
s/ELIZABETH P. MERRILL, Condo Owner and Former Tenant
s/ORNA SHAUGHNESSY, Student and Tenant
s/AFAM AGBODIKE, Tenant
s/BLAKE VON KNOPKA, Long Term Tenant

Ballot Measure J: Landmarks Preservation and Demolition Permit Application Ordinances

TITLE

Shall an ordinance be adopted: 1) granting the Landmarks Preservation Commission new authority to prohibit demolition of historic resources; 2) authorizing the Planning Director to suspend any application affecting a historic resource in an emergency; 3) extending the time during which the City may not act on applications to demolish nonresidential buildings over 40 years old; and 4) making it easier to initiate designation of historic districts and structures?

Financial Implications: Possible liability.

TEXT OF INITIATIVE ORDINANCE

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE
AMENDING LANDMARKS PRESERVATION AND DEMOLITION PERMIT
APPLICATION FOR NON-RESIDENTIAL BUILDINGS ORDINANCES

Chapter 3.24 LANDMARKS PRESERVATION COMMISSION*

Section 3.24.010 Findings and purposes of provisions.

A. It is found that structures, sites and areas of special character or special historical, architectural, cultural, educational, archaeological or aesthetic interests or value have been and continue to be unnecessarily destroyed or impaired, despite the feasibility of preserving them.

B. It is further found that prevention of such needless destruction and impairment is essential to the health, safety and general welfare of the citizens of the City.

C. The purpose of this legislation is to promote the health, safety and general welfare of the citizens of the City through:

1. The protection, enhancement, perpetuation and use of structures, sites and areas that are reminders of past eras, events and persons important to local, state or national history, or which provide significant examples of architectural styles of the past, or are landmarks in the history of architecture, or which are unique and irreplaceable assets to the City and its neighborhoods, or which provide for this generation and future generations examples of the physical surroundings in which past generations lived;

2. The development and maintenance of appropriate settings and environments for such structures, in such sites and areas;

3. The enhancement of property values, the stabilization of neighborhoods and areas of the City, and the increase of economic and financial benefits to the City and its inhabitants;

4. The preservation and encouragement of a City of varied architectural styles, reflecting the distinct phases of its history--cultural, social, economic, political and architectural;

5. The enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs by fostering knowledge of the living heritage of the past.

* For provisions concerning review of demolition permit applications for nonresidential buildings, see Ch. 19.20 of this code.

Section 3.24.020 Established--Powers and duties transferred when.

There is established the Landmarks Preservation Commission, hereinafter referred to as the commission. The commission shall have and exercise the powers and perform the duties set forth in this section, Sections 3.24.030 through 3.24.090, and elsewhere in this chapter with respect to historical or architectural preservation.

Section 3.24.030 Membership--Appointments--Organization and officers.

A. The commission shall consist of nine members. At least four of the nine members shall have expertise in the field of historic preservation by virtue of their profession or education. Expertise may be in, but not limited to the following: history, architecture, architectural history, archaeology, pre-history, cultural anthropology, preservation planning, landscape design or architectural design. Appointments to the commission shall be made by councilmembers and

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vacancies on the commission shall be filled by councilmembers in accordance with the provisions of Sections 2.04.030 through 2.04.120, enacted as Ordinance 4780-N.S. by the voters of the City.

B. ~~The Director of Planning and Development Assistant City Manager for Planning and Community Development~~, or his or her representative, shall serve as Secretary of the commission, without vote. The Department of Planning and ~~Community Development~~ shall provide staff assistance to the commission. The staff to the Commission shall have extensive experience and or expertise in historic preservation planning by virtue of their profession or education.

C. The commission shall elect annually in July a chairperson from among its members, and shall establish rules and regulations for its own organization and procedure. Three successive unexcused absences from regular meetings by a member shall constitute automatic termination of membership.

Section 3.24.040 Definitions.

For the purposes of this chapter certain terms used herein are defined as follows:

City: The City of Berkeley.

Commission: The Berkeley Landmarks Preservation Commission.

Feasible: Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

Historic District: Properties that have been designated a City of Berkeley historic district pursuant to Chapter 3.24 of the Berkeley Municipal Code.

Historic Resource: For the purposes of this chapter, and for purposes of environmental review under the provisions of the California Environmental Quality Act (CEQA) beginning with Section 21000 of the Public Resources Code, an historic resource shall be defined as:

- a. Any property designated a City of Berkeley landmark, structure of merit, or located in an historic district.
- b. Any property which is listed in or eligible for listing in the California Register of Historic Resources or in or eligible for listing in the National Register of Historic Places.
- c. Any property identified as significant in an historical resource survey meeting the requirements of Public Resources Code Section 5024.1(g).
- d. Any property the City of Berkeley determines to be historically significant pursuant to, California Code of Regulations Section 15064.5(3).

Initiated property: Any property that is undergoing review before the Landmarks Preservation Commission to determine whether it should be designated a City of Berkeley landmark, structure of merit or, historic district pursuant to Chapter 3.24 of the Berkeley Municipal Code.

Integrity: The authenticity of an historical resource's physical identity as evidenced by the survival of characteristics that existed during the resource's period of significance.

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a. A resource that maintains enough of its historic character or appearance to be recognizable as an historic resource and to convey the reasons for its significance whether or not it has been rehabilitated or restored.

b. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must be judged with reference to the particular criteria under which the resource is eligible to be designated. Alterations over time to a resource or historic changes in its use may themselves have historical, cultural, architectural or educational significance.

c. It is possible that an historical resource may not retain sufficient integrity to meet the criteria for listing in the California Register of Historic Resources but may still be eligible to be designated a City of Berkeley landmark, structure of merit or historic district. A resource that has lost its historic character or appearance may still have integrity if it maintains the potential to yield identifiable historical, cultural, archaeological, architectural or educational information.

Landmark: Any property that has been designated as a City of Berkeley landmark pursuant to Chapter 3.24 of the Berkeley Municipal Code.

Permit Streamlining Act: California Government Code Section 65920.

Structure of Merit: Any property that has been designated a City of Berkeley structure of merit pursuant to Chapter 3.24 of the Berkeley Municipal Code.

The Secretary of the Interior's Guidelines for the Treatment of Historic Resources: Illustrated rehabilitation guidelines specific to the Secretary of the Interior's Standards for Rehabilitation published by the National Park Service Technical Preservation Services.

