This document contains the the Ballot Question, City Attorney Impartial Analysis, Arguments, and Full Text of the twelve city ballot measures on the November 5, 2024 ballot.

Questions?
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Measure W
Real Property Transfer Tax Amendments

Shall the measure effective January 1, 2027, setting the existing general tax on transfers of real property at 2.5% of a property's value for properties valued $1.6M or higher, and increasing the rate from 2.5% to 3% for properties valued $1.9M or higher and from 3% to 3.5% for properties valued $3.0M or higher, adjusted annually for increases in value; removing January 1, 2029 expiration date; generating an estimated additional $2M - $4M annually, until repealed, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE W

This measure was placed on the ballot by the City Council. It requires a majority vote for passage.

The City currently imposes a real property transfer tax when property is transferred for consideration. The tax is jointly owed by the transferor and the transferee with certain exceptions, including transfers resulting from a marital dissolution, domestic partnership termination, foreclosure, or bankruptcy, and purchases by a government entity. The tax is measured by the value of consideration at a rate of 1.5% of the consideration for transactions less than or equal to $1.5 million and a rate of 2.5% of the consideration for transactions more than $1.5 million. To ensure that the 2.5% rate applies to the top third of transactions, the City annually adjusts the threshold between the two tax rates to match the value of consideration for the transaction at the 67th percentile of transactions, although the threshold may not fall below $1.5 million. The 2.5% tax rate will expire on January 1, 2029.

Proceeds of the tax go to the City's general fund. When voters adopted the 2.5% tax rate, they established a homeless services panel of experts, which makes recommendations on how the City should fund programs to end homelessness. City Council must consider, but need not follow, the panel's recommendations and may spend the revenues for any legitimate municipal purpose.

This measure would amend the tax in several ways. First, the 1.5% tax rate would apply to transactions for which the value of consideration is less than $1.6 million. Second, the 2.5% tax rate would apply to transactions for which the value of consideration is equal to $1.6 million but less than $1.9 million. Third, a new 3% tax rate would apply to transactions for which the value of consideration is equal to $1.9 million but less than $3 million. Fourth, a new 3.5% tax rate would apply to transactions for which the value of consideration is equal to or greater than $3 million. Fifth, the 2.5% tax rate would no longer expire and all tiers would remain in effect until amended or repealed by the voters.

The $1.6 million, $1.9 million, and $3.0 million thresholds correspond to the 67th, 80th, and 95th percentiles of real estate transactions in 2024. These thresholds would be adjusted annually to ensure they remain reflective of the percentiles, but would not be adjusted below $1.6 million, $1.9 million, and $3.0 million.

The measure would become effective January 1, 2027. Until then, the tax rates would remain as they currently are. Annually, the measure is estimated to generate an additional $2 to $4 million for $5 to $9 million of total tax revenue.

This measure changes nothing else about the tax. The method of collection, method of implementation, exemptions, homeless panel of experts, and other provisions would remain unchanged. City Council would be required to continue to consider the homeless services panel of experts' recommendations regarding funding programs to end homelessness but may spend the revenues for any legitimate municipal purpose.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE W

Berkeley's efforts to reduce homelessness are making a real difference.

Vote YES on Measure W to continue and expand our successful programs to rehouse homeless neighbors and provide critical services and support.

According to official counts, more than 1,500 formerly homeless neighbors in Berkeley have been rehoused since 2018, and the number of people living unsheltered on our streets has been reduced by an unprecedented 45%.

These heartening results, achieved while homelessness in other communities has surged, demonstrate the success of Berkeley's state-of-the-art programs, policies, and facilities. They also represent a huge reduction in human suffering, and significant improvements to the use and enjoyment of sidewalks, parks, and commercial areas in every neighborhood.

But with almost 500 people still languishing on our streets, and continued impacts to our downtown and shopping districts, there's still much work to be done. **Your YES vote on Measure W allows Berkeley to continue rehousing homeless neighbors and restoring public spaces, for the benefit of all residents.**

In 2018, voters overwhelmingly approved a time-limited transfer tax on the top approximately 1/3 of Berkeley's commercial and residential property sales. **This tax is only paid when a high-end property is sold; very few Berkeley residents will ever pay it.**

Proceeds from the 2018 measure fund critical programs and facilities, but it sunsets very soon. **Without Measure W, much of our success rehousing the homeless will come to an abrupt end**.

Measure W extends and improves the existing transfer tax. It takes effect after 2026 and still applies only to the top ⅓ of property sales, with rates increasing only on the highest value transactions. Very few Berkeley residents will ever pay it!

The City Council unanimously placed Measure W on the ballot. **Please join us with an enthusiastic YES! vote on Measure W.**

s/Jesse Arreguín
Berkeley Mayor

s/Ben Bartlett
Berkeley City Councilmember

s/Sophie Hahn
Berkeley City Councilmember

s/Julie Sinai
Lifelong Medical Care Chief Strategy Officer

s/Robert (Bob) Whalen
Dorothy Day House, Operations Manager

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE W

While Berkeley's efforts to reduce homelessness have shown some success, encampment sweeps and relocation to other parts of the region cannot be overlooked as the main reasons behind a temporary decrease in homelessness.

As Berkeley has increased homeless services, the financial handling of these efforts has been far from perfect.

In 2019 the transfer tax fund for homelessness was marred by mismanagement, with funds going to unvetted programs. **City reports warned against rushing into long-term financial commitments without thorough analysis, and the recommendations of the city's own homelessness panel of experts were not followed.** This lack of proper oversight is the direct result of tax revenue not being restricted to a special fund for the homeless. Instead, the measure is deceptively written to give the perception that it is, when in fact it can be spent on anything.

Extending and increasing this tax could have unintended consequences.

High-value property sales often involve investments in the community, including the development of new multi-family housing. By imposing a higher tax burden on these transactions, Measure W will discourage investment, ultimately limiting Berkeley's housing supply and exacerbating affordability issues.

Berkeley needs better financial stewardship, not another tax.

<u>There are already eight tax related measures on the ballot.</u> Instead of extending a flawed measure, the city should focus on ensuring existing funds are used effectively and transparently. Voters must take a stand and encourage a more responsible and well-planned approach to tackling homelessness.

Vote NO on Measure W

s/Marcus Crawley
President Alameda County Taxpayers' Association

ARGUMENT AGAINST MEASURE W

Solving homelessness is very important for our community, but using the homelessness issue merely to increase taxes is dishonest and unethical. Vote NO on Measure W, the dishonest transfer tax increase.

<u>There is no guarantee that the money from this tax will continue to be directed at homelessness.</u>

The city has ensured that tax revenue will continue to go to the general fund where money can be siphoned off for any purpose. The current City Council has no obligation to follow anyone's recommendations on how the money will be spent. In addition, City Council removed the sunset date of this tax meaning that future administrations will go unchecked and be able to use the revenue as they see fit.

<u>Higher taxes didn't solve homelessness.</u>

This tax was last increased only six years ago. In that time, the city instituted aggressive encampment sweeps and the state closed large homeless communities on the land it owns within Berkeley. Patterns of the homeless who often move to a neighboring community when sweeps are administered are never tracked. Berkeley's numbers decreased at the same time they increased in neighboring cities. These are the main reasons Berkeley's homelessness count dropped.

<u>Berkeley is expensive because there are too many taxes.</u>

Higher transfer taxes make homes and apartment buildings more expensive. Homes become harder to buy, and tenants are charged more rent to cover the cost of their buildings. <u>Measure W is the first of eight tax measures on the Berkeley ballot this year alone.</u> Given that there are new property taxes on the ballot every single election year in Berkeley means that things will just get more expensive.

<u>Bottom line</u> - the cost of living in Berkeley has become unsustainable. Nothing will change unless voters take a stand.

Vote NO on Measure W.

s/Marcus Crawley
President Alameda County Taxpayers' Association

REBUTTAL TO ARGUMENT AGAINST MEASURE W

Vote YES on Measure W to continue funding outstanding programs that have lifted more than 1,500 people out of homelessness.

Anyone can file an argument against a ballot measure. Measure W's anti-tax opponent - one person who doesn't even live in Berkeley - simply doesn't know the facts.

- **FACT**: Federal Point-in-Time counts confirm unsheltered homelessness has declined an unprecedented 45% since programs this measure pays for were launched – by rehousing over 1,500 formerly homeless neighbors, not pushing them to other communities.

- **FACT**: Berkeley has been true to its promises. Guided by an independent oversight committee, the Homeless Services Panel of Experts, Berkeley has allocated funds generated by this measure to housing and services.

- **FACT**: Measure W is a tax most people in Berkeley **will never pay**. It applies to only the top 1/3 of real estate transactions, including sales of large commercial and apartment buildings, and ultra-expensive homes. It's not a daily sales tax or yearly assessment.

- **FACT:** Funds from this measure have allowed Berkeley to triple shelter beds and support highly effective outreach teams. We've closed numerous large encampments, reducing impacts to the whole community.

- **FACT:** With these funds, we've leveraged more than $40M in State of California dollars to buy and lease underutilized motels, transforming them into housing for hundreds of homeless neighbors.

If we don't extend this measure, our success will come to a halt.

Measure W was placed on the ballot by a unanimous City Council. Join community leaders and service providers with a YES vote on Measure W, to continue proven, compassionate, and effective homeless services.

s/Terry Taplin
Berkeley City Councilmember, District 2

s/Igor Tregub
Berkeley City Councilmember

s/Rosa Bay
Co-Deputy Director, East Bay Community Law Center

s/Scott Barshay
Board Member, Insight Housing

s/James Jay Kelekian
Eviction Defense Center, Rental Assistance Specialist

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

AUTHORIZING AND ADOPTING AMENDMENTS TO THE REAL PROPERTY TRANSFER TAX

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

Section 1. Code Amendment. Chapter 7.52 of the Berkeley Municipal Code is hereby amended as follows (additions denoted by *underlined text* and deletions denoted by ~~strike through~~):

Chapter 7.52
REAL PROPERTY TRANSFER TAX

Sections:

7.52.010 Title.

The ordinance codified in this chapter may be cited as the "real property transfer tax ordinance of the City of Berkeley."

7.52.020 Purpose.

The tax imposed under this chapter is solely for the purpose of raising income and revenue which is necessary to pay the usual and current expenses of conducting the municipal government of the City.

7.52.030 Definitions.

As used in this chapter:

A. "Real property" and "realty" mean real property as defined by and under the laws of the state.

B. "Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust, or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrance after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer. Value of the consideration also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the value of the consideration cannot be definitely determined, or is left open to be fixed by future contingencies, value of consideration shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the value of the consideration pursuant to the above provisions of this section.

7.52.040 Imposed.

A. There is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the *rates set forth below*. ~~of one and one-half percent of the value of consideration, for transfers with a value at or below the threshold established in paragraph (C).~~ Except as set forth in Section 7.52.060, this tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer*. For purposes of this paragraph, the tax reduction available under Section 7.52.060.K shall be limited to the rebate that would be available based on the tax rate imposed pursuant to Paragraph A(1) of this section.*

> *1. For properties where the value of consideration is below the first threshold, as established in Paragraph B of this section, the rate shall be one and one-half percent of the value of consideration;*
>
> *2. For properties where the value of consideration is equal to or higher than the first threshold, as established in Paragraph B of this section, but below the second threshold, as established in Paragraph C of this section, the rate shall be two-and-one-half percent of the value of consideration;*
>
> *3. For properties where the value of consideration is equal to or higher than the second threshold, as established in Paragraph C of this section, but below than the third threshold, as established in Paragraph D of this section, the rate shall be three percent of the value of consideration;*
>
> *4. For properties where the value of consideration is equal to or greater than the third threshold, as established in Paragraph D of this section, the rate shall be three-and-one-half percent the value of consideration.*

~~*B. There is hereby imposed on all transfers of lands, tenements, or other interests in real property located in the City of Berkeley a real property transfer tax at the rate of two-and-one-half percent of the value of consideration, for transfers with a value above*~~

~~*the threshold established in paragraph (C). Except as set forth in Section 7.52.060, this tax applies regardless of the method by which the transfer is accomplished or the relationship of the parties to the transfer. For purposes of this paragraph, the tax reduction available under Section 7.52.060.K shall be limited to the rebate that would be available based on the tax rate imposed pursuant to Paragraph A.*~~

B. ~~*C.*~~ For purposes of the real property transfer tax imposed by this Section, the threshold is $1,~~5~~600,000, adjusted annually by the City of Berkeley on January 1 of every subsequent year to a number equal to the value of consideration for the transaction at the 6*0*~~7~~th percentile of transactions during the 12 months preceding September 1 of the preceding year, as recorded by the Alameda County Assessor, rounded to the nearest $100,000 increment; provided, that in no case shall any adjustment lower the threshold below $1,~~5~~600,000.

C. For purposes of the real property transfer tax imposed by this Section, the second threshold is $1,900,000 adjusted annually by the City of Berkeley on January 1 of every subsequent year to a number equal to the value of consideration for the transaction at the 80th percentile of transactions during the 12 months preceding September 1 of the preceding year, as recorded by the Alameda County Assessor, rounded to the nearest $100,000 increment; provided, that in no case shall any adjustment lower the threshold below $1,900,000.

D. For purposes of the real property transfer tax imposed by this Section, the third threshold is $3,000,000 adjusted annually by the City of Berkeley on January 1 of every subsequent year to a number equal to the value of consideration for the transaction at 95th percentile of transactions during the 12 months preceding September 1 of the preceding year, as recorded by the Alameda County Assessor, rounded to the nearest $100,000 increment; provided, that in no case shall any adjustment lower the threshold below $3,000,000.

~~*D. The two-and-one-half percent rate imposed in Paragraph B of this Section shall expire on January 1, 2029, unless reauthorized by the voters prior to such date.*~~

7.52.045 Unrecorded contracts for sale not taxable transfers.

Contracts for the sale of real property which do not require immediate conveyance of legal title to the buyer, and installment sales contracts do not constitute taxable transfers under this chapter unless and until they are recorded.

7.52.050 Applicability.

Any person who makes a transfer which is subject to the tax imposed under Section 17.52.040 of this chapter, and any persons to whom such transfer is made, shall be jointly and severally liable for payment of the tax imposed under said Section 17.52.040.

7.52.060 Exceptions.

A. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

B. Any deed, instrument or writing to which the United States, or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.

C. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

Subdivisions 1 to 4, inclusive, of this section shall only apply if the making, delivering or filing of instruments of transfer of conveyance occurs within five years from the date of such confirmation, approval or change.

D. Any tax imposed pursuant to this chapter shall not apply to the making or delivering of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

2. Such order specifies the property which is ordered to be conveyed;

3. Such conveyance is made in obedience to such order.

E.

1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:

(a) Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

(b) Such continuing partnership continues to hold the realty concerned.

2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

3. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subdivision 2, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

F.

1. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse or domestic partner to the other in order to create a joint tenancy or tenancy in common of their common residence.

2. Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Any tax imposed pursuant to this chapter also shall not apply to any transfer from one domestic partner, as that term is used in the City of Berkeley's policy establishing domestic partnership registration, to another, where (1) prior to such transfer an affidavit of domestic partnership has been filed with the City Clerk pursuant to Section IV of the City of Berkeley's policy establishing domestic partnership registration; (2) subsequent to the filing of such affidavit of domestic partnership, either or both domestic partner(s) files a statement of termination with the City Clerk pursuant to Section V of the domestic partnership policy; (3) such transfer of real property is made pursuant to a written agreement between the domestic partners upon the termination of their domestic partnership; and (4) the real property was acquired by either or both domestic partner(s) prior to the filing of the statement of termination.

G. Any tax imposed pursuant to this chapter shall not apply to transfers, conveyance, lease or sub-lease without consideration which confirm or correct a deed previously recorded or filed.

H. Any tax imposed pursuant to this chapter shall not apply to transfers recorded prior to the effective date of the ordinance codified in this chapter.

I. The tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

J. Reserved.

K.

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

2. The term "seismically retrofit" within the meaning of this chapter means any of the following:

(a) That work which is needed and directly related to make the structure capable of withstanding lateral loads equivalent to the force levels defined by Chapter 23 of the 1976 Uniform Building Code;

(b) Replacement or repair of foundations; replacement or repair of rotted mud sills; bracing of basement or pony walls; bolting of mud sills to standard foundations; installation of shear walls; anchoring of water heaters; and/or securing of chimneys, stacks or water heaters;

(c) Corrective work on buildings which fit the criteria in subsection K.1, which are listed on the City of Berkeley inventory of potentially hazardous, unreinforced masonry buildings when such work is necessary to meet City standards or requirements applicable to such buildings;

(d) Any other work found by the building official to substantially increase the capability of those structures, specified in subsection K.1, to withstand destruction or damage in the event of an earthquake.

3. The work to seismically retrofit structures as provided herein shall be completed either prior to the transfer of property or as provided in subsection K.4.

4. If the work to seismically retrofit the structures provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or their designee may refund such expenses not to exceed one-third of the tax imposed to the parties to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

5. From the date of the recordation of the transfer document, the applicant shall have one year to complete all seismic retrofit work and submit a seismic retrofit verification application to the codes and inspection division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited to the applicant upon submission of a seismic retrofit verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.

6. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or their designee may grant such an extension only for good cause. The decision of the City Manager or their designee shall be entirely within their discretion and shall be final.

(a) "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the seismic retrofit work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the seismic retrofit work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the seismic retrofit work.

(b) "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.

7.52.070 Due date and penalty for delinquency.

The tax imposed under this chapter is due and payable at the time the deed, instrument, or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of ten percent shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one-half of one percent a month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax.

7.52.080 Declaration may be required.

The tax imposed by this chapter shall be paid to the director by the persons referred to in Section 17.52.050. The director shall have the authority as part of any rules and regulations promulgated by them as provided for herein to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by their agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which the purchaser or the transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The director may require delivery to them of a copy of such deed, instrument or writing whenever they deem such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The director may rely on the declaration as to the amount of the tax due provided they have no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the director has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, they may, by notice served upon any person liable for the tax, require the person to furnish a true copy of their records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument or writing which transfers such property.

7.52.090 Determination of deficiency.

If on the basis of such information as the director receives pursuant to the last paragraph of Section 17.52.080, and/or on the basis of such other relevant information that comes into their possession, they determine that the amount of tax due as set forth in the declaration, or as paid, is insufficient, they may recompute the tax due on the basis of such information.

If the declaration required by Section 17.52.080, is not submitted, the director may make an estimate of the value of the consideration for the property conveyed and determine the amount of tax to be paid on the basis of any information in their possession or that may come into their possession.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

7.52.100 Notice of determination.

The director shall give written notice to a person liable for payment of the tax imposed under this chapter of their determination made under Section 17.52.090. Such notice shall be given within three years after the recordation of the deed, instrument, or writing effecting the transfer on which the tax deficiency determination was made.

7.52.110 Notice serving.

Any notice required to be given by the director under this chapter may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at their address as it appears in the records of the City or as ascertained by the director. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

7.52.120 Petition for redetermination.

Any person against whom a determination is made under this chapter or any person directly interested may petition the director for a redetermination within sixty days after service upon the person of notice thereof. If a petition for redetermination is not filed in writing with the Director, City Hall, Berkeley, California 94704, within the sixty-day period, the determination becomes final at the expiration of the period.

7.52.130 Consideration of petition.

If a petition for redetermination is filed within the sixty-day period, the director shall reconsider the determination and, if the person has so requested in their petition, shall grant the person an oral hearing, and shall give the person ten days' notice of the time and place of hearing. The director may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

7.52.140 Determination of petition.

The director may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the director at or before the hearing.

