

Measure D

Ballot Question - REVISED

Shall an ordinance imposing a 1¢ per ounce general tax on the distribution of sugar-sweetened beverages (e.g., sodas, energy drinks, presweetened teas) and sweeteners used to sweeten such drinks, but exempting: (1) sweeteners (e.g., sugar, honey, syrups) typically used by consumers and distributed to grocery stores; (2) drinks and sweeteners distributed to very small retailers; (3) diet drinks, milk products, 100% juice, baby formula, alcohol, or drinks taken for medical reasons, be adopted?

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

IMPOSING A GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS

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

Section 1. Findings

- A. Our nation, our state, and our community face a major public health crisis.
- B. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children as well as low income communities and communities of color have been and continue to be disproportionately affected.
- C. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay.
- D. Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar.
- E. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm.
- F. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latino children are also aggressively targeted with advertisements to promote sugar-laden drinks.
- G. The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11.
- H. This level of consumption has had tragic impacts on community health. Type 2 Diabetes – previously only seen among adults – is now increasing among children. If the current obesity trends are not reversed, it is predicted that one in three children and *nearly one-half* of Latino and African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.
- I. An Asian resident of Berkeley is almost 3 times more likely than a white resident to have been diagnosed with diabetes, and an African American resident of Berkeley is 14 times more likely than a white resident to be hospitalized for diabetes.
- K. Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years; in 2010, more than one-third of children and adolescents were overweight or obese.

- N. Our community has not been immune to the challenge of unhealthy weight gain and obesity. In 2008-09, over 40% of Berkeley 9th graders were overweight or obese. These overweight and obese children have a much greater chance of being obese as adults, with all the health risks that entails.
- M. There are also economic costs. In 2006, for instance, overweight and obesity-related costs in California were estimated at almost \$21 billion.
- O. Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

Section 2. Purpose and Intent

- A. Based on the findings set forth above, the purpose of this Ordinance is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks by discouraging their distribution and consumption in Berkeley through a tax. Specifically, the purpose of this ordinance is to tax the distribution of sugary drinks and the products used to make them.
- B. This Ordinance is not intended for the purpose of regulation.
- C. This Ordinance does not authorize the conduct of any business or activity in the city, but merely provides for the taxation of distribution of specified products as it occurs.
- D. This Ordinance imposes a general tax on the distribution of sugar-sweetened beverages such as high-calorie, low-nutrition products, like soda, energy drinks, and heavily presweetened tea, as well as the added caloric sweeteners used to produce these sugar-sweetened beverages, such as the premade syrup used to make fountain drinks. Certain drinks containing sugar are exempted, including infant formula, milk products, and natural fruit and vegetable juice.
- E. This Ordinance provides for a small business exemption for Retailers who transport sugar-sweetened beverage products into the City themselves and then sell those products directly to consumers.
- F. This general tax will provide revenue to be available for the general governmental needs of the people of Berkeley.
- G. This Ordinance provides for a Sugar Sweetened Beverage Product Panel of Experts, composed of experts in the areas of public health, child nutrition, nutrition education, and food access programs. The Panel will make recommendations on how and to what extent the City should fund programs to further reduce the consumption of sugar-sweetened beverages in Berkeley and address the consequences of such consumption.

Section 3. New Berkeley Municipal Code Chapter 7.72

That a new Chapter 7.72 is added to the Berkeley Municipal Code is to read as follows:

Chapter 7.72 Sugar-Sweetened Beverage Product Distribution Tax

Section 7.72.010 Excise Tax

- A. In addition to any other taxes imposed by the City, the City hereby levies a tax of one cent (\$0.01) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City.
- B. For the purposes of this Chapter, the volume, in ounces, of a Sugar-sweetened beverage product shall be calculated as follows:
 1. For a Sugar-sweetened beverage, the volume, in fluid ounces, of Sugar-sweetened beverages distributed to any person in the course of business in the City.
 2. For Added caloric sweeteners, the largest volume, in fluid ounces, of Sugar-sweetened beverages that could be produced from the Added caloric sweeteners. In accordance with rules and regulations promulgated by the City pursuant to Section 7.72.040, the largest volume, in fluid ounces, that would typically be produced from the Added caloric sweeteners shall be determined based on the manufacturer's instructions or, if the Distributor uses the Added caloric sweeteners to produce a Sugar-sweetened beverage, the regular practice of the Distributor.
- C. The tax shall be paid upon the first non-exempt Distribution of a Sugar-sweetened beverage product in the City. To the extent that there is a chain of Distribution within Berkeley involving more than one Distributor, the tax shall be levied on the first Distributor subject to the jurisdiction of the City. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent Distributions and by subsequent Distributors, provided that the Distribution of Sugar-sweetened beverage products may not be taxed more than once in the chain of commerce.

Section 7.72.020 Exemptions

The tax imposed by this Chapter shall not apply:

- A. To any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California;
- B. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less than \$100,000 in annual gross receipts, as defined in Section 9.04.025, in the most recent year;
- C. To any Distribution of Natural or common sweeteners; or
- D. To any Distribution of Added caloric sweeteners to a Food Products Store as defined in Section 23F.04.010, if the Food Products Store then offers the Added caloric sweetener for sale for later use by customers of that store.

Section 7.72.030 Definitions

- A. "Added caloric sweetener" means any substance or combination of substances that meets all of the following four criteria:
1. Is suitable for human consumption;
 2. Adds calories to the diet if consumed;
 3. Is perceived as sweet when consumed; and
 4. Is used for making, mixing, or compounding Sugar-sweetened beverages by combining the substance or substances with one or more other ingredients including, without limitation, water, ice, powder, coffee, tea, fruit juice, vegetable juice, or carbonation or other gas.
- An Added caloric sweetener may take any form, including but not limited to a liquid, syrup, and powder, whether or not frozen. "Added caloric sweetener" includes, without limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.
- B. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code, as that Part may be amended from time to time.
- C. "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section 109971 of the California Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.
- D. "Business Entity" means any Person except for a natural person.
- E. "City" means the City of Berkeley, California.
- F. "City Manager" means the City Manager of the City of Berkeley or his or her designee.
- G. "Consumer" means a natural person who purchases a Sugar-sweetened beverage product in the City for a purpose other than resale in the ordinary course of business.
- H. "Distribution" or "Distribute" means the transfer of title or possession (1) from one Business entity to another for consideration or (2) within a single Business entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.
- I. "Distributor" means any Person who Distributes Sugar-sweetened beverage products in the City.
- J. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.

- K. "Natural or common sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.
- L. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, government, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a, limited liability company, and association or any other group or combination acting as a unit.
- M. "Retailer" means any Person who serves Sugar-sweetened beverage products to a Consumer.
- N. "Simple syrup" means a mixture of water and one or more Natural or common sweeteners without any additional ingredients.
- O. "Sugar-sweetened beverage" means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.
 - 1. "Sugar-sweetened beverage" includes, but is not limited to all drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," or any other common names that are derivations thereof.
 - 2. "Sugar-sweetened beverage" shall not include any of the following:
 - a. Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;
 - b. Any beverage for medical use;
 - c. Any liquid sold for use for weight reduction as a meal replacement;
 - d. Any product commonly referred to as "infant formula" or "baby formula"; or
 - e. Any alcoholic beverage.
- P. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Added caloric sweetener.

Section 7.72.040 Duties, Responsibilities and Authority of the City Manager

- A. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.
- B. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:
 - 1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.
 - 2. The determination of the frequency with which a Distributor must pay the tax. This determination shall not constitute an increase of the tax.
 - 3. The determination of whether and how a Distributor must register with the City.
 - 4. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another Distributor must report to the City the name of that Distributor.
 - 5. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another distributor must report to the

City the volume of Sugar-sweetened beverage products received from that Distributor.

6. The determination of what other documentation is required to be created or maintained by a Distributor.
- C. The City Manager shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

Section 7.72.050 Collection

- A. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the City. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount.
- B. In order to aid in the City's collection of taxes due under this Chapter, any Retailer that receives Sugar-sweetened beverage products from a Distributor shall, in accordance with rules and regulations promulgated by the City Manager pursuant to Section 7.72.040, either:
 1. report to the City all such transactions, the volume in ounces of Sugar-sweetened beverage products received in each transaction, and the identity and contact information of the Distributor from whom the Sugar-sweetened beverage products were received; or
 2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or
 3. provide to the City evidence that the Distributor from whom the Sugar-sweetened beverage products were received has registered as a Distributor with the City and that registration is current.
- C. The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda or the California Board of Equalization in conjunction with the collection of other taxes for the City. If the City Council exercises this authorization, the duties and responsibilities of the City Manager shall be given, as appropriate, to the County of Alameda or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law.

Section 7.72.060 Refunds

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

Section 7.72.070 Enforcement

Except as otherwise provided by this Chapter or by rule or regulation promulgated by the City Manager, the tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter 9.04 and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter 9.04.

Section 7.72.080 Not a Sales and Use Tax

The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically, Distributing Sugar sweetened beverage products within the City of Berkeley. It is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened beverage products.

Section 7.72.090 Sugar-Sweetened Beverage Product Panel of Experts

- A. There shall be established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption.
- B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel.
- C. In accordance with Chapter 2.04, the Panel shall be composed of nine members appointed by the City Council.
- D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section 2.04.030 through 2.04.145 of this Code.
- E. Each member of the Panel must:
 - 1. Have experience in community-based youth food and nutrition programs; or
 - 2. Have experience in school-based food and nutrition programs and be referred by the Berkeley Unified School District; or
 - 3. Have experience in early childhood nutrition education; or
 - 4. Have experience in researching public health issues or evaluating public health programs related to diabetes, obesity, and sugary drink consumption; or
 - 5. Be a licensed medical practitioner.
- F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.
- G. The Panel shall, by majority vote, do each of the following:
 - 1. Annually appoint one of its members as chair and one of its members as vice-chair;
 - 2. Approve bylaws to facilitate the proper functioning of the Panel;
 - 3. Establish a regular time and place of meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and
 - 4. Publish an annual report that includes the following:
 - a. recommendations on how to allocate the City's general funds to reduce the consumption of sugar sweetened beverages in Berkeley and to address the results of such consumption;
 - b. information, if available, concerning the impact of this Chapter on the public health of the residents of the City; and
 - c. any additional information that the Panel deems appropriate.
- H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be transmitted to the City Council and the Governing Board of the Berkeley Unified School District.

City Attorney's Impartial Analysis - REVISED

The proposed ordinance would impose a general tax of one cent (\$0.01) per ounce on the distribution in Berkeley of sugar-sweetened beverages and the added-calorie sweeteners ("sweeteners") used to make them. The tax on added-calorie sweeteners would be calculated based on the number of ounces of sweetened beverage that would typically be produced using that sweetener.

The tax would be payable by the distributor, not the customer.

Beverages

Sugar sweetened beverages whose distribution *would be* subject to the tax would include sugar-sweetened beverages, like soda, energy drinks, and presweetened tea, that contain at least 2 calories per fluid ounce.

Certain beverages *would not be* subject to the tax:

- Baby formula
- Beverages in which milk is the primary ingredient
- Beverages or liquids sold for use for weight reduction as a meal replacement
- Medical beverages (beverages used as oral nutritional therapy or oral rehydration electrolyte solution for infants and children),
- Beverages containing only natural fruit and vegetable juice
- Alcoholic beverages..

Added-calorie sweeteners

Added-calorie sweeteners *would include* any edible product that is perceived as sweet and adds calories, and is used to make sugar-sweetened beverages, including but not limited to sucrose, fructose, glucose, other sugars, and high fructose corn syrup.

Added-calorie sweeteners *would not include* natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

Applicability and exemptions

The tax *would* apply to:

- distribution of *sugar-sweetened beverages* to stores and restaurants;
- distribution of *sweeteners* to restaurants; and
- distribution of *sweeteners* to stores where they are used to make sugar-sweetened beverages for customers.

The tax *would not* apply to:

- distribution of sweeteners to food stores;
- distribution of sugar sweetened beverages or sweeteners to retailers with less than \$100,000 in annual gross receipts.

ARGUMENT IN FAVOR OF MEASURE D

Vote YES on MEASURE D to protect our children's health.

Overwhelming scientific evidence shows that consumption of sugary drinks causes widespread health problems, starting in childhood. One-third of all children, and nearly half of African-American and Latino children, are predicted to develop diabetes in their lifetimes. In addition to diabetes, tooth decay and heart disease are also linked to sugary drink consumption.

Big Soda spends hundreds of millions of dollars to aggressively market sugary drinks to children - even bypassing parents by texting teenagers directly.

Measure D places a tax on distributors (not on consumers) of high-calorie, low-nutrition sugary drinks and syrups to make them. It does not tax natural fruit or vegetable juices, milk products, baby formula, or drinks taken for health reasons. Measure D is NOT a sales tax.

Measure D establishes a panel of health professionals and educators to advise the City Council on how best to support programs to reduce sugary drink consumption in Berkeley and address the effects of consumption.

A wide range of Berkeley citizens, organizations, and healthcare professionals endorse Measure D, including the Berkeley NAACP, Berkeley Federation of Teachers, City Council, School Board, Latinos Unidos de Berkeley, Ecology Center, Telegraph Business Improvement District, Berkeley Dental Society, Alice Waters, and Michael Pollan.

Big Soda has spent millions of dollars to confuse and manipulate voters and is trying to do so again. Don't be fooled. Look closely - you will see that primary opposition comes from outside Berkeley, led by the American Beverage Association. The real costs and suffering for families come from health problems linked to sugary drinks.

Berkeley has always been a leader on important issues. Together with San Francisco we will become the first of many U.S. cities to tax sugary drinks.

www.BerkeleyVsBigSoda.com

VOTE YES ON MEASURE D

s/Loni Hancock
State Senator

s/Mansour Id-Deen
President of Berkeley's NAACP

s/Alice Waters
Founder, Chez Panisse & the Edible Schoolyard Project

s/Nancy Bickel
President, League of Women Voters of Berkeley, Albany, Emeryville

s/Marty Lynch
LifeLong Medical Care, Executive Director

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE D

A tax on some sugar-sweetened beverages—but not others—is the wrong way to approach complex health issues.

Look closer: **Measure D is riddled with loopholes.**

For starters:

Some stores will pay the tax, but others won't. For example, retailers who pick up their beverages outside of Berkeley won't pay the tax.

Measure D makes no sense:

Chocolate milk, 100% juice drinks, alcoholic beverages, and some coffee drinks will not be taxed—no matter how much sugar or how many calories they contain. Organic local root beer will be taxed, but diet soda is exempt. An iced tea is taxed if it is pre-sweetened, but not if the customer adds the sugar.

As for the panel that's supposed to advise the city on managing the funds:

Measure D is written so that City Council can ignore those recommendations and spend the tax revenue on anything they want. A similar measure in San Francisco specifically dedicates beverage tax funds for health and wellness programs. That's not the case with Measure D.

We can't tax our way to health with a measure that provides absolutely zero accountability in terms of how revenue is spent:

This tax is not about health; it's about raising more money for the city. The fact is nothing in this measure will prevent future City Councils from shifting the money to other things. Measure D comes with too many loopholes, too many exemptions, and too few safeguards.

That's why you should vote NO on D.

s/Ted Mundorff
CEO/President Landmark Theaters

s/James Fried
Vice President Teamsters Local 70

s/Masamoni Yasumaga
Owner of Seasons of Japan

s/Roy Mowrouzi
Owner of Cafe Rio

s/Sylvester Lollis
Owner of Bootstrapper Restaurant

ARGUMENT AGAINST MEASURE D

Some want you to believe Measure D will make Berkeley healthier—but look closer and you'll see that's just not the case.

Right now, San Franciscans are voting on a similar proposal that specifically dedicates beverage tax funds for health and wellness programs.

Unfortunately for those who live in Berkeley, Measure D just does not come with those guarantees.

Measure D is purposefully written so that tax revenue will not be directed toward health and wellness programs. Rather it will be funneled into the general fund where there is no accountability as to how the money is spent and no guarantee that any revenue will actually benefit nutritional programs.

Obesity and diabetes are important problems, but Measure D takes the wrong approach to solving these problems:

- Measure D **comes with arbitrary and confusing exemptions.**
- Chocolate milk, 100% juice drinks, diet soda, alcoholic beverages, and some coffee **drinks will not be taxed.**
- Under Measure D, some stores will pay the tax and others won't.

Singling out some sugar-sweetened beverages for taxation but providing exemptions for others doesn't make sense. If this law won't be applied with any consistency, what's the point?

Lawmakers in San Francisco say funds from their proposed tax measure will go toward health and wellness programs. Berkeley lawmakers just want the tax money for the general fund so they can spend it however they choose—and they want Berkeley taxpayers to pay for it.

That's not fair.

There is a better way, Berkeley—but a beverage tax riddled with exemptions and arbitrary loopholes isn't it. That's why you should vote NO on Measure D.

s/Masamoni Yasumaga
Owner of Seasons of Japan

s/Roy Mowrouzi
Owner of Cafe Rio

s/Sylvester Lollis
Owner of Bootstrapper Restaurant

s/Houshmand Ghaderi
Owner of The Vault Café and Restaurant

s/Francis Wong
Owner of Just Rite Market

REBUTTAL TO ARGUMENT AGAINST MEASURE D

The Beverage Industry is funding the campaign against Measure D. They have hired a Los Angeles PR company and paid canvassers and phoners. And if it hasn't happened already, expect a flood of mail in an attempt to defeat Measure D. They even got one of their LA consultants to register to vote in Berkeley so they could sue the city over Measure D.

Big Soda is concerned about the emerging scientific consensus that significant health problems - including diabetes, obesity and dental problems - are linked with drinking sugary drinks. They are concerned that Measure D will spark other communities around the country to tax sugary drinks (Mexico already has).