Section 3.24.050 List of structures and sites--To be established and maintained-- Contents.

The commission shall:

A. ~~After June 6, 1974, u~~ Undertake to establish and maintain ~~a list~~ an ongoing list of landmarks, structures of merit and historic districts to carry out the objectives and purposes of this chapter. ~~structures, sites and areas having a special historical, architectural, or aesthetic interest or value.~~ This list may include single structures or sites, portions of structures, groups of structures, man-made or natural landscape elements, works of art or integrated combinations thereof. After public hearings, the commission may designate landmarks, structures of merit and historic districts from the list. In the establishment of the foregoing list, the commission shall notify and solicit the views of property owners and residents of structures, sites and areas proposed by the commission to be included in such a list.

B. ~~Establish an initial list no later than six months from the first meeting of the commission. The commission shall u~~ Utilize this initial list for the designation of landmarks, structures of merit and historic districts. Upon the completion of ~~landmark~~ designations from the initial list, the commission may undertake to establish and maintain an ongoing list for the purpose of carrying out the objectives and purposes of this chapter.

Section 3.24.060 List of structures and sites--Landmarks, historic districts and structures of merit designated--Permit application review.

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~~From and after six months from the first meeting of the commission or upon the completion of the foregoing initial list of structures, sites and areas, or in the event such list is completed by the commission prior to six months from the first meeting of the commission, the commission~~The commission may:

A. Designate, after public hearings, structures, sites and areas including single structures or sites, portions of structures, groups of structures, manmade or natural landscape elements, works of art, or integrated combinations thereof, having a special character, or special historical, architectural, cultural, educational, archaeological or aesthetic interest or value, as:

- 1 A landmark, and shall designate a landmark site for each landmark;
2. An historic district constituting a specific designated section of the City;
3. A structure of merit.~~For the purposes of this chapter, structure of merit includes structures, sites and areas,~~ including single structures or sites, portions of structures, groups of structures, man-made or natural landscape elements, works of art, or integrated combinations thereof, having a special character, or special historical, architectural, cultural, educational, archaeological or aesthetic interest or value;

B. Review and decide on permit applications for construction, alteration and demolition on landmark sites, in historic districts and on structure of merit sites and on initiated landmark sites, initiated historic districts and initiated structure of merit sites, as more fully set forth in Sections 3.24.220 through 3.24.250 and 3.24.350A below;

C. Take steps to encourage or bring about preservation of structures, sites and areas where the commission has decided to suspend ~~a action on~~ permit application, as more fully set forth in Sections 3.24.220 through 3.24.250 below.

Section 3.24.070 Powers and duties generally.

In connection with the foregoing power and authority, the commission may:

A. Conduct historic surveys in order to establish and maintain lists of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition, as more fully set forth in Section 3.24.330 below;

B. Carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation, and establish archives where pictorial evidence of the structures and their architectural plans, if any, may be preserved and maintained;

C. Consult with and consider the ideas and recommendations of civic groups, public agencies and citizens interested in historic preservation;

D. Inspect structures, sites and areas that it has reason to believe worthy of preservation with the permission of the owner or the owner's agent;

E. Disseminate information to the public concerning those structures, sites and areas deemed worthy of preservation, and may encourage and advise property owners and members of the community generally in the protection, enhancement, perpetuation and use of landmarks, property in historic districts and other officially recognized property of historical or architectural interests;

F. Consider methods other than those provided for in this chapter for encouraging and achieving historical or architectural preservation;

G. Establish such policies, rules and regulations as it deems necessary to administer and enforce this chapter, subject to the approval of the City Council.

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Section 3.24.080 Permit application--Suspension authorized when.

~~The Director of Planning and Development, Assistant City Manager for Planning and Community Development, prior to completion of the initial list of structures, sites and areas, shall have the authority to deny without prejudice recommend to the City Council that an application suspension of an application~~ for a maximum of one hundred eighty days, if in the judgment of the Director of Planning and Development Assistant City Manager for Planning and Community Development, an emergency is deemed to exist and an historic resource structure, site or area appropriate for landmark status is threatened with imminent destruction or substantial alteration.

Section 3.24.090 Annual report required.

The commission shall report its actions annually to the City Council not later than June 30th.

Section 3.24.100 Landmarks, historic districts and structures of merit--Designation--Procedures required--Control and standards.

A. Each designation of a landmark, historic districts or structure of merit by the commission shall include a description of the characteristics which justify its designation and a description of the particular features that should be preserved, and shall include the location and boundaries of the landmark site, historic district or structure of merit site. Any such designation shall be in furtherance of and in conformance with the purposes of this chapter and the standards set forth herein.

B. The property included in any such designation shall upon designation be subject to the controls and standards set forth in this chapter. In addition, the said property shall be subject to the following further controls and standards if imposed by the designation:

1. For a publicly owned landmark or structure of merit, review of proposed changes in major interior architectural features;
2. For an historic district, such further controls and standards as the commission deems necessary or desirable, including but not limited to facade, setback, height controls, signs and public improvements.

The commission may, upon receipt of any significant new information, reconsider after two years any structure of merit and designate it as a landmark, subject to all the procedures set forth in this section for an original landmark designation.

Section 3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.

A. Landmarks and historic districts: General criteria which the commission shall use when considering structures, sites and areas for landmark or historic district designation are as follows:

1. Architectural value: ~~merit~~
 - a. Property that is the first, last, only or most significant architectural property of its type in the region;
 - b. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder; ~~or~~
 - c. Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.

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2. Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City.

3. Educational value: Structures worth preserving for their usefulness as an educational force.

4. Historic value: Preservation and enhancement of structures, sites and areas that embody and express the social, cultural, economic, political, religious or military history of Berkeley/Alameda County/California/United States. ~~History may be social, cultural, economic, political, religious or military;~~

5. Any property which is listed in or eligible for listing in the California Register of Historic Resources or in or eligible for listing in the National Register of Historic Places, which is listed on the National Register described in Section 470A of Title 16 of the United States Code.

6. Archaeological value: Sites that have value by virtue of prehistoric or historic occupation or activity such as, but not limited to, Native American habitation and ceremonial sites.