7.52.150 Finality of determination.

The order or decision of the director upon a petition for redetermination becomes final thirty days after service upon the petitioner of notice thereof.

7.52.170 Tax a debt to City.

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

7.52.180 Administration.

The Director of Finance of the City (in this chapter referred to as the director) shall collect the tax imposed under this chapter and shall otherwise administer this chapter. They may make such rules and regulations, not inconsistent with this chapter, as they may deem reasonably necessary or desirable to administer this chapter, as well as necessary forms and receipts.

7.52.190 Homeless services panel of experts.

A. There shall be established the Homeless Services Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to end or prevent homelessness in Berkeley and provide humane services and support.

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 the development, administration, provision and/or evaluation of homeless programs in a government or non-profit capacity; or

2. Have current or past lived experience with homelessness; or

3. Have experience in researching the causes, impacts and solutions to homelessness; or

4. Have experience with state and/or local homeless policy, funding or programs; or

5. Have experience with federal homeless policy and funding administration such as the Continuum of Care Program; or

6. Have experience in the development and financing of affordable housing for formerly homeless persons; or

7. Have experience in the provision of mental health and/or substance use programs for homeless persons.

F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.

1. For purposes of determining term limits under Section 3.02.040, a commissioner's service on the Homeless Commission shall be counted toward their service upon their appointment to the Homeless Services Panel of Experts.

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 fund homeless services programs in Berkeley;

(b) Information, if available, concerning the impact of funded programs on 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.

I. The revenue raised by the tax imposed by Section 7.52.040 is available to pay the usual and current expenses of conducting the municipal government of the City, as determined by the City Council. The City Council shall consider, but need not follow, the

Panel's recommendations on how and to what extent to use this revenue to establish and/or fund programs to pay for homeless services and shall annually inform the Panel as to the extent to which it has implemented the Panel's recommendations.

J. The Homeless Services Panel of Experts shall also perform the following functions:

1. Continue the ongoing function previously performed by the Homeless Commission of monitoring and assisting in the City's progress in implementing needed homeless services and facilities;

2. Invite service providers and other interested members of the community to attend its meetings;

3. Report its recommendations concerning homeless services and facilities to the City Council;

4. Perform the federally mandated role of advising Council in the development and implementation of the Continuum of Care Plan;

5. Continue making annual funding recommendations to Council regarding the disbursement of Measure O and other related funds; and

6. Operate for an indefinite period of time.

7.52.200 Increase appropriations limit.

Pursuant to California Constitution Article XIIIB, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this general tax for each of the four fiscal years from 2026 (July 1, 2025 – June 30, 2026) through 2029 (July 1, 2028 – June 30, 2029).

Section 2. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 3. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 4. General Tax; Simple Majority Vote Requirement. This Ordinance imposes a general tax and shall be effective if approved by a simple majority of the voters voting thereon.

Section 5. Effective Date. This ordinance shall become effective on January 1, 2027.

Measure X
Library Relief Act of 2024

Shall the measure creating a special parcel tax to maintain Berkeley Public Library facilities and services, prioritizing neighborhood libraries, weekend and evening hours, diverse collections, and youth, educational and other programs, at $0.06 per square foot of improvements for dwelling units, and $0.09 per square foot for other properties, generating $5,600,000 annually until repealed, in addition to the current library tax of $0.28 per square foot for dwelling units and $0.4233 for other properties, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE X

This measure was placed on the ballot by the City Council. It requires a two-thirds vote for passage.

This measure would impose a special parcel tax to fund library operations and services, including but not limited to building maintenance, collections, and staffing. The proceeds of the tax would be placed into the existing library fund or into another special fund to be used for the purpose of funding library operations and services.

The measure identifies a set of spending priorities to be considered by the City when spending the proceeds of the tax. The priorities include: keeping neighborhood libraries well-staffed and in good repair; maintaining weekend and evening hours; maintaining and expanding programs for children and teenagers; providing more copies of up-to-date books, e-books, and other materials; maintaining library facilities; maintaining the tool library; improving accessibility for wheelchair and low-mobility users; improving library program for older adults; installing or upgrading air conditioning and solar panels to respond to climate crisis challenges; improving the usability of the library's website; upgrading wifi service; expanding programs for job seekers; and expanding multilingual collections and bilingual programming. None of the listed priorities, however, limit the scope of permissible uses of the tax proceeds.

The tax would be imposed at a rate of $0.06 per square foot on all dwelling units, and up to $0.09 per square foot on all other improved property. The measure would create an exemption for property owned by individuals with "very low-income," as defined by the City Council, and property that is tax-exempt under state or federal law. The City Council would be allowed to adjust the tax rates annually for inflation.

The City estimates the tax would raise roughly $5.6 million per year.

The tax would be in addition to an existing special parcel tax for library services, the current rates of which are $0.28 per square foot of improvements for dwelling units and $0.4233 per square foot for all other properties.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE X

Berkeley loves its libraries!

Vote YES on Measure X to keep our libraries open nights and weekends; expand programs for children, teens, and seniors; teach reading; launch a new website; improve connections to the internet; and jump-start important repairs.

For over a century, Berkeley's public libraries have educated, delighted, and transformed lives in our community. Last year the library's five branches had more than 500,000 visits, and thousands of children, teens, and adults participated in reading, educational, and cultural programs. That's a lot of love – and wear!

With three of our branch buildings topping 75 years of service; aging computer systems; the need for improved air quality, cooling, and circulation; and overall expenses rising faster than income; our libraries need additional funds.

With your YES vote on Measure X, providing a modest increase in funds, our libraries can:

- Continue to stay open evenings and weekends – including Sundays!
- Keep popular youth, educational, and cultural programs going, and
- Address long-deferred maintenance and technology needs that support library users of all ages and abilities.

Our libraries are at a critical juncture, and without additional funds we'll be forced to cut hours, reduce staff, shrink collections, delay much-needed upgrades and repairs, and cut youth and other programs that are highly valued by our community.

The last time our libraries won direct operational funding from voters was in the 1980s. It's time to renew our support!

Measure X has overwhelming support in our community, including a unanimous vote of the City Council to place the Measure on the ballot. With our YES! votes, we can be proud to have passed an important measure to keep Berkeley's beloved public libraries strong and vibrant.

Thank you for voting YES on Measure X!

www.BerkeleyLibrariesYesOnX.com

s/Nancy Skinner
State Senator

s/Linda Schacht Gage
Berkeley Public Library Foundation Council

s/Michael Lewis
Author

s/Ana Vasudeo
President & School Board Director

s/Cathy Brown
President, Friends of the Berkeley Public Library

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

AUTHORIZING AND ADOPTING A SPECIAL TAX TO FUND LIBRARY OPERATIONS AND SERVICES

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

Section 1. Findings and declarations.

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

A. The Berkeley Public Library is anticipating a structural deficit in the near future.

B. The Library will need to employ cost-saving measures in order to remain financially solvent if additional revenue is not identified.

C. These cost-saving measures could impact current hours, staffing levels, and the ability to complete identified deferred maintenance and capital improvement projects.

D. The Library has developed a robust new 2024-2028 strategic plan in partnership with community stakeholders that identifies relevant and significant service directions in support of community that also require investment of resources.

E. Thousands of children participate in the Berkeley Public Library's reading and educational programs each year.

F. Three current library facilities are over 75 years old, and their computer networks and technologies are seriously in need of updates.

G. Public libraries are one of the few important community gathering spaces left that benefit children, teens, families, seniors, the disabled, and low-income residents.

H. The library provides books, computer access, classes and services for those that cannot afford to buy them.

I. Community libraries provide a place for youth to do their homework and participate in after-school programs.

J. Library programs for children and teens, including homework help and reading resources, are critical to providing our students with the resources they need.

K. The Berkeley Public Library ensures that all residents have free and equal access to a wide range of information.

L. Libraries play a critical role in Berkeley, which is one of the highest circulating systems in California.

M. The Berkeley Public Library helps support the economic vitality of the community by helping residents of all ages and backgrounds prepare for jobs, use computers, and succeed in school.

N. The Board of Library Trustees is responsible for developing budgetary priorities and recommends an annual budget for the operation and maintenance of the Library.

O. The Board of Library Trustees recommended to refer to Council a request for inclusion of a ballot measure calling for limited increase in Library tax on the November 2024 ballot

Section 2. Code Amendment. A new Chapter 7.57 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 7.57
LIBRARY RELIEF ACT OF 2024

Sections:

7.57.010 Imposition of special tax for library operations and services.

A. This chapter may be cited as the "Library Relief Act of 2024." The tax imposed under this chapter is solely for the purpose of funding library operations and services, including but not limited to building maintenance, collections and staffing.

B. The City Council may impose the tax authorized by this Chapter at the rate and subject to the inflation adjustments set forth in Section 7.57.030.

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

D. The proceeds of the tax imposed by this chapter shall be placed in the library fund established by Section 3.04.070 of the Berkeley Municipal Code or in another special fund to be used only for the purposes of funding library operations and services.

7.57.020 Definitions.

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

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

B. "Dwelling" shall mean a building or portion of a building designed for human occupancy.

C. "Dwelling unit" shall mean a building or portion of a building designed for or occupied exclusively by one family.

D. "Family" shall mean one or more persons related by blood, marriage or adoption, and, in addition, any domestic servants or gratuitous guests thereof who are living together in a single dwelling unit and maintaining a common household. Family shall also mean all unrelated persons who live together in a single dwelling unit and maintain a common household.

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

F. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

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

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

7.57.030 Tax authorized – Tax rate – Adjustments for inflation.

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

B. The rate of tax for the fiscal year 2025-26 shall be as follows:

1. For all dwelling units, the tax shall be imposed at the rate of $0.06 per square foot of improvements.

2. For all other property, the tax shall be imposed at the rate of $0.09 per square foot of improvements.

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

7.57.040 Exemptions.

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

B. The tax imposed by this chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate his or her entitlement thereto annually by submitting an application and supporting documentation to the City Manager or the City Manager's designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or the City Manager's designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

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

7.57.050 Term of tax.

The tax imposed by this chapter shall be operative from July 1, 2025 until ended by voters.

7.57.060 Spending Priorities.

The following list of spending priorities shall be considered by the City when spending the proceeds of the tax imposed by this chapter. Nothing in this section shall be construed to limit the scope of permissible uses of the proceeds of this tax set forth in Section 7.57.010:

A. Keep neighborhood libraries well-staffed and in good repair
B. Maintain weekend and evening hours
C. Increase afterschool reading programs, homework help and tutoring for children and teenagers
D. Maintain high-quality children's story times and programming at all five libraries
E. Provide literacy services for all ages
F. Provide supportive places, resources and activities for children and teens
G. Provide more copies of up-to-date books, e-books and other materials
H. Maintain library facilities
I. Expand summer learning programs
J. Maintain the tool library for home repair, bike and culinary tools
K. Improve accessibility for wheelchair and low mobility users in all library locations
L. Improve library programs for seniors
M. Install or upgrade air conditioning and install solar panels at the Central Library and neighborhood libraries to respond to climate crisis challenges
N. Improve the usability of the library's website and optimize it for cell phone use and those with disabilities
O. Expand multilingual collections and bilingual programming for all ages
P. Upgrade all libraries for fast wifi service
Q. Expand programs for job seekers
R. Ensure free access to the top newspapers and magazines from all over the world
S. Ensure the library collections reflect the community's diversity, equity and inclusion goals
T. Fund social worker services in more than one location
U. Revitalize the art and music floor at the Central Library
V. Decrease wait times on new and popular digital titles

W. Expand the 'library of things' for check out with items like camping equipment, boardgames and audiovisual equipment
X. Remodel spaces for additional quiet study and music practice rooms
Y. Provide separate space for quiet adult and older adult reading

7.57.070 Duties and authority of the City Manager.

It shall be the duty of the City Manager or the City Manager’s designee to collect and receive all taxes imposed by this chapter, and to keep an accurate record thereof.

The City Manager or the City Manager’s Designee 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 re-examination and correction of returns and payments. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Upon disallowing any claim submitted pursuant to Section 7.57.080, the City Manager or the City Manager’s designee shall mail written notice thereof to the claimant at the claimant’s last known address.

7.57.080 Collection with property tax - Interest and penalties.

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

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

7.57.090 Refunds.

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

7.57.100 Collection of unpaid taxes.

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

7.57.110 Savings clause.

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

7.57.120 Violation – Penalty.

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

7.57.130 Increase appropriations limit.

Pursuant to California Constitution Article XIIIB, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2025-2026 through 2028-2029.

Section 3. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 4. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 5. Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax and shall be effective only if approved by two-thirds of the voters voting thereon.

Measure Y
Parks, Trees, and Landscaping Maintenance
Tax Amendments

Shall the measure increasing the rate of the City's special parcel tax for parks, trees and landscaping maintenance from $0.221 to $0.2652 per square foot of taxable improvements, adjusted annually for inflation, exempting very low-income property owners as defined by the City Council, estimated to generate an additional approximately $3.8 million annually for a total of approximately $22 million annually, and effective until amended or repealed by voters, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE Y

This measure was placed on the ballot by the City Council. It requires a two-thirds vote for passage.

This measure would increase the rate of the City's special parcel tax for parks, trees, and landscaping maintenance. Currently, the tax is imposed at a rate of $0.2210 per square foot of taxable improvements. The measure would increase the rate to $0.2652 per square foot of taxable improvements. The measure includes an exemption for property owned by individuals with "very low-income" as defined by the City Council. The City Council would be allowed to increase or decrease the rate annually for inflation.

Revenues generated by the existing Parks Tax, which was adopted in 1997, fund the acquisition and maintenance of improvements to City parks, trees and landscaping. The additional revenues generated by the increased tax would be used for the same purposes.

The City estimates that the rate increase would raise roughly $3.8 million more per year, resulting in the tax raising a total of roughly $22 million per year.

This measure changes nothing else about the tax. The method of collection, method of implementation, exemptions, and other provisions in Chapter 7.10 of the Municipal Code would remain unchanged.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE Y

All Berkeley residents deserve beautiful parks, a resilient waterfront, and an ecologically sustainable and biodiverse city. **Vote Yes on Measure Y to Revitalize Berkeley's Parks, Urban Forest, and Green spaces!**

Berkeley is a socially and economically diverse community and one of the densest cities in California. Our parks, trees, and landscaping are a precious legacy we've inherited and all enjoy daily.

Properties, except for qualified low-income owners, are currently assessed 22.1 cents annually per building square foot. Every Parks Tax dollar is set aside for the acquisition and maintenance of improvements to our beloved public parks, trees, and landscaping.

However, there are many parks and facilities requiring upgrades. We have approximately $90M in key capital improvement needs across the 250 acres comprising Berkeley's parks and this modest increase will allow us to continue expanding the tree canopy in South and West Berkeley while increasing our management of trees in the hills and fire areas.

A moderate increase in the existing Parks Tax to approximately 26.5 cents per square foot will allow Berkeley to:

- Increase biodiversity and sustainable landscaping city-wide
- Attract and retain the highly skilled workforce to cultivate our urban canopy
- Invest in beautiful, age-inclusive public green spaces in every Berkeley neighborhood
- Advance critical projects to improve Berkeley parks from the flats to the hills
- Leverage local tax dollars with outside grants; and
- Reverse the deterioration of the the three waterfront parks and help bring the Marina Fund into solvency.

Berkeley's parks are environmental justice and climate equity in action. It's our turn to contribute to the legacy. **Vote Yes on Measure Y!**

s/Jesse Arreguín
Mayor of Berkeley

s/Susan Wengraf
Vice Mayor and Berkeley City Councilmember, District 6

s/Terry Taplin
Berkeley City Councilmember, District 2

s/Mark Humbert
Berkeley Councilmember, District 8

s/Claudia Kawczynska
Parks, Recreation & Waterfront Commission, Chair

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

AUTHORIZING AND ADOPTING AN INCREASE TO THE PARKS, TREES AND LANDSCAPING MAINTENANCE TAX

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

Section 1. Code Amendment. Chapter 7.10 of the Berkeley Municipal Code is hereby amended as follows (additions denoted by *underlined text* and deletions denoted by ~~*strike through*~~):

Chapter 7.10
PARKS, TREES AND LANDSCAPING MAINTENANCE TAX

Sections:

7.10.010 Special tax.

A. The tax adopted under this chapter is solely for the purpose of raising income and revenue which is necessary to provide for the direct cost of acquisition and maintenance of improvements in the City of Berkeley.

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

7.10.020 Tax adopted--Tax rate--Term--Index.

A. There is hereby adopted a special tax on the square footage of all improvements in the City of Berkeley, as defined herein.

B.*1* The tax rate for the fiscal year 2016 shall be $0.1466 per square foot of taxable improvements; provided, that this rate shall be increased or decreased annually in May pursuant to Section 7.10.020.D.

2. Notwithstanding paragraph (1), beginning fiscal year 2026, the tax rate shall be $0.2652 per square foot of taxable improvements; provided, that this rate shall be increased or decreased annually in May pursuant to Section 7.10.020.D.

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

D. The tax 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.

E. For purposes of this section only the following terms shall be defined as set forth below:

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

2. "Commercial," "industrial" and "institutional" shall refer to all buildings and improvements within the City that are not classified by this chapter as dwelling units.

3. "Dwelling" shall mean a building or portion of a building designed for human occupancy

4. "Dwelling unit" shall mean a building or portion of a building designed for or occupied exclusively by one family.

5. "Family" shall mean one or more persons related by blood, marriage or adoption, and, in addition, any domestic servants or gratuitous guests thereof who are living together in a single dwelling unit and maintaining a common household. Family shall also mean all unrelated persons who live together in a single dwelling unit and maintain a common household.

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

7. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph c. below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

(a) Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

(b) Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

(c) Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

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

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

7.10.030 Exemption for very low-income homeowners.

The tax imposed by this chapter shall not apply to any property owner by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate his or her entitlement thereto annually by submitting an application and supporting documentation to the City Manager or his or her designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or his or her designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

7.10.040 Definitions.

For purposes of this chapter, except Section 7.10.020, the following terms shall be defined as set forth below:

A. "Improvement" means one or any combination of the following:

1. The installation or planting of landscaping.

2. The installation or construction of statuary, fountains, and other ornamental structures and facilities.

3. The installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.

4. The installation of park or recreational improvements, including, but not limited to, all of the following:

(a) Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.

(b) Lights, playground equipment, play courts, and public restrooms.

5. The maintenance or servicing, or both, of any of the foregoing.

6. The acquisition of land for park, recreational, or open-space purposes.

7. The acquisition of any existing improvement otherwise authorized pursuant to this section.

B. "Incidental expenses" include all of the following:

1. The costs of preparing plans, specifications, estimates and diagrams for improvements, including compensation to engineers and architects.

2. The costs of printing, advertising and giving published, posted and mailed notices.

3. Compensation payable to the County for collection of tax.

4. Any other expenses incidental to the construction, installation, or maintenance and servicing of the improvements.

C. "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.

D. "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including:

1. Repair, removal, or replacement of all or any part of any improvement.

2. Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.

3. The removal of trimmings, rubbish, debris, and other solid waste.

4. The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

E. "Service" or "servicing" means the furnishing of water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other park improvements.

7.10.050 Duties of the Director of Finance.

It shall be the duty of the Director of Finance to collect and receive all taxes imposed by this chapter, and to keep an accurate record thereof. The Director of Finance 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 re-examination and correction of returns and payments. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

7.10.060 Interest and penalties.

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

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

7.10.070 Refunds.

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

7.10.080 Collection.

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt to the City. Any person owing money under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

7.10.090 Savings clause.

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

7.10.100 Violation--penalty.

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

7.10.110 Increase appropriations limit.

Pursuant to California Constitution Article XIIIB, 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 *2025--*20*2*~~1~~6 through *2028-*20*2*~~1~~9.