Here are the facts:

- Deceptively, although Big Soda asserts the San Francisco measure is "better," Big Soda opposes the San Francisco measure too.
- Measure D is carefully written to create a panel of health and education experts, not politicians, to devise strategies to combat the effects of sugary drinks on young people.
- Milk products, diet drinks, natural vegetable and fruit juices are not taxed because they are not typically laced with added sugar.

One third of all children face getting diabetes in their lifetimes, an outcome scientifically linked to the beverage industry's products.

Big Soda knows Measure D taxes distributors of these products, not consumers and Measure D will help educate our children on healthier food choices.

Please join Berkeley teachers, nurses, parents, local Democratic clubs, restaurants, grocers and community organizations in supporting Measure D.

www.BerkeleyvsBigSoda.com

VOTE YES on Measure D

Robert B. Reich
Chancellor's Professor of Public Policy

Xavier Morales, Ph.D.
Co-Director Latinos Unidos de Berkeley

Martin Bourque
Ecology Center Executive Director

Tina Ferguson-Riffe
Chef/Owner of Smoke Restaurant Berkeley

Ann-Marie Hogan
Berkeley City Auditor

Measure F

Ballot Question

Shall the parks special tax be amended to sustain community parks like the Rose Garden, children's playgrounds, tennis, basketball courts, and ball fields, by increasing the per square foot tax rate from \$0.1256 to \$0.1466 and adding an inflation factor?

Financial Implications

The annual cost increase in fiscal year 2016 would be \$39.90, from \$238.64 to \$278.54, for a 1,900 square foot home and \$210, from \$1256.00 to \$1466.00, for a 10,000 square foot building.

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

**INCREASING THE PARKS, TREES AND LANDSCAPING MAINTENANCE
TAX**

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

Section 1. Sub-section 7.10.020.B of the Berkeley Municipal Code is hereby amended to read as follows:

B. The tax rate for the fiscal year ~~2001-02~~ 2016 shall be ~~8.90¢~~ \$0.1466 per square foot of taxable improvements provided that this rate shall be increased or decreased annually in May ~~2001~~ pursuant to Section 7.10.020.D ~~to account for changes in the cost of living in the San Francisco Bay Area during the period of May 2000 to May 2001.~~

Section 2. Sub-section 7.10.020.C of the Berkeley Municipal Code is hereby amended to read as follows:

C. The tax imposed by this chapter shall be operative on July 1, ~~1997~~ 2015.

Section 3. Sub-section 7.10.020.D of the Berkeley Municipal Code is hereby amended to read as follows:

D. The tax ~~shall~~ may be increased or decreased annually in May, according to the greater of the increase or decrease in the cost of living in the immediate San Francisco Bay Area or personal income growth in the state of California, as verified by official United States economic reports.

Section 4. Section 7.10.110 of the Berkeley Municipal Code is hereby amended to read as follows:

7.10.110 Increase appropriations limit.

Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from ~~2016~~ 2013-14 through ~~2019~~ 2016-17.

City Attorney's Impartial Analysis

The proposed measure would increase the existing special tax for parks, trees and landscaping maintenance by 2.1 cents per square foot, from \$0.1256 to \$0.1466, to fund deferred and ongoing maintenance and operation of City parks and recreational facilities, such as the Rose garden, childrens' playgrounds, ball fields, and tennis and basketball courts. It would also add a new inflation adjustment. Currently the tax rate is adjusted according to the consumer price index in the San Francisco Bay Area. The amendment would allow the rate to be adjusted according to the consumer price index or per capita income growth in the state of California.

The proposed increase would represent an approximately 16.7% increase in the existing tax rate. It is estimated that the total tax, including the proposed increase, would cost residential and other taxpayers no more than the following average amounts during FY 2016:

<u>Square Feet</u>	<u>Current Annual Tax</u>	<u>Proposed Annual Tax</u>
1,200	\$150.72	\$175.92
1,500	\$188.40	\$219.90
1,900	\$238.64	\$278.54
3,000	\$376.80	\$439.80
10,000	\$1256.00	\$1,466.00

This proposed ordinance was placed on the ballot by the City Council.

/s/ ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE F

Berkeley Parks Urgently Need Help

Since 1974, Berkeley has doubled our park acreage, bringing the total to 52 parks, 30 park buildings, 100 pathways and 35,000 trees in the urban forest. In the last decade, growth in total population has increased both park usage and the cost of keeping our parks safe and clean. Heavy use and weather have also taken a toll on park facilities, which urgently need repair. Although the City has reduced park staffing by 25% and cutback on maintenance, the parks' budget faces a deficit. **Without a modest increase in the parks tax, it will be necessary to cut services in all of our parks, reduce landscaping and tree care, and consider closing some parks.**

All Funds Go Directly to Parks, Landscaping and Trees

Measure F will ensure that our park heritage is properly cared for. It will improve Berkeley's precious parks, from the waterfront to the hills, from Aquatic Park to the Rose Garden, including tot lots, playgrounds, sports fields, basketball and tennis courts, and care for landscaped medians and city street trees. It will also ensure that the buildings in our parks, centers of activities from wheelchair basketball to art exhibits, are kept in good shape.

Parks Meet Basic Human Needs and Build Community

Parks and city landscaping are vital to every neighborhood. No matter where you live in Berkeley, your age or occupation, everybody needs a city that is beautiful, livable and healthy, with activity centers for children that are walkable from all neighborhoods. Parks provide healthy activities for our children and youth, recreation for all ages, a place for festivals and informal gathering at the community level that builds communities in our neighborhoods.

We Love Our Parks: Let's Take Care of Them

VOTE YES ON MEASURE F

s/Nancy Bickel

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

s/Douglas Fielding

Chairperson Association of Sports Field Users

s/Loni Hancock

State Senator

s/James McGrath

Chairman, Parks and Waterfront Commission

s/Sylvia McLaughlin

Environmental Pioneer; Co-Founder, Save San Francisco Bay Association

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE F

WE TOO LOVE OUR PARKS AND OUR OTHER BERKELEY AMENITIES, BUT...

MEASURE F WON'T ENSURE THAT OUR PARKS ARE CARED FOR

Despite a cornucopia of promises, proponents don't specify exactly where the new tax money would go. They even admit that, despite doubled revenue, staffing has been cut drastically. Will revenue be used simply to cover growing benefit contributions for remaining parks employees (who currently pay zero for retirement, health insurance, and other benefits)? Who knows?

Consider the original 1997 parks measure which made similar promises

<http://northeastberkeleyassociation.org/reference/May1997VoterInformationPamphlet.pdf>

and consider the current situation. Despite the promises, as revenues doubled our parks decayed and the number of park employees shrank. Our parks were not underfunded, they were mismanaged. This is not likely to change.

OUR OFFICIALS REFUSE TO ADDRESS THE UNDERLYING ISSUE OF TRUE SUSTAINABILITY FOR CURRENT AND FUTURE GENERATIONS

Quick short-term fixes paid by hard-pressed homeowners (most lacking lush benefits) do not address the problem of deep structural deficit and municipal financial sustainability. With huge costs looming for employee benefits and capital improvements, there is no long-term plan or effort to share the cost burden among other big stakeholders—especially, City employees, UC, developers. Without a plan and fairer cost-sharing, our facilities, services and amenities will continue to deteriorate. We will have fewer and fewer City employees, each compensated at ever-higher levels. View compensation levels at

<http://publicpay.ca.gov/Reports/Cities/City.aspx?entityid=61&fiscalyear=2012>

JOIN YOUR FRIENDS AND NEIGHBORS IN DEMANDING FISCAL ACCOUNTABILITY, CLARITY, TRANSPARENCY AND SUSTAINABILITY. DO NOT CAPITULATE TO EXTORTION. VOTE NO ON MEASURE F.

s/David M. Wilson
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS (Fiscal Accountability, Clarity, Transparency, and Sustainability)

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

s/Nigel Guest
President, Council of Neighborhood Associations (CNA)

s/Karl J. Reeh
President, LeConte Neighborhood Association

ARGUMENT AGAINST MEASURE F

AS PARKS TAX REVENUES ROSE, OUR PARKS DECAYED

The original 1997 parks measure promised to fund parks, trees and landscaping maintenance. The original tax rate and the revenue generated have since almost doubled. The average homeowner already pays \$240 annually for parks. Yet today we have far fewer maintenance staff (down 26% from 2002) being compensated substantially more each, and very deteriorated facilities. There is a \$5M backlog just in basic repairs. Capital projects have been shelved. This is gross mismanagement.

Now the City wants 17% more annually and a bigger inflator! But new money will go into a dark hole of ever-increasing employee costs--underwriting huge City pension liabilities (to \$58.4M annually in 2020 from \$43M today) and growing health care costs.

\$1B IN UNFUNDED LIABILITIES AND NO PLAN

Similar mismanagement pervades all City operations. Despite substantially increasing revenues, the City has substantially less money for actual services. Employee compensation absorbs most new moneys. We have a \$1B unfunded liability for employee benefit costs and infrastructure. We urge a NO vote on Berkeley tax measures until we have a comprehensive Fiscal Action Plan and a Blue Ribbon panel to address this looming insolvency.

THIS TAX INCREASE WOULD WORSEN THE PROBLEM AND DELAY FAIRER ALLOCATION OF COSTS

Nickel-and-diming taxpayers and threatening loss of facilities (witness Willard Pool!) is wrong and won't even solve the big budget problem. We need a sound and transparent long-term fiscal plan that includes fairer contributions from ALL stakeholders—City employees, UC, developers, philanthropists—and not just taxpayers who already pay too much and get too little.

Voting for this tax increase would delay and worsen the day of reckoning. A NO vote will incentivize City managers, employees, Council and other stakeholders to start fixing the big fiscal problem.

We urge you to vote NO.

s/David M. Wilson
Director, Berkeley Budget SOS

s/Barbara Gilbert
Treasurer, Committee for FACTS (Fiscal Accountability, Clarity, Transparency, and Sustainability)

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

s/Nigel Guest
President, Council of Neighborhood Associations (CNA)

s/Karl J. Reeh
President, LeConte Neighborhood Association

REBUTTAL TO ARGUMENT AGAINST MEASURE F

Livable Cities Need Healthy Parks

Opponents of the Park Tax increase agree that we have “very deteriorated facilities,” yet urge you to vote no, because they take issue with the City’s overall budget. Yet delaying major maintenance only increases long term costs as buildings and facilities continue to deteriorate.

Currently, around \$10 million is generated by the existing park tax. This is just over 3% of the City budget. The proposed tax increase would generate about \$1.7 million or 0.5% of the City budget. Voting no on this measure will not change the City’s budget picture—but it will result in the deterioration or closure of some of Berkeley’s parks.

Berkeley has taken SIGNIFICANT steps to address the concerns raised by the opponents. Between 2009 and 2014, the City eliminated about 250 jobs—15% of the work force. Most city employees have not received a cost of living increase in three years.

Just as literacy is an important community value reflected in a special tax for our five libraries, so too is ensuring that our parks and recreation centers, our “outdoor living rooms,” are properly cared for and repaired. Measure F makes a modest investment in a legacy we inherited, parks and open spaces from our cherished Rose Garden to our smallest tot lots, built and cared for by Berkeley residents of every generation.

Support Healthy Living. Join the Sierra Club, City Auditor and a host of park supporters and **VOTE YES FOR PARKS.**

s/Nancy Bickel
President, League of Women Voters of Berkeley, Albany, Emeryville

s/Josh Daniels
Berkeley School Board President

s/Ann-Marie Hogan
City Auditor

s/Toni Mester
Vice-Chair, Parks and Waterfront Commission; Sierra Club No. Alameda Co. Executive Committee

s/Susan Wengraf
Berkeley City Council

Measure O

Ballot Question

Shall the Charter of the City of Berkeley be amended to conform the provisions for the recall of elective officers to recent judicial rulings and the state Elections Code with respect to counting of votes, signature threshold, petition circulators, and signature verification, and adjust the deadlines for calling recall elections to allow for consolidation with statewide elections?

Financial Implications:

Potential cost savings from increased likelihood of election consolidation.

ARTICLE IV RECALL OF ELECTIVE OFFICERS

Section 7. Recall.

(1) Persons subject to recall.

Every incumbent of an elective office, whether elected by popular vote or appointed to fill a vacancy, is subject to recall by the voters of the City. The procedure for recall shall be as provided in this Section 7.

(2) Commencement of recall proceedings.

Recall proceedings may be commenced by the service, filing and publication of a notice of intention to circulate a recall petition pursuant to subdivision (6) of this Section 7. Proceedings may not be commenced against the holder of an office unless, at the time of commencement, the holder has held office for at least six months and no recall petition has been filed against such holder within the preceding six months. Recall proceedings may not be commenced if the office holder's term of office ends in six months or less.

(3) Recall petition.

A petition demanding the recall of the officer sought to be recalled shall be filed with the City Clerk. The petition shall be signed by not less than 25 percent of the registered electors of the City eligible to vote for said officer on the day the petition is filed with the City Clerk, as indicated by the most recent Report of Registration by the county elections official to the Secretary of State.

~~(4) Repealed. Occurrence of vacancy after filing petition.~~

~~If a vacancy occurs in an office after a recall petition has been filed, the election shall nevertheless proceed as provided in this Section 7, except as provided in subdivision (20) hereof.~~

(5) Recall of more than one officer.

One election is sufficient for the recall of one or more officers, but a separate petition is necessary to propose the recall of each officer.

(6) Notice of intention to circulate petition; statement.

~~No signature may be affixed to the petition until~~ The proponents shall have served, filed and published a notice of intention to circulate a recall petition, ~~Said notice shall~~ Said notice shall containing the name of the officer sought to be recalled and the title of his or her office, a statement in not more than 500 words of the grounds on which the recall is sought, and the name and address of at least one

proponent. The notice of intention shall be served, personally or by certified mail, on the officer sought to be recalled, and a copy thereof with a certificate of the time and manner of service shall be filed with the City Clerk.

(7) Answer to statement of proponents.

Within seven days after the filing of the notice of intention, the officer sought to be recalled may file with the City Clerk an answer in not more than 500 words to the statement of the proponents, and, if an answer is filed, shall serve a copy thereof, personally or by certified mail, on one of the proponents named in the notice of intention. The statement and answer are intended solely for the information of the voters and no insufficiency in the form or substance thereof shall affect the validity of the election or proceedings.

(8) Publication of notice, statement and answer.

The notice, statement and answer, if any, shall be published by the proponents at least once in a newspaper of general circulation published in the City, or, if there be no such newspaper, then in a newspaper published in the County and of general circulation within the City. The provision of Section 68 of this Charter indicating that posting shall be sufficient publication of any matter required by the Charter to be published shall not be applicable to the publication requirement of this Subdivision (8) of Section 7.

(9) Circulation of petition.

Seven days after ~~the filing an affidavit of publication of the notice, statement and answer, if any, with the City Clerk, statement and answer, if any,~~ the recall petition may be circulated and signed. The petition shall bear a copy of the notice of intention, statement and answer, if any. If the officer has not answered, the petition shall so state. Signatures shall be secured and the petition filed within ~~75~~ 90 days from the filing of the ~~notice of intention~~affidavit of publication.

(10) Signatures.

The signatures appended to the petition need not all be appended to one paper but may be in sections. Each signer shall print his or her name, add to his or her signature, ~~the date of his or her signing~~ and list his or her residence, giving street and number. If no street or number exists, then a designation of the place of residence shall be given which will enable the location to be readily ascertained. ~~The petition, when filed, must have designated therein the name or number of the respective precinct in which each of the signers resides.~~

(11) Affidavit of Circulator.

Each section of the petition shall have attached to it an affidavit made by the circulator of the petition, by a voter of the City. The affidavit shall be sworn to under penalty of perjury before an officer competent to administer oaths and shall conform to the requirements of the state Elections Code Sections 104 and 9022 or their successors. ~~state that the affiant solicited signatures to that particular section and saw written the signatures appearing thereon. The affidavit shall also state that according to the best information and belief of the affiant:~~

~~(a) Each signature is the genuine signature of the person whose name it purports to be.~~

~~(b) The signer is a qualified voter of the City.~~

Any section of a petition may include a number of attached sheets.

(12) Clerk's examination of petition; ~~supplemental petition.~~

In order to be acceptable for filing, the petition must on its face purport to have appended to it signatures of voters in the required number. Within 30 15 business days from the date of ~~filing~~ the petition is filed, the Clerk shall examine and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. He or she shall attach to the petition his or her certificate showing the result of his or her examination. ~~If the Clerk's certificate shows the petition is insufficient, a supplemental petition, in form a duplicate of the original petition, may be filed within 15 days of the date of the certificate of insufficiency.~~

(13) Insufficient petition.

~~The Clerk shall, within 15 days after the supplemental petition is filed, examine it, and if his or her the certificate of the City Clerk shows that the petition is still insufficient, no action shall be taken thereon. The petition shall remain on file as a public record pursuant to Elections Code Section 11226 as it may be amended from time to time, and the failure to secure sufficient names shall not prejudice the filing later of an entirely new petition to the same effect.~~

(14) Submission to Council; order for election.

If the petition, ~~together with supplementary petitions, if any,~~ is sufficient, the Clerk shall submit certification of petition's sufficiency ~~it~~ to the Council without delay. The Council shall at once order a special election to be held, not less than 100 60 nor more than 180 75 days after the date of the order, to determine whether the voters will recall the officer sought to be recalled. If a regular municipal election, a previously called special municipal election, or any statewide election is to be held within this time period ~~occur not more than 90 nor less than 60 days from~~

~~the date of the order~~, the Council may order the special recall election to be held on the day of ~~the regular~~ that election.

(15) Nominations.

(a) The provisions of Section 6 1/2 of Article III of the Charter shall be applicable in recall proceedings and elections.

~~(b), and t~~(b) The officer sought to be recalled as well as the candidate or candidates nominated to succeed him or her may file the candidate's statement provided for in Section 6 1/2 of Article III of the Charter ~~therein~~. The candidate's statement of the officer sought to be recalled shall be filed not later than the last day upon which nomination papers may be filed.