7. Integrity: A resource that maintains enough of its historic character or appearance to be recognizable as a historic resource and to convey the reasons for its significance as defined further in Section 3.24.040.

B. Structures of Merit: Criteria which the commission shall use when considering a structure for structure of merit designation are as follows:

1. General criteria shall be architectural value merit and/or cultural, educational, archaeological, or historic or aesthetic interest or value. If upon assessment of a structure, the commission finds that the structure ~~does not currently meet the criteria set out for a Landmark,~~ but is worthy of preservation as a significant part of a neighborhood, a block or a street frontage, or as part of a group of buildings which includes landmarks, that structure may be designated a structure of merit.

2. Specific criteria include, but are not limited to one or more of the following:

a. The age of the structure is contemporary with (1) a designated landmark within its neighborhood, block, street frontage, or group of buildings, or (2) an historic period or event of significance to the City, or to the structure's neighborhood, block, street frontage, or group of buildings.

b. The structure is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block, street frontage, or group of buildings.

c. The structure is a good example of architectural design.

d. The structure has historical significance to the City and/or to the structure's neighborhood, block, street frontage, or group of buildings.

e. The structure retains its historical integrity as defined in Section 3.24.040.

Section 3.24.120 Landmarks, historic districts and structures of merit--Designation--Initiation procedures.

Initiation of a landmark or structure of merit designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least twenty five ~~fifty~~ residents of the City. Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. Where such application is submitted for designation of an historic district, initiation may be by the

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commission on its own motion, or initiation may the application must be subscribed by, or on behalf of, a majority of the property owners or residents of the proposed district.

Section 3.24.130 Designation proposal--Public hearing--Required--Recordkeeping.

The commission shall hold a public hearing on the proposal and shall set a time and place for such hearing. Such hearing shall be held within seventy days of the filing of the application or resolution to initiate. A record of pertinent information presented at the hearing shall be made and maintained as a permanent record.

Section 3.24.140 Designation proposal--Public hearing notice requirements.

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than thirty ten days prior to the date of the hearing.

B. In addition to the posting of notice, a notice of the hearing shall be mailed not less than thirty days ten days prior to the date of such hearing to the property owner or his or her authorized agent, and not less than ten days prior to the date of such hearing to all property owners having property and each residential or other unit within three hundred feet of the property referred to in the application; provided, however, that the failure of any such property owner or resident to receive such notice shall not affect the validity of the proceedings.

C. Notice shall be given to the neighborhood group(s) that are on file with the zoning officer and whose regular geographic area of interest includes the area of the proposed designation, and to any City committee or City agency serving the area of the proposed designation which affects property owners and tenants.

D. The commission may also give such other notice as it may deem desirable and practical, including, if requested, to organizations or individuals indicating an interest in the work of the commission.

Section 3.24.150 Designation proposal--Time limit for determination.

The commission shall approve, disapprove or modify the proposal within one hundred eighty days after the conclusion of the opening of the public hearing; failure to act within said time shall constitute disapproval.

Section 3.24.160 Designation proposal--Notice of decision required.

The commission shall promptly notify in writing the applicant, owner and residents of the property of action taken. The commission shall also mail a notice of its decision to persons requesting such notification. A copy of the notice of decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.

Section 3.24.170 Designation proposal--Disapproved--Waiting period for resubmission.

If a proposal initiated by application has been disapproved by the commission or by the City Council on appeal as more fully set forth in Section 3.24.300 below, no subsequent application that is the same or substantially the same may be submitted or reconsidered for at least two years from the effective date of final action by the commission or by the City Council on the original proposal.

Section 3.24.180 Landmarks, historic districts and structures of merit--Designation--Recording required.

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When a landmark, historic district or structure of merit has been designated by the commission as provided above, in addition to the notification required in Section 3.24.160 above, the commission shall cause a copy of the designation, or notice thereof, to be recorded in the Office of the County Recorder.

Section 3.24.190 Council certification authorized when--Effect.

Notwithstanding any of the provisions of this chapter, the council may certify to the council any action of the commission in granting or denying an application for designation as a landmark or an historic district, but such action of the council shall be taken within fifteen days from the mailing of the notice of the decision of the commission. Such certification to the council shall stay all proceedings in the same manner as the filing of a notice of appeal.

Section 3.24.200 Landmarks, historic districts and structures of merit--Construction, alteration or modification--Approval required.

No person shall carry out or cause to be carried out on a designated landmark, in a designated historic district or structure of merit, any construction, alteration, or demolition for which a City permit is required, without approval by the commission pursuant to Sections 3.24.220 through 3.24.250 hereof, except in conformity with the provisions of Section 3.24.280 hereof. In addition, no such work shall take place unless all other applicable laws and regulations have been complied with, and a permit has been issued for said work.

Section 3.24.210 Review of permit applications.

A. The commission shall maintain with the Department of Planning and ~~Community~~ Development and the department's zoning and codes and inspection division a current record of designated landmarks, historic districts and structures of merit, as well as any property which is listed in or eligible for listing in the California Register of Historic Resources or in or eligible for listing in the National Register of Historic Places -as and a record of those having been initiated and undergoing consideration. Upon receipt of any application for a permit to carry out any construction, alteration or demolition on a landmark site, in an historic district or on a structure of merit site, or on an initiated landmark site, in an initiated historic district or on an initiated structure of merit site, the Department of Planning and ~~Community~~ Development shall, unless the structure or feature concerned has been declared unsafe or dangerous pursuant to Section 3.24.280 of this chapter, promptly forward such permit application to the commission for review.

B. The City Council shall set by resolution the fees for Landmarks Preservation Commission review of any application for a permit to carry out any construction, alteration or demolition on an initiated or designated nonresidential landmark site (or nonresidential portion thereof), in an initiated or designated historic nonresidential district (or nonresidential portion thereof), or on an initiated or designated nonresidential structure of merit (or nonresidential portion thereof.)

Landmarks Preservation Commission review of applications for permits to carry out any construction, alteration, or demolition on residential initiated or designated landmarks, residential initiated or designated historic districts and residential initiated or designated residential structures of merit, located in any zoning district and nonresidential initiated or designated landmarks, nonresidential initiated or designated historic districts and nonresidential initiated or designated structures of merit located in residential zoning districts, are not subject to the landmarks review fees.