Section 2. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 3.	California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 4.	Special Tax; Two Thirds Vote Requirement. This Ordinance imposes a special tax and shall be effective only if approved by two-thirds of the voters voting thereon.

Measure Z

Sugar-Sweetened Beverage Tax Amendments

Shall the measure to remove the current January 1, 2027 expiration date and extend until ended by voters the general tax on the distribution of sugary drinks and sweeteners, paid by distributors at the rate of 1¢ per fluid ounce, previously approved by voters in 2014, with exceptions for small retailers, milk products, and baby formula, raising approximately $1,150,000 per year for general government use, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE Z

This measure was placed on the ballot by the City Council. It requires a majority vote for passage.

Responding to increased rates of diabetes, obesity, and tooth decay, particularly in low-income communities and communities of color, connected to the consumption of sugar-sweetened beverages, the City Council placed a measure on the ballot in 2014 to impose a general tax on the distribution of sugar-sweetened beverages at a rate of 1 cent per fluid ounce. The measure included exceptions for small retailers, milk products, juice, baby formula, medical drinks, typical sweeteners added by consumers, diet drinks, and alcohol. The measure also established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption. The measure requires the City Council to consider, but need not follow, the Panel's recommendations and to annually inform the Panel as to the extent to which it has implemented the Panel's recommendations.

The voters adopted the measure in 2014, and it is currently set to expire on January 1, 2027.

This measure would extend the tax on the distribution of sugary beverages and the requirement that the City Council consider the Panel's recommendations on how and to what extent the City should establish or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption, until repealed or modified by the City's voters.

The tax currently raises roughly $1.15 million a year for the City's general fund, which is expected to remain the same if the tax is reauthorized by voters through this measure.

This measure changes nothing else about the tax. The tax rate, method of collection, method of implementation, exemptions, and other provisions in Chapter 7.72 of the Municipal Code would remain unchanged.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE Z

This measure is simple!

It extends the EXISTING tax on soda distributors that was passed by over 75% of Berkeley voters in 2014 and will expire soon unless we all vote YES! to keep it in place.

Measure Z is the same as in 2014: it taxes wholesale soda distributors and maintains all existing exceptions including natural fruit and vegetable juice, milk products, baby formula, and drinks taken for medical reasons.

Sugary drinks are proven risk factors for many health problems, including obesity, type 2 diabetes, cardiovascular disease, tooth decay, and some cancers. Almost 50% of African American and Latino children are predicted to get diabetes in their lifetimes.

By voting YES! on Measure Z we can continue to reduce soda consumption and prevent the health problems it causes.

The soda tax, in place now for almost ten years, has been a huge success!

- Since 2014, consumption of sugary drinks has gone down, water consumption is up, and obesity rates for Berkeley's kids have decreased.

- The tax helps pay gardening teachers in all 17 BUSD schools so kids of all ages can participate in Cooking and Gardening Programs.

- It has supported over 77,000 health and dental screenings for low-income community members and over 31,000 community workshops, classes, and events.

- It provides funds to teach kids about healthy eating and for free food pantries and grocery boxes for food-insecure families.

- It provides critical funding for healthcare services to low-income Berkeley residents.

Without Measure Z, which extends the existing tax on wholesale soda distributors, funds for all of these programs will be lost.

Vote YES! on Measure Z to support health equity and continue funding Cooking and Gardening Programs, community food and health organizations, and programs that improve the wellbeing of Berkeley's youth and families.

s/Sophie Hahn
Berkeley City Councilmember

s/Ka’Dijah A. Brown
Vice-President, Berkeley School Board

s/Xavier Morales, Ph.D.
Sugar Sweetened Beverage Product Panel of Experts Commissioner

s/Lupe Gallegos-Diaz
Co-chair, Latinos Unidos de Berkeley

s/Jaleh Niazi, MD
Pediatrician

ORDINANCE NO. _______

REAUTHORIZING AND EXTENDING THE GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS

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

<u>Section 1.</u> <u>Findings.</u>

A. Responding to the major public health crisis of increased rates of diabetes, obesity, and tooth decay, particularly in low-income communities and communities of color, connected to the consumption of sugary beverages, on November 4, 2014, the voters of the City of Berkeley passed Measure D, which added Chapter 7.72 to the Berkeley Municipal Code and imposed a general tax on the distribution of sugary beverages at a rate of 1 cent per fluid ounce.

B. Since its adoption, Measure D has measurably reduced the consumption of sugary beverages in the City of Berkeley, as compared to neighboring cities that have not imposed a tax on the distribution of sugary beverages. For example, a report by the Berkeley Food Institute of the University of California found that three years after the passage of Measure D residents of the City of Berkeley were drinking half the amount of soda and consuming 29 percent more water than before Measure D.

C. Measure D will terminate on January 1, 2027, unless reauthorized by the People of the City of Berkeley.

<u>Section 2.</u> <u>Reauthorization.</u>

A. The general tax imposed on the distribution of sugary beverages in the City of Berkeley at the rate of 1 cent per fluid ounce, which was imposed by Ordinance No. 7,388-N.S.(Imposing a General Tax on the Distribution of Sugar-Sweetened Beverage Products) and codified as Chapter 7.72 of the Berkeley Municipal Code, is hereby reauthorized beyond December 31, 2026, its last effective date.

B. The second sentence of section 4 of Ordinance No. 7,388-N.S., which states that "[t]he last effective date of this Ordinance shall be December 31, 2026, and it shall terminate as of January 1, 2027" is hereby deleted and replaced with the following sentence: "This Ordinance shall be effective until repealed or modified by the voters of the City of Berkeley."

Section 3. Code Amendment. Chapter 7.72 of the Berkeley Municipal Code is hereby amended as follows (additions denoted by *underlined text* and deletions denoted by ~~*strike through*~~):

Chapter 7.72
SUGAR-SWEETENED BEVERAGE PRODUCT DISTRIBUTION TAX

Sections:

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 nonexempt 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.

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.

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.

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.

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.

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.

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.

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.

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.

I. The City Council shall consider, but need not follow, the Panel's recommendations and shall annually inform the Panel as to the extent to which it has implemented the Panel's recommendations.

7.72.100 Increase appropriations limits.

Pursuant to California Constitution article XIIIB, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this tax for each of the four fiscal years from *202~~1~~5-2~~1~~6* through *202~~1~~8-2~~1~~9*.

7.72.110 Amendment.

The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.72.020.B.

7.72.120 Duration.

This Ordinance shall be effective until repealed or modified by the voters of the City of Berkeley.

Section 4. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 5. California Environmental Quality Act Requirements.

This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation Public Resources Code section 21065, CEQA Guidelines section 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8) and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 6. General Tax; Simple Majority Vote Requirement. This Ordinance imposes a general tax and shall be effective if approved by a simple majority of the voters voting thereon.

Measure AA
Article XIIIB GANN Appropriations Limit Authorization

Shall the City's appropriation limit under Article XIIIB of the California Constitution be increased to allow expenditure of the proceeds of City taxes and income from the investment of those taxes for fiscal years 2025 through 2028?

Financial Implications:

This measure would not increase taxes or impose a new tax. It would authorize the City to continue to spend the proceeds of already- approved taxes for FY 2025 through 2028.

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE AA

This measure was placed on the ballot by the City Council. It requires a majority vote for passage.

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

In 2020, voters approved a measure allowing the City to spend all revenues from existing taxes. Under the California Constitution, such a vote can only raise the spending limit for up to four years. The spending limit approved in 2020 thus expires after fiscal year 2024. If, in a cumulative two-year period, the City exceeds the spending limit without authorization from its voters, the City must return all revenues in excess of the spending limit in the form of reduced taxes or fees over the next two years.

This measure would extend the voter-approved spending authorization by an additional four years, allowing the City to continue to spend all funds generated by City taxes for fiscal years 2025 through 2028. This measure would not increase taxes or create any new taxes. It would authorize the City to continue to spend the proceeds from existing taxes as well as any income from the investment of the revenues generated by those taxes.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE AA

The passage of Proposition 13 in 1978 and other anti-tax State measures had catastrophic impacts on schools, libraries, public safety, and other essential local services, capping property tax increases and depriving Berkeley of several billion cumulative dollars that our city and schools would otherwise have received over the past four decades.

As a result, Berkeley voters have approved several tax measures to address critical safety needs and provide essential city services. Those tax measures include funding for Berkeley's public libraries (1988), parks (1997 and 2014), emergency services for severely disabled community members (1998), and to keep fire stations open and improve emergency medical response (2008) and support wildfire response, preparedness, and emergency services (2020).

A vestige of the Prop-13 era, State law requires voters to reauthorize the expenditure of previously approved taxes every four years. Measure AA was placed on the ballot by a unanimous City Council. **THIS MEASURE <u>DOES NOT</u> RAISE YOUR TAXES. It is a formality required by State law to continue spending proceeds from taxes Berkeley voters have already approved.**

If Measure AA does not pass, the city will lose tens of millions of dollars in voter-approved tax revenues every year. This will have significant negative impacts for everyone in Berkeley - forcing our public libraries to close, fire stations to be shuttered, reductions in park maintenance, the elimination of services for the disabled, and crippling our wildfire prevention efforts. **These vital services impact the safety and quality of life for <u>all</u> of us.**

With your YES vote this measure will allow Berkeley to continue these important, voter-approved services. Vote YES on Measure AA.

s/Jesse Arreguín
Mayor, City of Berkeley

s/Susan Wengraf
Vice Mayor, Councilmember District 6

s/Sophie Hahn
Berkeley City Councilmember

s/Mark Humbert
Berkeley Councilmember, District 8

s/Amy Roth
President, Board of Library Trustees

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

APPROVING INCREASE IN APPROPRIATION LIMIT FOR FISCAL YEARS 2025 THROUGH 2028

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

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

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

NOW THEREFORE BE IT RESOLVED by the People of the City of Berkeley that the City's appropriation limit under Article XIIIB of the California Constitution is increased to allow the expenditure of the proceeds of City taxes and income from the investment of those taxes for fiscal years 2025 through 2028.

Measure BB
City Counil Rent Stabilization Ordinance
Amendments and Housing Retention

Shall the measure to use existing revenue to fund housing retention and homelessness prevention; modify certain grounds for eviction; remove rent control and registration exemptions for certain units; allow tenant associations and require owners to confer with them; limit the ways tenants can be charged for utilities; limit the maximum annual rent increase to 5%; eliminate suspension of rent controls during high vacancy; and require notice to new tenants of their rights, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE BB

This measure was placed on the ballot by the City Council. It requires a majority vote for passage.

This measure would enact a law requiring the City Manager to recommend how the City should use existing general fund revenues to fund a housing retention program and to prevent homelessness, with a goal of expending at least $1.18 million a year, adjusted for inflation. The City Manager would be authorized to establish rules and regulations for eligibility for the program.

The measure would also amend the Rent Stabilization and Eviction for Good Cause Ordinance, codified in Chapter 13.76 of the Municipal Code, in numerous ways, including the following:

- Remove exemption from rent control and registration for units where the owner shares kitchen or bath facilities with the tenants if the owner moves in after the tenancy begins, and units owned by the Graduate Theological Union. Additionally, if state law (Costa-Hawkins Act) changes, the exemption for newly constructed units would last 15 years after the City's final inspection approval.

- Modify certain grounds for eviction by prohibiting nonpayment evictions when a tenant owes less than one month of fair market rent, as determined by U.S. Department of Housing and Urban Development data; limiting evictions for breach of a lease to breaches that cause the property owner actual and substantial injury; and prohibiting evictions for failure to renew a lease.

- Allow certain tenants representing at least 50% of the occupied rental units in a building to form an association, and require the owner to meet and confer in good faith with associations over issues common to all tenants. Only tenants at properties with ten or more units, or between one and nine units if managed by a property management company, would have the right to form an association. A tenant or tenant association aggrieved by a violation of the laws on forming and conferring with a tenant association would have the right to sue for damages and injunctive relief, and a prevailing plaintiff would be entitled to reasonable attorney's fees.

- Prohibit utility charges for new leases after February 6, 2024, unless the utility charge is included in the base rent and fixed during the tenancy, is separately metered in the tenant's name, or complies with policies the Rent Board deems similar to metering.

- Reduce the maximum allowable annual rent increase from 7% to 5%.

- Eliminate the ability of the City Council to remove price controls on rental units during periods of high vacancy.

- Require owners to give tenants written notice of their rights under the Ordinance and any claimed exemptions within 15 days of the start of the tenancy.

- Require owners to file copies of eviction notices and lawsuits with the Rent Board within three days.

- Make non-substantive changes such as updating findings and removing outdated language.

Measure CC on the 2024 general election ballot is a conflicting measure. If this measure and Measure CC both pass, the measure with more affirmative votes will become law, and the other will not.

ARGUMENT IN FAVOR OF MEASURE BB

Protect Berkeley Tenants; Support Tenant Organizing and Keep Berkeleyans Housed

Vote YES on Measure BB: the City-Sponsored Rent Control Measure.

Since 1980, Berkeley's Rent Stabilization Ordinance has effectively regulated rent increases to provide stability for tenants, protect against arbitrary evictions and provide owners a fair return. Voters consistently support rent control as a key housing strategy. Measure BB, a long overdue update to respond to current needs based on best practices from other California cities, will:

- Expand eviction protections
- Set a maximum rent cap of 5%
- Help control rising utility costs
- Establish a new right to organize tenant associations
- Require corporate landlords to negotiate in good faith with tenant associations.

Preventing eviction prevents homelessness. Measure BB also funds existing rent relief, establishing a $1.1 million/year goal for Berkeley's Housing Retention Program.

<u>Measure BB Protects Seniors</u>
Much of Berkeley's affordable senior housing - built with public subsidies - is now owned and managed by for-profit corporations. With homelessness among seniors rising, residents need protections from arbitrary rent increases, unjust evictions, and dangerous situations. Measure BB expands Berkeley's protections to vulnerable tenants in affordable housing.

<u>Right to Organize</u>
Corporations have consolidated ownership. Tenants lack anyone to talk to about repairs and problems unless they work together. Just like unionization improves working conditions, a union at home improves living conditions. Based on successful San Francisco law, Measure BB creates a new right to organize tenant associations, requiring owners to work in good faith with tenants to address issues.

A broad coalition of Berkeley organizations, tenants, legal service providers, homeless prevention workers, small landlords, unions and local electeds support BB: SEIU Local 1021, Berkeley Tenants Union, Eviction Defense Center, Tenants Together, Wellstone Democratic Renewal Club, UAW4811, Our Revolution East Bay, CalDems, California Center for Movement Legal Services.

Vote YES on BB for a Better Berkeley. And No on CC to stop the Corporate Con.
For more information: www.right2organize.org.

s/Jesse Arreguín

Berkeley Mayor

s/Leah Simon-Weisberg
Chair of Berkeley Rent Board

s/Darinxoso Oyamaselo
Resident, Harriet Tubman Terrace

s/Paola Laverde
Former Chair of Rent Board, On behalf of the Berkeley Tenants Union

s/Iris Rosenblum-Sellers
Academic Student Employee Unit Chair, UAW 4811 Berkeley

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE BB

Vote NO on Measure BB: It's Bad for Berkeley

Berkeley has some of the strongest rent control and tenant protections in the nation. But Berkeley doesn't have a permanent Rent Relief Fund. During the pandemic, Berkeley's Rent Relief Fund kept almost 1,000 people from being evicted.

But the money ran out.

Measure BB claims to fund rent relief but fails to provide any concrete plans. Instead, it states that it "may" allocate money for "homeless prevention" programs.

Fortunately, Measure CC provides concrete ideas and real rental assistance.

Vote YES on Measure CC: Rent Relief to Keep People Housed
The #1 reason for eviction is nonpayment of rent. Berkeley needs a permanent solution to rental assistance. Financial assistance in an emergency keeps people off Berkeley's streets.

Measure CC is the only Measure that does this.

Vote YES on Measure CC: Berkeley's Quickest Path to Housing Affordability
In 2018, Berkeley voters recognized that increasing housing affordability required reducing obstacles to building Accessory Dwelling Units. Since then, hundreds of backyard cottages have been added to the city's housing supply.

But Berkeley needs to encourage more owners to rent out their homes. *Why would someone rent their house if it costs them $27,000 to move back in?* Measure CC eliminates obstacles that discourage people from renting out their homes.

Vote YES on Measure CC if you want:
- Financial assistance for tenants in crisis.
- More backyard cottages for rent.
- Less government bureaucracy.

Vote NO on Measure BB if you want:
- Failed housing programs.
- No real rent relief.
- Decreased housing options.

s/Debra Sanderson
Former Planning Manager (COB); Co-chair ADU Task Force

s/Kathleen Crandall
ADU Task Force Co-Chair and District 3 Homeowner

s/Dan Lieberman
District 8 Homeowner

ARGUMENT AGAINST MEASURE BB

Don’t be fooled by Measure BB’s false promises.

Measure BB fails to deliver critical relief for renters. Berkeley needs real solutions to keep people housed. We urge you to Vote No on Measure BB!

Measure BB fails to reduce tenants’ economic insecurity. Its proposed “Housing Retention Program” does not guarantee rent assistance to renters when they need it the most. It merely requires the City Manager to “recommend” such a program to Council.

In contrast, Measure CC guarantees direct rental assistance to those who need it most.

Measure BB destroys homeowners’ ability to decide when to start and stop renting their home. It severely limits the ability to evict tenants for non-payment of rent or lease violations. The inability to end a tenancy when a homeowner needs to, can lead to serious financial and social issues for families.

Measure BB discourages owners from renting out available Accessory Dwelling Units and single-family homes. We must encourage more community members to rent their secondary units to others within the community. It’s the quickest path to increasing housing affordability. Measure BB negatively impacts a homeowners’ right to easily and fairly end a rental arrangement. Without this right, fewer units will be made available for rent, and housing affordability will be gravely impacted.

Meanwhile, Measure CC expands housing supply and improves housing affordability.

Measure BB discourages adding Accessory Dwelling Units to the rental market. We need to expand the housing supply by adding small, affordable rental units. By encouraging the creation of secondary units throughout all of Berkeley, we can reduce homelessness, lower rents, and maintain the diversity of the city we all love.

With Measure BB we get:
- No guaranteed rent relief,
- A roadblock to building and renting Accessory Dwelling Units, and
- No new housing affordability options.

VOTE NO on MEASURE BB!

s/Debra R. Sanderson
Former Planning Manager, City of Berkeley; Co-chair ADU Task Force

s/Kathleen Crandall
ADU Task Force Co-Chair and District 3 Homeowner

s/Dan Lieberman
District 8 Homeowner

REBUTTAL TO ARGUMENT AGAINST MEASURE BB

Measure BB is the only measure that:
1) Protects Berkeley's successful housing retention programs that helped save thousands from homelessness. It further empowers staff to adjust these programs as needed; and
2) Maintains and expands Berkeley's rent control and eviction protection law.

In contrast, Measure CC's "assistance" does not give any money to tenants. Payments aren't required to go to owners or tenants with the greatest need, and rules and regulations are unwritten and to be determined. In fact, Measure CC demands that landlord representatives have a say over the allocation of funds to help tenants.

Berkeley's largest landlords are lying to you. Contrary to what they claim, Measure BB does NOT remove any exemptions for duplexes, single family houses, or Accessory Dwelling Units.