(c) The City Council shall set the nomination period by resolution. Said filing period shall end no later than the 88th day prior to the election.

(15.5) Sample ballot.

The Clerk shall cause to have mailed to each voter, at least 10 days prior to the election, a sample ballot and a separate printed copy of the statement of the proponents and of the answer, if any, of the officer sought to be recalled. If the recall of more than one officer is sought, the statement and answer for each shall be printed together and shall be clearly distinguished from those of any other officer.

(16) Form of recall question.

There shall be printed on the recall ballot, as to each officer whose recall is to be voted on, the following question: "Shall (name of person) be recalled from the office of (title of the office)?" Following which question shall be the words "yes" and "no" on separate lines, with a voting square at the right of each, in which the voter shall indicate in the manner prescribed his or her vote for or against the recall.

(17) Ballot; nominees; counting votes.

On the recall ballots, under each question, there shall be printed the names of those persons who have been nominated, in the manner provided by this Charter for nominations at municipal elections, as candidates to succeed the incumbent if he or she is recalled from office by the recall election. ~~No vote cast shall be counted for any candidate for the office unless the voter also voted on the question of the recall of the person sought to be recalled from that office.~~ The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. Voting procedure shall be in accordance with Article III, Section 5, Paragraph 12 and Article V, Section 9 of the City Charter.

(18) Canvass of votes.

The City Council shall meet at its usual place of meeting on the first Tuesday after the completion of the canvass of votes cast ~~election to canvass the returns~~ and to declare the results as in a regular election. If a majority of those voting at the election voted in favor of the recall of any incumbent from office, the incumbent shall be deemed removed from office upon the qualification of his successor.

If all of the members of the City Council or Board of Education are recalled, and no candidates are elected to succeed them, the recall shall fail and the incumbents shall remain in office.

If all or part of the members of the City Council or Board of Education are recalled, and not enough candidates are elected to provide a quorum, the appointment of persons to bring the membership up to a quorum shall be by the remaining members of the City Council or Board of Education, as the case may be, ~~after which~~ The quorum shall fill the remaining vacancies by appointments. If there are any unfilled vacancies remaining ~~30-60~~ 30-60 days after the ~~recall~~ election completion of the canvass of votes cast, and more than ~~75-180~~ 75-180 days will elapse before the next general municipal election will be held, the City Council shall immediately cause an election to be held to fill the vacancies.

A person appointed to office under this section shall hold office for the remainder of the unexpired term of the recalled officer whose position he or she is appointed to fill.

(19) Declaration of election of candidate; failure to qualify; filling vacancy.

If the vote recalls the officer, the candidate who has received the highest number of votes for the office shall be declared elected for the unexpired term of the former incumbent. If the person who received the highest number of votes fails to qualify within 10 days after the declaration of his or her election, the office shall become vacant and shall be filled according to law.

(20) Vacancy in office after recall petition is filed. ~~Death or resignation of officer sought to be recalled.~~

~~If the officer sought to be recalled dies more than 40 days prior to the election, the period for filing nomination papers to succeed the officer shall be extended to the 25th day prior to the election.~~

(1) If a vacancy occurs in the office sought to be recalled and more than one candidate has been nominated for the office, then the election shall be held as a special election to fill the vacancy and the recall question shall not appear on the ballot.

~~(2) If a vacancy occurs in the office sought to be recalled resigns prior to the election, and at the close of the period for filing nomination papers only one person has been nominated for the office or no person has been nominated for the office, an election shall not be held. In such case the City Council or Board of Education, as the case may be, shall appoint to the office the person nominated, or, if no person has been nominated, shall appoint any qualified person.~~

(21) Disqualification from office.

A person who has been recalled, or who has resigned from office while recall proceedings were pending against him or her, shall not be a candidate for nor appointed to such office within one year after his or her resignation or recall.

(22) Further regulations.

The City Council may, by resolution, make such further regulations as may be necessary to carry out the provisions of this Section.

(23) Withdrawal of candidate.

~~Candidates nominated to succeed the incumbent if he or she is recalled from office by the recall election may withdraw from candidacy no later than the date the City Council may provide by resolution.~~

City Attorney's Impartial Analysis

The proposed Charter amendment would revise the recall provisions of the Berkeley Charter (Section 7) to eliminate provisions that are contrary to state law and case law, generally revise the wording for clarity, and modify deadlines for calling elections to meet current election deadlines in the Elections Code, and ensure the City's ability to consolidate elections and request services from the County Registrar of Voters, thereby reducing the likelihood of special elections.

In particular, the proposed Charter amendment would:

- Prohibit recalls of an office holder within six months before his or her term expires;
- Base the number of required signatures on the most recent report of registration by the county elections official;
- Require recall proponents to file of an affidavit of publication with the City Clerk;
- Combine the 75-day circulation period and the 15-day supplemental circulation period for a recall petition into a single 90-day circulation period;
- Conform the requirements for the declaration of circulator to state law and petitioning requirements;
- Provide the City Clerk 30 days to examine signatures rather than 15 days;
- Require the City Clerk to retain insufficient recall petitions as required by state law;
- Conform the timeline for calling an election to state law;
- Permit registered voters to vote on a replacement candidate even if they do not vote on the recall, as required by state law; and
- Provide the City Council and Board of Education 60 days rather than 30 days to fill any vacancies after a recall election.

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

/s/ ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE O

Vote YES on Measure O to modernize our recall election procedures to conform to recent changes in law and prevent costly special elections.

Under the Berkeley City Charter, voters can initiate a recall election of an elective officer (Mayor, City Councilmember, School Board, Auditor, Rent Board) by submitting petitions signed by at least 25% of registered voters eligible to vote for that office. While recalls are very rare, the last recall election was in 1973, it's important that our recall procedures align with state law and can be easily implemented, without adding additional costs to taxpayers.

The last time recall provisions were amended was in 1974 as part of an overhaul of the City Charter. Since then both the State Elections Code and court decisions have made certain provisions obsolete, and current language is in conflict with legal timelines and requirements for conducting elections.

Measure O is a clean-up amendment to our Charter which would revise the recall provisions of the Berkeley Charter (Section 7) to eliminate language that is contrary to state law and case law, revise wording for clarity, and modify deadlines for calling elections to meet current deadlines in the state Elections Code, and enable the city to consolidate a recall election with a primary or general election, thereby reducing the likelihood of special elections and saving taxpayer dollars.

Measure O was put on the ballot by a unanimous City Council. Join community leaders in supporting this good government reform that will improve democracy AND save taxpayer dollars.

s/Nancy Bickel
President, League of Women Voters Berkeley Albany Emeryville

s/Maxwell G. Anderson Jr.
Berkeley City Council, District 3

s/Jesse Arreguín
Berkeley City Councilmember, District 4

s/Susan Wengraf
Berkeley City Council, District 6

s/Gordon Wozniak
Berkeley City Council, District 8

Measure P

Ballot Question (Revised 7/21/14)

Should the United States Constitution be amended to abolish the legal concept that corporations are persons that are entitled to constitutional rights, and the doctrine that the expenditure of money may be treated as speech?

City Attorney's Impartial Analysis

The proposed measure, if adopted, would call for an amendment to United States Constitution to abolish the legal concept that corporations can be considered persons that are entitled to constitutional rights, and the doctrine that the expenditure of money may be treated as speech.

This proposed ordinance was placed on the ballot by the City Council.

/s/ ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE P

Argument in Favor of Constitutional Amendment to Abolish Corporate Personhood

The Supreme Court's decision in *Buckley vs. Valeo* (1976) established the concept that "money equals speech".

The Court's decision in *Citizen's United vs. Federal Elections* (2010) gave corporations the same rights and protections under the U.S. Constitution as human persons.

The 5-4 Supreme Court decision specified that donating unlimited money on campaigns should be considered free speech. As a result, large corporations have undue influence over who gets elected, what laws are passed, what is in our food and water and air. Granting corporations the status of a legal "person" effectively re-writes the constitution to serve corporate interests as though they were human interests, without requiring any of the responsibilities of personhood.

Do you think money should be considered the same as speech?

Do you think corporations are entitled to the same rights and protections as human beings, without any of the responsibilities?

Don't let our privilege and power as citizens be undermined.

VOTE YES on P to send a clear message to our representatives to pass an Amendment to the Constitution to abolish "corporate personhood."

Defend democracy. **Yes on Measure P**

s/Emily Rusch
Executive Director, CALPIRG

s/Taylor Joseph Ward
CALPIRG Students Campaign Coordinator

s/Kriss Worthington
Berkeley City Council District 7

s/Susan Wengraf
Berkeley City Council

s/Gordon Wozniak
Berkeley City Council

Measure Q

Ballot Question

Shall the People of the City of Berkeley advise the City Council to adopt an ordinance based on proposed federal legislation and the San Francisco Family Friendly Workplace Ordinance giving employees in Berkeley the right to request to work part-time, and send letters to the state and federal elected officials, requesting the state and federal governments to give government employees the right to have shorter work hours, if doing so would not cause operational problems?

Section 1: Title

This initiative shall be known and may be cited as "The Berkeley Flexible Work Time Initiative of 2014." *[Note: This may be changed depending on the title provided by the city attorney.]*

Section 2: Findings and Declarations

The people of Berkeley find and declare as follows:

2.1: Most Americans do not have a practical option of working part-time.

2.1.a: Most part-time jobs pay less per hour than full-time jobs and have no benefits. Economist Juliet Schor has estimated that, if the average male worker leaves his full-time job and gets a part-time job that cuts his hours by 50 percent, he will cut his earnings by 80 percent because of the lower pay and benefits for part-time workers.

2.1.b: To work in most occupations, you have no choice but to take a full-time job.

2.2: Giving people the option of working part-time would have important social and environmental benefits.

2.2a: **Work-Family Balance:** Choice of work hours would help parents to balance the demands of work and family. Our standard 40-hour week dates back to the Fair Labor Standards Act of 1938, a time when the typical American family had a father who worked full-time and a mother who stayed at home with the children. Today, most American families with children have no stay-at-home parent. The labor standards of the 1930s do not give our families the flexibility they need to balance work and family obligations.

2.2.b: **Employment:** Choice of work hours would reduce unemployment, as employers hired more people to replace workers who cut their hours from full-time to part-time. In the Netherlands, they say that increased part-time work was the main cause of the "Dutch employment miracle" of the 1990s, when unemployment fell from 13% in the mid-1980s to 6.7% in 1996, the lowest level in western Europe. If we let the United States federal government's civilian employees choose their work hours, and if they chose to work as much as the average German employee, this change alone would create almost one-half million jobs.

2.2.c: **Environment:** Choice of work hours would reduce our impact on the environment, because people who choose to work less, earn less, and spend less would also pollute less. If Americans worked as few hours as western Europeans, it would lower our energy consumption and greenhouse gas emissions by 20%, according to a study by the Center for Economic and Policy Research.

2.2.d: **Quality of life:** Choice of work hours would increase people's satisfaction with their lives, because people would choose to work shorter hours only if they thought this would improve their lives.

2.3: Other nations have successfully adopted policies that allow workers to choose part-time work, and similar laws have recently been adopted in the United States.

2.3.a: Workers are allowed to choose part-time work by the Netherlands' Working Hours Adjustment Act (2000) and by Germany's Part-Time and Fixed Term Contract Act (2001). Both these laws allow workers who have had a job for a specified amount of time (six months or one year) to request a change to part-time work, and they require the employer to grant the request unless the employer can show that there are operational reasons that prevent this position from being part-time.

2.3.b: Care-givers, such as people with children under 6 years old, are given the right to request part-time work by the United Kingdom's Flexible Working Act (2002). Employers cannot penalize or discriminate against employees who request shorter hours, and employers are required to respond to the employee's request, though there are no sanctions if the employer refuses the request.

2.3c: Vermont's H99 An Act Relating to Equal Pay, which was passed in 2013, gives employees the right same to request as the United Kingdom but applies to all employees, not just care givers.

2.3d: San Francisco's Family Friendly Workplace Ordinance, which was passed in 2013, applies only to care givers, gives employees the right to request part time work, requires employees to respond to the request, but allows the employer to refuse the request for any bona fide business reason and does not allow any appeal if the employer refuses the request.

2.4: An economy can be successful with large numbers of part-time worker. In 2010, 48.5% of Dutch workers were part-time, and this country has an efficient economy with high productivity per worker hour.

Section 3: Provisions

3.1: We advise the city of Berkeley to pass a right-to-request law that applies to employees in Berkeley.

3.1a: The provisions of Berkeley's right-to-request law should be based on the provisions of the Working Families Flexibility Act, first introduced in Congress in 2007 as Senate Bill S. 2419, and on the Family Friendly Workplace Ordinance, passed by San Francisco in 2013. It should apply to all employees, not only to care givers.

3.1b: The city should fine-tune the ordinance based on the comments the city receives from the public. For example, the city should exempt small businesses from the requirements of the law, and should also modify the law in any other ways that are useful to accommodate the needs of Berkeley's employers and employees.

3.2: Within 90 days of passage of this measure, the city of Berkeley shall write letters to the Governor, Senate and Assembly of the state of California and to the President, Senate, and

House of Representatives the United States, calling on them to take action to allow more choice of work hours.

3.2a: This letter shall call on the federal and state government to implement policies giving government employees the right to request shorter work hours, and to grant these requests if they would not cause operational problems

3.2b: This letter shall also call on the federal government to pass the Working Families Flexibility Act, first introduced in Congress in 2007 as S. 2419, and shall call on the state government to pass a law with similar provisions. The Working Families Flexibility Act gives employees the right to request shorter hours and more flexible work arrangements.

3.2c: Section 4 contains the text of the letter that the city shall send.

Section 4: Text of the Letter

The city of Berkeley shall send the following letter to California's Governor, Senate and Assembly and to the United States' President, Senate, and House of Representatives:

To <insert the name of the addressee>

The voters of the city of Berkeley, California, have passed a ballot initiative that made the following findings:

<insert the text of sections 2.1 through 2.4, without the section numbers >

In light of these facts, we urge you to pass a law with the provisions of the Working Families Flexibility Act, first introduced in Congress in 2007 as S. 2419. This law gives employees the right to request flexible hours. It prevents employers from penalizing or discriminating against employees who request shorter hours, and it requires employers to respond to the request, but it does not impose any sanctions on employers who refuse the request. To avoid burdening small businesses, we recommend that small businesses should be exempted from this law.

(We do not support another bill with the same name, H.R. 1406, the Working Families Flexibility Act introduced in the House of Representatives in 2013, which would not provide any right to request flexible hours or working conditions and which would deny employees with flexible schedules the right to time-and-a-half pay for overtime on weeks when they do work more than 40 hours.)

We also urge you to adopt a policy giving government employees the right to request shorter hours, and to grant these requests when they would not create operational problems. We urge you to hire new employees to fill in for those who have cut their hours. This program could create large numbers of jobs for the small cost of rescheduling.

<signed by the city of Berkeley>

City Attorney's Impartial Analysis

The proposed measure, if adopted, would “advise” the Berkeley City Council that the voters request it to adopt an ordinance based on the “Working Families Flexibility Act”, introduced in Congress in 2007 as Senate Bill S. 2419, and the Family Friendly Workplace Ordinance adopted in San Francisco, that would give public sector and private sector employees in the City of Berkeley the right to request to work part-time. The proposed measure would also advise the City Council that any such ordinance should apply to all employees, not just care givers, and be fine-tuned based on the needs of local employers, such as, for instance, by exempting small businesses.

The proposed measure would direct the City of Berkeley to send a letter to the Governor, Senate and Assembly of the State of California and the President, Senate and House of Representatives of the United States, requesting the state and federal governments to implement policies that would give government employees the right to request shorter work hours, and require the state and federal governments to grant such requests if doing so would not cause operational problems.

The proposed measure would direct the City of Berkeley to send a letter to the Governor, Senate and Assembly of the State of California and the President, Senate and House of Representatives of the United States, urging them to pass a law with the provisions of the “Working Families Flexibility Act”, introduced in Congress in 2007 as Senate Bill S. 2419.

This measure was placed on the ballot as the result of a petition signed by voters.

/s/ ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE Q

Flexible work options improve family life, increase employment, increase productivity, reduce employee turnover, and reduce environmental impacts.

This advisory initiative calls on city, state, and federal governments to pass laws that make it easier to choose flexible working arrangements, such as part-time work, telecommuting, and compressed work weeks. Under the proposed laws:

- Employees can request flexible working arrangements.
- Employers must reply to the request in writing and can refuse the request by providing a business reason. No appeals are allowed.
- Small businesses are exempted.

Similar laws were passed in Vermont and San Francisco in 2013. In June 2014, President Obama adopted this policy for all federal employees. Such laws have been successful in Europe for over a decade.

Flexibility is good for families. Our 40-hour work week dates back to a time when families were expected to have stay-at-home mothers. Today, most American families have no stay-at-home caregiver, and 90% of these families say they have trouble balancing work and family obligations.

Flexibility is good for employment. Employers hire more people to backfill for those who choose shorter hours.

Flexibility is good for the environment. People have the option of living more simply, choosing to have more time instead of more stuff. People who choose to work fewer hours usually consume less, reducing their impacts on the environment. Academic research has shown that shorter work hours reduce our ecological and carbon footprints.

For more information, see www.flexibleworktime.com.

For stronger families, more jobs, and a cleaner environment, vote Yes on Q, the Flexible Work Time Initiative.