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Applicants who are qualified non-profits and other applicants with projects valued at less than three hundred fifty thousand dollars may apply to the City Manager for a fee waiver if it can be demonstrated that the payment of the fee would pose a hardship.

Section 3.24.220 Permit application--Data and public hearing required--Exceptions.

A. The commission shall review the permit application in accordance with the provisions of this section and Sections 3.24.230 through 3.24.250 except:

1. When the application is for a permit to do ordinary maintenance and repairs, unless, in the opinion of the commission, approval of the said application would seriously conflict with the purposes and standards of this chapter or the provisions of the designation.

2. For the purpose of this chapter, "ordinary maintenance and repairs" means any work, the sole purpose and effect of which is to correct deterioration, decay or damage.

B. Any such permit application referred to the commission shall include plans and specifications showing the proposed appearance, color and texture of materials, and the proposed architectural design of the structure. If the application, together with its supporting plans and specifications does not provide a sufficient basis for review by the commission, the commission shall inform the applicant of the additional data required, and the applicant shall supply said data.

C. Except for permits issued pursuant to subsection A.1, of this section, the commission shall hold a public hearing on the permit application. Such public hearing shall be held within seventy days after receipt by the commission of the application.

Section 3.24.230 Permit application--Public hearing notice requirements.

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than thirty ~~ten~~ days prior to the date of the hearing.

B. In addition to the posting of notice, a notice of the hearing shall be mailed not less than thirty days ~~ten days~~ prior to the date of such hearing to the property owner or his or her authorized agent, and not less than ten days prior to the date of such hearing to all property owners having property and each residential or other unit within three hundred feet of the property referred to in the application; provided, however, that the failure of any such property owner or resident to receive such notice shall not affect the validity of the proceedings.

C. Notice shall be given to the neighborhood group(s) that are on file with the zoning officer, and whose regular geographic area of interest includes the area of the proposed designation, and to any City committee or City agency serving the area of the proposed designation which affects property owners and tenants.

D. The commission may also give such other notice as it may deem desirable and practical, including, if requested, to organizations or individuals indicating an interest in the work of the commission.

Section 3.24.240 Permit application--Decision--Procedure and time limitations--Notification required.

A. The commission shall consider the conformance of the proposed work with the purposes and standards in this chapter and with the provisions of the designation. The commission shall approve, suspend or disapprove the application as specified below in this section, or, with the applicant's consent, shall modify and approve the application, within thirty days after the conclusion of the public hearing. Failure to act within said time shall constitute approval. The commission shall promptly notify in writing the owners or, where appropriate, authorized agents

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and residents of the property of its decision. The commission shall also mail notice of the decision to organizations and individuals who request such notification. A copy of the notice of decision shall be filed with the City Clerk, and the City Clerk shall present said copy to the City Council at its next regular meeting.

B. For such permit applications reviewed by the commission:

1. If the application is for a permit to make exterior alterations or to carry out new construction the commission shall approve, modify or disapprove the application in whole or in part, or suspend ~~action on~~ it for a period not to exceed one hundred eighty days for a landmark or a structure located in an historic district, and for a period not to exceed ninety days for a structure of merit.

2. If the application is for a permit to demolish the commission shall approve, disapprove or modify the application in whole or in part, or suspend ~~action on~~ it for a period not to exceed one year for a landmark or a ~~designated~~ structure in an historic district, and for a period not to exceed one hundred eighty days for a structure of merit; however, no demolition permit approved for a City of Berkeley landmark, ~~designated~~ structure in an historic district, or structure of merit shall be activated following the appropriate period of suspension stated above until the building permit for the replacement structure is presented to the Codes and Inspections Division of the Department of Planning and ~~Community~~ Development.

Section 3.24.250 Permit application--Effect of suspended action.

In the event ~~action on~~ the application is suspended as provided above in Section 3.24.240, the commission may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purposes of this chapter. Such steps may include, but shall not be limited to, consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies and exploration of the possibility of moving one or more structures or other features.

Section 3.24.260 Permit application--Review standards and criteria.

A. The commission shall be guided by the standards in this section in its review of permit applications for work on a landmark site, in an historic district or on a structure of merit site. In appraising the effects and relationships mentioned herein, the commission shall in all cases consider the architectural style, appearance, arrangement, height, design, texture, materials, color and appurtenances and such other facts as may be relevant.

B. In all instances, the proposed work shall be as appropriate for and as consistent with the purposes of this chapter as is possible within the peculiar circumstances of the owner of the property and preservation or enhancement of the characteristics and particular features specified in the designation. In judging the appropriateness of the proposed work, the commission shall be guided by: The Department of the Interior Guidelines for the Treatment of Historic Resources.

C. Approval of permit applications pursuant to this section may be granted only upon determination that the proposal conforms to the criteria set forth in paragraphs 1 and 2 below:

1. For permit applications for construction, alteration or repair:

a. For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features; nor shall the proposed work adversely affect the special character or special historical, architectural, cultural, educational,

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archaeological or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.

b. For applications relating to property in historic districts, the proposed work shall not adversely affect the exterior architectural features of the subject property or the relationship and congruity between the subject structure or feature and its neighboring structures and surroundings, including facade, setback and height; nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the district. The proposed work shall also conform to such further standards as may be embodied in the designation of the historic district.

c. For applications relating to structure of merit sites, the proposed work shall not adversely affect the architectural features if architectural merit is the basis for designation; nor shall the proposed work adversely affect the special cultural, educational or historical interest or value if that is the basis for designation.

2. For permit applications for demolition: the commission shall find that the designated landmark, historic district or structure of merit or portion thereof is in such condition that it is not feasible to preserve or restore it, taking into consideration the ~~economic~~ feasibility of alternatives to the proposal, and balancing the interest of the public in preserving the designated landmark, historic district or structure of merit or portion thereof, and the interest of the owner of the landmark site, historic district, or structure of merit site, in its utilization.

Section 3.24.270 Permit application--Finding of hardship authorized when--Effect.