Measure BB was placed on the ballot by City Council as a balanced compromise between tenants, homeowners, and landlords. Not a single councilmember voted against it.

- Homeowners who currently have the power to end a lease for any reason will keep that power.
- Designed to hold corporations accountable, Measure BB's Right to Organize a tenant union only applies to corporate managed or 10+ unit properties.

Measure BB was created to update our Rent Ordinance in response to new issues, while maintaining existing flexibility for homeowners and small landlords. By encouraging preventative maintenance, BB preserves our housing supply and protects tenants from mold and other habitability issues.

Please join tenants, elected officials, labor unions, housing activists, and others: **Vote YES on BB for a Better Berkeley,** and NO on CC, the Corporate Con. www.Right2Organize.org

s/Ben Bartlett
Berkeley City Councilmember

s/Xavier Johnson
Berkeley Rent Stabilization Board Commissioner

s/Ethan Silverstein
Tenant Attorney – California Center for Movement Legal Services

s/Jocelyn Goldsmith-DeSena
Community Health Worker Specialist & Chapter Officer, Berkeley SEIU 1021
CSU/PTRLA

s/Julia Cato
Elder, long term rent control tenant

ORDINANCE NO. X,XXX-N.S.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO FURTHER PROTECT THE RIGHTS OF TENANTS TO BE SAFE FROM ARBITRARY AND EXCESSIVE RENT INCREASES AND EVICTIONS, AND TO ESTABLISH THE RIGHT TO ORGANIZE TENANT ASSOCIATIONS

The People of Berkeley do hereby ordain as follows:

Section 1. Title. This amendment to Chapter 13.76 shall be known and may be cited as the "Berkeley Tenant Protection and Right to Organize Act."

Section 2. Amendment of Chapter 13.76. Chapter 13.76 of the Berkeley Municipal Code is amended to read as follows:

13.76.010 Title.

This C~~c~~hapter shall be known as the Rent Stabilization and Eviction for Just ~~Good~~ Cause Ordinance.

13.76.020 Findings.

~~A. The Housing Element of the Berkeley Master Plan of 1977 states that:~~

~~1. Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford. (Goal 1)~~

~~2. Existing housing should be maintained and improved. (Goal 2)~~

~~3. Berkeley should have an adequate supply of housing throughout the City for persons with special needs. (Goal 3)~~

~~4. All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis. (Goal 4)~~

~~B. On June 6, 1972, the electorate of the City of Berkeley passed a rent control charter amendment that was later voided by the California Supreme Court as being unconstitutional.~~

A~~C~~. On June 5, 1973, the City Council (hereinafter, "Council") declared the existence of a housing emergency in the City of Berkeley (hereinafter, "the City"), based upon ~~the~~ C~~c~~ouncil's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

~~D. On November 7, 1978, the electorate of the City of Berkeley passed a renter property tax relief ordinance.~~

~~E. On October 25, 1979, the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.~~

~~F. On October 30, 1979, January 26, 1980 and February 21, 1980, the Berkeley City Council held public hearings at which members of the public expressed their views regarding current housing conditions in Berkeley and legislative proposals for rent stabilization and eviction controls.~~

~~G. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance expired on December 30, 1979.~~

B~~H~~. On November 27, 1979, the ~~Berkeley City~~ Council passed an ordinance establishing a temporary rent stabilization program, effective until June 30, 1980.

C. In 1980, the People of Berkeley passed the Rent Stabilization and Eviction for Good Cause Ordinance, establishing the registration of rental units, the regulation of rental increase amounts, and the requirement for a landlord to provide good cause prior to terminating a tenancy.

D. In 1995, the California Legislature enacted the Costa-Hawkins Rental Housing Act, which prohibited the ability of local governments to control the rental amount on a rental unit at the commencement of a new tenancy and to control the rental amount in single family homes or rental units with an initial Certificate of Occupancy issued after February 1, 1995. As a result of the Costa-Hawkins Rental Housing Act, many rental units became unaffordable to Berkeley residents.

E. The City continues to experience a severe housing shortage and an unprecedented increase in the number of residents experiencing housing hardships. According to data from the United States Census Bureau, in 2019, 53% of Berkeley renter households were "rent burdened," paying more than 30% of their household income towards rent.

F. Due to the continuance of the housing emergency which existed when the voters of Berkeley first enacted this Chapter, the Berkeley Rent Stabilization Board (hereinafter, "Board") finds that reasonable regulation of aspects of the landlord-tenant relationship is necessary to foster constructive communication, maintain an adequate supply of a variety of rental housing options, and protect the health, safety, and general welfare of the public.

G. Because the People of Berkeley have periodically updated this Chapter through various updates, the Board finds a need to enact non-substantive changes to this Chapter in 2024 in order to make the provisions of this Chapter more consistent with modern usage and clarity.

H. Pursuant to California Civil Code section 1946.2(g)(1)(B), the Board finds that this Chapter is more protective than the provisions of California Civil Code section 1946.2. The just cause for termination of a residential tenancy under this Chapter is consistent with California Civil Code section 1946.2; however, this Chapter further limits the reasons for termination of a residential tenancy, and provides for higher relocation assistance amounts in the event of a termination.

13.76.030 Purpose.

The purpose~~s~~ of this C~~c~~hapter is ~~are~~ to regulate residential rent increases in the City of Berkeley, ~~and~~ to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, to facilitate the formation of tenant associations to balance the relationship between tenants and landlords, to help maintain the diversity of the Berkeley community, and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City~~ of Berkeley~~'s housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, marginalized communities ~~minorities~~, students, persons with disabilities ~~handicapped~~, and older adults ~~the aged~~.

13.76.040 Definitions.

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

B. "Commissioners" means the members of the B~~b~~oard who are denominated commissioners.

C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit, including the right for tenants to organize as set forth in Section 13.76.135. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Partially-covered unit" means any rental that is subject to all sections of this Chapter except: Section 13.76.100: Establishment of base rent ceiling and posting; Section 13.76.110: Annual general adjustment of rent ceilings; and Section 13.76.120: Individual adjustments of rent ceilings.

~~"Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.~~

K. "Fully-exempt unit" means any rental unit that is not subject to any section of this Chapter.

~~"Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.~~

L. "Tenant Association" ~~"Recognized tenant organization"~~ means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated as set forth in Section 13.76.135 of this Chapter.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this C~~c~~hapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this Chapter.

O. "Fees" means for the purpose of this C~~c~~hapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

~~P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.~~

~~Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.~~

13.76.050 Applicability.

A. All sections of ~~T~~this C~~c~~hapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following as provided in this section.~~:~~

B. The following rental units are Partially-covered units:

1. *Newly Constructed Rental Units*. A rental unit created after June 30, 1980. For purposes of this partial exemption, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit.

However, in the event of the repeal or amendment of Civil Code Section 1954.52 such that “certificate of occupancy” is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City. A rental unit shall only be deemed newly constructed for fifteen years after the date of final inspection approval by the City.

Notwithstanding any provision in this Chapter and to the extent that state or local law permits, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a “housing development project” as defined in the Housing Crisis Act of 2019 (Senate Bill 330), shall not be exempt as “newly constructed rental units” and, unless otherwise exempt, shall be covered by all provisions of this Chapter.

2. *Separately Alienable Rental Units*. Rental units in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance), unless the tenancy commenced before January 1, 1996. This partial exemption shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

3. *Government-Owned or Government-Subsidized Rental Units*. Rental units which a government agency or authority owns, operates, manages, or in which governmentally subsidized tenants reside to the extent that applicable Federal law, State law, or administrative regulation specifically exempts such units from local or municipal price control. Such rental units shall be subject to all provisions of this Chapter except those from which applicable Federal law, State law, or administrative regulation specifically exempts the rental units.

C. The following rental units are Fully-exempt units:

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

2. *Co-op Rental Units*. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

3. *Rental Units in Health Facilities.* Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for older persons.

For the purposes of this Subsection, the following definitions apply:

"Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

"Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

4. *Owner-Occupied Shared Rental Units*. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord occupied a unit in the same property as his/her principal residence at the inception of the tenancy.

For the purposes of this subsection, the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

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

6. *Accessory Dwelling Units*. Rental units in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also

occupies a unit in the same property as his/her principal residence. This subsection (13.76.0S0N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.

7. *Shelters and Transitional Housing.* Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program.

However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the requirements of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

8. *“Sabbatical” Exemption for Single-Family Homes*. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and owned by a property owner who:

a) owns only one residential unit in the City;

b) occupied that residential unit for at least 365 consecutive days as their principal residence immediately prior to renting the unit;

c) is absent from the unit for a period not to exceed 24 months; and

d) such period is specified in the lease.

9. *Golden Duplex Exemption*. Rental units in a residential property which is divided into two units where one of the units was owner-occupied on December 31, 1979, and is currently occupied by the landlord as their principal residence.

Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080J and 13.76.100C. applied to them.

For the purposes of this subsection, the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

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

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

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

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

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

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

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

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

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

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

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

~~apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.~~

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

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

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

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

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

13.76.060 Rent Stabilization Board.

A. *Composition.* There shall be in the ~~city of Berkeley~~ City an elected R~~r~~ent S~~s~~tabilization B~~b~~oard; the B~~b~~oard shall consist of nine C~~c~~ommissioners. The B~~b~~oard shall elect annually as chairperson one of its members to serve in that capacity.

B. *Eligibility.* Residents who are duly qualified electors of the C~~c~~ity~~ of Berkeley~~ are eligible to serve as C~~c~~ommissioners on the B~~b~~oard.

C. *Full D~~d~~isclosure of H~~h~~oldings.* Candidates for the position of C~~c~~ommissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. *Election of C~~c~~ommissioners.* Commissioners shall be elected at the statewide general election held in November of even numbered years.

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

F. *Powers and D~~d~~uties.* The elected R~~r~~ent S~~s~~tabilization B~~b~~oard shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The B~~b~~oard shall have the following powers and duties:

1. Set the rent ceilings for all rental units.

2. Require registration of all rental units under Section 13.76.080.

3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.

4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.

5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this C~~c~~hapter.

6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.

7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this C~~c~~hapter.

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

9~~10~~. Administer oaths and affirmations and subpoena witnesses and relevant documents.

10~~1~~. Establish rules and regulations for settling civil claims under Section 13.76.150.

11~~2~~. Seek injunctive relief under Section 13.76.150.

12~~3~~. Pursue civil remedies in courts of appropriate jurisdiction.

13~~4~~. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this C~~c~~hapter.

14~~5~~. Hold public hearings.

15~~6~~. Charge and collect registration fees, including penalties for late payments and fines, as set by schedule, for failure to re-register a rental unit within fifteen (15) days of the commencement of a new tenancy.

16. Require that landlords of rental units subject to the requirement to register under Section 13.76.080 provide notice of the existence of this Chapter to each new tenant at the commencement of their tenancy.

17. Other powers necessary to carry out the purposes of this C~~c~~hapter which are not inconsistent with the terms of this C~~c~~hapter.

18. Except as provided in Section 13.76.060N of this C~~c~~hapter, the B~~b~~oard shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the ~~city of Berkeley.~~City.

G. *Rules and Regulations*: The B~~b~~oard shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The B~~b~~oard shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the ~~city of Berkeley.~~City.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the B~~b~~oard shall be kept in the B~~b~~oard's office and shall be available to the public for inspection and copying.

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

H. *Meetings*: The B~~b~~oard shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the C~~c~~ommissioners of the B~~b~~oard. The B~~b~~oard shall hold its initial meeting no later than July 15, 1980.

I. *Quorum*: Five C~~c~~ommissioners shall constitute a quorum for the B~~b~~oard.

J. *Voting*: The affirmative vote of five C~~c~~ommissioners of the B~~b~~oard is required for a decision, including all motions, rules, regulations, and orders of the B~~b~~oard.

K. *Compensation*: The R~~r~~ent S~~s~~tabilization B~~b~~oard shall be a working B~~b~~oard. Commissioners shall be paid compensation and benefits in an amount set by the B~~b~~oard in order to compensate C~~c~~ommissioners for their time and work performed as required by this C~~c~~hapter and the C~~c~~ity C~~c~~harter.

L. *Dockets*: The B~~b~~oard shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

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

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

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

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

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

Q~~R~~. *Conflict of Interest*: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

13.76.070 Security deposits.

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be held by the landlord, in a fiduciary capacity for the benefit of the tenant and shall accrue simple interest at the rate equal to the average rates of interest paid on six-month certificates of deposit by banks doing business in the City ~~of Berkeley~~ until such time as the payment or deposit is returned to the tenant or entitled to be used by the landlord as provided in Civil Code Section 1950.5. The interest accrued by said payment or deposit through October 31st of each year shall be returned to the tenant annually in December of each year, either through a rent rebate or cash payment, and shall be at a rate equal to the 12-month average of the average rates of interest paid on six-month certificates of deposit by banks doing business in the City ~~of Berkeley~~ on the first business day of each month for the prior 12 months ending on November 1st, rounded to the nearest tenth. On or before November 15th of each year, the B~~b~~oard shall give public notice of the rate to be effective for the following December. Upon the tenant’s departure from the premises, the balance of any interest accrued since the last October 31st shall be paid at the average monthly rate from the last November 1st to the date of departure and shall be returned to the tenant along with the appropriate part of the principal and any prior unpaid interest. The B~~b~~oard shall compute and publicize the interest rate applicable under this section on an ongoing basis.

13.76.080 Rent registration.

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

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

(1) The address of each rental unit;

(2) The name and address of the landlord(s) and the managing agent, if any;

(3) The date on which the landlord received legal title to or equitable interest in the rental unit;

(4) The housing services provided for the rental unit;

(5) The rent in effect on June 6, 1978;

(6) The rent in effect on December 30, 1979;

(7) The base rent ceiling;

(8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this C~~c~~hapter;

(9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;

(10) Whether the rental unit was vacant or occupied on May 31, 1980;

(11) Rent in effect on December 31, 1981.

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

D. *Notice at Commencement of Tenancy*. The landlord of any rental unit subject to this section must give the tenant a written notice on a form prescribed by the Board within 15 days of the commencement of the tenancy. The form shall include the following information:

(1) The existence and scope of this Chapter;

(2) The tenant's rights to petition against certain rent increases, if applicable;

(3) Whether the landlord is permitted to set the initial rent and subsequent rents during the tenancy without limitation (such as pursuant to California Civil Code Sections 1947.12 and 1954.52); and

(4) Any provisions of this Chapter which the landlord claims the rental unit to be exempt from.

If rental units subject to this Chapter are located in a property with an interior common area that all of the building's tenants have access to, the landlord must post a notice containing the information in subparagraph (1) and, if applicable to all units at the property, the information in subparagraphs (2) through (4).

All registration statements under this section shall include an affidavit signed by the landlord declaring under penalty of perjury that the landlord has provided this notice at the commencement of the current tenancy. A landlord that has failed to provide a notice pursuant to this subsection shall not be in compliance with this section.

E. *Vacancy Registration*. Any landlord who rents a unit to a new tenant after January 1, 1996, shall re-register the rental unit with the Board within fifteen (15) days of the commencement of a new tenancy on a form prescribed by the Board. Re-registering the unit shall include providing all current tenancy information as established by the Board's Regulations.

~~D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall be paid no later than July 1 of each year. Because fees charged in years prior to 1991 were due on September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.~~

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

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

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

H~~G~~. The amount of any registration fee, ~~and~~ penalty, and fine imposed by the provisions of this chapter shall be deemed a debt to the ~~Ccity~~ Board.

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

J~~I~~. Landlords of formerly exempt units shall register within 60~~sixty~~ days of coming under coverage of this C~~c~~hapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

K~~J~~. No landlord shall be deemed to be in compliance with this S~~s~~ection with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided, any notice required by subsection 13.76.080.D has been provided to the Board, and all outstanding fees and penalties have been paid.

L~~K~~. Registration fees shall not be passed along to the tenants without the express, prior approval of the B~~b~~oard. Under no circumstances shall penalties be passed along to tenants.

M~~L~~. Landlords of P~~p~~artially-Covered~~exempt~~ U~~u~~nits (set forth above in Section 13.76.050.B ~~s 13.76.050I. and 13.76.050O~~.) shall register within ~~sixty~~ 60 days of coming under coverage of this C~~c~~hapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

13.76.090 Confidentiality of information submitted to Board.

The B~~b~~oard shall adopt rules and regulations providing for the confidentiality of information submitted to the B~~b~~oard in support of a petition for an individual rent ceiling adjustment under

Section 13.76.120 of this C~~c~~hapter when such confidentiality is deemed necessary by the B~~b~~oard and where otherwise permitted by state law.

13.76.100 Establishment of base rent ceiling and posting.

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

B. *Posting.* The B~~b~~oard may establish reasonable rules and regulations for the posting of rent ceiling and other relevant information to further the purposes of this C~~c~~hapter.

C. *Previously Exempt Units.* For rental units specified in Section 13.76.050.C.9, ~~13.76.050.F.,~~ the base rent ceiling shall be the rent in effect ~~on December 31, 1981~~on June 1, 1980. For such rental units where the landlord lawfully established a new initial rent any time after January 1, 1996, the most recently established initial rent shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120. Initial rent shall mean the first periodic rental rate established for the existing tenancy.

~~For such rental units where no rent was in effect on December 31, 1981, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on December 31, 1981, or during the six months preceding that date and no other rent has been certified or determined by the Bboard after hearing, the base rent ceiling shall be the first periodic rent charged following December 31, 1981.~~

D. *Vacancy Rent Increases Preserved.* This subdivision shall apply to the extent that state law no longer mandates that a landlord may establish the initial rental rate for any tenancy in a unit that is otherwise subject to a residential rent control ordinance. For such rental units where the landlord lawfully established a new initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et seq.), the Base Rent Ceiling shall be the most recent lawfully established periodic rent. For such rental units that were exempt from rent stabilization pursuant to the Costa-Hawkins Rental Housing Act, the Base Rent Ceiling shall be the most recent lawfully established periodic rent.

E. *Utilities*. A tenant may only be responsible for utilities if: 1) the utility charge is included in the base rent and does not increase during the tenancy; 2) the utility service is separately or individually metered and the lease agreement requires that the tenant registers the utility account in their own name; or 3) the utility service is in compliance with Board regulations, specifying other technologies, mechanisms, or policies that the Rent Board deems functionally similar to separate and individual metering.

This prohibition shall not apply to leases entered into before February 6, 2024 to the extent that the lease provides that the tenant shall pay for one or more utility. For all other tenancies, this prohibition shall apply regardless of whether the written lease allows for split utility charges or ration utility billing services. In the event a lease entered into after February 6, 2024 charges the tenant for utilities in violation of this section, the landlord may petition pursuant to Section 13.76.120 of this Chapter to adjust the rent ceiling to include the average cost of utilities for the unit.

13.76.110 Annual general adjustment of rent ceilings.

A. Effective January 1 of each year, the rent ceiling for all rental units covered by this C~~c~~hapter for which the landlord did not establish an initial rent during the prior calendar year shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than ~~seven~~five percent (~~7~~5%). The B~~b~~oard shall publish and publicize the annual general adjustment on or about October 31st of each year.

B. An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a 30 days written notice of such rent increase and the notice period expires.

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

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

1. Has continued to fail to comply, after order of the B~~b~~oard, with any provisions of this C~~c~~hapter and/or orders or regulations issued thereunder;~~, or~~

2. Has failed to bring the rental unit into compliance with the implied warranty of habitability;~~, or~~

3. Has failed to make repairs as ordered by the housing inspection services of the~~ City of Berkeley,~~; or

4. Has failed to completely register by July 1, except as provided in Subsection E. below.

E. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten percent (10%) per month for each month beyond October 1 for which the landlord fails to register.