NOTE: The city's analysis only says this initiative promotes part-time work. Actually, the laws we ask the city to use as models promote many forms of flexibility, including flexibility in the times, locations, and number of hours worked.

s/Charles Siegel
Author of *The Politics of Simple Living*

s/Joan Blades
Co-founder MomsRising and Great Work Cultures

s/Rob Wrenn
Former Planning Commissioner

s/Sophie Hahn
Member, Berkeley Zoning Adjustments Board and Past Chair, City of Berkeley Commission on the Status of Women

s/Robert E. Johnson
former Landmark Preservation Commissioner

Measure R

Ballot Question - REVISED

Shall an ordinance amending Zoning Ordinance provisions for downtown Berkeley be adopted to: establish new requirements for new buildings over 60 feet; eliminate current historic resource determination for Green Pathway projects; establish a Civic Center Historic District overlay; amend LEED requirements; change parking requirements; restrict some permitted uses; change prevailing-wage requirements for workers in specified categories; and reduce hours of operation for businesses selling or serving alcohol?

INITIATIVE ORDINANCE AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23B.34 (Green Pathway), CHAPTER 23E.68 (C-DMU Commercial Downtown Mixed Use District), SECTION 23F.04.010 (Definitions), AND ADDING CHAPTER 23E.98 (Civic Center District Overlay); PROVIDING STREAMLINED PERMIT PROCESSING AND ADDITIONAL HEIGHT FOR SPECIFIED DOWNTOWN PROJECTS IN EXCHANGE FOR SUBSTANTIAL ENVIRONMENTAL AND COMMUNITY BENEFITS; TO STRENGTHEN ENVIRONMENTAL, COMMUNITY BENEFIT AND PARKING REQUIREMENTS AND MODIFY USES, HEIGHT LIMITS AND SET BACKS FOR C-DMU PROJECTS; AND TO ESTABLISH A CIVIC CENTER DISTRICT OVERLAY.

The People of the City of Berkeley DO ORDAIN AS FOLLOWS:

Section 1. Findings and Purpose

The People of the City of Berkeley make the following findings:

WHEREAS, In November 2006 Berkeley voters overwhelmingly passed a Climate Action Plan that calls for reducing greenhouse gas emissions by 80% by the year 2050, making Berkeley one of the greenest cities in the United States; and

WHEREAS, In November 2010 Berkeley voters adopted Berkeley's Green Vision for the Downtown (Measure R) to create a Downtown that meets the City's climate action goals by concentrating housing, jobs and cultural destinations near transit, shops and amenities; preserving historic resources; promoting social equity by creating local jobs and affordable housing; enhancing open space and promoting green buildings; and helping make Berkeley one of the greenest cities in the United States; and

WHEREAS, Berkeley's Downtown should be an attractive destination and a commercial and residential neighborhood that is safe, oriented to pedestrians, offering open space, tree-lined streets and shops, services and amenities that make it possible to meet most daily needs near where people live and work; and

WHEREAS, Berkeley's Downtown should thrive economically, serving residents and visitors with attractive stores, parks and plazas, exceptional restaurants, and provide myriad community amenities with adequate public parking; and

WHEREAS, Berkeley's Downtown should celebrate its cultural, historic assets and its proximity to the University of California, renowned for its academic accomplishments and its physical beauty; and

WHEREAS, The Downtown should be the preferred location for new, transit oriented housing, providing homes for all income levels and family sizes, thus reducing the heavy volume of commute traffic into the City of Berkeley; and

WHEREAS, Downtown buildings should be constructed to the highest green standards and provide a limited number of new structures that are no higher than what exists now; and

WHEREAS, Implementation of Berkeley's Green Vision for the Downtown requires a new set of regulations to ensure that all of the environmental and community benefits promised are fully realized; and

WHEREAS, Community and environmental benefits, including green building standards, affordable housing, support for alternative transportation and bicycle parking, improved streetscapes and open space, car share and electric vehicle charging facilities, loans for small businesses, public restrooms, apartments for single, group and family living, and adequate parking for the disabled, for residents and for patrons of downtown establishments, must be specified to provide clarity for developers and for the community; and

WHEREAS: Berkeley's Civic Center is an irreplaceable public commons comprised of numerous historic buildings and a park, that must be preserved and revitalized as the heart of Berkeley's public and cultural life.

Purpose: The purpose of this measure is to implement Berkeley's Green Vision for the Downtown, approved by the voters as Measure R in 2010. This measure implements the Green Vision by specifying the community benefits promised, adopting the highest green building standards, promoting the revitalization of our Downtown, and preserving Berkeley's historic Civic Center for public use.

Section 2. That Berkeley Municipal Code Chapter 23B.34 is hereby amended to read as follows:

**Chapter 23B.34
GREEN PATHWAY**

Sections:

23B.34.010 Applicability

23B.34.020 Purpose

~~**23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources**~~

23B.34.0430 Voluntary Green Pathway Election--Application

23B.34.0540 Public Benefit Requirements Applicable to All Green Pathway Projects

23B.34.0650 Additional Green Pathway Requirements Applicable to Buildings Seeking Additional Bonus Height Large Buildings and Hotels

23B.34.0760 Development Standards for All Green Pathway Projects

~~**23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet In Height**~~

Section 23B.34.0790 Streamlined Entitlement Process For Projects Electing the Green Pathway Projects Involving Buildings Over 75 Feet In Height

~~**23B.34.100080 Tolling**~~

~~**23B.34.110090 Compliance**~~

~~**23B.34.120100 City Manager Authority to Issue Regulations**~~

Section 23B.34.010 Applicability

This Chapter applies only to development projects in the C-DMU district that:

- A. Do not propose alteration or demolition of any property that is an historical resource as defined by 14 California Code of Regulations 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by 14 California Code of Regulations 15064.5.

Section 23B.34.020 Purpose

The purpose of this Chapter is to implement the "Green Pathway" provisions of Measure R (2010) by providing a voluntary streamlined permit process and the option of additional height for buildings that exceed the Green Building requirements applicable in the C-DMU district and confer extraordinary public benefits that could not otherwise be obtained, as specified in this Chapter. More specifically, this Chapter establishes standards and requirements ~~to provide greater clarity regarding the City's expectations~~ for projects eligible for approval under these provisions and ~~to ensure~~ they will be designed and developed consistent with the Downtown Area Plan.

Section 23B.34.030 Eligibility Determination--Procedure for Identifying Potential Impacts of Green Pathway Projects on Historical Resources

In order to determine whether a project is eligible for processing under this Chapter, each applicant shall submit to the City a Request for Determination ("RFD"). The RFD process set forth in this Section shall apply to development projects that may be eligible for Green Pathway processing pursuant to this Chapter notwithstanding anything to the contrary in Chapter 3.24.

A. A property owner or authorized agent thereof shall request the Landmarks Preservation Commission ("LPC") to determine whether the subject property, as well as each adjacent property, is an historical resource under 14 California Code of Regulations 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990); Chapter 23B.34: Green Pathway
2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent); or
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

B. Processing of RFDs.

1. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City's consultant at the applicant's expense. If a property that is the subject of the RFD is not identified on any of the lists in Subdivision (A), the applicant's assessment may consist of a statement of why the applicant believes the property does not include an historical resource.
3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review.
4. The LPC shall commence its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Section 3.24.140.
5. Any of the timelines specified in this Section may be extended at the request of the applicant. Failure to act within any of the timelines set forth in this Section, as they may be extended, shall constitute a decision to take no action to designate.

~~C. If a property that is the subject of a RFD is not designated within the time limitations set forth in this Section, Chapter 3.24 shall not apply to that property unless and until the earliest of any of the following occurs:~~

- ~~1. The expiration of two (2) years from the date of any final action not to designate the property; or~~
- ~~2. If an application under this Chapter is submitted within that period, (1) the application is withdrawn or denied; or (2) any entitlement expires, is cancelled or revoked, or for any other reason ceases to have effect.~~

~~D. Decisions by the Landmarks Preservation Commission under this Section shall be subject to appeal as set forth in Section 3.24.300, and certification as set forth in Section 3.24.190.~~

~~E. If a subject property is determined to be an historical resource as defined by 14 California Code of Regulations 15064.5, it shall not be processed as a Green Pathway Project under this Chapter. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.0430 Voluntary Green Pathway Election--Application

A. The Green Pathway authorized by this Chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain specified processing benefits and height increases.

B. An application for processing pursuant to the Green Pathway shall include the information otherwise required by this Title for the entitlement sought, as well as:

- ~~1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements set forth in this Chapter if the application is approved; and~~
- ~~2. Proof that the Landmarks Preservation Commission has not taken any action under Section 23B.34.030 to designate the subject property as a structure of merit or landmark under Chapter 3.24.~~

C. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of this Title.

~~D. Except as expressly specified in this Chapter, the requirements of this Chapter are in addition to, and do not alter or replace any other requirements or standards of Chapter 3.24, Landmarks Preservation Commission. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.0540 Public Benefit Requirements Applicable to All Green Pathway Projects

All p In exchange for benefits conferred under the Green Pathway, projects electing subject to the Green Pathway shall be subject to the following requirements:

A. In addition to any other applicable affordable housing mitigation fee or requirement, at least twenty ten percent (2010%) of the total units in any proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income

households, as defined by Section 50053, of the California Health and Safety Code for the life of the project. This 10% additional affordable housing requirement may not be satisfied by payment of an in lieu fee to the Housing Trust Fund or be reduced or mitigated by any other means. All units must be provided on site and rented to eligible households for the life of the project.

~~As an alternative, an applicant may pay an in lieu fee to the Housing Trust Fund as established by Council.~~

B. The applicant shall waive, in writing, any rights under State Density Bonus Law, Sections 65915-65918 of California Government Code.

C. The applicant shall sign an agreement that no less than fifty ~~thirty~~ percent (530%) of a project's construction workers shall be Berkeley residents.

1. If insufficient Berkeley residents are available to fulfill the 530% Berkeley local hire requirement, then the next tier of workers residents shall come from the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).

2. If insufficient workers residents are available from the Green Corridor to fulfill the 530% Berkeley local hire requirement, then residents of Alameda County will be utilized to fulfill the local hire requirements.

~~An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30% local hire requirement by providing the same documentation the City requires to demonstrate compliance with paragraphs 1 and 2 of this subdivision.~~

D. All construction workers shall be paid the Prevailing Wage for their occupation, as established by the California Department of Industrial Relations.

E. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

F. Employees in hotels, as well as building maintenance and security workers in all new buildings electing the Green Pathway shall be paid prevailing wages for their occupation, as established by the Department of Industrial Relations for hotel, building maintenance and security employees. If the Department of Industrial Relations does not establish prevailing wages for such occupational categories, such employees shall be paid wages consistent with area mean wages per occupational category.

G. As a condition of approval for any Green Pathway project subject to the requirements of this Section, the applicant shall enter into a written agreement that shall be binding on all successors in interest.

H. Uses shall comply with the requirements and limitations of Sections 23E.68.030 and 23E.68.060.

Section 23B.34.050 Additional Green Pathway Requirements Applicable to Buildings Seeking Additional Bonus Height

All Green Pathway projects seeking Additional Bonus Height pursuant to Table 23E.68.070 shall meet the following additional Public Benefit and Green Building requirements:

A. In addition to the 10% affordable housing requirement at Section 23B.34.040.A, and any other applicable affordable housing mitigation fee or requirement, all multi-unit rental development projects seeking Additional Bonus Height must provide another additional ten percent (10%) of the total units for rental to very low income households whose annual income does not exceed 50 percent (50%) of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053 of the California Health and Safety Code for the life of the project. This 10% additional affordable housing requirement for projects seeking Additional Bonus Height may not be satisfied by payment of an in lieu fee to the Housing Trust Fund or be reduced or mitigated by any other means. All additional affordable housing units required pursuant to Section 23B.34.040.A and the added ten percent (10%) affordable housing units required pursuant to this Section of projects seeking Additional Bonus Height are cumulative, must be provided on site and must be rented to eligible households for the life of the project.

B. In addition to the SOSIP Impact Fee required by Section 23E.68.075, as adopted by the City, the applicant shall pay into the SOSIP Fund an additional fee equivalent to \$1.00 per square foot of new Gross Floor Area.

C. The project shall provide easily accessed Public Restrooms, including separate facilities for men, women and the disabled, which shall be either operated by the applicant, or leased to the City at a rate of \$1.00 a year.

D. Buildings shall attain a LEED Platinum rating as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.

E. 20% of the total number of dwelling units in the project must be designed to accommodate families, including adequate living, kitchen and closet space. At least 50% of such units must include two or more bedrooms and the remaining 50% must include three or more bedrooms. Such units must be reasonably dispersed throughout the project, and be comparable with all other units in design and in terms of appearance, materials and finish quality.

~~Section 23B.34.060 Additional Green Pathway Requirements Applicable to Large Buildings and Hotels~~

~~In addition to the requirements of Section 23B.34.050, any Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, shall be subject to the following requirements:~~

~~A. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations. Chapter 23B.34: Green Pathway~~

~~B. To the extent that a sufficient number of qualified apprentices are reasonably available, no less than 16% of the construction workers shall be apprentices from a State-Certified Apprenticeship program with a record of graduating apprentices.~~

~~C. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.~~

~~D. As a condition of approval for any Green Pathway subject to the requirements of this Section, the owner shall enter into a written agreement that shall be binding on all successors in interest. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.0670 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section 23E.68.070 and the following additional requirements:

A. **Building Setbacks Within View Corridors:** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.

B. **Street Wall Facade:** Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less:

1. Smaller modulations may be incorporated within larger volumes;
2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one (1) or more of the following features:
 - a. Window openings, oriel windows, or balconies;
 - b. Awnings, canopies, or entrances;
 - c. Arcades, columns, or pilasters;
 - d. Materials and color; or
 - e. Other architectural features.

C. **Shadow Analysis Required for Buildings with Heights at or above ~~Between 60 and 75 Feet in height:~~** Applications shall include diagrams showing:

1. The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet or greater in height that complies with all applicable setback requirements;
2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

D. **Height Restrictions on Green Pathway Buildings:** Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:

1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height;
2. Two buildings, up to 120 feet in height in the Core or Outer Core.

E. To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this Chapter will be subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

Section 23B.34.080 Streamlined Entitlement Process for Projects Involving Only Buildings at or Below 75 Feet in Height

~~A. Notwithstanding anything to the contrary in this Title, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the applicable zoning requirements, standards and requirements in this Chapter and the Downtown Design Guidelines. Such projects shall be subject to design review under subdivision B and Chapters 23E.08 and 23E.12.~~

~~B. If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23B.34.030, the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.~~

~~1. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subdivisions A and B of Section 23B.34.030 to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee.~~

~~2. The Design Review Committee shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the Design Review Committee determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway Project.~~

~~C. Notwithstanding Sections 23E.12.040 and 23E.12.050, the Design Review Committee shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for design review, is complete. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the Design Review Committee shall treat applicable guidelines as standards. The decision of the Design Review Committee regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within fourteen (14) days of the date of the Committee's action. Design Review appeals shall be limited to design issues. (Ord. 7230-NS § 1 (part), 2012)~~

Section 23B.34.0790 Streamlined Entitlement Process For Projects Electing the Green Pathway Projects Involving Buildings Over 75 Feet In Height

Notwithstanding anything to the contrary in this Title, the Zoning Adjustments Board shall take final action on a Green Pathway project ~~over 75 feet in height or any other project not processed under 23B.34.080~~ no later than 210 days after ~~the~~ a new application submitted on or after May 4, 2015 pursuant to Section 23E.68.070.B.3.b is deemed complete pursuant to Section 23B.24.050 or 210 days after a preexisting application, submitted prior to November 4, 2014 and modified and resubmitted at any time on or after November 4, 2014 pursuant to Section 23E.68.070.B.3.a is deemed complete pursuant to Section 23B.24.050, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act. Such Green Pathway projects shall receive priority status in order to meet the review milestones set forth in this Section.

Section 23B.34.100080 Tolling

Timelines under this Chapter shall be tolled during any proceedings pursuant to Chapter 3.24, relating to a Green Pathway project.

Section 23B.34.110090 Compliance

~~All The~~ applicable Public Benefit requirements pursuant to Section 23B.34.040 and Section 23B.34.050 of this Chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects.

Section 23B.34.120100 City Manager Authority to Issue Regulations

The City Manager or his/her designee may promulgate rules and regulations pertaining to this Chapter, including, but not limited to, setting and administering gross rents and sale prices for below-market-rate units. These rules and regulations may also specify and require guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this Chapter are secured.

Section 3. That Berkeley Municipal Code Chapter 23E.68 is hereby amended to read as follows:

**Chapter 23E.68
C-DMU Downtown Mixed Use District Provisions**

Sections:

- 23E.68.010 Applicability of Regulations**
- 23E.68.020 Purpose**
- 23E.68.030 Uses Permitted**
- 23E.68.040 Downtown Arts District Overlay**
- 23E.68.050 Construction of New Floor Area: Use Permits**
- 23E.68.060 Use Limitations**
- 23E.68.065 Performance Standards**
- 23E.68.070 Development Standards**
- 23E.68.075 Fee to Implement Streets and Open Space Improvement Plan (SOSIP)**
- 23E.68.080 Parking -- Number of Spaces**
- 23E.68.085 Green Building Provisions, Environmental Requirements and Community Benefits**
- 23E.68.090 Findings**

23E.68.010 Applicability of Regulations

The regulations in this chapter apply in the Downtown Mixed Use District. In addition, the general provisions in Sub-title 23C and applicable provisions in Chapter 23B.34 (Green Pathway) shall apply.

23E.68.020 Purpose

The purpose of this Chapter is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

23E.68.030 Uses Permitted

A. The following table identifies permitted, permissible, and prohibited uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH), or is prohibited. Uses within the Downtown Arts District Overlay area (ADO) are also subject to Section 23E.68.040. Properties within the Civic Center District Overlay are not subject to the uses specified herein and shall be subject to the uses permitted in Chapter 23E.98.