Regardless of whether or not the standards set forth in Section 3.24.260 are met, the commission may approve a permit application to carry out alterations or construction on a landmark site, in an historic district or on a structure of merit site, if the applicant presents clear and convincing evidence to the commission that such disapproval will result in ~~work~~ immediate and substantial hardship because of conditions peculiar to the particular structure or feature involved, and that failure to disapprove the application will be consistent with the purposes of this chapter. If hardship is found to exist under this section, the commission shall make a written finding to that effect, and shall also specify in writing the facts relied upon in making such finding. Nothing in this section shall prohibit the commission from acting to modify or to suspend ~~action on~~ any application pursuant to Sections 3.24.220 through 3.24.250 hereof.

Section 3.24.280 Landmarks, historic districts or structures of merit--Unsafe or dangerous conditions--Effect.

None of the provisions of this chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature, or part thereof, which such condition has been declared unsafe or dangerous by the Planning and ~~Community~~ Development Department or the Fire Department, and where the proposed measures have been declared necessary, by such department or departments, to correct the said condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any structure or other feature is damaged by fire or other calamity or by act of God, or by the public enemy to such an extent that in the opinion of the aforesaid department or departments it cannot reasonably be repaired or restored, it may be removed in conformity with normal permit procedures and applicable laws.

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Section 3.24.290 Landmarks, historic districts and structures of merit--Good repair and maintenance required.

A. The owner, lessee, or other person in actual charge of a landmark, a structure in an historic district or a structure of merit, shall keep in good repair all of the exterior portions of such landmark, structure in an historic district or structure of merit, all interior portions thereof when subject to control as specified in subsection (B)(1) of Section 3.24.100 of this chapter, and all interior portions of a building not subject to control as specified in subsection (B)(1) of Section 3.24.100 the maintenance of which is necessary to prevent deterioration and/or structural decay of any exterior portion.

B. For purpose of this section, "good repair" means the prevention of structural decay or structural failure or the prevention of irreparable damage to the major historic or architectural features of the structure.

C. For purpose of this section, "landmark, historic districts and structure of merit sites" include the landscape features and amenities of the designated district when specifically included as a part of the designation.

Section 3.24.300 Appeals--Procedures required--City Council authority.

A. An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Arts Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least ~~twenty-five~~ ~~fifty~~ residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the Notice of Decision ~~notice of the decision~~ of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

B. The filing of a notice of appeal within the time and in the manner specified in subsection A above shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of the appeal, as provided herein. Within twenty-five days following the filing of the notice of appeal, the City Council shall review the action of the commission and may do any one of the following:

1. Refer the matter back to the commission for further consideration, in which case the commission shall conduct such further investigation as it shall deem advisable and report its conclusion to the City Council;

2. If the facts stated in or ascertainable from the application, the notice of appeal, the written statement of the commission setting forth the reasons for its decision, and the other papers, if

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any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the commission and dismiss the appeal;

3. If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing in the same manner as is provided for giving notice of the time and place for hearing before the commission as set forth in Section 3.24.140. The City Council may reverse or affirm wholly or partly, or modify any decision, determination or requirement of the commission, and may make decisions or determinations or may impose such conditions as the facts warrant and its decision or determination shall be final. Any hearing may be continued from time to time.

C. If a public hearing is set on the appeal pursuant to subsection B above, the council must decide the appeal within thirty days from the date that the public hearing on the appeal is closed. ~~opened~~. If the council is unable to act on such appeal within such time, the decision of the commission shall be automatically affirmed.

D. The City Clerk shall promptly notify in writing the appellant, owners or authorized agents of affected property, and residents of such property of the action taken.

E. Payment of fees for an appeal from the decision of the Landmarks Preservation Commission shall be set by resolution of the City Council.

Section 3.24.310 Advice and guidance to property owners.

The commission may render advice and guidance with respect to any proposed work not requiring a City permit, on a designated landmark site, in a designated historic district or on a designated structure of merit site. Examples of the work referred to are: painting and repainting of exterior surfaces; fencing; landscaping; and installation of lighting fixtures. In rendering such advice and guidance, the commission shall be guided by the purposes and standards of this chapter.

Section 3.24.320 Property owned by public agencies--Cooperation--Consultation and report requirements.

A. The commission shall take appropriate steps to notify all public agencies which own or may acquire property in the City about the existence and character of designated landmarks, historic districts and structures of merit, and the commission shall cause a current record of such landmarks, districts and structures of merit to be maintained in each public agency. In the case of any publicly owned property on a landmark site, or in an historic district which is not subject to the permit review procedures of the City, the agency owning the property shall seek the advice of the commission prior to approval or authorization of any construction, alteration or demolition thereon, including the placement of street furniture, lighting and landscaping; and the commission in consultation with the Design Review Committee of the Planning Commission, in appropriate cases, shall render a report to the owner as expeditiously as possible, based on the purposes and standards of this chapter. If commission review of a public project involving construction, alteration or demolition on a landmark site, in an historic district or on a structure of merit site is required under any other law or under the Charter, the commission shall render the report referred to in this section to such public agency without specific request therefor.

B. All officers, boards, commissions, and departments of the City shall cooperate with the commission in carrying out the spirit and intent of this chapter.

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Section 3.24.330 Other procedures authorized.

A. The commission may authorize such steps as it deems desirable to recognize the value of and to encourage the protection, enhancement, perpetuation, and use of any such structure of merit, or of any designated landmark, or any structure in a designated historic district, including, but not limited to the issuance of a certificate of recognition and the authorization of a plaque to be affixed to the exterior of the structure; and the commission shall cooperate with appropriate state and federal agencies in such efforts.

B. The commission may make recommendations to the City Council and to any other body or agency responsible to encourage giving names pertaining to Berkeley history to streets, squares, walks, plazas, and other public places.

Section 3.24.340 Landmarks, historic districts or structures of merit--Filing fees required when.

Before accepting for filing any application hereinafter mentioned, the commission shall charge and collect the fees herein specified:

A. For each application for designation of a landmark or a structure of merit, the fee shall be fifty dollars;

B. For each application for designation of an historic district, the fee shall be one hundred dollars;

C. There shall be no fee for each application for designation of a landmark, an historic district or a structure of merit, if such application is initiated by the commission, or by resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission.

Section 3.24.350 Applicability of provisions.