F. An owner who has previously been out of compliance with the ordinance, regulations, or applicable housing, health and safety codes, and has been denied Annual General Adjustments, may be granted them prospectively as set forth in~~ Rent~~ Board r~~R~~egulations.

13.76.120 Individual adjustments of rent ceilings.

A. *Petitions.* Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this S~~s~~ection. The petition shall be on the form provided by the B~~b~~oard. The B~~b~~oard may set a reasonable per unit fee based upon the expenses of processing the petition to be paid by the petitioner at the time of filing. ~~No petition shall be filed before September 1, 1980.~~ Notwithstanding any other provision of this S~~s~~ection, the B~~b~~oard or hearing examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit, within the previous six months.

B. *Hearing Procedure.* The B~~b~~oard shall enact rules and regulations governing hearings and appeals of individual adjustments of rent ceilings which shall include the following:

1. *Hearing Examiner.* A hearing examiner appointed by the B~~b~~oard shall conduct a hearing to act upon the petition for individual adjustments of rent ceilings and shall have the power to administer oaths and affirmations.

2. *Notice.* The B~~b~~oard shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.

3. *Time of Hearing.* The hearing officer shall notify all parties as to the time, date and place of the hearing.

4. *Records.* The hearing examiner may require either party to an individual rent ceiling adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the City to conduct a current building inspection if the hearing examiner finds good cause to believe the B~~b~~oard's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this section shall be made available to the parties involved prior to the hearing at the office of the B~~b~~oard. In cases where information filed in a petition for an individual rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

5. *Open Hearings.* All individual rent ceiling adjustment hearings shall be open to the public.

6. *Right of Assistance.* All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, Tenant Association, ~~recognized tenant organization~~ representatives or any other persons designated by said parties.

7. *Hearing Record.* The B~~b~~oard shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision,

order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.

8. *~~Quantum~~ Burden of Proof and Notice of Decision.* No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the B~~b~~oard and/or to judicial review of the decision pursuant to this S~~s~~ection and Section 13.76.180 of this C~~c~~hapter.

9. *Consolidation.* All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

10. *Appeal.* Any person aggrieved by the decision of the hearing examiner may appeal to the B~~b~~oard or to any appeals panel of the B~~b~~oard established by the B~~b~~oard, so long as such panel has at least three C~~c~~ommissioners. On appeal the B~~b~~oard or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The B~~b~~oard or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the B~~b~~oard shall be filed no later than thirty days after receipt of the notice of the decision of the hearing examiner. The B~~b~~oard may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.

11. *Finality of Decision.* The decision of the hearing examiner shall be the final decision of the B~~b~~oard in the event of no appeal to the B~~b~~oard. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the B~~b~~oard or panel reverses or modifies the decision of the hearing examiner, the B~~b~~oard shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the B~~b~~oard's.

12. *Time for Decision.* The rules and regulations adopted by the B~~b~~oard shall provide for final B~~b~~oard action on any individual rent adjustment petition within 120 days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.

13. *Board Action in Lieu of Reference to Hearing Examiner.* The B~~b~~oard, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

C. In making individual adjustments of the rent ceiling, the B~~b~~oard or the hearing examiner shall consider the purposes of this C~~c~~hapter and shall specifically consider all relevant factors, including (but not limited to):

1. Increases or decreases in property taxes;

2. Unavoidable increases or any decreases in maintenance and operating expenses;

3. The cost of ~~planned or~~ completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement~~.~~;

4. Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;

5. Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;

6. Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;

7. Whether parties conferred in good faith relating to housing services and conditions, landlord-tenant relations, rent increases, and other issues of common interest or concern;

8~~7~~. The pattern of recent rent increases or decreases;

9~~8~~. The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to the landlord as a result of ownership of the property~~.~~;

10 ~~9~~. Whether or not the property was acquired or is held as a long-term or short-term investment; and

11 ~~10~~. Whether or not the landlord has received rent in violation of the terms of this chapter or has otherwise failed to comply with the C~~c~~hapter.

It is the intent of this C~~c~~hapter that individual upward adjustments in the rent ceilings on units be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.

D. No individual upward adjustment of a rent ceiling shall be authorized by the B~~b~~oard by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could reasonably have foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 13.76.120 C.3. This paragraph shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refinanced after the date of adoption of this C~~c~~hapter.

E. Except for cases of individual hardship as set forth in Subsection 13.76.120 I. of this C~~c~~hapter, no individual upward adjustment of a rent ceiling shall be authorized by the B~~b~~oard because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This Subsection (13.76.120 E.) shall only apply to rental units acquired after the date of adoption of this C~~c~~hapter.

F. No upward adjustment of an individual rent ceiling shall be authorized by the B~~b~~oard under this S~~s~~ection if the landlord:

1. Has continued to fail to comply, after order of the B~~b~~oard, with any provisions of this C~~c~~hapter and/or orders or regulations issued thereunder by the B~~b~~oard;~~,~~ or
2. Has failed to bring the rental unit into compliance with the implied warranty of habitability.

G. Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord gives the tenant at least a 30 day written notice of such rent increase and the notice period expires.

H. If the B~~b~~oard makes a downward individual adjustment of the ceiling, such rent decrease shall take effect no later than 30 days after the effective date set by the B~~b~~oard for the downward adjustment.

I. No provision of this Cchapter shall be applied so as to prohibit the Bboard from granting an individual rent adjustment that is demonstrated necessary by the landlord to provide the landlord with a fair return on investment.

13.76.130 ~~Good~~ Just cause required for eviction.

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

1. *Non-payment of Rent.* The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in ~~Berkeley~~ the City shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency. This subsection shall not constitute grounds where the amount of rent demanded is less than one month of fair market rent for a unit of equivalent size in the metro area Oakland-Fremont, CA HUD Metro FMR as determined by the U.S. Department of Housing and Urban Development for the fiscal year in which the rent is demanded.

2. *Substantial Violation of Material Lease Causing Actual Injury*. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

   Material terms of the rental agreement only include those terms of the rental agreement which both parties have expressly agreed upon and do not include any changes of the terms of tenancy, other than the amount of rent owing for the premises, which the landlord has attempt to impose unilaterally under Civil Code Section 827.

In order to assert this ground for eviction, the landlord must demonstrate all of the following: that the tenant's lease violation caused substantial actual damage to the landlord; and that the tenant's behavior was unreasonable.

Actual injury must be a direct result of the tenant’s breach of lease and is not limited to physical or personal injury. Substantial actual injury includes but is not limited to the harm caused by a tenant’s failure to comply with income recertification mandated by state or federal statute or regulation for deed-restricted affordable housing units.

Notwithstanding any contrary provision in this C~~c~~hapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this S~~s~~ubsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

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

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

(c) The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the B~~b~~oard’s regulations, whichever is greater.

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

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

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

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

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

Any notice to cease given pursuant to this Subsection must state allegations in sufficient detail so that a reasonable person would understand the alleged violation and resulting injury, including the specific term of the lease allegedly violated, the date of the alleged violation, and the injury that occurred as a result of the alleged violation.

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

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

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

5~~6~~. *Refusal of Lawful Access to Unit.* The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

6~~7~~. *Substantial and Necessary Repairs*.

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

(b) Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this S~~s~~ubsection (13.76.130A.6~~7~~.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

(c) Where the landlord owns any other residential rental units in the City ~~of Berkeley~~, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this S~~s~~ubsection (13.76.130A.6~~7.~~), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

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

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

(d) Where the landlord recovers possession under this subsection 13.76.130A.(6~~7.~~), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this S~~s~~ubsection.

7~~8~~. *Demolition Permit Issued by the City*. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition~~.~~

8~~9~~. *Owner Move-in Evictions.*

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

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

(c) For the purposes of this S~~s~~ubsection (13.76.130A.8~~9.~~), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

(d) All notices terminating tenancy pursuant to subsection 13.76.130.A.7~~9~~ shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.8~~9~~.g; the existence of tenant protections for families with minor children as defined in S~~s~~ubsection 13.76.130A.8~~9~~.k; the name and relationship of any qualified relative for purposes of S~~s~~ubsection 13.76.130A.8.~~9~~b; and the landlord's ownership interest in any residential properties in the City ~~of Berkeley~~ where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the ~~Rent~~ Board.

(e) The landlord may not recover possession under this S~~s~~ubsection (13.76.130A.8~~9.~~) if a comparable unit, owned by the landlord in the City ~~of Berkeley~~, was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City ~~of Berkeley~~, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

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

(g) Where a landlord recovers possession of a unit under S~~s~~ubsection 13.76.130A.8~~9~~, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of $15,000. The landlord is required to provide an additional $5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in S~~s~~ubsection

13.76.130A.7~~9~~.h below. The procedures for payment of this relocation assistance are set forth below in S~~s~~ubsection 13.76.130A.7~~9~~.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under S~~s~~ubsection 13.76.130A.8~~9~~:

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

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

iii. "Elderly" is defined as sixty (60) years of age or older.

iv. "Minor child" means a person who is under 18 years of age.

v. "Tenancy began prior to January 1, 1999" is a tenancy where an "original occupant" (as defined by ~~Berkeley Rent~~ Board r~~R~~egulation) still permanently resides in the rental unit.

(h) Effective January 1 of each year beginning in 2018, the fees set forth above in S~~s~~ubsection 13.76.130A.8~~9~~.g., shall ~~may~~ be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

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

(j) Once a landlord has successfully recovered possession of a rental unit pursuant to S~~s~~ubsection 13.76.130A.8~~9~~.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to S~~s~~ubsection 13.76.130A.8~~9~~.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under S~~s~~ubsection 13.76.130A.8~~9~~.a and that once a unit is used for such occupancy, all future occupancies under S~~s~~ubsection 13.76.130A.8~~9~~.a must be of that same unit.

(k) A landlord may not recover possession of a unit from a tenant under S~~s~~ubsection 13.76.130A.8~~9~~ if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

i. For purposes of S~~s~~ubsection 13.76.130A.8~~9~~.k, the term "custodial relationship" means that the person is a legal guardian of the child, or has a caregiver's authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child's legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child's lifetime, whichever is less. The term "family relationship" means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

(l) A landlord may not recover possession of a unit from a tenant under S~~s~~ubsection 13.76.130A.8~~9~~ if any tenant in the rental unit:

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

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

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

(m) A tenant who claims to be a member of one of the classes protected by S~~s~~ubsection 13.76.130A.8~~9~~.l must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by S~~s~~ubsection 13.76.130A.8~~9~~.l. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

(n) The provisions of S~~s~~ubsection 13.76.130A.8~~9~~.l shall not apply to the following situations:

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

ii. Where each residential rental unit in the City~~Berkeley~~ in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by S~~s~~ubsection 13.76.130A.8~~9~~.I and the landlord's qualified relative who is seeking possession of a unit subject to S~~s~~ubsection 13.76.130A.8~~9~~.b is 60 years of age or older or is disabled as defined in S~~s~~ubsection 13.76.130A.8~~9~~.I.(ii) above; or

iii. Where each residential rental unit in the City~~Berkeley~~ in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by S~~s~~ubsection 13.76.130A.8~~9~~.I, the landlord has owned the unit for which possession is being sought subject to S~~s~~ubsection 13.76.130A.8~~9~~.a for five years or more and is 60 years of age or older or is disabled as defined in S~~s~~ubsection 13.76.130A.8~~9~~.I.(ii).

(o) Where a landlord recovers possession under Subsection 13.76.130A.8~~9~~, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

(p) When a landlord is required to provide a relocation assistance payment subject to S~~s~~ubsection 13.76.130A.8~~9~~.g, the payment shall be divided among the tenants occupying the rental unit at the time of service of the notice to terminate tenancy.

i. Within ten days of service of a notice terminating tenancy under S~~s~~ubsection 13.76.130A.8~~9~~, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that ~~he/she~~ the landlord disputes the tenant's eligibility to receive such assistance.

ii. In order to claim entitlement to additional relocation assistance under S~~s~~ubsection 13.76.130A.8~~9~~.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that the tenant ~~he/she~~ is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per S~~s~~ubsection 13.76.130A.8~~9~~.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release of the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that the landlord ~~he/she~~ disputes the tenant's eligibility to receive such assistance.

iii. When a tenant household's eligibility to receive standard or additional relocation assistance as described in S~~s~~ubsection 13.76.130A.8~~9~~.g is disputed, either party may file a ~~Rent Board~~ petition with the Board requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Board ~~Rent Stabilization Program~~ shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or ~~Rent~~ Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable~~ Rent~~ Board r~~R~~egulations.

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

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

vi. Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this S~~s~~ubsection (13.76.130A.8~~9~~). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this S~~s~~ubsection (13.76.130A.8~~9~~), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

(q) A tenant who prevails in an action brought under this S~~s~~ubsection (13.76.130A.8~~9~~), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

(r) At least twice annually, ~~Rent~~ Board staff shall report to the ~~Rent~~ Board regarding the occupancy status of units possession of which has been recovered pursuant to this S~~s~~ubsection (~~1~~13.76.130A.8~~9~~) within the prior 36 months.

(s) If any provision or clause of this S~~s~~ubsection (13.76.130A.8~~9~~) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this S~~s~~ubsection are severable.

9~~10~~. *Exemption of Temporary Lease of Owner's Principal Residence.* A landlord or lessor seeks in good faith to recover possession of the rental unit for ~~his/her~~their occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as ~~his/her~~ their principal residence and has the right to recover possession of the unit for ~~his/her~~ their occupancy as a principal residence under an existing rental agreement with the current tenants.

10~~11~~. *Expiration of Temporary Rental Agreement for Replacement Housing During Substantial Repairs.* The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of S~~s~~ubsection

13.76.130A.6~~7~~.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. *Contents of Notice to Terminate Tenancy.* A landlord's failure to specify ~~good~~ just cause as listed above in subsections 1. through ~~11.~~10. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter. Any notice terminating tenancy must additionally include a statement that advice regarding the notice terminating tenancy is available from the Rent Board, the current phone number for the Rent Board's housing counseling services, and the current address to the Rent Board's website.

C. *Allegation of Notice to Terminate Tenancy* In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under S~~s~~ubsection 13.76.130.A.6~~7~~., 13.76.130.A.7.~~8~~, or 13.76.130.A.10~~11~~., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this C~~c~~hapter.

D. *Filing of Termination Notices and Unlawful Detainer Summons and Complaints.* The landlord shall file with the B~~b~~oard a copy of any notice of termination, notice to quit, and summons and complaint, ~~within ten days~~ no later than three business days after the tenant has been served with such notice or summons and complaint. The Board may provide an email address to which the landlord may send any notice of termination, notice to quit, and summons and complaint.

13.76.135 Right to Organize.

A. *Tenant Association*. This section shall be limited to 1) parcels that contain ten or more rental units; and 2) parcels that contain between one and nine rental units, so long as the rental units are managed by a property management company as defined by Board regulation.

Tenants of such a residential rental property may establish a Tenant Association by providing their Landlord a petition signed by Tenants representing at least 50% of the occupied rental units, including Rooming Houses as defined by Board regulation, of the residential rental property certifying their desire to form a Tenant Association, and identifying the Tenant Association. For purposes of this subsection, a petition may include individual written statements signed by said Tenants or some combination of individual and collective written statements.

B. *Confer in Good Faith*. Landlords and Tenant Associations shall confer with each other in good faith regarding housing services and conditions, community life, landlord-tenant relations, rent increases, and other issues of common interest or concern. "Confer in good faith" means that the parties shall have the mutual obligation, personally or through their authorized representatives, to meet and confer and continue for a reasonable period of time, in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement. Examples of conferring in good faith include, but are not limited to, maintaining a designated point of contact, engaging in regular communications, responding to reasonable requests for information, allowing participation by non-resident advocates, providing adequate time for limited-English speakers to obtain translation services, providing and adhering to timelines for addressing habitability concerns, and negotiating and putting agreements into writing. In addition, a Landlord may not prohibit a Tenant from allowing a Tenant Association representative to attend meetings involving the Landlord and one or more Tenants. The Board, through regulation, may further define good faith.

C. *Organizing Activities*. "Organizing Activities" means:

1. initiating contact with tenants, including conducting door-to-door surveys, to ascertain interest in and/or seek support for forming a Tenant Association;
2. joining or supporting a Tenant Association;
3. distributing literature, requesting or providing information, offering assistance, convening meetings (which may occur without a landlord or landlord representative present); or
4. otherwise acting on behalf of one or more tenants in the building regarding issues of common interest or concern.

The term "Organizing Activities" shall include, but is not limited to, the operations of a Tenant Association. A person's participation or failure to participate in Organizing Activities shall have no effect on whether that person qualifies as a tenant. The Board, through regulation, may further define Organizing Activities. In addition, a tenant's right to engage in Organizing Activities, to receive assistance from a Tenant Association, and to have Organizing activities occur at the property shall qualify as a housing service, and a landlord's failure to confer in good faith with a Tenant Association may send the Landlord a single standing request to attend meetings for the duration of the calendar year.

D. A Landlord must on written request of the Tenant Association attend, either themselves or through their representative, at least one Tenant Association meeting per calendar quarter, though more frequent attendance at the request of the Tenant Association is permitted. Landlord or Landlord's representative must remain in attendance at the meeting until all agenda items are complete, unless the meeting extends for more than two hours, in which case the Landlord or Landlord's representative may withdraw from the meeting and request that the remaining items be continued to a subsequent meeting. These meetings shall occur at a mutually convenient time and place. To request that a landlord or their representative attend a meeting, the Tenant Association shall send the Landlord a written request at least 14 days in advance; alternatively, if the Tenant Association meets at a regularly scheduled time and place, then the Tenant Association may send the Landlord a single standing request to attend meetings for the duration of the calendar year.

E. *Private Right of Action*. In the event of a violation of this section, any Tenant Association, or individual tenant, aggrieved by the violation may institute a civil proceeding for injunctive relief, and actual money actual damages as specified below, and whatever other relief the court deems appropriate. In addition to the above awards of damages in a civil action under this Chapter, a prevailing plaintiff shall be entitled to an award of reasonable attorney's fees.

13.76.140 Retaliation prohibited.

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services, including a tenant's right to engage in Organizing Activities, or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this C~~c~~hapter. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of the assertion or exercise by the tenant of rights under this C~~c~~hapter within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the court must find the existence of the fact presumed unless and until its nonexistence is proven by a preponderance of the evidence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption regardless of the period of time which has elapsed between the tenant's assertion or exercise of rights under this C~~c~~hapter and the alleged act of retaliation.

13.76.150 Remedies.

A. *For V~~v~~iolation of Rent Ceilings or Failure to Register.* If a landlord fails to register in accordance with Section 13.76.080 of this C~~c~~hapter, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this C~~c~~hapter, a tenant may take any or all of the following actions until compliance is achieved:

1. A tenant may petition the B~~b~~oard for appropriate relief. If the B~~b~~oard, after the landlord has proper notice and after a hearing, determines that a landlord has willfully and knowingly failed to register a rental unit covered by this C~~c~~hapter or violated the provisions of Sections 13.76.100, 13.76.110 and 13.76.120 of this C~~c~~hapter, the B~~b~~oard may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this C~~c~~hapter. After a rental unit is brought into compliance, the B~~b~~oard shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the B~~b~~oard allows such withholding, no landlord who has failed to comply with the C~~c~~hapter shall at any time increase rents for a rental unit until such unit is brought into compliance.

2. A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this C~~c~~hapter. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this S~~s~~ection.