Table 23E.68.030		
Use and Required Permits		
Use	Classification	Special Requirements
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F, except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Under 7,500 s.f.	AUP ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	
Personal and Household Services		
All Personal and Household Services, except those listed below	ZC	As defined in Sub-title 23F, except those otherwise listed (does not include Massage)

Laundromats	UP(PH)	
Veterinary Clinics	UP(PH)	Including Pet Hospitals
Offices		
Financial Services, Retail (Banks)	AUP	Within the Arts District Overlay, see Section 23E.68.040
Under 7,500 s.f.	ZC	
Within the A.D.O.	AUP	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	Subject to additional requirements; see Section 23E.68.060.E
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section 23E.68.040
Medical Practitioners	ZC	Including Holistic Health and Mental Health Practitioners
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section 23E.68.040
Other Professionals and Government, Institutions, Utilities	ZC	Subject to additional requirements; see Section 23E.68.060.E
Within the A.D.O.	AUP	Within the Arts District Overlay, see Section 23E.68.040
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses		
Adult-Oriented Businesses	UP(PH) <u>Prohibited</u>	Subject to additional requirements; see Section <u>23E.16.030</u> Prohibited on Public Serving Frontages
Alcoholic Beverage Service of beer and wine incidental to food service at quick and full service restaurants	AUP	For on-site consumption only
Alcoholic Beverage Service, including Bars, Cocktail Lounges, and Taverns	UP(PH)	Includes service of distilled spirits incidental to food service.
Amusement Device Arcades	UP(PH)	Subject to additional requirements; see Section 23E.16.050
Commercial Recreation Center	UP(PH)	Subject to additional requirements; see Section 23E.68.060.E
Dance, Exercise, Martial Arts and Music Studios	ZC	
Entertainment Establishments	UP(PH)	Including Nightclubs
Food Service Establishments: Carry Out Food Service Stores	AUP	Within the Arts District Overlay, see Section 23E.68.040
Under 2,000 s.f.	ZC	

Within the A.D.O.	AUP	
Quick Service Restaurants Under 2,000 s.f.	AUP ZC	See Alcoholic Beverage Service above
Full Service Restaurants Under 2,000 s.f.	AUP ZC	See Alcoholic Beverage Service above
Group Class Instruction for Business, Vocational or Other Purposes	ZC	Subject to additional requirements; see Section 23E.68.060.E
Gyms and Health Clubs Under 7,500 s.f.	AUP ZC	Subject to additional requirements; see Section 23E.68.060.E
Hotels, Tourist, including Inns, Bed and Breakfasts and Hostels	UP(PH)	
Motels, Tourist	UP(PH)	
Theaters, including Motion Pictures and Stage Performance	AUP	
Automobile and Other Vehicle-Oriented Uses		
Automobile Parts Stores	Prohibited	
Automobile Repair and Service	Prohibited	
Automobile Sales and Rentals, and motorcycle stores	UP(PH)	
Automobile Washes, Mechanical or Self-Service	Prohibited	
Automobile Wrecking Establishments	Prohibited	
Gasoline/Automobile Fuel Stations	Prohibited	
Recreational Vehicle and Trailers Sales and Rental	Prohibited	Including Boats
Tire Sales/Service Stores	Prohibited	
Parking, Outdoor and Exterior Service Window Uses		
Activities or Storage Outside of a building: When not abutting R-District When abutting R-District	AUP UP(PH)	

Drive-in uses	Prohibited	
Surface Parking Lots:		
Eight (8) or fewer Off-street Parking Spaces	AUP	
More than eight (8) Off-street Parking Spaces	Prohibited <u>UP(PH)</u>	
Parking Structures	UP(PH)	
Recycling Redemption Centers	AUP	
Outdoor Cafe Seating		Quick and Full-Service Restaurants only
When seating not abutting R-District	ZC	
When seating abutting R-District	AUP	
Combination Commercial/Residential Uses		
Live/Work Units		
Not requiring a UP under Chapter <u>23E.20</u>	ZC	
Requiring a UP under Chapter <u>23E.20</u>	UP(PH)	
Mixed Use Developments (e.g. Residential/Commercial; Hotel/Other Commercial; Office/Other Commercial)	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F Subject to Section 23E.68.070
Uses Incidental to a Permitted Use		
Amusement Devices (up to three)	AUP	
Food or Beverage for Immediate Consumption	ZC	
Live Entertainment		
Unamplified	ZC	
Amplified	AUP	
Manufacturing Uses	AUP	
Storage of Goods (over 25% of gross floor area)	AUP	
Wholesale Activities	AUP	
Uses Permitted in Residential Districts		

Accessory Buildings and Structures	As per R-5 District	See Table 23D.44.030
Child Care Centers	AUP	
Clubs, Lodges	UP(PH)	
Community Centers	UP(PH)	
Dwelling Units, including multifamily developments	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F
Group Living Accommodations	UP(PH)	Subject to additional requirements; see Section 23E.68.060.F
Hospitals	UP(PH)	
Residential Hotels, including Single Room Occupancy (SRO) Hotels	UP(PH)	Subject to Section 23E.68.060.F
Libraries	UP(PH)	
Nursing Homes	UP(PH)	
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing: Six or fewer persons Seven or more persons New Construction	 ZC AUP UP(PH)	 Change of use of an existing dwelling unit Subject to Section 23E.68.070
Miscellaneous Uses		
Automatic Teller Machines When not a Part of a Retail Financial Service Exterior Interior	 UP(PH) AUP	
Cafeteria, Employee or Residential	UP(PH)	

Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP Prohibited	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10.
Up to 60 beds	ZC	
More than 60 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound		
Recording Studios	AUP	
Broadcast Studios	UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities		Subject to the requirements and findings of Section 23C.17.100
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Legend:		
ZC -- Zoning Certificate		
AUP -- Administrative Use Permit		
UP(PH) -- Use Permit, public hearing required		

B. The Zoning Officer may approve an Administrative Use Permit for any use that he or she determines is compatible with the purposes of the C-DMU District. Any use that is not listed that is not compatible with the purposes of the C-DMU District shall be prohibited.

23E.68.040 Downtown Arts District Overlay

A. The City Council finds and declares that:

1. The purpose of the Downtown Arts District Overlay is to create a core of cultural activities and supportive retail and commercial uses which would generate more pedestrian vitality in the downtown, promote Berkeley's regional leadership in the arts, and encourage broader economic revitalization of the area.

2. To this end, the use and appearance of ground floor spaces in the Downtown Arts District are important to the success of the City's plans for the area, since these spaces define the ambiance and character of the area for pedestrians. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, full- and quick-service restaurants, and uses which provide pedestrian scale and siting. Desirable new development would include projects which fully utilize the development potential of the property and incorporate continuity in street facades. Uses such as food uses with seating, art galleries, bookstores and other culturally compatible and pedestrian-oriented uses will contribute to the area's economic vitality.

B. Downtown Arts District Overlay shall be abbreviated as "ADO." Said overlay district shall consist of:

1. All buildings with street frontage on Addison Street between Shattuck Avenue and Milvia Street; and

2. All buildings with street frontage on the two blocks along the southbound west wing of Shattuck Avenue between University Avenue and Center Street, and all addresses on the east side of Milvia Street between University Avenue and Center Street.

3. These proposed boundaries are as set forth in the map on file with the City Clerk and incorporated by reference herein.

C. No new carry out food service store or office use located on the ground floor adjacent to a street frontage may be established within the Downtown Arts District Overlay, either as a new use or as a change of use, unless an Administrative Use Permit is approved by the Zoning Officer subject to the findings in Section 23E.68.090.C.

23E.68.050 Construction of New Floor Area: Use Permits

Gross floor area of 10,000 square feet or more shall not be created unless a Use Permit is obtained subject to the findings in Section 23E.68.090.D. Creation of new floor area includes construction of new buildings or accessory buildings; additions to existing buildings; or the installation of new floor area or mezzanine levels within or onto existing buildings.

23E.68.060 Use Limitations

~~A. No commercial use shall operate except between the hours of 6:00 a.m. and 2:00 a.m. except as authorized by an Administrative Use Permit, and in accordance with Section 23E.16.010.~~

A. Commercial uses in the C-DMU Core, Outer Core and Corridor Sub-Areas, as designated in the Official Zoning Map, may operate between the hours of 6:00 a.m. and 2:00 a.m., seven days per week; provided, that any use with alcohol sales or service shall conform to the following:

Establishments with alcohol sales or service located in the C-DMU Core, Outer Core and Corridor Sub-Areas may not stay open past midnight from Sunday through Thursday, and may operate until 2:00 a.m. on Fridays and Saturdays, unless later hours are authorized by a Use Permit under Section 23E.16.040 and provided the Board makes the required finding under Section 23E.68.090.H.

B. Commercial uses located in the C-DMU Buffer Sub-Area, as designated in the Official Zoning Map, may operate from 6:00 a.m. to 12:00 a.m. seven days per week, unless later hours are authorized by an Administrative Use Permit under Section 23E.16.010 and subject to the Board making the required finding under Section 23E.68.090.H. The Board may not extend the hours of operation later than midnight for establishments with alcohol sales or service located in the C-DMU Buffer Sub-Area.

~~B.C.~~ Any use that is incidental to the primary use of a building or property shall be subject to the permit requirements identified in the Uses Incidental to a Permitted Use heading in Table 23E.68.030.

~~C.D.~~ Any activity or use that occurs outside of a building shall be subject to the permit requirements identified in the Parking, Outdoor, and Exterior Window Uses heading in Table 23E.68.030.

~~D.E.~~ Adult-oriented Businesses, Alcoholic Beverage Sales or Service Uses, and Amusement Arcades shall be subject to the requirements of Chapter 23E.16 in addition to the requirements of this Chapter.

~~E.F.~~ For new uses identified in Table 23E.68.030 that are located on the ground floor adjacent to a street frontage, storefront windows are required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.

~~F.G.~~ In new buildings constructed on Public Serving Frontages, as illustrated in Sub-title 23F and the Downtown Area Plan, entrances to individual dwelling units and to living quarters in Group Living Accommodations are prohibited on the street-facing side of the street-level floor.

23E.68.065 Performance Standards

Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program adopted concurrently with this Chapter.

23E.68.070 Development Standards

A. The height for main buildings shall not exceed the following limits and shall satisfy the following requirements:

Table 23E.68.070			
Height Limits (as per Downtown Area Plan) *			
C-DMU Sub-Area **	Minimum ***	Maximum	Maximum With Use Permit
Core Area†	50 feet	60 feet	75 feet
Outer Core†	40 feet		
Corridor	40 feet		
Buffer	None	50 feet	60 feet

<u>C-DMU Subarea**</u>	<u>Maximum Height Limit ***</u>	<u>Green Pathway - Bonus Height Limit ***</u>	<u>Green Pathway Additional Bonus Height Limit ***</u>
<u>Core Area</u>	<u>60 feet</u>	<u>May build up to 75 feet only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to all other applicable requirements of this Title.</u>	<u>Three buildings at up to 180 feet and two buildings at up to 120 feet permitted only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to the requirements in Section 23E.68.070.B and all other applicable requirements of this Title.</u>
<u>Outer Core</u>	<u>60 feet</u>	<u>May build up to 75 feet only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to all other applicable requirements of this Title.</u>	<u>Two buildings at up to 120 feet permitted only if applicant elects the Green Pathway pursuant to Chapter 23B.34 and subject to the requirements of Section 23E.68.070.B and all other applicable requirements of this Title.</u>
<u>Corridor</u>	<u>60 feet</u>	<u>None</u>	<u>None</u>
<u>Buffer</u>	<u>50 feet</u>	<u>None</u>	<u>None</u>

* Notwithstanding Sub-title 23F, in the case of a roof with parapet walls, building height shall be measured to the top of the roof and parapets may exceed the height limits above by up to five (5) feet as of right.

** See Downtown Area Plan Sub-area map in Figure LU-1 and the Zoning Map.

*** Up to 10 additional feet in height may be approved with a Use Permit, subject to the Parking and Penthouse provisions of Section 23E.68.080.G and the findings required by Section 23E.68.090.I.

New buildings only, measured to the top of the plate. Theater and Museum Buildings are exempt.

† ~~Within the Core, up to three buildings over 120 feet but not more than 180 feet. Within the Core and Outer Core, up to two buildings over 75 feet but not more than 120 feet. See section 23E.68.070.B.~~

B. The Board may issue Use Permits for up to five buildings seeking Green Pathway Additional Bonus Height pursuant to Table 23E.68.070 if it makes the finding in Section 23E.68.090.E, and as follows:

1. In the combined Core and Outer Core areas, up to two buildings with Green Pathway Additional Bonus Height of over 75 feet but not more than 120 feet plus up to 10 additional feet in height subject to the Parking and Penthouse provisions of Section 23E.68.080.G.
2. In the Core area, up to three buildings with Green Pathway Additional Bonus Height of over 120 feet but not more than 180 feet plus up to 10 additional feet in height subject to the Parking and Penthouse provisions of Section 23E.68.080.G.

Allowed uses in such buildings include:

- a. Two residential buildings with ground-level commercial uses.
- b. One hotel building with conference facilities and accessory commercial uses.

3. Application process for buildings over 75 feet in height seeking Green Pathway Additional Bonus Height pursuant to Table 23E.68.070:

a. Any application for a building over 75 feet in height that was submitted to the City prior to November 4, 2014 and satisfied existing submittal requirements, as determined by the Zoning Officer, even if not initially submitted as a Green Pathway project pursuant to Chapter 23B.34, may be approved so long as the applicant modifies such application to elect the Green Pathway and the project complies with all applicable provisions of this Title. Such modified applications may be resubmitted and deemed complete pursuant to Section 23B.24.050 at any time on or after November 4, 2014 and shall not be considered new applications.

b. One (1) new aApplications for any of the five buildings seeking Green Pathway Additional Bonus Height over 75 feet in height may be submitted and deemed complete pursuant to Section 23B.24.050 during any one year, starting on the Fourth (4th) of May 2015 and restarting every Fourth (4th) of May thereafter. Once one (1) application for a building seeking such Green Pathway Additional Bonus Height has been submitted and deemed complete pursuant to Section 23B.24.050 during any one (1) such year, no additional applications seeking Green Pathway Additional Bonus Height may be submitted or deemed complete within the same year. may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six month intervals until the first application has been submitted. Once the first application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.

bc. A project shall secure a position as one of the five allowed buildings with Green Pathway Additional Bonus Height over 75 feet in height following final Use Permit approval. After five such buildings have received final Use Permit approval, no new applications for buildings seeking Green Pathway Additional Bonus Height may be accepted and no additional Use Permits for Green Pathway Additional Bonus Height buildings may be approved.

d. Such Use Permits for buildings with Green Pathway Additional Bonus Height shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and commencement of construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.

ee. Failure of a permittee to strictly comply with the schedule established by the Use Permit shall be grounds for revocation of the Use Permit pursuant to Chapter 23B.60.

C. No yards for main buildings, accessory buildings, or accessory structures shall be required, except as required in Section 23E.04.050 for commercial lots abutting or confronting residential zoning. In addition buildings shall be set back from property lines as set forth in the table and provisions below, unless modified by a Use Permit subject to the findings in Section 23E.68.090.F.

Portion of Building at Height of:	Front Lot Line	Interior Side Lot Line		Rear Lot Line
		65' and less from lot frontage	Over 65' from lot frontage	
Zero to 20 feet	0' minimum, 5' maximum;	0' minimum	0' minimum	0' minimum
21 feet to 75 feet	0' minimum	0' minimum	5' minimum	5' minimum
76 feet to 120 feet	15' minimum	5' minimum	15' minimum	15' minimum
Over 120 feet	15' minimum	15' minimum	15' minimum	15' minimum

1. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
2. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
3. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, ~~except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, t~~ This provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
4. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
5. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50% of the surface area of the side of the building on which the projections are located.

D. New buildings shall provide on-site open space as follows:

1. For residential uses, 80 square feet of usable open space per unit.
 - a. Each square foot of such open space that is provided as Privately-Owned Public Open Space shall be counted as two square feet of required on-site open space for residential uses.
2. For non-residential uses, one (1) square foot of privately-owned public open space per 50 square feet of commercial floor area.
3. In lieu of providing the open space required by this Section on site, an applicant may pay an in-lieu fee at a rate of \$30 per square foot of usable open space required, adjusted annually for inflation, to help fund the Streets and Open Space Improvement Plan (SOSIP) and/or construct public improvement consistent with the SOSIP, as specified in the Use Permit, provided the Board makes the findings in Section 23E.68.090. ~~GE~~.

23E.68.075 Fee to Implement Streets and Open Space Improvement Plan (SOSIP)

In addition to any other requirement of this Chapter, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as ~~may be~~ adopted by the City.

23E.68.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of this Section and Chapter 23E.28, except as set forth in this Section. No change of commercial use within the existing floor area of a building shall be required to meet the off-street parking requirements of this Section or Chapter 23E.28, unless the structure has been expanded to include new floor area for any use.

B. Except as provided at subsection C below, tThe District minimum standard vehicle parking space requirement for all floor area is one and a half spaces per each 1,000 square feet of gross floor area or as required for the uses listed in the following table.

Use	Number of Parking Spaces Required
Dwelling Units, Single and Multi-Family Buildings	One per three dwelling units
Hotels and Motels, Tourist (Including Inns, Bed and Breakfast and Hostels)	One per each three guest/sleeping rooms or suites
Group Living Accommodations (Including Single Room Occupancy Residential Hotels) and Nursing Homes	One per eight sleeping rooms

1. Additions up to 1,000 square feet of gross floor area, or up to twenty-five percent (25%) of existing gross floor area, whichever is less, are exempt from the parking requirements for new floor area.

2. Parking spaces shall be provided on site, or off site within 800 feet subject to securing an AUP and in compliance with Section 23E.28.030.

C. New construction, new uses and changes of use in the C-DMU Buffer Sub-Area, as designated in the Official Zoning Map, shall be subject to the R-4 parking standards in Table 23D.40.080.

~~D~~ G. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space and for dwelling units at one space per bedroom or studio. Such bicycle parking spaces shall be provided and in accordance with the requirements of Section 23E.28.070 and shall be offered and assigned to residents and employees working in the building first, at no cost. If ten (10) or more Bicycle parking spaces are not assigned to residents or employees working in the building, all unassigned spaces should be made available to the public.