A. No application for a permit to construct, alter or demolish any structure or other feature on a site, filed subsequent to the day that an application has been filed, or a resolution adopted to initiate designation of the said site as a landmark, an historic district, or a structure of merit, shall be approved while proceedings are pending on such designation; provided, however, that after one hundred eighty days have elapsed from the opening of the public hearing date of initiation of ~~on~~ said designation, unless the application has been suspended pursuant to Sections 3.24.220 through 3.24.250, if final action on such designation has not been completed, the permit application may be approved.

B. The provisions of this chapter shall be inapplicable to the construction, alteration, or demolition of any structure or other feature on a proposed landmark site, historic district or structure of merit site, where a permit for the performance of such work was issued prior to the day that an application has been filed or a resolution adopted to initiate the designation of the said landmark site, ~~or~~ historic district or structure of merit and where such permit has not expired or been cancelled or revoked, provided that construction is started and diligently prosecuted to completion in accordance with the building code

C. No provision of this chapter shall be construed to prevent compliance with the state laws governing permit streamlining, the Permit Streamlining Act (PSA) Section 65920 of the Government Code, or the California Environmental Quality Act (CEQA) beginning with Section 21000 of the Public Resources Code.

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D. To the extent that provisions of this ordinance are in conflict with any provisions of the Berkeley Municipal Code or zoning ordinance of the City of Berkeley in effect prior to the date this ordinance is enacted, the provisions of this ordinance shall control.

E. Severability: If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter.

Section 3.24.360 Enforcement--Exemption for financial hardship when.

Any owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or structure of merit, upon presentation of clear and convincing evidence demonstrating to the satisfaction of the commission that compliance with these regulations will work immediate and substantial financial hardship on such owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or a structure of merit, shall be exempt from the provisions of this section and Sections 3.24.370 through 3.24.390.

Section 3.24.370 Enforcement--Inspection services authority.

It shall be the responsibility of the Department of Planning and ~~Community~~ Development to administer and enforce the provisions of this chapter through its division of codes and inspection service.

Section 3.24.380 Enforcement--Methods authorized.

In addition to the regulations of this chapter and other ordinances which govern the approval or disapproval of applications for building permits or other permits, or licenses affecting the use of land or buildings, the Assistant City Manager for Planning and ~~Community~~ Development shall enforce the provisions thereof by any of the following means:

A. The ~~Director~~ ~~Assistant City Manager~~ for Planning and ~~Community~~ Development may serve notice requiring the removal of any violation of this chapter upon the owner at last known address, or, where relevant, the owner's authorized agent, tenant of the building or land, or upon the architect, builder, contractor, or other person who commits, or assists in any such violation.

B. In addition, the City Attorney may seek injunctive relief or maintain an action in abatement to further the provisions of this chapter.

Section 3.24.390 Violation--Penalty.

Any violation of any provisions of this chapter shall be deemed a misdemeanor and shall be punishable as set forth in Chapter 1.20 of this code.

Chapter 19.20 REVIEW OF DEMOLITION PERMIT APPLICATIONS FOR NONRESIDENTIAL BUILDINGS

Section 19.20.010 Purposes.

The City Council finds and declares that:

A. A substantial number of Berkeley's nonresidential buildings, such as commercial, office, industrial, manufacturing, or institutional structures are valuable expression of the City's architectural and historical heritage;

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B. Adequate procedures are needed to assure an opportunity to review such buildings' historical, architectural, cultural, educational or aesthetic significance before demolition permits are issued for such buildings; and

C. A process for the exploration of restoration and reuse of such buildings as alternatives to demolition promotes the welfare of the community and saves valuable resources.

Section 19.20.020 Applicability.

The procedures established by this chapter shall apply to all applications for a permit to demolish any nonresidential building or portion thereof which was constructed more than forty years prior to application, except accessory buildings containing less than three hundred square feet or unsafe buildings.

Section 19.20.030 Definitions.

A. "Accessory building" is any subordinate nonresidential building on a lot or building site, the use of which is incidental to that of the main building on the same lot or building site.

B. "Building official" refers to the Director ~~Assistant City Manager~~ of Planning and ~~Community~~ Development of the City of Berkeley or his/her authorized representative in the issuance of permits.

C. "Landmarks Preservation Ordinance" refers to that ordinance codified as Chapter 3.24 of the Berkeley Municipal Code.

D. "Unsafe building" refers to any nonresidential structure which is determined to be unsafe, hazardous and which endangers the life or health of residents or tenants therein or in the vicinity thereof and shall include:

1. Any building determined to be hazardous pursuant to Section 203 of the 1979 Uniform Building Code as adopted by Ordinance No. 5389-N.S. and any subsequent editions of such Code which may be adopted by the City of Berkeley.

2. Any building determined to be a health and safety hazard pursuant to Chapter 11.36 of the Berkeley Municipal Code.

3. Any building determined to be unsafe pursuant to the Uniform Fire Code of 1971 as adopted by Ordinance No. 4647-N.S. and any subsequent editions of such Code which may be adopted by the City of Berkeley.

Section 19.20.040 Procedures.

The following requirements shall apply to any application for issuance of a demolition permit for any nonresidential building or portion thereof which falls within the provisions of Section 19.20.020 of this chapter and shall modify the requirements, standards and procedures for demolition permits set forth in Chapter 3 of the 1979 Uniform Building Code as adopted by Ordinance No. 5389-N.S. and subsequent editions and amendments to such Code which are adopted by the City of Berkeley.

A. Each such demolition permit application shall be forwarded by the building official to the Landmarks Preservation Commission for review. Within thirty days of receiving the application the building official shall notify the applicant in writing that the application is not yet complete and the application will remain incomplete pending the expiration of the review periods set forth in this chapter. ~~no further action on such application may be taken by the building official until the expiration of the referral periods set forth in this chapter.~~

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B. At the first regular meeting following receipt of the permit application the The Landmarks Preservation Commission shall review the application and determine whether the building involved is potentially eligible for designation as a landmark pursuant to the criteria and procedures set forth in the Landmarks Preservation Ordinance. provided, however, that its action must comply with the time limits specified in this chapter.

C. Within sixty days of receiving the application theThe Landmarks Preservation Commission shall either notify the building official either that it intends to take no action or shall initiate proceedings to designate the property. building as a landmark within thirty five days from the date the demolition permit application is filed with the building official..