3. A tenant may seek injunctive relief on behalf of herself or himself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this C~~c~~hapter.

4. A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this C~~c~~hapter. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this C~~c~~hapter, the tenant shall receive a judgment of up to $750 in addition to any actual damages.

B. *For Violation of Eviction Proceedings.* If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 13.76.130A.6~~7.~~, ~~Subsection 13.76.130A.8.,~~ Subsection 13.76.130A.7~~9.~~, or Subsection 13.76.130A.8~~10.~~ is not initiated within two months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of $750 or three times the actual damages sustained, whichever is greater.

C. Both t~~T~~he City Attorney and the Board shall have the separate authority to ~~may~~ bring an action for injunctive relief ~~on behalf of the City or~~ on behalf of tenants seeking compliance by landlords with this C~~c~~hapter or~~.~~

~~D. The board may seek injunctive relief~~ to restrain or enjoin any violation of this chapter or of the rules, regulations, orders and decisions of the B~~b~~oard.

D~~E~~. If a tenant fails to bring a civil or administrative action within 120 days from the date of the first occurrence of a violation of this C~~c~~hapter, the B~~b~~oard may either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the board acted may not bring an action against the landlord in regard to the same violation for which the board has made a settlement or brought an action. In the event the B~~b~~oard settles the claim it shall be entitled to retain from any payments made by the landlord, the costs it incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

13.76.160 Partial invalidity.

If any provision of this C~~c~~hapter or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this C~~c~~hapter which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this chapter are severable.

13.76.170 Nonwaiverability.

Any provision in a rental agreement which waives or modifies any provision of this C~~c~~hapter is contrary to public policy and void.

13.76.180 Judicial review.

A landlord or tenant aggrieved by any action or decision of the B~~b~~oard may seek judicial review in a court of appropriate jurisdiction.

13.76.190 Criminal penalties.

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of Section 13.76.130 of this C~~c~~hapter shall be subject to up to a $500 fine and/or 90 days in jail for a first offense and up to a $1000 fine and/or six months in jail for any subsequent offenses.

Section 3. Adoption of Chapter 13.85, the Housing Retention Program. Chapter 13.85 of the Berkeley Municipal Code is hereby added as follows:

13.85.010 Purpose

The purpose of this chapter is to ensure that the City allocates reasonable funding from existing sources to an ongoing Housing Retention Program, whose goal will be to prevent homelessness by ensuring that at-risk residents of the City of Berkeley are able to remain in stable housing.

13.85.020 Funding
The City Manager or their designee shall recommend how and to what extent the City uses revenues from the general fund to fund the Housing Retention Program and prevent homelessness, with a goal of allocating no less than $1,180,000.00 per year for this purpose. The target allocation shall increase annually to track the increase in the Consumer Price Index for all Bay Area Consumers.

13.85.030 Operations
The City Manager or their designee is authorized to promulgate any necessary rules or regulations to effectuate the Housing Retention Program including eligibility criteria, application procedures, and any other rule or regulation necessary to administer the Program.

Section 4. Severability – Liberal Construction. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are declared to be severable. The People of Berkeley declare that they would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase of the Ordinance in spite of the fact that any one or more of the same be declared unconstitutional or invalid. This Chapter shall be liberally construed to achieve the purposes of this Chapter and to preserve its validity.

Section 5. Competing Ordinances. In the event that there is another ordinance on the ballot during the same election which seeks to regulate residential housing which also passes, the ordinance which obtains the higher number of votes shall be the controlling ordinance.

Section 6. Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council. The Mayor and City Clerk and hereby authorized to execute this Chapter to give evidence of its adoption by the voters.

Measure CC
Establish Direct Rental Payments and Amendments to the Rent Stabilization Ordinance (Initiative)

Shall the measure to use existing revenue to create a fund for rent payments to property owners on certain tenants' behalf; to expand exemptions from rent control and registration for certain single-family homes and two-unit properties; to allow property owners and tenants to agree to rent increases in exchange for services or amenities; to modify certain grounds for eviction; to allow tenants' associations; and to remove certain powers from the Rent Board, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE CC

This measure was placed on the ballot by an initiative petition signed by the requisite number of registered voters. It requires a majority vote for passage.

Current law imposes a tax on the gross receipts from the rental of five or more residential units. This measure would place that revenue into a specific account and require that 20% of the proceeds be used for direct rent payments to property owners on tenants' behalf. The measure would require the Finance Department to create rules regarding this program, with input from an oversight committee of nine members, appointed by the Mayor and City Council. The other 80% of the proceeds would go to the City's general fund.

The measure would also amend the Rent Stabilization and Eviction for Good Cause Ordinance, codified in Chapter 13.76 of the Municipal Code, in numerous ways, including the following:

- Modify exemptions from rent control and registration by (1) replacing the exemption for two-unit properties that were owner-occupied on December 31, 1979, with an exemption for all owner-occupied two-unit properties, where the owner of record holds a material interest in the property, and the tenancy was created after December 31, 2024, and (2) exempting properties with multiple ADUs. Additionally, if state law (Costa-Hawkins Act) changes, the measure would exempt owner-occupied single-family homes where the owner owns two or fewer units in Berkeley.

- Remove the Rent Board's authority to carry out powers not enumerated in Chapter 13.76 and the Rent Board's ability to intervene as an interested party in litigation.

- Modify the Rent Board's powers and duties, by requiring a City Auditor audit every three years and by providing that commissioners would no longer be compensated.

- Increase the maximum limit of annual rent increases based upon inflation from 7.0% to 7.1%. The measure would also allow owners and tenants to agree to a rent increase above applicable limits for increased services or amenities.

- Grant the City's Code Enforcement department the sole, exclusive discretion to determine whether a unit has failed to substantially comply with the warranty of habitability and applicable state and local housing laws, in the context of petitions for individual adjustment of rent ceilings.

- Modify certain grounds for eviction by (1) prohibiting non-payment evictions for less than one month of rent, unless the tenant has not paid for more than 90 days; (2) allowing evictions for violations of health codes and city ordinances; and (3) requiring 60 days' notice before eviction for failure to renew a lease.

- Allow tenants in a property to form an association to confer with owners over common issues, if tenants representing two-thirds of the occupied units sign a petition. Owners would need to confer with associations in good faith, but the Rent Board would not be permitted to further define that obligation.

Measure BB on the 2024 general election ballot is a conflicting measure. If this measure and Measure BB both pass, the measure with more affirmative votes will become law, and the other measure will not.

ARGUMENT IN FAVOR OF MEASURE CC

Vote Yes on Measure CC, the Berkeley Rent Relief and Homeowners Protection Act!

The lack of housing affordability in Berkeley has reached an all-time high. Building new housing takes time and it isn't affordable for everyone. Berkeley needs housing options now.

Preventing tenants from being displaced due to unexpected life events helps keep people off the streets. Berkeley needs a permanent rent relief fund for tenants in need.

Measure CC addresses both these needs:

1. It <u>increases the availability and affordability of housing</u> by encouraging small landlords to rent their homes to other community members.

2. It provides a <u>permanent rent assistance fund</u> to help tenants pay rent, stay housed, and avoid homelessness.

<u>Increases Affordable Housing Supply and Availability</u>

Measure CC increases the supply of available housing in Berkeley by encouraging community members with duplexes and single-family homes to rent them out to other community members.

It's a fact. When we increase housing supply, rents go down.

We need to make it easier (not more complex) for small owners to rent available units. Duplex owners who live in close proximity with their tenant need to know they can end the relationship if something goes wrong.

A homeowner needs to know they can move back to their rented home without having to pay the tenant a $25,000 relocation fee.

<u>Measure CC establishes a permanent rent relief fund</u>

Many renters are just one disruption away from not paying their rent. During COVID, almost 1,000 renters were able to stay in their homes using rent relief. But then money ran out.

Measure CC establishes a <u>permanent rent relief fund</u> using existing tax revenue from big landlords. It will <u>keep people housed</u> when unforeseen life events prevent them from paying rent.

Get the facts at <u>www.RealBerkeleyRentRelief.org</u>. Vote Yes on Measure CC!

s/Susan Wengraf

Vice Mayor and Dist. 6 Councilmember

s/Mark Humbert
City of Berkeley Councilmember, District 8

s/Rashi Kesarwani
Councilmember, District 1

s/Laurie Capitelli
Berkeley City Councilmember (ret.)

s/Sandra Clement
Proponent & District 5 Duplex Owner

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE CC

If Measure CC was really about helping tenants, then how come <u>Measure CC increases the amount your rent is raised?</u> It's because Measure CC is a Corporate Con by Berkeley's largest landlords to:
1) Roll back rent control, habitability, and eviction protections;
2) DEFUND the city's existing rental relief and affordable housing program in order to create a slush-fund for for-profit landlords; and
3) Make it harder for the Rent Board to protect tenants from health and safety risks.

Measure CC does NOT increase affordable housing supply

- Measure CC strips rent and eviction protections from units that already have them. This would allow rents to go up by hundreds of dollars per year for those units.

- Thanks to Berkeley's vacancy tax, landlords are already encouraged to rent out units that were previously off the market.

Measure CC DEFUNDS existing rent relief and affordable housing programs

- All the money for CC's so-called "rent relief fund" comes from taking money away from existing Measure U1 rent relief and affordable housing programs and into the pockets of landlords.

- **Measure CC STRIPS the Rent Board of powers to protect tenants from unsafe and uninhabitable conditions**

- Currently, a Rent Board Hearing Officer can make a determination that a unit is uninhabitable and reduce rents until the problem is fixed when presented with evidence. Measure CC would take this power away.

Eviction defense organizations, social workers, homeless prevention advocates and members of your elected Rent Board, urge you to vote NO on CC, the Corporate Con and vote YES on BB for a Better Berkeley. www.Right2Organize.org

s/Cecilia Lunaparra
Berkeley City Councilmember

s/Stefan Elgstrand
Berkeley Rent Stabilization Board Commissioner

s/Mary McDonald
Board President, Bay Area Community Land Trust

s/Elizabeth W. (Betsy) Morris
Co-Convenor, Gray Panthers Berkeley – East Bay

s/Alfred Twu
Berkeley Planning Commissioner

ARGUMENT AGAINST MEASURE CC

Vote No on Measure CC, a deceptive proposal designed to raise rents, not lower them.

Rents in Berkeley are already too high, pricing working families, teachers, students and seniors out of our town. So why would we make it even more difficult for people to afford to live here? Supporters of Measure CC claim it will provide “rent relief” but read the fine print and it’s clear this measure will: Increase rents in rent-controlled buildings by raising the maximum rent cap to 7.1%; strip rent control from hundreds of units in smaller properties; and make it difficult to hold landlords accountable who fail to make needed repairs.

That’s why Berkeley’s largest landlords spent tens of thousands of dollars to qualify Measure CC, promoting it as a solution to homelessness. However, this measure could increase housing insecurity for hundreds of households throughout our city.

Measure CC also creates a redundant rent relief program, placing millions of taxpayer dollars directly into the pockets of landlords, with no criteria or means testing. It would saddle Berkeley’s Finance Department with administering a program for an unspecified number of landlords. Berkeley’s current Housing Retention Program, administered by the non-profit Eviction Defense Center, has kept hundreds of households stably housed. Berkeley’s successful housing retention efforts have contributed to a 45% reduction in unsheltered homelessness over the past two years. There is no need to reinvent the wheel.

It is no surprise that Measure CC is supported by those who benefit from higher rents and is opposed by a diverse coalition of renters, elected officials, and community organizers who work every day to improve the lives of our residents.

This measure is a Trojan Horse being advertised as good for tenants, when in reality it will cause irreparable harm. **Vote No on Measure CC.**

s/Jesse Arreguin
Mayor of Berkeley

s/Leah Simon-Weisberg
Chair of Berkeley Rent Board

s/Chris Schildt
Chair, Berkeley Housing Authority

s/Sophie Hahn
Berkeley City Councilmember

s/Igor A. Tregub
Berkeley City Councilmember

REBUTTAL TO ARGUMENT AGAINST MEASURE CC

Yes on Measure CC. No on Measure BB.

Measure CC is the only proposal that:

- Takes **big corporate landlord tax money** and dedicates it to **rent relief** for tenants in need.
- Increases **housing supply and affordability** from day one.

The authors of Measure BB claim there's a "Berkeley Housing Retention Program". But it ran out of money long ago!

That's because there's no dedicated source of rental assistance. Measure BB **DOES NOT** commit to creating a dedicated fund source and uses vague language about a funding "goal." Measure CC **DOES** provide immediate funding with no unnecessary bureaucracy.

Measure BB does nothing to address housing affordability and nothing for direct rent relief. Instead, it penalizes small housing providers who offer below market rate units.

Measure CC keeps people housed. Measure BB does not.

The most effective and the quickest way to housing affordability is to encourage Berkeleyans to rent their homes or secondary units to seniors, teachers, and other community members.

Measure BB makes it more difficult for small housing providers by giving the city's Rent Board authority over what to do with their homes.

Measure CC removes barriers that keep owners from renting. When barriers are removed, housing supply increases. When housing supply increases, rents go down. It's that simple.

Best of all, Measure CC increases housing supply with no cost to taxpayers!

If you favor immediate rent relief and providing housing affordability options for all, **Vote Yes on Measure CC and No on Measure BB!**

s/Susan Wengraf
Vice Mayor and District 6 Councilmember

s/Laurie Capitelli
Berkeley City Councilmember (Ret.)

s/Mark Humbert
City of Berkeley Councilmember, District 8

s/Rashi Kesarwani
Councilmember, District 1

s/Sandra Clement
District 5 Duplex Owner & Proponent

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

SECTION 1. Title.

This measure shall be known and may be cited as the "Berkeley Rent Relief & Homeowners Protection Act."

SECTION 2. Findings

The people of the City of Berkeley make the following findings in passing this update to the Rent Stabilization and Eviction for Good Cause Ordinance of 1980 (the Ordinance):

Since 1980, the residents of the City of Berkeley have demonstrated a strong commitment to the availability and affordability of quality housing in the City.

The voter-approved Rent Stabilization and Eviction for Good Cause Ordinance of 1980 established the laws that protect renters in the City from excessive housing costs and eviction for unjust causes.

Berkeley voters must approve any changes to Berkeley's rent control and eviction protection laws. This protects residents from wholesale changes by the government. While the current law has served the city well for almost 45 years, there has come a time for voters to consider improvements that will better reflect the affordable housing needs of today.

The COVID-19 pandemic revealed many renters are often just one disruption away from being unable to pay rent. If there is a loss of employment, or an unexpected car repair, they may struggle to keep a roof over their head.

The city's rent relief fund became a lifeline for those who needed it during the pandemic, providing them with temporary financial assistance when they struggled to pay rent. During this time of crisis, the City, rental housing providers, and residents partnered to create a rent relief fund that helped almost 1,000 renters stay in their homes.

These funds, however, came from funding that was intended to be temporary, and the City has no ongoing rent relief with permanent funding.

While the causes of homelessness are complex, studies show that many of those currently unhoused have experienced some sort of disruption, such as loss of income or unanticipated expenses, that may have led to loss of housing. A fund to prevent such situations is critical to helping keep people off the streets.

Larger landlords in Berkeley already pay a tax on rents received which is intended to fund housing programs in the City. But these funds are often tied up in future new housing when the city's renters need more immediate help.

The renters of Berkeley desperately need a more permanent rent relief fund, so much so that twenty percent of the special tax levied on large landlords should go to a permanent rent relief fund. It will help those experiencing difficulty paying rent to stay housed and off the streets.

The residents further find that the long-term availability of affordable housing in the City plays a critical role in ensuring a sufficient supply of affordable housing units in the City, and as such, find that eighty percent of the funds derived from the tax on landlords should go to the Berkeley Housing Trust Fund to assist in increasing the supply of affordable and workforce housing units.

To further increase the availability of quality housing options in the city, the residents also recognize that owners of single-family homes, duplexes in which the owner occupies one unit, and homes with accessory dwelling units (ADUs) should be incentivized to rent their vacant units, thus increasing Berkeley's housing supply, and that these units should be exempted from the Ordinance. In making this finding, the residents further understand that such landlord-tenant relationships are often involve a more personal relationship due to the one-on-one relationship and co-sharing of space that happens when tenant and landlord live together.

Current law allows landlords to go to court for eviction if a tenant is behind by any amount of rent. To protect renters from eviction who may be temporarily unable to pay their full monthly rent, the residents believe the City's Rent Stabilization and Eviction for Good Cause Ordinance should be improved to prohibit evictions unless the tenant is at least a full month's rent behind, or if the tenant is more than 90 days behind on any rent. This will prevent tenants from being evicted for small amounts of unpaid rent.

The residents also find that while the Ordinance protects renters from unaffordable rent increases, some renters are willing to pay higher rent for an upgrade to their living space and as such, where mutually agreed upon, tenant and landlord should be able to increase the rent.

To protect tenants in multi-unit buildings from health and safety violations that may be occurring in another unit the residents find that landlords should be allowed to modify lease terms to comply with new federal, state, or City health and safety guidelines and require these new rules be incorporated into leases.

To ensure that renters have adequate time to decide whether or not to renew their lease at the end of their lease term, the residents of the City find that landlords should not be able to evict tenants at the end of their lease unless they have given the tenant at least 60 days' notice prior to the expiration of the lease of the new terms and an opportunity to sign an extension.

The residents also acknowledge the value of an elected Rent Board in the City to protect renters but find that the Board should be more focused on core services to renters such as setting rent ceilings and tracking all rental units in the City rather than getting involved in litigation where they are not named as a party.

To ensure this and other services are being properly provided to tenants and landlords, the people demand that the Rent Board be audited by the City Audit at least every three years.

And finally, the people seek to reaffirm their desire that tenants be allowed to form tenants' unions to negotiate with landlords, if needed, and that landlords be required to consider conferring in good faith with such tenant unions when they are properly formed.

SECTION 3. Funding Rent Relief and Berkeley Housing Trust Fund.

Chapter 9.04 of the Berkeley Municipal Code is amended as follows:

9.04.196. Rental of five or more units of residential real property.

A. Notwithstanding Section 9.04.195, this Section shall govern the taxation of gross receipts from the rental of five or more residential rental units in the city of Berkeley.

B. Every person engaged, directly or indirectly, including through an interest in another entity, in the business of renting or leasing dwelling units in the City of Berkeley shall pay an annual tax as provided in Section 9.04.240 for each thousand dollars of gross receipts. All proceeds generated by this section (9.04.196) shall be deposited into the Berkeley Housing and Homeless Protection Account as provided in subdivision 9.04.196G.

C. Gross receipts from the following categories of dwelling units shall not be subject to this Section, but shall be subject to section 9.04.195:

1. dwelling units owned by a nonprofit corporation whose primary purpose is the provision of affordable housing, as provided in Section 9.04.300;

2. dwelling units whose rents are controlled under state or federal law, deed restrictions, or agreements with public agencies, at rental rates that are affordable to households earning no more than 80% of AMI and whose tenants must be income-qualified;

3. any unit subject to rent control under Chapter 13.76 that are occupied by a tenant who resided in that unit prior to January 1, 1999;

4. units occupied by tenants receiving monthly rental assistance (such as Section 8 vouchers or Shelter + Care) from the Berkeley Housing Authority or City of Berkeley; and

5. any dwelling unit during the first 12 years after the issuance of a certificate of occupancy.

D. Any person who would otherwise be subject to the tax imposed under this Section may seek a 1-year hardship exemption due to exceptional circumstances. The City Manager may approve such applications for good cause. Such approvals shall be in writing and specifically state the factors that constitute good cause. Any hardship exemption shall be effective for one tax year only, after which it will expire. Taxpayers who seek hardship exemptions must reapply every year.