~~D. The vehicle parking space requirements of this Section may be reduced or waived through payment of an in-lieu fee to be used to provide enhanced transit services, subject to securing a Use Permit subject to the finding in section 23E.68.090.H or modified with an AUP subject to the findings in 23E.28.140.~~

E. Up to 70% of the applicable vehicle parking space requirements provided at Subsection B of this Section may be reduced or waived. All such reductions or waivers are subject to the findings required in Section 23E.28.140 and Payment of an in-lieu fee as adopted by the City.

F. Projects with vehicle parking space requirements of eleven (11) or more spaces pursuant to Subsection B of this Section shall provide all on-site disabled accessible parking spaces which would be required pursuant to Chapter 2 Section 208 of the Americans with Disability Act Guidelines based on the full vehicle parking requirement, whether or not such spaces are provided or have been reduced or waived. All disabled accessible parking spaces shall be provided in addition to, and not in lieu of, parking spaces required under Subsection B of this Section and Vehicle Sharing and Electrical Vehicle Charging Station spaces required pursuant to Subsection L of this Section.

G. If 100% of the vehicle parking, disabled accessible, Vehicle Sharing and Vehicle Charging Station spaces required by this Section are provided, without any reductions or waivers, plus at least ten (10) additional vehicle parking spaces are provided, the Board may approve a single Penthouse structure covering a maximum of 1/3 of the roof space or 4,500 square feet, whichever is less, with up to 10 additional feet in Height above the Green Pathway Bonus Height or Green Pathway Additional Bonus Height limits provided in Table 23E.68.070 and with front, rear and side setbacks of at least 10 Feet from the edge of the roof, subject to approval of a Use Permit and to the findings at Section 23E.68.090.I.

H.E. New construction that results in an on-site total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications, including, but not limited to, real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System or equivalent, as determined by the Zoning Officer in consultation with the Transportation Division Manager.

I.F. Occupants of residential units or GLA units constructed, newly constructed or converted from a non-residential use shall not be eligible for Residential Parking Permit (RPP) permits under Chapter 14.72 of the BMC.

J.G. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit, unless the Board grants a Use Permit to waive this requirement for projects which include financing for affordable housing subject to the finding in section 23E.68.090.I.

K.H. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident. A notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.

1. A pass for unlimited local bus transit service; or
2. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.

L.I. ~~For residential structures constructed or converted from a non-residential use that require vehicle parking under Section 23E.68.080.B, required parking spaces shall be designated as Vehicle Sharing Spaces in the amounts specified in the follow Table. If no parking spaces are provided pursuant to Section 23E.68.68.080.D, no vehicle sharing spaces shall be required.~~ The applicant shall build, in addition to unwaived vehicle parking spaces pursuant to Subsection B of this Section and required disabled accessible spaces pursuant to Subsection F of this Section, at least the minimum number of Vehicle Sharing Spaces and Electric Vehicle Charging Stations which would be required under a full build-out of all required vehicle parking, pursuant to the Table below, regardless of whether such vehicle parking is provided or has been reduced or waived. Unwaived vehicle parking spaces, Disabled Accessible spaces, Vehicle Sharing Spaces and Electric Vehicle Charging Station spaces required by this Section are cumulative requirements and no space may serve a dual purpose.

Number of Parking Spaces Required	Minimum Number of Vehicle Sharing Spaces	Minimum Number of Electric Vehicle Charging Stations
0 – 10	0	0
11 – 30	1	1
30 – 60	2	2
61 or more	3, plus one for every additional 30 spaces	3, plus one for every additional 30 spaces

1. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
2. The vehicle sharing spaces required by this Section shall remain available to a vehicle sharing service provider as long as providers request the spaces. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.

M J. For residential structures constructed or converted from a non-residential use, ~~subject to Sections 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I~~ prior to issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City, which demonstrates that the project is in compliance with the applicable parking requirements of ~~this Section 23E.68.080.G, 23E.68.080.H, and 23E.68.080.I.~~ Thereafter, the property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

23E.68.085 Green Building Provisions, Environmental Requirements and Community Benefits

~~A. Construction of new buildings and additions of more than 20,000 square feet shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.~~

A. Construction of new buildings shall meet all of the following Green Building requirements:

1. Attain a LEED Gold rating of 65 points or its equivalent or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer.
2. Attain an energy efficiency rating of 15 percent above the requirements of Title 24, or equivalent, as determined by the Zoning Officer.
3. Ensure at a minimum no new net water runoff and incorporate environmental practices such as depaving of spaces, permeable surfaces, rain catchment systems, and bio-filtration systems.

B. All projects must meet the following Environmental requirements:

1. Provide on-site recycling and composting facilities adequate to accommodate the reasonably estimated waste stream of the project
2. Pay a Transportation Services Fee, to be set by resolution of the City Council, to support alternative modes of travel and/or Transportation Demand Management (TDM) programs.

C. All projects shall make a contribution equivalent to \$0.50 per square foot of new or additional Gross Floor Area into the City of Berkeley Revolving Loan Fund, providing capital for loans to businesses and entrepreneurs who seek to grow and retain or create jobs in Berkeley.

~~B. Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.~~

23E.68.090 Findings

A. In order to approve any Use Permit under this Chapter, the Zoning Officer or Board must make the findings required by Section 23B.32.040, as well as the findings required by the following paragraphs of this Section to the extent applicable.

B. A proposed use or structure must:

1. Be compatible with the purposes of the District; and
2. Be compatible with the surrounding uses and buildings.

C. For each Administrative Use Permit obtained under Section 23E.68.040.C to allow a new carry out food service store or ground floor office use within the Downtown Arts District Overlay, the Zoning Officer must find that:

1. The project meets the purposes of the Arts Overlay District as set forth in Section 23E.68.040; and
2. The location, size, type, appearance, and signage of the proposed use will:
 - a. Animate and enhance the pedestrian experience on the street; and
 - b. Be generally open to the public evenings and on weekends, whenever practicable.

D. In order for any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that:

1. The addition or new building is compatible with the visual character and form of the District; and
2. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.

~~E. In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.~~

~~F. In order to approve a Use Permit for modification of the setback requirements of 23E.68.070.C, the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.~~

E G. In-Lieu Open Space.

1. In order to approve a Use Permit under Section 23E.68.070.~~ED~~ for payment of an in-lieu fee, the Board must find that the in-lieu payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
2. In order to approve a Use Permit under Section 23E.68.070.~~ED~~ for construction of public improvements consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP), the Board must find that the public improvements:
 - a. Will be located within the vicinity of the project and are consistent with the SOSIP; and
 - b. The improvements will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
 - c. The value of such improvements is equal to or greater than the amount of the applicable in-lieu fee.
 - d e. The improvements will be completed prior to issuance of a certificate of occupancy for the project, unless otherwise allowed by the Conditions of Approval.

F H. In order to approve a Use Permit to allow a reduction of required vehicle parking spaces under Section 23E.68.080.~~DE~~, which may be reduced to zero, the Board must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.

G I. In order to approve a Use Permit to allow parking spaces to be leased or sold in combination with the proposed affordable housing units under Section 23E.68.080.G, the Board must find that applicant has demonstrated that the combined parking is necessary for the purpose of obtaining financing or meeting other obligations.

H. No Administrative Use Permit or Use Permit may be granted under Sections 23E.68.060.A or 23E.68.060.B unless the Zoning Officer or Board finds that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the District.

I. In order to approve a Use Permit under Section 23E.68.080.G, the Board must find that all three of the following requirements have been met and are included as Conditions of Approval:

1. 100% of the vehicle parking, disabled accessible, Vehicle Sharing and Electric Vehicle Charging Station spaces required by Section 23E.68.080 are included in the project, without any reductions or waivers, and will be built
2. At least 10 additional vehicle parking spaces are included in the project, and will be built
3. All 10 or more additional parking spaces provided in the project and all other spaces not leased or sold to residential or commercial occupants will be made available to the public.

Section 4. That Chapter 23E.98 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 23E.98

CIVIC CENTER DISTRICT OVERLAY

23E.98.010 Applicability of Regulations

23E.98.020 Purposes

23E.98.030 Uses Permitted

23E.98.040 Development Standards

23E.98.010 Applicability of Regulations

The regulations in this Chapter apply to the area coterminous with the Civic Center Historic District designated under Chapter 3.24 and are applicable to the following parcels:

1. APN 057 201701601 (Old City Hall/Courthouse/Public Safety Building)
2. APN 057 202202000 (Veterans Memorial Building)
3. APN 057 202200600 (State Farm Insurance Building/City offices, 1947 Center Street)
4. APN 057 202100200 (Civic Center Park)
5. APN 057 202100100 (Civic Center Building)
6. APN 057 202601500 (Downtown Berkeley YMCA)
7. Portion of APN 057 202000503 which contains the Berkeley Community Theater/Florence Schwimley Little Theater
8. APN 057 202000400 (Berkeley High School)
9. APN 057 202700500 (Berkeley Main Post Office)

Section 23E.98.020 Purposes

The general purpose of the overlay district is to implement General Plan Policy LU-22 Civic Center: "Maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities", as well as Downtown Area Plan Policy LU-1.4:

“Focus City government and civic activity in the Civic Center area, and recognize Downtown’s central role in providing community services.”

The specific purposes are to:

- A. Preserve and protect the integrity of the City of Berkeley Historic Civic Center through preservation of existing buildings and open space listed in the Civic Center Historic District.
- B. Allow a set of uses, which are civic in nature, and support active community use.
- C. Promote uses, which combined or individually will maintain public access to the historic buildings and resources.
- D. Promote appropriate uses which respect the Civic Center’s historic significance in unifying the community and forming a link to Berkeley’s past.
- E. Promote the cultural and architectural heritage of the Civic Center.
- F. Preserve the Civic Center District as a place for government functions, community activities, cultural and educational uses, and civic functions and facilities.
- G. Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources.

Section 23E.98.030 Uses Permitted

The following table identifies all permitted uses and sets forth the Permit required for each allowed use. Each use and structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a Public Hearing (UP/PH). All properties in the Civic Center District Overlay are restricted to only those uses listed below, regardless of uses permitted in the underlying zoning district.

<u>Use and Required Permits</u>		
<u>Use</u>	<u>Classification</u>	<u>Special Requirements (if any)</u>
<u>Libraries</u>	<u>UP(PH)</u>	
<u>Judicial Courts</u>	<u>AUP</u>	
<u>Museums</u>	<u>UP(PH)</u>	
<u>Parks and Playgrounds</u>	<u>ZC</u>	
<u>Public Safety and Emergency Services</u>	<u>UP(PH)</u>	
<u>Government Agencies and Institutions</u>	<u>AUP</u>	
<u>Public Schools/Educational Facilities</u>	<u>UP(PH)</u>	
<u>Non-Profit Cultural, Arts, Environmental, Community Service and Historical Organizations</u>	<u>UP(PH)</u>	
<u>Live Performance Theatre</u>	<u>UP(PH)</u>	
<u>Public Market</u>	<u>UP (PH)</u>	

Section 23E.98.040 Development Standards

- A. All new buildings and additional Gross Floor Area within the Civic Center District Overlay shall be subject to a maximum building height of 50 feet.
- B. All new buildings, additional Gross Floor Area, or changes of use shall be subject to the parking, set back requirements and other development standards of the underlying District, in addition to the other applicable requirements of this Title.

Section 5. That Berkeley Municipal Code Section 23F.04.010 is hereby amended so as to insert therein, in alphabetical order, the following three additional definitions:

Live Performance Theatre: An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.

Museum: A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.

Public Market: An open air or enclosed marketplace, including a farmer’s market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as 75% or more of retail space is devoted to the sale of General or Specialized food products and no more than 25% of retail space is devoted to one or more of the following Incidental Uses: owner operated and/or independent Carry Out Food and/or Quick Service Restaurants selling food from local and regional producers and sales of Retail Products from local and regional producers.

Section 6. Exempt from Environmental Review

Pursuant to Section 15378(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, this initiative is exempt from environmental review because the initiative is a “submittal [...] to a vote of the people [...] of a particular community that does not involve a public agency sponsored initiative”, and is not classified as a project under CEQA.

Section 7. Findings for Compliance with Government Code Section 65863

WHEREAS, the proposed initiative ordinance reduces maximum allowable building heights in the Corridor and Buffer Sub Areas of the Commercial Downtown Mixed Use (C-DMU) District, from a maximum allowable building height of 60 feet in the Corridor Sub-Area and 50 feet in the Buffer Sub-Area; and

WHEREAS, Government Code Section 65863 states that jurisdictions shall not reduce residential density unless written findings are made supported by substantial evidence that the reduction is consistent with the adopted General Plan including the Housing Element and that the remaining sites identified in the Housing Element are adequate to accommodate the jurisdiction’s share of the regional housing need pursuant to Section 65584; and

WHEREAS, the proposed changes are consistent with the General Plan Land Use designations of Medium Density Residential and Neighborhood Commercial. Following adoption of this initiative the General Plan shall be amended for consistency with this measure; and

WHEREAS, the 2009-2014 Regional Housing Needs Determination allocated a total of 2,431 units to the City of Berkeley, and within the planning period of the 2001 Housing Element, the City Approved 1,234 units; and

WHEREAS, the 2010 Housing Element's Inventory of Vacant Land, Parking Lots, and Redevelopable Land did include the Commercial Downtown Mixed Use District (C-DMU) in its analysis of land capable of supporting residential development; and

WHEREAS, numerous sites identified in the 2010 Housing Element's Inventory of Vacant Land, Parking Lots, and Redevelopable Land have not been developed, thus indicating additional residential unit capacity; and

WHEREAS, of those sites within the Commercial Downtown Mixed Use District (C-DMU) that were identified in the 2010 Housing Element's Inventory of Vacant Land, Parking Lots, and Redevelopable Land, the city estimated that under the development regulations proposed in the 2009 DAP, which permitted buildings at 120 feet and 180 feet similar to current regulations, that 479 units could be constructed during the 2009-2014 planning period, under the maximum allowable density permitted; and

WHEREAS, the 2010 Housing Element estimates potential residential capacity for the Housing Element planning period to be roughly 3,320 units, which is adequate to address the 2007-2014 Regional Housing Needs Assessment of 2,431 units and the 479 units in the Downtown Plan area which could be constructed under the maximum allowable density proposed in the 2009 DAP; and

WHEREAS, the 2010 Housing Element list of opportunity sites may include sites within the area in which the maximum residential density is proposed to be reduced, but there is adequate capacity throughout the city and the proposed changes will not limit the City's ability to meet its share of the regional housing need.

Section 8. Amendment

Following adoption of this initiative by the voters, no part of Chapter 23B.34 (Green Pathway), nor any of the Development Standards in Section 23E.68.070, Parking Requirements in Section 23E.68.080, Green Building Requirements in Section 23E.68.085, nor any part of Chapter 23E.98 (Civic Center Overlay) may be amended without being submitted to the voters and approved by a vote of the people. All other provisions, unless modified by voter approval, cannot be amended by the City Council until 5 years after approval of this initiative.

Section 9: Amending Downtown Area Plan and General Plan for Consistency with this Initiative Ordinance

Immediately following adoption of this initiative by the voters, the City Manager shall develop amendments to the Downtown Area Plan and General Plan for consistency with this initiative. Pursuant to Berkeley Municipal Code Section 22.04.020, such amendments shall be submitted to the Planning Commission who shall hold a public hearing prior to making a recommendation to the City Council on adoption of the amendments.

Section 10: Severability

If any part or provision of this initiative ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

City Attorney's Impartial Analysis

This measure would amend Zoning Ordinance provisions in the Downtown area.

Heights

Currently, the maximum heights generally permitted in the Downtown area are 75', and 60' in the buffer area. A map depicting these areas is at

[http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/DAP%20Zoning%20And%20Addresses_4-25-12\(1\).pdf](http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/DAP%20Zoning%20And%20Addresses_4-25-12(1).pdf).

The initiative would reduce these height limits to 60' in the Downtown, and 50' in the buffer area, with a 10' penthouse bonus for extra parking.

The existing Downtown Area Plan and zoning allow up to two buildings in the core area at heights up to of 120' and three in the core area with heights up to 180'. The initiative would not change these height limits.

Under the Green Pathway in Measure R, and the Downtown Area Plan and Zoning Ordinance, applicants may offer certain community benefits in return for either "as of right" approval (buildings 75' and under) or priority processing (buildings over 75'). The initiative would replace these provisions with requirements for various community benefits in order to build over certain heights. For buildings over 60': additional affordable housing;; prevailing wage for some categories of workers; and increased local hire and new apprenticeship requirements for construction workers. In addition, for buildings over 75': additional affordable housing; units with 2 and 3 bedrooms; public restrooms; and of LEED Platinum rather than LEED Gold ratings.

Retroactivity

These requirements would apply to all new applications as well as applications pending as of November 4, 2014.

Pre-application landmarks review

Currently an applicant must obtain pre-application review by the Landmarks Preservation Commission of all affected buildings before submitting a Green Pathway application, and a building that is a historic resource is ineligible for the Green Pathway. The initiative eliminates these provisions.

Downtown C-DMU Zoning District

The measure would amend the existing C-DMU (Commercial Downtown Mixed-Use) zoning district to: prohibit columbaria and adult uses; limit the hours of uses involving alcohol; eliminate the ability to modify setbacks; increase parking requirements in the "buffer" subarea; require additional bike parking; limit parking waivers and require payment of an in lieu fee for them; add a requirement for electric vehicle charging stations; require all parking to be provided onsite; require new buildings to attain a LEED Gold rating; prohibit any new project from creating runoff; and require onsite composting and recycling facilities.