D. If the commission elects to initiate such proceedings, a public hearing shall be held within seventy days of the date of initiation and a decision issued concerning such designation within 180 days of the opening of the public hearing sixty days of initiation. The building official's action on such demolition permit application shall be further stayed for an additional fifteen days after the Landmarks Preservation Commission's decision and pending completion of the commission's action on the designation and any Council action on any appeal which may be filed from the commission's action. If a property building is designated, as a landmark, action upon the demolition application will be governed by the provisions of the Landmarks Preservation Ordinance, provided, however, that any suspension of commission action on the appropriateness of a demolition permit pursuant to Berkeley Municipal Code Section 3.24.240 subsection B.2 shall not exceed a maximum of one year, such period of suspension to be measured from the date that of the application is deemed complete. application's initial filing with the building official. The building official shall issue the demolition permit upon the expiration of any such period of suspension upon the permit applicant's request. The time limits for commission designation provided for in subsection C, and Council appeals pursuant to Berkeley Municipal Code Section 3.24.300, shall be jurisdictional.

E. In the event that any of the time limits applicable are exceeded or if designation is denied, the building official shall deem the requirements met and may act upon the application in the normal manner.

F. No provision of this section shall be construed to prevent compliance with the state laws governing permit streamlining, the Permit Streamlining Act (PSA) Section 65920 of the Government Code, or the California Environmental Quality Act (CEQA) beginning with Section 21000 of the Public Resources Code.

G. None of the provisions of this section shall be construed to allow demolition of a structure pursuant to Section 19.20.030 subsection D 1,2,3, if feasible measures exist to abate the unsafe or dangerous conditions. Only such work as is reasonably necessary to correct the unsafe or dangerous conditions may be performed pursuant to this section.

H. Notwithstanding any other provisions of this chapter, the Director of Planning and Development, shall have the authority to deny without prejudice an application for a maximum of one hundred eighty days, if in the judgment of the Director of Planning and Development, an emergency is deemed to exist and an historic resource is threatened with imminent destruction or substantial alteration.

Section 19.20.050 Rules and regulations.

The building official may issue such rules and regulations as are necessary to administer the provisions of this chapter.

CITY ATTORNEY ANALYSIS

**SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE
AMENDING LANDMARKS PRESERVATION AND DEMOLITION PERMIT
APPLICATION FOR NON-RESIDENTIAL BUILDINGS ORDINANCES**

The proposed ordinance would have the voters adopt most provisions of the City's existing Landmarks Preservation Ordinance ("LPO"), after which any changes would have to be approved by the voters. The LPO establishes a nine member Landmarks Preservation Commission ("LPC") appointed by the City Council. The LPC designates landmarks, structures of merit and historic districts ("historic resources") and may approve or deny alteration of such historic resources, but may not deny their demolition; such demolition permits are decided by the City's Zoning Adjustment Board under existing law. The LPC also reviews all applications to demolish nonresidential buildings over 40 years old for possible initiation as historic resources. The City has not been implementing some provisions of the existing LPO that delay permit processing timelines, based on the City Attorney's advice that these provisions conflict with permit processing deadlines imposed by State law. The Council has been attempting to amend the current LPO to bring it into conformity with State law but has suspended these actions pending resolution of whether this initiative measure will be adopted or rejected by the voters.

The proposed measure would have the following material effects:

1. It would have the voters adopt, and in some cases lengthen, some City timelines to process permits that the City Attorney has advised can cause the City to violate state processing deadlines. This would prevent the Council from amending the ordinance to bring the permit processing timelines into conformity with state law without voter approval.
2. It would authorize the Planning Director to suspend for up to 180 days any application that would result in demolition or substantial alteration of a historic resource in an emergency and would extend the time during which applications for permits to demolish nonresidential structures over 40 years old could not be approved pending LPC review.
3. It would grant the LPC authority to disapprove permits to demolish historic resources, and significantly limit the City's ability to permit such demolitions, regardless of competing public interests.
4. It would readopt the provisions of a City ordinance, recently repealed, that required referral to the LPC of any proposed demolition of a non-residential structure over 40 years old.
5. It would require the City to prepare environmental impact reports with respect to certain structures that the City has not designated as historic resources, because they are listed on an inventory prepared by third parties, pursuant to state law.
6. It would require earlier notice to property owners of LPC hearings that affect their property.
7. It would limit to no more than 6 months the length of LPC consideration of whether or not to designate a structure site or district as a historic resource, once the public hearing is opened.

Financial Implications: If the City follows time lines in conflict with state processing time lines, it may face uncertain liability. If Proposition 90 passes, the City may face liability for damages if this ordinance is found to result in substantial economic loss to property.

ARGUMENT IN FAVOR OF MEASURE J

A YES vote on Measure J maintains citizen participation in decisions regarding demolition permits for historic homes, apartments, schools, libraries and neighborhoods.

The Mayor's alternative ordinance, which will become law if this initiative fails, significantly reduces the authority of the Landmarks Preservation Commission (LPC), paves the way for speculators to demolish dozens, possibly hundreds of historic buildings, and severely weakens citizens' rights to participate in decisions affecting their immediate neighborhood.

This Initiative updates the 1974 Landmarks Preservation Ordinance (LPO), which was certified by the State in 2000 as being compliant with state and federal preservation practices. It adds professional qualifications for Landmarks Commissioners and defines stricter criteria for designation of landmarks as recommended by the State Office of Historic Preservation.

Don't be misled by the City Attorney's speculation that this ordinance may violate state law. No credible legal authority, not even the State Office of Planning and Research, supports that interpretation.

The Mayor's proposed ordinance makes it easier to demolish a hundred-year-old Victorian than to repave your driveway, by requiring all permits for exterior maintenance and repairs to be LPC approved. At the same time the Mayor's ordinance expedites demolition permits. This will add hundreds, possibly thousands, to homeowner permit costs, substantially increase the LPC's workload, and delay permits. Homeowners, not developers, will bear the cost.

This Initiative encourages retaining truly affordable housing, that which was built long ago of enduring materials and craftsmanship, by providing time to discuss demolition alternatives. It also encourages environmentally friendly housing by creative reuse of existing buildings, saving the character of Berkeley neighborhoods.