E. The City Council may reduce the tax rate set forth in Section 9.04.240 under this Section for rental of five or more dwelling units, and may terminate any such reductions, without further voter approval.

F. The tax imposed by this Chapter shall not be passed on to sitting tenants in the form of rent increases or in any manner, even if permitted under Chapter 13.76.

G. The City Manager and/or Director of Finance shall establish a Berkeley Housing and Homeless Protection Account and all gross receipts tax proceeds generated by this section shall be deposited by the City Manager and/or Director of Finance into the Berkeley Housing and Homeless Protection Account. Such proceeds shall only be used for the specific purposes identified in section 9.04.197. The Department of Finance shall be solely responsible for the distribution of funds from the Berkeley Housing and Homeless Protection Account for rent relief, pursuant to section 9.04.197B1. No other City department, nor any entity outside of the City of Berkeley, may make any determinations regarding the qualification of individuals to receive funds, or be given any responsibility for distributing funds, pursuant to section 9.04.197B1.

9.04.197. Expenditure plan for proceeds from residential real property of five or more units.

A. The revenues generated by the gross receipts tax imposed by section 9.04.196 shall be allocated by the City of Berkeley on an annual basis with additional independent oversight provided by the Rent Relief Independent Oversight Committee to ensure expenditures are consistent with this Section.

B. The funds deposited into the Berkeley Housing and Homeless Protection Account pursuant to section 9.04.196 shall be expended according to the following schedule:

1. Funding rent relief.

a. Twenty percent (20%) of funds made available from section 9.04.196 shall be dedicated for rent relief for tenants in the form of direct payments for rent. The Department of Finance, considering input from the Rent Relief Independent Oversight Committee, shall be solely responsible for creating rules and regulations setting forth the qualification, application, and distribution of all such funds.

b. All funds distributed pursuant to this subdivision (9.04.197B1) shall be distributed from the Department of Finance to lessors of real property being rented by individual tenants. No other City department, nor any entity outside of the City of Berkeley, may distribute funds pursuant to this subdivision (9.04.197B1).

c. Except where a nonprofit organization receives rent relief funds in its capacity as a lessor of real property to a properly qualified tenant, no funds distributed pursuant to this subdivision (9.04.197B1) may be designated for, or managed by, any nonprofit organization.

d. The Department of Finance shall be solely responsible for the distribution of funds from the Berkeley Housing and Homeless Protection Account to lessors of real property leasing to individuals who qualify for receipt of such funds pursuant to section 9.04.197B1. No other City department, nor any entity outside of the City of Berkeley, may make any determinations regarding the qualification of individuals to receive funds pursuant to section 9.04.197B1.

2. Funding the City of Berkeley General Fund.

a. Eighty percent (80%) of the funds made available from section 9.04.196 shall be dedicated to the City of Berkeley's General Fund and/or all costs associated with levying the taxes set forth in section 9.04.196. All funds transferred to the City's General Fund pursuant to this subdivision (9.04.197B2) may be treated as, and distributed as, normal General Fund revenue.

9.04.198. Separate section with true and impartial statement of facts identifying the tax and specific limitations on how the revenue can be spent.

Section 9.04.196 enacts a gross receipts tax on the rental of residential real property in the City of Berkeley at the 2023 rates of 10.81 per $1,000 (for rental of residential property with fewer than five units) and $28.80 per $1,000 (for rental of residential property with five units or more) to be used only for the purposes set forth in section 9.04.197, which evenly allocates the funds between direct rent relief for tenants and the Berkeley General Fund. The Expenditure Plan in section 9.04.197 is intended as a specific and legally binding and enforceable limitation on how the proceeds of the gross receipts tax imposed on the rental or residential property may be spent. The revenues collected as a result of this tax may not be used for any purposes not specifically identified in this ordinance.

9.04.199. Rent Relief Independent Oversight Committee.

A. Composition. There shall be in the City of Berkeley an appointed Rent Relief Independent Oversight Committee. The Committee shall consist of nine (9) members. The Committee shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as members on the Committee. No more than three individuals who qualify as Landlords under section 13.76.040 of the Rent Stabilization and Eviction for Good Cause Program may concurrently serve as members on the Committee. No more than three individuals who qualify as Tenants under section 13.76.040 of the Rent Stabilization and Eviction for Good Cause Program may concurrently serve as members on the Committee.

C. Appointment of Commissioners. Each City Councilmember shall appoint one member of the Rent Relief Independent Oversight Committee. The Mayor shall appoint one member of the Rent Relief Independent Oversight Committee.

D. Term. Each member of the Rent Relief Independent Oversight Committee shall serve a two-year term and are eligible to be reappointed once.

E. Vacancies. In the event a vacancy occurs on the Rent Relief Independent Oversight Committee for any reason, the elected official who appointed the member vacating the Committee shall select a replacement member to fill the remainder of the vacant term. If the replacement member serves on the Board for more than one year (more than 365 days), then that replacement member may only be reappointed once. If the replacement member serves on the Board for one year or less (365 days or fewer), then that replacement member may be reappointed twice.

F. Meetings. The Rent Relief Independent Oversight Committee shall establish its own rules and procedures for conducting meetings but shall hold at least two regularly scheduled public meetings per year.

G. Duties. The Rent Relief Independent Oversight Committee shall provide an annual report containing at least two items for consideration by the City Council and Department of Finance:

1. A detail of the prior fiscal year's activities related to distribution of funds pursuant to section 9.04.197, including a statement regarding the effectiveness of rent relief distributions, as well as potential improvements related to distribution of rent relief funds, pursuant to 9.04.197B1.

2. Suggestions regarding the criteria for qualification under the rent relief program funded through distributions made pursuant to section 9.04.197B1.

H. Compensation. Members of the Rent Relief Independent Oversight Committee shall not be entitled to compensation or benefits in any amount.

SECTION 4. Incentivizing Owners to Offer Units for Rent, Requiring Reasonable Notice for End of Term of the Lease, and Creating a Tenant Right to Organize.

Chapter 13.76 of the Berkeley Municipal Code is amended as follows:

13.76.050. Applicability.

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

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

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

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

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

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

F. Rental units in a residential property which is divided into a maximum of ~~four~~ two units where one of such units is occupied by the landlord as his/her principal residence. This subsection (13.76.050F) shall only apply to tenancies created after December 31, 2024. ~~Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to parcels for rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.~~

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

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

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

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

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

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

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

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

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

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting: Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

P. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance). This subsection (13.76.050P) shall only apply to a property owner who owns a maximum of two residential units in the City of Berkeley. This subsection (13.76.050P) shall only apply to tenancies created after December 31, 2024.

13.76.060. Rent Stabilization Board.

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

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

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

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

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

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

1. Set the rent ceilings for all rental units.

2. Require registration of all rental units under Section 13.76.080.

3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.

4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.

5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.

6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.

7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter and request every three years an audit by the City Auditor.

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

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

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

12. Seek injunctive relief under Section 13.76.150.

13. Pursue civil remedies in courts of appropriate jurisdiction.

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

14~~5~~. Hold public hearings.

15~~6~~. Charge and collect registration fees, including penalties for late payments.

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

16~~8~~. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

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

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

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

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

K. Compensation: ~~The rent stabilization board shall be a working board.~~ Commissioners shall not be ~~paid~~ entitled to compensation or ~~and~~ benefits in any amount~~ set by the board in order to compensate commissioners for their time and work performed as required by this chapter and the city charter~~.

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

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

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

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

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

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

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

13.76.080. Rent registration.

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

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

(1)The address of each rental unit;

(2)The name and address of the landlord(s) and the managing agent, if any;

(3)The date on which the landlord received legal title to or equitable interest in the rental unit;

(4)The housing services provided for the rental unit;

(5)The rent in effect on June 6, 1978;

(6)The rent in effect on December 30, 1979;

(7)The base rent ceiling;

(8)The lowest rent in effect between June 6, 1978, and the date of the adoption of this chapter;

(9)The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;

(10)Whether the rental unit was vacant or occupied on May 31, 1980;

(11)Rent in effect on December 31, 1981.

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

D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall be paid no later than July 1 of each year. Because fees charged in years prior to 1991 were due on September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

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

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

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

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

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

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

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

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

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

13.76.110. Annual general adjustment of rent ceilings.

A. Effective January 1 of each year, the rent ceiling for all rental units covered by this chapter for which the landlord did not establish an initial rent during the prior calendar year shall be adjusted by 65% of the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve month period ending the previous June 30. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual adjustment be less than zero (0%) or greater than seven percent <u>and one-tenths</u> (7<u>.1</u>%). The board shall publish and publicize the annual general adjustment on or about October 31st of each year.

B. An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a 30 days written notice of such rent increase and the notice period expires.

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

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

1. Has continued to fail to comply, after order of the board, with any provisions of this chapter and/or orders or regulations issued thereunder, or

2. Has failed to bring the rental unit into compliance with the implied warranty of habitability, or

3. Has failed to make repairs as ordered by the housing inspection services of the City of Berkeley, or

4. Has failed to completely register by July 1, except as provided in Subsection E. below.

E. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten percent (10%) per month for each month beyond October 1 for which the landlord fails to register.

F. An owner who has previously been out of compliance with the ordinance, regulations, or applicable housing, health and safety codes, and has been denied Annual General Adjustments, may be granted them prospectively as set forth in Rent Board Regulations.

13.76.120. Individual adjustments of rent ceilings.

A. Petitions. Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this section. The petition shall be on the form provided by the board. The board may set a reasonable per unit fee based upon the expenses of processing the petition to be paid by the petitioner at the time of filing. No petition shall be filed before September 1, 1980. Notwithstanding any other provision of this section, the board or hearing examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit, within the previous six months. For the purposes of this section 13.76.120, Code Enforcement has the sole and exclusive discretion to make determinations regarding whether a unit has failed to substantially comply with applicable state rental housing laws, the warranty of habitability, or local housing and safety codes. For the purposes of this section 13.76.120, no City Department other than Code Enforcement, and no private entity, shall have the authority to make any determination regarding whether a unit has failed to substantially comply with applicable state rental housing laws, the warranty of habitability, or local housing and safety codes.

B. Hearing Procedure. The board shall enact rules and regulations governing hearings and appeals of individual adjustments of rent ceilings which shall include the following:

1. Hearing Examiner. A hearing examiner appointed by the board shall conduct a hearing to act upon the petition for individual adjustments of rent ceilings and shall have the power to administer oaths and affirmations.

2. Notice. The board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.

3. Time of Hearing. The hearing officer shall notify all parties as to the time, date and place of the hearing.

4. Records. The hearing examiner may require either party to an individual rent ceiling adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the City to conduct a current building inspection if the hearing examiner finds good cause to believe the board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this section shall be made available to the parties involved prior to the hearing at the office of the board. In cases where information filed in a petition for an individual rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

5. Open Hearings. All individual rent ceiling adjustment hearings shall be open to the public.

6. Right of Assistance. All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, recognized tenant organization representatives or any other persons designated by said parties.

7. Hearing Record. The board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.

8. Quantum of Proof and Notice of Decision. No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to

the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the board and/or to judicial review of the decision pursuant to this section and Section 13.76.180 of this chapter.

9. Consolidation. All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

10. Appeal. Any person aggrieved by the decision of the hearing examiner may appeal to the board or to any appeals panel of the board established by the board, so long as such panel has at least three commissioners. On appeal the board or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the board shall be filed no later than thirty days after receipt of the notice of the decision of the hearing examiner. The board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.

11. Finality of Decision. The decision of the hearing examiner shall be the final decision of the board in the event of no appeal to the board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the board or panel reverses or modifies the decision of the hearing examiner, the board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the board's.

12. Time for Decision. The rules and regulations adopted by the board shall provide for final board action on any individual rent adjustment petition within 120 days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.

13. Board Action in Lieu of Reference to Hearing Examiner. The board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

C. In making individual adjustments of the rent ceiling, the board or the hearing examiner shall<u>, and must in every petition and hearing,</u> consider the purposes of this chapter and shall specifically consider all relevant factors, including (but not limited to):

1. Increases or decreases in property taxes;

2. Unavoidable increases or any decreases in maintenance and operating expenses;

3. The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement:

4. Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;

5. Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;

6. Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;

7. The pattern of recent rent increases or decreases;

8. The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to landlord as a result of ownership of the property.

9. Whether or not the property was acquired or is held as a long-term or short-term investment; and

10. Whether or not the landlord has received rent in violation of the terms of this chapter or has otherwise failed to comply with the chapter.

<u>11. Where tenant and landlord have mutually agreed upon an increase in services to tenant's unit.</u>

~~It is the intent of this chapter that individual upward adjustments in the rent ceilings on units be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.~~

D. No individual upward adjustment of a rent ceiling shall be authorized by the board by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could reasonably have foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 13.76.120 C.3. This paragraph shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refinanced after the date of adoption of this chapter.

E. Except for cases of individual hardship as set forth in Subsection 13.76.120 I. of this chapter, no individual upward adjustment of a rent ceiling shall be authorized by the board because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This Subsection (13.76.120 E.) shall only apply to rental units acquired after the date of adoption of this chapter.

F. No upward adjustment of an individual rent ceiling shall be authorized by the board under this section if the landlord:

1. Has continued to fail to comply, after order of the board, with any provisions of this chapter and/or orders or regulations issued thereunder by the board, or

2. Has failed to bring the rental unit into compliance with the implied warranty of habitability.

G. Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord gives the tenant at least a 30 day written notice of such rent increase and the notice period expires.

H. If the board makes a downward individual adjustment of the ceiling, such rent decrease shall take effect no later than 30 days after the effective date set by the board for the downward adjustment.

I. No individual downward adjustment of a rent ceiling shall be authorized by the board for reason of tenant relocation, unit repairs, improvements, or modifications. ~~No provision of this chapter shall be applied so as to prohibit the board from granting an individual rent adjustment that is demonstrated necessary by the landlord to provide the landlord with a fair return on investment.~~

J. No provision of this chapter shall be applied so as to prohibit an individual upward rent adjustment for an increase in services necessitated by improvements and modifications to the unit and for which improvements and modifications landlord and tenant have reached mutual agreement regarding such upward rent adjustment.

13.76.130. Good cause required for eviction.

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

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency. This subsection shall not be satisfied where the amount of rent demanded is less than one months' rent, unless the balance due is greater than 90 days in arrears.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, including violation of health and safety codes or city ordinances, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement~~; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord~~

~~shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement~~. Material terms of the rental agreement include those terms which both parties have expressly agreed upon and do not include any changes to the terms of tenancy associated with a decrease in services. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

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

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

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

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

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

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

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

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

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

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws, and where the landlord has provided at least 60 days' notice prior to the expiration of prior rental agreement.

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

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

7. (a) The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health

and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

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

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

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

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

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

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

9. Owner Move-in Evictions.

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

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

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

(d) All notices terminating tenancy pursuant to subsection 13.76.130.A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

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

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

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

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

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

iii. "Elderly" is defined as sixty (60) years of age or older.

iv. "Minor child" means a person who is under 18 years of age.

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

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

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

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

(k) A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term "school year" as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

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

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

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

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

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

(m) A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.l must submit a statement, with supporting evidence, to the landlord. A tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.l. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

(n) The provisions of subsection 13.76.130A.9.l shall not apply to the following situations:

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

ii. Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.l and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.l.(ii) above; or

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

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

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

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

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

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

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

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

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

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

(r) At least twice annually, Rent Board staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered pursuant to this subsection (113.76.130A.9) within the prior 36 months.

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

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

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

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

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

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

13.76.200. Right to Organize

A. Tenant Association. Tenants of a residential property may establish a tenant association by providing their landlord a petition signed by tenants representing at least two-thirds of the occupied rental units, including Rooming Houses as defined by board regulation, for the residential rental property certifying their desire to form a tenant association, and identifying the tenant association.

B. Confer in good faith. Landlords and tenant associations shall confer with each other in good faith regarding housing services, landlord-tenant relations, and other issues of common interest or concern. “Confer in good faith” means that the parties shall have the mutual obligation to meet and confer in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement. The board may not further define good faith.

SECTION 5. Effective Date and Operative Date.

This measure shall become effective upon its approval by a simple majority of electors voting on the measure. This measure shall become operative on January 1, 2025.

SECTION 6. Severability.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The People of the City of Berkeley hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional. The People of the City of Berkeley further declare their desire that this measure provide funding for rent relief, incentivize property owners to offer units for rent, require reasonable notice for end of term leases, modify the responsibilities and compensation terms for the Rent Stabilization Board, and establish a tenant right to organize, and that each of these vital city services are independently important of one another.

SECTION 7. Conflicting Measures.

This measure is intended to be comprehensive. It is the intent of the People of the City of Berkeley that, in the event this measure and one or more measures relating to Chapter 13.76 of the Berkeley Municipal Code, or the taxation of rental property, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters, but does not receive a greater number of affirmative votes than any other competing measure or measures appearing on the same ballot, then this measure shall take effect to the extent not in conflict with said other measure or measures.

SECTION 8. Liberal Constitution.

This measure is an exercise of the initiative power reserved to the People of the City of Berkeley for rent relief and funding the Berkeley Housing Trust Fund, and shall be liberally construed to effectuate that purpose.

SECTION 9. Municipal Affair.

The People of the City of Berkeley hereby declare that funding rent relief and the Berkeley Housing Trust Fund, as well as protecting voting rights associated with the Rent Stabilization Board, separately and together, constitute municipal affairs for the proper regulation of residential rental property in the City of Berkeley. The People of the City of Berkeley hereby further declare their desire for this measure to coexist with any similar tax and rental housing measures adopted at the city, county or state levels.

SECTION 10. Legal Defense.

The People of the City of Berkeley desire that this measure, if approved by a simple majority of voters, and thereafter challenged in court, be defended by the City of Berkeley. The People of the City of Berkeley, by approving this measure by a simple majority of voters, hereby declare that the proponent(s) of this Act have a direct and personal stake in defending this measure from constitutional or statutory challenges to the measure's validity or implementation. In the event the City of Berkeley fails to defend this measure, or the City of Berkeley fails to appeal an adverse judgment against the constitutionality, statutory permissibility or implementation of this measure, in whole or in part, in any court of law, the measure's proponent(s) shall be entitled to assert his, her or their direct personal stake by defending the measure's validity and implementation in any court of law and shall be empowered by the People of Berkeley through this measure to act as agents of the People of the City of Berkeley, and the City of Berkeley shall indemnify the proponent(s) for reasonable fees, expenses and other losses incurred by the proponent(s), as agent(s) of the City of Berkeley, in defending the validity and/or implementation of the measure. The rate of indemnification shall be no more than the amount it would cost the City of Berkeley to perform the defense itself.

Measure DD
Prohibition on Concentrated Animal Feeding Operations (Initiative)

Shall the measure prohibiting the establishment within the City of Berkeley of facilities where livestock are kept for 45 days or more in a 12-month period and which meet size and other regulatory thresholds established by the Environmental Protection Agency; prohibiting the expansion of existing facilities; requiring existing facilities to cease operations within one year; establishing a penalty of $10,000 per violation per day; and allowing enforcement by the City Council or by private lawsuit, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE DD

This measure was placed on the ballot by an initiative petition signed by the requisite number of registered voters in the City of Berkeley. It requires a majority vote for passage.

This measure would amend the Berkeley Municipal Code to prohibit any person or entity from establishing a Concentrated Animal Feeding Operation (CAFO) or expanding an existing CAFO within the City of Berkeley. The measure would also require that existing CAFOs cease operations in the City within a year of the measure's passage.