Fees and exactions

Requirements for buildings over 75' include public restrooms and an additional fee for streets and open space improvements. Requirements for all projects would include a new in-lieu fee for projects not providing the required open space and a new fee to fund a loan program for businesses seeking to retain or create jobs in Berkeley. The legal validity of these requirements is uncertain.

Historic District Overlay

The measure would create a Civic Center Historic District overlay zone that limit permissible uses in the commercial parts of the zone, and permit new uses in the residential parts of the zone.

This measure was placed on the ballot as the result of a voter petition.

/s/ ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE R

Vote YES! Save the Post Office, Old City Hall and our historic Civic Center from commercial development, and ensure our Downtown is built on Berkeley's values.

Under Measure R, new developments

- meet high green building standards
- include affordable housing on site
- offer generous bike parking
- include parking for residents, visitors and patrons of theaters, concerts, shops and restaurants; and for the disabled, carsharing and electric vehicle charging
- guarantee jobs for Berkeley residents and fair wages for construction, maintenance, security and hotel workers
- provide funding for public transportation, improvements to streets, sidewalks, parks and open spaces and for loans to small businesses

The five tallest developments also include public restrooms and family-sized units.

The goals of a greener, denser and more vibrant Downtown are fully supported while respecting existing neighborhoods and historic resources. Our Civic Center is protected as a public commons – in perpetuity – allowing only public-serving uses such as museums, libraries, government, non-profits, arts, live performance venues and farmer's markets. No future Council can vote to allow exclusively private uses – ever.

In 2010, voters approved a “Green Vision” for Downtown Berkeley, outlining a plan for increased development coupled with significant community benefits. Measure R fulfills that promise, providing the legal language necessary to ensure our Downtown is developed to 21st Century environmental standards, invites residents of all economic backgrounds and life-stages, and is accessible and welcoming for all Berkeley residents.

Berkeley has led the national movement to save our Post Offices and keep public assets in the public realm. We champion social justice, universal accessibility and the environment. Our Post Office is threatened, and loopholes allow Downtown development with the bare minimum of environmental features or community benefits. Vote YES for a Green, Equitable and Civic Downtown. Later will be “too late.”

s/Maxwell G. Anderson, Jr.
Berkeley City Council, District 3

s/Jesse Arreguín
Berkeley City Councilmember, District 4 (Downtown & Central Berkeley); former member, Downtown Area Plan Advisory Committee (DAPAC)

s/Margot W. Smith
Committee to Save the Berkeley Post Office Steering Committee Member

s/Shirley Dean
Berkeley Neighborhoods Council Steering Committee; Former Mayor, City of Berkeley

s/Martha Nicoloff
Board Member, Council of Neighborhood Assoc.; Author - Neighborhood Preservation Ordinance

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE R

Measure R supporters say it “fulfills the promise” that voters envisioned when they overwhelmingly passed a downtown plan measure four years ago. ***Then why is virtually everyone who supported the original downtown measure to create a green, vibrant downtown now OPPOSING THIS MEASURE R?***

The Greenbelt Alliance, League of Conservation Voters East Bay, Downtown Berkeley Association, Senator Hancock, Assemblywoman Skinner, Mayor Bates, housing advocates and labor unions all oppose Measure R because it will not “fulfill” any promise – instead it would stop the progress we are making toward an environmentally sound, transit-oriented downtown.

It would eliminate much needed housing, jeopardize \$28 million in contributions to affordable housing, and drive housing costs in our city even higher.

- ***Greenbelt Alliance says: "Measure R would stop new housing near BART and stop Berkeley's progress toward a green downtown."***
- ***The League of Conservation Voters East Bay says: "Measure R threatens to reverse environmental gains and make Berkeley more expensive, more car-dependent and more polluted."***

Don't be fooled. Measure R is not needed to save the Downtown Post Office – the City Council already acted to protect it from commercial development. Measure R doesn't help the environment – it reverses progress we've made holding our city to a higher green standard.

Join with the broad spectrum of environmental, elected, community, labor and housing leaders who came together four years ago to plan a greener, better future. We gather again to reject this deceptive and misguided measure.

Don't stop our green downtown.

No on Measure R

s/James Paxson
Member of the Greenbelt Alliance Public Policy Committee

s/Robert Reich
Professor of Public Policy and Former U.S. Secretary of Labor

s/Pavan Upadhyayula
ASUC President

s/Nancy Skinner
Assemblymember

s/Tom Bates
Berkeley Mayor

ARGUMENT AGAINST MEASURE R

MEASURE R is deceptive ballot-box planning that would:

- **End the Downtown revival** that is giving us a greener, safer, more vibrant heart of the City.
- **Reverse Berkeley's Climate Change efforts** by stopping new housing near BART and increasing pollution and congestion – adding to one of the greatest threats we face today. The lost transit-oriented housing means millions of pounds of added greenhouse gases.
- **Exacerbate the competition for housing** that has already made Berkeley unaffordable for many individuals and families.

"**Measure R** would bring Berkeley's progress toward a green vibrant downtown to a screeching halt."

-- **Greenbelt Alliance**

The Downtown Post Office will be protected. The City Council is already acting to save it.

Measure R:

- would overturn the Downtown Plan approved by 64% of voters in 2010. The Plan has already delivered significant community benefits, and will bring more if projects planned under its guidelines can move forward.
- would drive up rents throughout the city by blocking new housing. The City's financial impact study estimates that 1,300 units of housing planned near BART would not be built because of this measure, and we could lose up to \$28 million for our affordable housing trust fund.
- is so inflexible that controversial and even illegal details – like requiring public restrooms in private residential buildings and reducing city flexibility to create affordable housing – can be corrected only at the ballot box with more costly elections.

Measure R would mean **a less livable, less affordable city for all of us**. Join State Senator Loni Hancock; Assemblywoman Nancy Skinner; Mayor Tom Bates; Councilmembers Capitelli, Maio, Moore, Wengraf and Wozniak; and a broad coalition of environmentalists, seniors, students, small business owners, housing advocates, labor leaders and educators in voting NO on Measure R.

Learn more at NoOnMeasureR.org.

No on R – Save our green downtown!

s/Susan Medak
President, Downtown Berkeley Association

s/Eric Panzer
Chair, Board of Directors, Livable Berkeley

s/Anthony Bruzzone
President, Berkeley Design Advocates

s/Frederick C. Collignon
Past Chair Dept of City and Regional Planning

s/Tom Bates
Berkeley Mayor

REBUTTAL TO ARGUMENT AGAINST MEASURE R

Nearly 4,000 residents signed petitions placing Measure R on the ballot. Neighborhood organizations, environmentalists, housing advocates and Berkeleyans of all ages, from every neighborhood - are in support.

Voters approved a "Green Vision" for Downtown in 2010, providing incentives to developers, coupled with environmental and community benefits. Loopholes allow lucrative developments to go forward with a bare minimum of benefits. Measure R closes these loopholes.

Opponents claim "nothing will be built" if developers must provide the very benefits originally promised. It's just not credible. Housing prices - and profits - are skyrocketing. The City's own study states that housing will continue to be built under Measure R.

Opponents are using scare tactics to mislead voters.

Here's the truth:

- **Measure R furthers Downtown's revival.** The benefits of transit oriented development will accrue, plus funds to expand public space, improve transit and support small businesses.

- **Measure R will not drive up rents.** New development will continue - with ample affordable housing and funds for the Housing Trust Fund.

- **Measure R fulfills our Climate Action goals.** Development must meet high green building standards and environmental features.

Berkeley's civic and historic buildings are threatened with imminent privatization. City Council may act to protect them now, but without voter ratification, the Council can **reverse protections** with a simple vote. Your YES vote locks in these protections.

Vote Yes on R to ensure our Downtown is built for the benefit of the entire community, and our Civic Center remains public-serving - forever.

www.berkeleydowntown.com

s/Patrick Sheahan
Planning Commissioner (former), LEED Accredited Architect

s/Isabelle Gaston
North Berkeley Resident; Neighborhood Association President

s/Lisa Stephens
Chair, Berkeley Rent Stabilization Board; Former member, Downtown Area Plan Advisory Committee

s/Anne Paxton Wagley
Vice Chair Landmarks Preservation Commission

s/Jesse Arreguín
Berkeley City Councilmember, District 4; former member, Downtown Area Plan Advisory Committee

Measure S

Ballot Question

Shall Ordinance No. 7,320-N.S. authorizing the adjustment of Berkeley City Council district boundaries pursuant to Section 9, Article V of the Berkeley City Charter, to equalize population in the districts as a result of population changes reflected in the 2010 decennial federal census be adopted?

ORDINANCE NO. 7,320–N.S.

AUTHORIZING THE ADJUSTMENT OF BERKELEY CITY COUNCIL DISTRICT BOUNDARIES PURSUANT TO SECTION 9, ARTICLE V OF THE BERKELEY CITY CHARTER, TO EQUALIZE POPULATION IN THE DISTRICTS AS A RESULT OF POPULATION CHANGES REFLECTED IN THE 2010 DECENNIAL FEDERAL CENSUS

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

Section 1. Purpose.

In order that the eight City Council Districts shall continue to be nearly equal in population as may be according to said 2010 Decennial Federal Census, the City Council Districts are hereby adjusted as set forth in Section 2.

Section 2. District Boundaries.

FIRST COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 421800

Blocks as follows:

2006	2012	2013	2014	2015	2016	2017	2020	2021	2022
2023									

Tract 421900

Blocks as follows:

1002	1003	1004	1005	1006	1007	1008	1009	1010	1011
2001	2003	2004	2005	2006	2007	2008	2009	2010	2011
2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2022	2023	2024	2025	2026	3000	3001	3002	3003	3004
3005	3006	3007	3008	3009	3010	3011	3012	3013	3014
3015	3016	4000	4001	4002	4003	4004	4005	4006	4007
4008	4009	4010	4011	4012	4013	4014	4015	4016	4017
4018	4019	4020	4021	4022	4023				

Tract 422000

Blocks as follows:

1000	1001	1002	1004	1005	1006	1010	1011	1012	1013
1018	1019	2000	2001	2002	2003	2004	2005	2006	2007
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
2048	2049	2050	2051	2052	2053	2054	2055	2056	2057
2058	2059	2060	2061	2062	2063	2064	2065	2066	2067
2068	2069	2070	2071	2072	2073	2074	2075	2076	2077
2078	2079	2080	2081						

Tract 422100

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	2000	2001	2002	2003
2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
2034									

Tract 422200

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	1026	1027	1028	1029
1030	1031	1032	1033	1034	1035	1036	2000	2001	2002
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2013	2014	2015	2016	2017	2018	2019	3000	3001	3002
3003	3004	3005	3006	3007	3008	3009	3010	3011	3012
3013	3014	3015	3016	3017					

Tract 422300

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	2000	2001	2002
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2013	2014	2015	3000	3001	3002	3003	3004	3005	3006
3007	3008	3009	3010	3011	3012	3013	3014	3015	

Tract 422400

Blocks as follows:

3001	3002	3003	3004	3005
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The foregoing list of Census Blocks in the FIRST COUNCIL DISTRICT is generally located within a boundary line commencing on the point at the intersection of University Avenue and Martin Luther King Jr. Way, thence northerly, along Martin Luther King Jr. Way to the intersection of Martin Luther King Jr. Way and Francisco Street; thence easterly, along Francisco Street to the intersection of Francisco Street and Milvia Street; thence northerly, along Milvia Street to the intersection of Milvia Street and Cedar Street; thence westerly, along Cedar Street to the intersection of Cedar Street and McGee Avenue; thence northerly, along McGee Avenue to the intersection of McGee Avenue and Rose Street; thence westerly, along Rose Street to the intersection of Rose Street and Sacramento Street; thence northerly, along Sacramento Street to the intersection of Sacramento Street and Ada Street; thence westerly, along Ada Street to the intersection of Ada Street and Ordway Street; thence northerly, along Ordway Street

to the northern boundary line of the City of Berkeley; thence westerly, along said northern boundary line to the western boundary line of the City of Berkeley in the San Francisco Bay; thence along said western boundary line to where it intersects with a line which is a direct extension of University Avenue; thence easterly, along said extension line and along University Avenue to the point of the beginning.

SECOND COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 422000

Blocks as follows:

1007	1008	1009	1014	1015	1016	1017	1020	1021	1022
1023	1024	1025	1026	1027	1028	1029	1030	1031	1032
1033	1034	1035	1036	1037	1038	1039	1040	1041	1042
1043	1044	1045	1046	1047	1048	1049	1050	1051	1052
1053	1054	1055	1056	1057	1058	1059	1060	1061	1062
1063	1064	1065	1066	1067	1068	1069	1070	1071	1072
1073	1074	1075	1076	1077	1078	1079	1080	1081	1082
1083	1084	1085	1086	1087	1088	1089	1090	1091	1092
1093	1094	1095	1096	1097	1098	1099	1100	1101	1102
1103									

Tract: 423100

Blocks as follows:

1002	1003	1004	1005	1006	1007	1008	1009	1010	1011
1012	1013	1017	1018	1019	1020	2000	2001	2002	2003
2004	2005	2006	3000	3001	3002	3003	3004	3005	3006
3007	3008	3009	4000	4001	4002	4003	4004	4005	4006
4007	4008								

Tract: 423200

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
2010	2011	2012	2013	2014	2015				

Tract: 423300

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	2000	2001	2002	2003
2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2014	2015	2016	2017	2018	3000	3001	3002	3003	3004
3005	3006	3007	3008	3009	3010	3011	3012	3013	3014
3015	3016	3017	3018						

Tract: 424001

Blocks as follows:

1004	1005	1006	2004	2005	3004	3005	3006	3007	3008
4003	4004	4008	4009	4010					

Tract: 424002

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	2000	2001	2002	2003	2004	2005
2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
2016									

The foregoing list of Census Blocks in the **SECOND COUNCIL DISTRICT** is generally located within a boundary line commencing on the point on the western boundary line of the City of Berkeley in the San Francisco Bay where a direct extension of University Avenue would intersect said western boundary line; thence southerly, along said western boundary line to the southern boundary line of the City of Berkeley; thence easterly, along said southern boundary line to the intersection of said southern boundary line and Sixty-Third Street; thence easterly along Sixty-Third Street to the intersection of Sixty-Third Street and California Street; thence northerly, along California Street to the intersection of California Street and Ashby Avenue; thence westerly, along Ashby Avenue to the intersection of Ashby Avenue and Sacramento Street; thence northerly, along Sacramento Street to the intersection of Sacramento Street and Allston Way; thence westerly, along Allston Way to the intersection of Allston Way and Acton Street; thence northerly, along Acton Street to the intersection of Acton Street and University Avenue; thence westerly, along University Avenue and along the extension of University Avenue to the point of the beginning.

THIRD COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract: 423400

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
3000	3001	3002	3003	3004	3005	3006	3007	3008	3009
3010	3011	3012	3013	3014	3015	4000	4001	4002	4003
4004	4005	4006	4007	4008	4009	4010	4011		

Tract: 423500

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	2000	2001	2002	2003	2004	2005	2006	2007
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2018	2019	2020	3000	3001	3002	3003	3004	3005	3006
3007	3008	3009	3010	3011	3012	3013	3014	3015	3016

3017

Tract: 423601

Blocks as follows:

1005 1006 2011 2012 2013 2014

Tract: 423602

Blocks as follows:

1003 1004 3009 3010

Tract: 423901

Blocks as follows:

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009
1010 1011 1012 1013 1014 1015 1016 2000 2001 2002
2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
2013 2014 2015 2016 2017 2018 2019 2020 2021 2022
2023 2024 2025 2026 2027 2028 2029 2030

Tract: 424001

Blocks as follows:

1000 1001 1002 1003 1007 2000 2001 2002 2003 2006
2007 3000 3001 3002 3003 3009 4000 4001 4002 4005
4006 4007 4011 4012 4013 4014 4015 4016 4017 4018
4019 4020 4021

The foregoing list of Census Blocks in the THIRD COUNCIL DISTRICT is generally located within a boundary line commencing on the point of the westerly intersection of the southern boundary line of the City of Berkeley and Sixty-Third Street; thence easterly, along said southern boundary line to the intersection of said southern boundary line and Deakin Street; thence northerly, along Deakin Street to the intersection of Deakin Street and Ashby Avenue; thence easterly, along Ashby Avenue to the intersection of Ashby Avenue and Ellsworth Street; thence northerly, along Ellsworth Street to the intersection of Ellsworth Street and Dwight Way; thence westerly, along Dwight Way to the intersection of Dwight Way and Sacramento Street; thence southerly, along Sacramento Street to the intersection of Sacramento Street and Ashby Avenue; thence easterly, along Ashby Avenue to the intersection of Ashby Avenue and California Street; thence southerly, along California Street to the intersection of California Street and Sixty-Third Street; thence westerly along Sixty-Third Street to the point of the beginning.

FOURTH COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 421700

Blocks as follows:

3005

Tract 422400

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	2000	2001	2002	2003
2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2014	2015	2016	2017	3000	3006	3007	3008	3009	3010
3011									

Tract 422500

Blocks as follows:

3004

Tract 422800

Blocks as follows:

3003 3008 3009 3010

Tract 422900

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	2000	2001
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
2032	2033	2034							

Tract 423000

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	2000	2001
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
2012	3000	3001	3002	3003	3004	3005	3006	3007	3008
3009	3010	3011	3012	3013	3014				

Tract 423100

Blocks as follows:

1000 1001 1014 1015 1016

The foregoing list of Census Blocks in the FOURTH COUNCIL DISTRICT is generally located within a boundary line commencing on the point at the intersection of Ellsworth Street and Dwight Way; thence northerly, along Ellsworth Street to the intersection of Ellsworth Street and Channing Way; thence westerly, along Channing Way to the intersection of Channing Way and Fulton Street; thence northerly, along Fulton Street to where it becomes Oxford Street and continuing northerly, along Oxford Street to the intersection of Oxford Street and Hearst Avenue; thence easterly along Hearst Avenue to the intersection of Hearst Avenue and Arch Street; thence northerly along Arch

Street to the intersection of Arch Street and Virginia Street; thence westerly along Virginia Street to the intersection of Virginia Street and Spruce Street; thence northerly along Spruce Street to the intersection of Spruce Street and Cedar Street; thence westerly along Cedar Street to the intersection of Cedar Street and Henry Street; thence northerly along Henry Street to the intersection of Henry Street and Vine Street; thence westerly along Vine Street to the intersection of Vine Street and Milvia Street; thence southerly along Milvia Street to the intersection of Milvia Street and Francisco Street; thence westerly along Francisco street to the intersection of Francisco Street and Martin Luther King Jr. Way; thence southerly along Martin Luther King Jr. Way to the intersection of Martin Luther King Jr. Way and University Avenue; thence westerly along University Avenue to the intersection of University Avenue and Acton Street; thence southerly along Acton Street to the intersection of Acton Street and Allston Way; thence easterly along Allston Way to the intersection of Allston Way and Sacramento Street; thence southerly along Sacramento Street to the intersection of Sacramento Street and Dwight Way; thence easterly along Dwight Way to the point of the beginning.