A "Yes" vote preserves your right to participate in decisions affecting your neighborhood and keeps the Mayor's proposal from becoming law. Save Berkeley's neighborhoods -- once they're gone, we can't get them back.

s/SHIRLEY DEAN, Former Berkeley Mayor, Co-Founder, 1974 LPO

s/DEAN METZGER, President, Claremont-Elmwood Neighborhood Assn, Zoning Adjustments Board member

s/ELAINE GREEN, Executive Secretary, Berkeley NAACP, South Berkeley United We Stand member

s/LAURIE BRIGHT, President, Council of Neighborhood Associations, Berkeley Architectural Heritage Assn Board member, Former Chair, Landmarks Commission

s/PATTI DACEY, Downtown Area Plan Advisory Committee (DAPAC) Member, Former Landmarks Commissioner, Secretary, LeConte Neighborhood Assn

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE J

Measure J is an attempt to overrule the public process and hijack Berkeley's landmarks rules. Measure J will hurt legitimate efforts to preserve our history and likely lead to lengthy and costly court battles.

The Facts:

FACT: Measure J may actually allow easier demolition of historic buildings.

- The City Attorney found that Measure J's probable conflict with State law can result in a court automatically approving a developer's project – even if it demolishes a potential landmark.

FACT: Measure J would toss out six years of public process that led to careful reforms supported by preservationists, the Landmarks Commission, and the City Council.

- Those careful reforms include:
 - providing the Landmarks Commission with authority to deny demolitions of landmarks,
 - requiring the Landmarks Commission and city staff abide by clear decision timelines to ensure fairness,
 - requiring all new landmarks have "integrity," and
 - ensuring all changes to existing landmarks are reviewed by the Landmarks Commission.

FACT: Measure J is a tool for a small group of people to stop new projects when they can't do so on the merits.

- Some of Measure J's proponents have inappropriately tried to provide historic protections for a nondescript chain restaurant and a retaining wall.
- Measure J makes it much easier to initiate a landmark designation by reducing the number of signatures needed from 50 to 25 and lengthening decision timelines.

Support legitimate historic preservation and a fair and inclusive public process -- vote NO on Measure J.

s/LONI HANCOCK, Assemblywoman
s/SALLY WOODBRIDGE, Architectural Historian
s/MIM HAWLEY, Former City Council Member
s/FRAN PACKARD, Member, Landmarks Preservation Commission
s/LINDA MAIO, City Council Member

ARGUMENT AGAINST MEASURE J

We all want to protect Berkeley's wonderful historic heritage, but Measure J makes the problems with our current law even worse.

Berkeley needs a landmark law that protects our history, not one that hurts historic preservation and exposes the City to litigation.

In 1999, a judge found the City's landmarks process to be seriously flawed. Since then, the Landmarks Commission, the Planning Commission, the City Council, and City staff have worked on revisions to maintain strong protections for historic resources while fixing the legal and procedural flaws.

This year, careful reforms to our landmarks law were overwhelmingly approved by both the Landmarks Commission and the City Council. But a small group of people want to forever lock in the old ordinance with Measure J.

According to the City Attorney's impartial analysis:

- **Measure J may force the City to violate State law.** The State's Permit Streamlining Act requires that the City make land use decisions within set timelines. Measure J could force the City to violate that law and allow developers to potentially receive automatic approval of their project without City oversight -- even if it demolishes a potential landmark. What's more, the City may be required to pay a developer for their economic loss.
- **Measure J is poorly written.** The City will likely be required to go to court to untangle the conflicting provisions of the ordinance, tying up the law for years. This may cost the City hundreds of thousands of dollars.

Berkeley has diligently protected its history. We have nearly 300 landmarks and structures of merit – more than all of San Francisco. Measure J will hurt efforts at legitimate historic preservation.

Please join Mayor Tom Bates; Council Members Max Anderson, Linda Maio, Laurie Capitelli, Darryl Moore, and Gordon Wozniak in voting NO on Measure J.

s/LONI HANCOCK, Assemblywoman

s/BURTON EDWARDS, Architect, Landmarks Preservation Commission Member (Former Chair)

s/SALLY WOODBRIDGE, Architectural Historian

s/ALAN TOBEY, Board Member, Liveable Berkeley

s/HARRY POLLACK, Planning Commission Member (Former Chair)

REBUTTAL TO ARGUMENT AGAINST MEASURE J

The argument opposing Measure J employs **scare tactics, speculation, and outright untruth** to mask its real intention: to facilitate demolitions in historic neighborhoods. The **facts** paint a different picture:

- * None of the city's 2 dozen neighborhood associations oppose Measure J and most are actively supporting it.
- * Nearly 5 dozen residents spoke before the City Council regarding the LPO with 99% supporting it.
- * The State certified the LPO 6 years ago while suggesting changes incorporated into Measure J.
- * In 33 years, **no** part of the Landmarks Preservation Ordinance has been successfully challenged in court. Much stronger preservation ordinances have been upheld by the courts.
- * The Landmarks Commission approved the Mayor's proposal only after the last-minute appointment of political cronies.
- * Alleged negative effects of the unapproved and sure-to-be litigated State Prop 90 constitute sheer speculation.

Berkeley's 300 landmarks and structures of merit define our neighborhoods and quality of life. Measure J specifically:

- * **Preserves your rights** to participate in decisions affecting your neighborhood.
- * **Protects affordable, good-quality rental housing** from demolition without public notice or opportunity for comment.
- * **Protects the environment** by encouraging renovation and creative reuse of existing buildings.
- * **Protects traditional neighborhoods** by prioritizing development at appropriate sites.
- * **Saves homeowners money and time**, as LPC won't need to review each and every permit for exterior maintenance and repair, as called for in the alternative proposals.

This is about the future of our city. **Once our neighborhoods are gone -- we can't get them back.** Vote "Yes" on Measure J.

www.lpo2006.org

s/DONA SPRING, Berkeley City Council member

s/ANNE WAGLEY, Former Chair, Housing Advisory Commission, Berkeley Architectural Heritage Board Member

s/ZELDA BRONSTEIN, Former Chair, Planning Commission, Board Member and Past
President, Thousand Oaks Neighborhood Association

s/JESSE ARREGUIN, Rent Stabilization Board Member, Housing Advisory Commission Chair,
Former ASUC City Affairs Director

s/LAURIE BRIGHT, Former Chair, Landmarks Commission, Berkeley Architectural Heritage
Board Member, President of The Council of Neighborhood Associations