FIFTH COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 421200

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	2000	2001	2002	2003	2004	2005	2006	2007
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
2028	2029	2030	2031	2032	2033	2034	3000	3001	3002
3003	3004	3005	3006	3007	3008	3009	3010	3011	3012
3013	3014	4000	4001	4002	4003	4004	4005	4006	4007
4008	4009	4010	4011	4012	4013	4014	4015	4016	

Tract 421300

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	1026	1027	1028	2000
2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
2011	2012	2013	2014	2015	2016	2017	2018	3000	3001
3002	3003	3004	3005	3006	3007	3008	3009	3010	3011
3012	3013	3014	3015	3016	3017	3018	3019	3020	3021
3022	3023	3024	3025	3026	3027	3028	3029	4000	4001
4002	4003	4004	4005	4006	4007	4008	4009	4010	4011
4012	4013	4014	4015	4016	4017	4018	4019	4020	4021
4022	4023								

Tract 421400

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	2000	2001	2002	2003	2004	2005	2006
2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
2017	2018	2019	2020	2021	2022				

Tract 421700

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	2000	2001	2002
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2013	2014	3000	3001	3002	3003	3004	3006	3007	3008

Tract 421800

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	2000	2001	2002	2003	2004	2005
2007	2008	2009	2010	2011	2018	2019			

Tract 421900

Blocks as follows:

1000	1001	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	2000	2002					

The foregoing list of Census Blocks in the FIFTH COUNCIL DISTRICT is generally located within a boundary line commencing on the point at the intersection of Spruce Street and Cedar Street; thence northerly, along Spruce Street to the northern boundary line of the City of Berkeley; thence westerly, and southerly along said northern boundary line to the intersection of said boundary line with Ordway Street; thence southerly, along Ordway Street to the intersection of Ordway Street and Ada Street; thence easterly, along Ada Street to the intersection of Ada Street and Sacramento Street; thence southerly along Sacramento Street to the intersection of Sacramento Street and Rose Street; thence easterly, along Rose Street to the intersection of Rose Street and McGee Avenue; thence southerly, along McGee Avenue to the intersection of McGee Avenue and Cedar Street; thence easterly, along Cedar Street to the intersection of Cedar Street and Milvia Street; thence northerly, along Milvia Street to the intersection of Milvia Street and Vine Street; thence easterly, along Vine Street to the intersection of Vine Street and Henry Street; thence southerly, along Henry Street to the intersection of Henry Street and Cedar Street; thence easterly, along Cedar Street to the point of the beginning.

SIXTH COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 421100

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	2000	2001	2002	2003	2004	2005
2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
2016	2017	2018	2019						

Tract 421500

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	1026	2000	2001	2002
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2013	2014	2015	2016	2017	2018	2019	3000	3001	3002
3003	3004	3005	3006	3007	3008	3009	3010	3011	3012
3013	3014	3015	3016	3017	3018	3019	3020	3021	3022

Tract 421600

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	2000	2001	2002	2003	2004	2005	2006	2007
2008	2009	2010	2011	3000	3001	3002	3003	3004	3005
3006	3007	3008	4000	4001	4002	4003	4004	4005	4006
4007	4008	4009	4010						

Tract 422500

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	2000	2001	2002	2003	2004	2005	2006	3000	3001
3002	3003	3005	3006	3007	3008	3009	3010	3011	3012
3013									

Tract 422600

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1013								

The foregoing list of Census Blocks in the SIXTH COUNCIL DISTRICT is generally located within a boundary line commencing on the point at the intersection of Arch Street and Hearst Avenue; thence easterly, along Hearst Avenue to the intersection of Hearst Avenue and Gayley Road; thence southerly along Gayley Road to the intersection of Gayley Road and Stadium Rim Way; thence easterly along Stadium Rim Way to the intersection of Stadium Rim Way and Centennial Drive; thence easterly along Centennial Drive to the eastern boundary line of the City of Berkeley; thence northwesterly along said eastern boundary line to the intersection of the eastern boundary line and Spruce Street; thence southerly, along Spruce Street to the intersection of

Spruce Street and Virginia Street; thence easterly, along Virginia Street to the intersection of Virginia Street and Arch Street; thence southerly along Arch Street to the point of the beginning.

SEVENTH COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 422600

Blocks as follows:

1011	1012	1014	1015	1016	1017	1018	1019	1020	1021
1022	1023	1024	1025	1026	1027	1028	1029	1031	1032
1033	1034	1035	1036	1037	1038	1039	1040	1041	1042
1043	1044	1045	1046	1047	1048	1050	1051	1052	1054

Tract 422700

Blocks as follows:

2000	2001	2002	2003	2004	2005	3000	3001	3002	3003
3004	3005	3006	3007						

Tract 422800

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
2000	2001	2002	2003	3000	3001	3002	3004	3005	3006
3007	3011								

Tract 423601

Blocks as follows:

1003	1004	1007	1008	1009	1010	1011	1014	1015	1016
2009	2010								

Tract 423602

Blocks as follows:

1000	1001	1002	1005	1006	1007	1008	1009	3004	3005
3006	3007	3008	3011						

The foregoing list of Census Blocks in the SEVENTH COUNCIL DISTRICT is generally located within a boundary line commencing at the point at the intersection of Hillegass Avenue and Russell Street; thence northerly along Hillegass Avenue to the intersection of Hillegass Avenue and Stuart Street; thence westerly along Stuart Street to the intersection of Stuart Street and Telegraph Avenue; thence northerly along Telegraph Avenue to the intersection of Telegraph Avenue and Dwight Way; thence easterly along Dwight Way to the intersection of Dwight Way and Prospect Street; thence northerly along Prospect Street to the intersection of Prospect Street and the southern boundary line of federal census tract number 4226; thence westerly along the southern boundary line of federal census tract number 4226 to the intersection of said boundary line and Piedmont Avenue; thence northerly along Piedmont Avenue to where it becomes Gayley

Road and continuing northerly along Gayley Road to the intersection of Gayley Road and Hearst Avenue; thence westerly, along Hearst Avenue to the intersection of Hearst Avenue and Oxford Street; thence southerly, along Oxford Street to where it becomes Fulton Street and continuing southerly along Fulton Street to the intersection of Fulton Street and Channing Way; thence easterly, along Channing Way to the intersection of Channing Way and Ellsworth Street; thence southerly, along Ellsworth Street to the intersection of Ellsworth Street and Russell Street; thence easterly along Russell Street to the point of the beginning.

EIGHTH COUNCIL DISTRICT shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

Tract 422600

Blocks as follows:

1030 1049 1053

Tract 422700

Blocks as follows:

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009
1010 1011 2006

Tract 423601

Blocks as follows:

1000 1001 1002 1012 1013 2000 2001 2002 2003 2004
2005 2006 2007 2008

Tract 423602

Blocks as follows:

2000 2001 2002 2003 2004 3000 3001 3002 3003

Tract 423700

Blocks as follows:

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009
1010 1011 1012 1013 1014 1015 1016 1017 1018 1019
1020 2000 2001 2002 2003 2004 2005 2006 2007 2008
2009 2010 2011 2012 2013 2014 2015 2016 2017 2018
2019 2020 2021 2022 2023 2024 2025 2026 3000 3001
3002 3003 3004

Tract 423800

Blocks as follows:

1000 1001 1002 1003 1004 1005 1006 1007 1008 1009
1010 1011 1012 1013 1014 1015 1016 1017 2000 2001
2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021
2022 2023 2024 2025 2026 2027 2028 2029 2030 2031

3000	3001	3002	3003	3004	3005	3006	3007	3008	3009
3010	3011	3012	3013	3014	3015	3016	3017	3018	3019
3020	3021	3022	3023	3024	3025	3026	3027	3028	

Tract 423902

Blocks as follows:

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	2000	2001	2002	2003
2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2014	2015	2016	2017	2018	2019	2020			

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

Section 3. Effective date of Adjustments.

The district boundaries established herein shall govern the election of Councilmembers beginning with the November 4, 2014 General Municipal Election.

Section 4. Posting.

Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 3, 2013 this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Capitelli, Maio, Moore, Wengraf, Wozniak and Bates.

Noes: Arreguin and Worthington.

Abstain: Anderson.

Absent: None.

* * * * *

City Attorney's Impartial Analysis

The City Charter divides the City of Berkeley into 8 council districts, with the Mayor elected at large.

The City Charter requires the City Council to adopt new council districts every ten years, based on the decennial census, and requires the Council to complete its redistricting process no later than the end of the third year after the census is taken.

The Charter requires that council districts be as nearly equal in population as may be. Based on the 2010 census, districts of equal population would each have 14,073 residents. The existing districts, which were based on the 2000 census, diverge from this population by a minimum of 4.5% and a maximum of 18%.

Until 2012, the Charter required that new council district boundaries preserve to the extent possible the original council district boundaries established by a charter amendment in 1986. In 2012, after considering a number of proposed redistricting maps, the Council placed a charter amendment on the ballot to eliminate the requirement that new districts conform as closely as possible to the 1986 boundaries. The voters adopted this amendment in November 2012.

In 2013 the Council reinitiated the redistricting process under the revised Charter rules. In December 2013, after considering a total of 7 redistricting proposals, the Council adopted an ordinance establishing new council district boundaries with a maximum population deviation between district size and equal population of 0.77%.

Under the City Charter and state law, voters may place an ordinance adopted by the Council on the ballot for voter approval or rejection by collecting the signatures of registered voters equal to 10% of the entire vote cast for all candidates for Mayor at the last preceding election at which a Mayor was elected. An ordinance that is placed on the ballot in this manner goes into effect if it is approved by a majority of the voters voting on it. This measure was placed on the ballot as the result of a petition signed by voters.

A "yes" vote would approve the redistricting ordinance adopted by the Council, in which case it would go into effect.

A "no" vote would reject the redistricting ordinance adopted by the Council, requiring the Council to adopt a new redistricting ordinance and leaving in place the existing districts that were adopted in 2002 until it does so.

/s/ ZACH COWAN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE S

“Redistricting” is the redrawing of Berkeley’s Council district boundaries. To protect equal representation, federal law requires that populations across districts be rebalanced every 10 years following each national Census.

Voting YES on Measure S supports citizen participation. Berkeley citizens were encouraged to submit their own map proposals. The City Council considered a total of seven (7) maps drawn by Berkeley residents. The City Council and the League of Women Voters held seventeen (17) forums, community meetings, and public hearings on redistricting. In the end, the Council adopted a map drawn by Berkeley citizens.

Voting YES on Measure S protects communities of interest. The City Council chose a map that met all the criteria in the Berkeley City Charter: populations are rebalanced across all districts, district boundaries are compact and easy to understand, communities of interest are protected, and no incumbent has been drawn out of his/her district. This map meets all federal, state, and local rules for redistricting. This map is the only map whose use has been affirmed by the courts.

Voting YES on Measure S allows Berkeley to move on and saves taxpayers’ money. We have been working on our redistricting process for *over three years*. Without your YES vote, Berkeley will need to spend additional years and tens of thousands more dollars to redo redistricting for the third time in just four years.

Voting Yes on Measure S ensures equal representation and supports a vote for fair districts. The new map’s population deviation is less than 1 percent and the City Council approved these Charter-compliant districts with a supermajority vote (6 ‘yes’ votes to 3 ‘no’ votes).

Vote YES on Measure S to approve the redistricting map and keep Berkeley City Council districts fair.

s/Loni Hancock
State Senator

s/Nancy Skinner
Assemblymember

s/Tom Bates
Berkeley Mayor

s/Pavan Upadhyayula
ASUC President

s/Safeena Mecklai
ASUC External Affairs Vice President 2013-2014

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE S

Don't be fooled by claims of “good government” from the very politicians responsible for subverting redistricting.

Only two maps from the “community process” were independent of Council. All other maps were submitted by proxies directly connected to Council; none were modified to reflect *any* public input.

Redistricting has been deliberately prolonged to influence elections. Council delayed redistricting to protect incumbents in 2012, and again this year. Council purposely placed redistricting on the ballot in order to sue themselves and community members, temporarily imposing its gerrymander this election without voter approval.

Measure S is the result of backroom deals and broken laws. Council never intended to resolve redistricting; they had already secretly hired lawyers with tax dollars *well before* opting for the ballot and suing themselves. Their decision was timed to bypass process, avoid transparency and enable their lawsuit in violation of the City Charter and open government laws.

Council's Gerrymander divides communities for political gain. In creating a **fraternity-dominated Student district**, many low-income and minority students were intentionally excluded, dividing major neighborhoods, and favoring certain incumbents.

Independent Redistricting will save money, spare the bickering, and bring this saga to a fair end. By rejecting Council's gerrymander, a permanent Citizens' Redistricting Commission **WILL** be created to draw fair lines **without regard to incumbents**, and prevent future deadlocks. The “foxes will no longer be in charge of the henhouse.”

Reject Council's Gerrymander. Support the Citizens' Redistricting Commission. Join neighbors, students, and good government advocates in voting **NO ON S**.

s/Roy Ulrich
Lecturer, School of Public Policy; political reform expert

s/Viveka Jagadeesan
Student and Co-President of Common Cause of Berkeley

s/Karl J. Reeh
President of LeConte Neighborhood Assoc.

s/James Chang
Vice President, Berkeley Student Cooperative (2013-2014)

s/Stefan Elgstrand
Recent graduate, author of alternative Redistricting Plan, Sued by City

ARGUMENT AGAINST MEASURE S

Vote NO on S. Reject Council's gerrymander that has disenfranchised voters, protects incumbents and divides neighborhoods and communities of interest, and **empower a Citizens' Independent Redistricting Commission** to draw fair lines once and for all.

Redistricting in Berkeley has become a sordid saga stuck on repeat. Every ten years, boundaries are manipulated for political gain, protecting select incumbents and punishing political enemies to the detriment of neighborhoods and communities of interests.

But this time, the decennial debacle has gotten worse with Council breaking laws to impact certain Council races.

In 2012, Council delayed redistricting under the guise of creating a Student District; conveniently, certain Councilmembers benefited from unchanged districts in their election races that year, disenfranchising over 4,300 voters from electing their Councilmember for 6 years.

After Council was granted unprecedented control, a “community” process was initiated where 4 of 7 maps were submitted by the same group of insiders, stacking the deck in favor of their **controversial gerrymander**. The gerrymander unnecessarily divided neighborhoods, such as Halcyon, West Berkeley and LeConte, and split students to create a **Fraternity-dominated District**. All other maps were not considered -it was *fait accompli* from the beginning.

Subsequently, neighbors, students and community leaders successfully gathered 7,867 signatures to compel Council to make things right. But rather than do its job, Council chose to violate the Charter and open government laws to punt its gerrymander on the ballot and then absurdly sued themselves and community members with taxpayer money. You're now asked to approve a map that Council has already imposed through a series of egregious misdeeds.

It's a conflict of interest when we allow politicians to draw their lines, cherry-picking winners and losers. **BREAK THE CYCLE: Reject Council's gerrymander and let a Citizens' Redistricting Commission create a fair map. VOTE NO ON S.**

s/Nigel Guest
President, Council of Neighborhood Associations

s/Shirley Dean
on behalf of Berkeley Neighborhoods Council

s/Viveka Jagadeesan
UC Berkeley Student and Co-President, Berkeley Common Cause

s/Spencer Hitchcock
Berkeley Student Cooperative President

s/Mansour Id-Deen
President of Berkeley NAACP

REBUTTAL TO ARGUMENT AGAINST MEASURE S

Berkeley does not have a redistricting commission, nor does Measure S create one. For opponents to claim that voting ‘no’ on Measure S will “let a citizens’ redistricting commission” draw a new map is entirely dishonest. **Read the language for yourself: the word “commission” is never used.**

The purpose of Measure S is to allow voters to approve the fair redistricting map that has already been passed by the City Council and affirmed by the courts.

The fair redistricting map was chosen through the public and transparent process set up by Measure R in 2012, which passed citywide with 66% support. The City Council, League of Women Voters, and UC Berkeley’s ASUC held a total of seventeen (17) community forums and public hearings to allow citizens to review and comment on map proposals.

After 17 meetings, the City Council chose one map drawn by Berkeley residents and adopted it with no modifications. The map balances population across districts, protects communities of interest, and has easily-understandable lines.

If Measure S does not pass, Berkeley will have to restart its redistricting process from the beginning. This will mean our district lines will be 12 years out of date and will have an unconstitutionally high population deviation. We will have to spend additional years and tens of thousands of taxpayer dollars to **redo redistricting for the third time in just four years.**

Vote YES on Measure S to approve the redistricting map and keep Berkeley City Council districts fair.

s/Loni Hancock
State Senator

s/Nancy Skinner
Assemblymember

s/Tom Bates
Berkeley Mayor

s/Darryl Moore
Berkeley City Council

s/Pavan Upadhyayula
ASUC President