A CAFO is defined in the measure as an agricultural operation where animals have been, are, or will be stabled or confined and fed or maintained for 45 days or more in any 12-month period and that meets other regulatory conditions, which are based on federal Environmental Protection Agency (EPA) regulations. Those regulatory conditions include pollution impacts, as well as size thresholds that vary depending on the type of animal confined in a CAFO. The size thresholds include for example 200 or more dairy cattle, 300 or more veal calves, 750 or more swine, 150 or more horses, 9,000 or more laying hens, and 1,500 or more ducks. Facilities with fewer animals may also be designated as CAFOs on a case-by-case basis where a regulatory authority has designated the facility as a significant contributor of pollutants.

The measure would grant the City Council enforcement powers, including the power to inspect premises suspected of violating the measure's provisions. The measure would also grant private parties the right to sue and seek injunctive relief and penalties to enforce the measure, and a prevailing plaintiff in court would be entitled to an award of reasonable attorney's fees and costs. Those who violate the measure would be civilly liable for a penalty of $10,000 per violation per day.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE DD

Vote YES on Measure DD to keep the City of Berkeley free of factory farms, or Concentrated Animal Feeding Operations (CAFOs), as defined by the Environmental Protection Agency. CAFOs confine large numbers of animals in industrial conditions, causing suffering, pollution, and disease.

CAFOs in the Bay Area have been exposed for widespread animal neglect and abuse, including chickens and ducks left to suffer debilitating injuries, unable to access food or water. These facilities often confine several hundred thousand animals, making it nearly impossible to receive a high quality of life or individualized care. Measure DD will protect animals.

CAFOs are a leading cause of pollution and global warming. Leading environmental groups have called for CAFO bans. Water pollution from CAFOs can cause ocean dead zones. Fresh water sources can become impaired from nitrogen and phosphorus in animal feces. This threatens the San Francisco Bay. Measure DD will protect the environment and support Berkeley's goal of zero net emissions by 2045.

CAFOs pose a safety risk to the public, especially to workers and neighboring communities, who are often members of underserved populations. Pathogens are rampant at many Bay Area CAFOs. Scientists warn that some diseases spreading on CAFOs have pandemic potential. Measure DD will protect public health.

There are no CAFOs in the City of Berkeley since the closure of Golden Gate Fields. The horse racing track's stables were classified as a CAFO by the EPA because over 1,000 horses were confined there. The company polluted the San Francisco Bay, kept horses in stalls for 20+ hours a day, and raced them in dangerous conditions, causing thousands of deaths. Measure DD will ensure another CAFO doesn't replace Golden Gate Fields.

Berkeley has often led the way for environmental and social justice. Berkeley can now lead the way to stop factory farming. Protect animals, the environment, and public health. Vote YES on Measure DD.

s/Krishna Desai
President, Animal Legal Defense Fund at Berkeley Law

s/Robert B. Daroff, M.D.

s/Avery Arbaugh
Berkeley Labor Commissioner

s/Alfred Twu
Berkeley Planning Commission

s/Erin Diehm
Urban Biodiversity Advocate

PROHIBITION ON CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

The People of the City of Berkeley ordain as follows:

That Chapter 23.336 Prohibition on Concentrated Animal Feeding Operations (CAFOs) be added to to Title 23 ZONING of the Berkeley Municipal Code as follows:

Chapter 23.336 Prohibition on Concentrated Animal Feeding Operations (CAFOs)

Section 23.336.010 Findings.

A. Hundreds of concentrated animal feeding operations (CAFOs) presently operate in California.
B. Animal agriculture is responsible for 38% of methane emissions in the United States, and it is projected that the global agriculture sector will nearly double in greenhouse gas emissions by 2050.
C. By worsening climate change via the release of greenhouse gases, CAFOs are a major contributor to the drought and wildfires in California.
D. CAFOs are contributing to the ongoing water crisis in California, with some facilities using up to 4 million gallons of water per day and others polluting water sources with chemical fertilizers and manure.
E. Globally, animal agriculture is the primary driver of biodiversity loss through its dependence on inputs such as fertilizer, pesticides, energy, land, and water, and on practices such as monocropping and heavy tilling, which in turn reduces the variety of landscapes and habitats.
F. It is a well-established scientific fact, as supported by 2,500 studies exploring animal cognition, that nonhuman animals have emotions, personalities, and the ability to feel pain, fear, and stress.
G. Millions of nonhuman animals are routinely confined and abused in CAFOs across California.
H. The treatment of nonhuman animals in CAFOs routinely violates California animal cruelty laws, with little to no enforcement.
I. Three out of four emerging infectious diseases are zoonotic, and CAFOs pose a serious risk to public health.
J. Investigators have found antibiotic resistant bacteria and infectious diseases in CAFOs in California and across the U.S.
K. Workers in the animal agriculture industry experience higher rates of substance abuse, post-traumatic stress disorder (PTSD), and domestic violence.
L. In summary, CAFOs are a leading cause of environmental destruction, pose grave risks to public health, abuse and kill nonhuman animals, and often create dangerous and exploitative conditions for workers.

Section 23.336.020 Prohibition on Establishment and Operation of Concentrated Animal Feeding Operations (CAFOs)

A. *Definitions.* For purposes of this chapter, the following definition shall apply:
    a. "Concentrated Animal Feeding Operation" or "CAFO" means an agricultural operations where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and which meets the regulatory definition set out by the Environmental Protection Agency seen in the following table

<u>Regulatory Definitions of Large CAFOs, Medium CAFO, and Small CAFOs</u>

A **Large CAFO** confines at least the number of animals described in the table below.

A **Medium CAFO** falls within the size range in the table below and either:

- Has a manmade ditch or pipe that carries manure or wastewater to surface water; **or**
- the animals come into contact with surface water that passes through the area where they're confined.

If an operation is found to be a significant contributor of pollutants, the permitting authority may designate a medium-sized facility as a CAFO.

A **Small CAFO** confines fewer than the number of animals listed in the table **and** has been designated as a CAFO by the permitting authority as a significant contributor of pollutants.

Animal Sector	Size Thresholds (number of animals)		
	Large CAFOs	**Medium CAFOs**[1]	**Small CAFOs**[2]
cattle or cow/calf pairs	1,000 or more	300 - 999	less than 300
mature dairy cattle	700 or more	200 - 699	less than 200
veal calves	1,000 or more	300 - 999	less than 300
swine (weighing over 55 pounds)	2,500 or more	750 - 2,499	less than 750
swine (weighing less than 55 pounds)	10,000 or more	3,000 - 9,999	less than 3,000
horses	500 or more	150 - 499	less than 150
sheep or lambs	10,000 or more	3,000 - 9,999	less than 3,000
turkeys	55,000 or more	16,500 - 54,999	less than 16,500
laying hens or broilers (liquid manure handling systems)	30,000 or more	9,000 - 29,999	less than 9,000
chickens other than laying hens (other than a liquid manure handling systems)	125,000 or more	37,500 - 124,999	less than 37,500
laying hens (other than a liquid manure handling systems)	82,000 or more	25,000 - 81,999	less than 25,000
ducks (other than a liquid manure handling systems)	30,000 or more	10,000 - 29,999	less than 10,000

ducks (liquid manure handling systems)	5,000 or more	1,500 - 4,999	less than 1,500

[1] Must also meet one of two "method of discharge" to be defined as a CAFO or may be designated.

[2] Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

B. Prohibition.

a. No person, corporation, or other entity shall establish a CAFO of any size within the city of Berkeley.

b. No person, corporation, or other entity shall expand an existing CAFO of any size within the city of Berkeley.

c. Any CAFO in operation within the city of Berkeley at the time of this initiative's passage shall be phased out within a period of 1 year.

Section 23.336.030 Enforcement and Penalties.

A. The The City Council shall have the authority to enforce this initiative, including the power to inspect premises suspected of violating its provisions.
B. This Chapter also provides a private right of action upon any person or entity to seek injunctive relief and penalties against a person or business who violates this prohibition.
C. Any person that violates this prohibition is civilly liable for a penalty in an amount of $10,000 per violation per day.
D. A court shall award a plaintiff who prevails on a cause of action reasonable attorney's fees and costs.

Section 23.336.040 Severability.

If any provision of this initiative is found to be invalid or unconstitutional, such finding shall not affect the validity or constitutionality of the remaining provisions.

Section 23.336.050 Effective Date.
This initiative shall become effective immediately after its passage by the voters.

Measure EE
Ordinance Creating a Parcel Tax for the Purpose of Funding Repairs and Improvements to Streets, Sidewalks and Pedestrian Paths (Fix the Streets & Sidewalks Initiative)

Shall the measure creating a special parcel tax for the purposes of street and sidewalk repair, repaving and reconstruction, pedestrian safety projects, traffic-calming measures on bicycle boulevards, and environmental infrastructure, at a rate of $0.13 per square foot of improvements, which may be increased annually for inflation, generating approximately $10.5 million annually for 12 years, provided the City continues to fund street maintenance and repair at levels established in 2022, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE EE

This measure was placed on the ballot by an initiative petition signed by the requisite number of registered voters in the City of Berkeley. It requires a majority vote for passage.

This measure would impose a special parcel tax to fund street and sidewalk repair, repaving, and reconstruction in the City, in order to raise the City's overall Pavement Condition Index (PCI), a measurement of pavement quality, to above 70. Starting January 1, 2025, the tax would be imposed at a rate of up to $0.13 per square foot on residential, commercial, and other properties within the City. The City Council would be allowed to adjust the tax rate annually for inflation.

The tax would last 12 years (unless extended by the voters), provided the City continues to fund street maintenance and repairs through an allocation from the general fund adopted by the City Council in July 2022. If the City Council were to reduce the allocation, the taxes imposed by the measure would be reduced by a proportionate amount. If the City Council were to eliminate the allocation, the measure would terminate.

The City estimates the tax would raise roughly $10.8 million in the first year, and $153 million over its 12-year duration, adjusted for inflation.

Proceeds from the tax would be placed into a special fund and allocated as follows:

- At least 36% for street repair, repaving, and reconstruction, with the requirement that the City prioritize streets with the lowest PCI measurements, bicycle boulevards, and streets in historically under-served neighborhoods;
- 35% for sidewalk and pathway repair, repaving and reconstruction;
- Up to 13.5% for the highest priority pedestrian safety projects;
- Up to 7% for traffic-calming measures on bicycle boulevards; and
- Up to 7% for green infrastructure and environmental enhancements, such as natural vegetation and cool pavements.

The measure would prohibit the use of tax proceeds for repair, repaving, or reconstruction of street segments with a PCI above 70. Additionally, the tax funds are primarily intended to repair existing infrastructure and not to develop new infrastructure.

The measure would establish an oversight commission, require the Public Works Department to prepare an annual performance report on all street funding, require City Staff to hold workshops to solicit public input, and require the City Auditor to perform an audit once every three years.

Property that is tax-exempt under state or federal law or owned by persons with "very low-income," as defined by the City Council, would be exempt from the tax. Any person who fails to pay the tax would be guilty of an infraction and subject to penalties under the Berkeley Municipal Code.

Measure FF on the 2024 general election ballot is a conflicting measure. If this measure and Measure FF both pass, the measure with more affirmative votes will become law, and the other measure will not.

ARGUMENT IN FAVOR OF MEASURE EE

Measure EE will fix the streets, sidewalks and paths for everyone -- at a much lower cost than Measure FF!

There are no special-interest carve-outs or hidden funding priorities in Measure EE. What you see is what you get – street repaving, sidewalk and path repair:

- Measure EE is the only measure on the ballot that requires the City to prioritize street, sidewalk and path repairs.
- Measure EE prohibits City Council from using the new revenues to reduce General Fund spending on streets, sidewalks, and paths.
- Every penny of the revenue raised by Measure EE will be monitored by an independent commission (not one handpicked by City Council) so that we can assure intended results.

Measure EE focuses on the basics to ensure that we will get our streets, sidewalks and paths repaired so that everyone can walk, bike, and drive safely. And Measure EE exempts low-income homeowners and protects small businesses.

Measure EE fully funds sidewalk repair so we don't have to rely on homeowners to make our sidewalks safe. The City's cost-sharing program to help homeowners pay for sidewalk repair currently has a three-year backlog. Most pavement-related claims against Berkeley are from unsafe sidewalks. Measure EE will make fixing sidewalks the City's responsibility and save millions of dollars in injury claims!

Finally, Measure EE improves our bicycle boulevards instead of funding expensive new cycle tracks and other projects that slow down first responders, interfere with trash collection, and block access for the disabled. There's no reason to build unproven new bike infrastructure that jeopardizes our safety when we can make our existing bike boulevards safer at a lower cost.

Please join us and the thousands of Berkeley residents who helped put Measure EE on the ballot by voting **Yes on Measure EE!**

www.FixBerkeleyStreets.com

s/James McGrath
Former Board Member, Bay Trail Board, Berkeley Public Works Commission

s/Donna DeDiemar
Friends of Hopkins Street

s/Vincent Casalaina

Berkeley Resident since 1963. Past President Willard Neighborhood Association

s/Richard Raffanti
Former Transportation and Infrastructure Commissioner

s/Steven Sullivan
President and co-founder, Acme Bread; Regular Bicycle Commuter

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE EE

Berkeley voters don't need to accept false promises. Vote NO on EE.

Berkeley's streets will get *worse* – not better – under EE. The City's own impartial analysis confirmed it. Measure EE raises less money - and it's not enough to fix our streets. We can't pave more streets with less money. Why would we tax ourselves if it won't do the job?

Voters have no guarantee this money will be spent as promised. Measure EE's authors left a multi-million dollar loophole in the measure: the City Council can actually reduce funding for street paving and still collect most of this tax. There's no guarantee the Council won't cut millions from the paving budget, spend the money on other projects, and use this tax to plug the gap. Why should we accept a measure that doesn't hold Council accountable?

Measure EE does not provide enough money to fully fund sidewalk repairs, according to the City's analysis. **Homeowners will still be responsible for fixing their sidewalks.** Measure EE can't change State law.

Measure EE fails to guarantee even a single penny for safety improvements to protect our kids. "Up to" a certain amount *can* be spent; but that funding is totally limited to certain types of projects on just a handful of streets. It doesn't fund Safe Routes to Schools. It doesn't fund improved emergency response times to protect Berkeley parents, children, and seniors. It just doesn't make sense.

Measure EE takes the wrong approach. We don't need the false promises of Measure EE. Vote NO on EE.

s/Jesse Arreguín
Berkeley Mayor

s/Rashi Kesarwani
Berkeley City Councilmember

s/Ann-Marie Hogan
Former Berkeley City Auditor

s/Ana Vasudeo
Berkeley School Board President

s/Julie Sinai
Former Berkeley School Board Director

ARGUMENT AGAINST MEASURE EE

Measure EE won't maintain or improve our streets**.** In fact, it will make many streets worse off and less safe – while still raising taxes. Vote NO on EE.

The City's own report says Berkeley streets would get worse under Measure EE.

According to the City's report, Measure EE simply doesn't have enough funding to maintain our streets, much less improve them. It requires a wasteful and inefficient approach to repaving, by neglecting preventative maintenance and only prioritizing failed streets. Measure EE wastes taxpayer dollars and would let our streets degrade even further.

Measure EE does not guarantee safety improvements for kids or pedestrians.

Measure EE doesn't require the Council to spend a dime on making our streets safer. It won't fund Safe Routes to Schools projects for children walking or biking to school. It won't fund street lighting to protect seniors, and it won't stop dangerous speeding on neighborhood streets, which almost killed a child on Mabel Street last Halloween.

Measure EE was not written with real community input. That's why a broad coalition opposes Measure EE.

The authors of Measure EE didn't consult community leaders, taxpayers, or City staff when they wrote it. That's why a broad coalition of leaders and organizations we trust opposes Measure EE.

Measure EE lacks serious oversight protections. There's no guarantee funding will be spent as promised.

Measure EE doesn't require the City Council to maintain funding for streets–Council could cut millions from the paving budget and still collect this tax. Measure EE doesn't require experts to be appointed to provide citizen oversight.

Measure EE will raise taxes, but it won't fix our streets. And it won't protect kids, seniors, and pedestrians. Vote NO on Measure EE.

s/Mark Humbert
Berkeley Councilmember, District 8

s/Ben Gerhardstein
Walk Bike Berkeley

s/Laurie Capitelli
Berkeley City Councilmember (ret.)

s/Jennifer Shanoski
Director, Berkeley Unified School District

s/Stephanie Allan
Career Technical Educator

REBUTTAL TO ARGUMENT AGAINST MEASURE EE

In drafting Measure EE, we listened to over 5,000 Berkeleyans. When we explained that Measure EE would **fix streets, sidewalks and paths for everyone** without funding street re-engineering experiments that slow first responders, most asked, "Where do I sign?"

Of course, many also wondered why we should pass a special tax to provide basic services.

Until recently, the City Council barely funded street repairs and funding is still deficient. And yet, Council and its insider allies divert millions to poorly studied, rarely used cycle tracks (those raised curbs in the traffic lane) while ignoring badly damaged bicycle boulevards and other streets, sidewalks and paths.

Measure EE requires Council to attend to the basics, without providing extra discretionary funds. That's why so many members of the City Council and their allies oppose our measure.

As you can read for yourself on our website (www.FixBerkeleyStreets.com), we listened to Berkeleyans and built robust oversight and transparency into Measure EE **to ensure we accomplish the priorities of most Berkeleyans** – **paving the streets and fixing the sidewalks and paths** – despite the desires of special interest groups.

If the money raised by Measure EE isn't used exactly how the 5,000 people we talked to asked for it to be used, it gets taken away.

Please join us in voting YES on Measure EE so that we can get down to work!

s/Shirley Dean
Former Mayor, Berkeley CA

s/Jack Kurzweil
Prof (emeritus), San Jose State University

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

s/Meryl Siegal
Co-founder, Beautiful San Pablo

s/James McGrath
Former member, Bay Trail Board

Berkeleyans for Better Planning

MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO LEVY A PARCEL TAX TO FINANCE STREET AND SIDEWALK REPAIRS AND PEDESTRIAN SAFETY PROJECTS

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

Section 1. Title
This measure shall be known as the Fix the Streets and Sidewalks Initiative.

Section 2. Findings
The People of the City of Berkeley find and declare as follows:

A. Berkeley's public streets and sidewalks are in dire need of repair. The City's *2022 Pavement Management Program Update* (dated March 2023) found that 42.25% of the City's pavement is in Poor to Failed condition and that Berkeley's overall Pavement Condition Index (PCI) is 55. Failure to make timely street repairs requires much more expensive repairs later and creates safety hazards for all users of Berkeley's streets. The PMP Update estimated deferred street maintenance to be $259.8 million.

B. On July 26, 2022, in Resolution No. 70,456-N.S., the City Council committed to increase annual funding of street maintenance from the General Fund to approximately $8 million, in addition to the approximately $7.3 million in annual city, county, and state gas tax funds, for a total of $15.3 million, and to continue that funding and increase it to account for inflation and maintenance costs once repairs have been made. Under this resolution, the latest five-year paving plan adopted by the City increases the combined funding to $17.4 million, which will generate $208.8 million over the 12-year life of this measure.

C. At this funding level, the PMP Update found that the overall PCI will decline by 2 points over the next five years and that the backlog of deferred maintenance will grow by about 25%.

D. Until recently, the City allocated only a small amount of funding to sidewalk repair—just $32,529 in FY 2020. Existing City policy requires homeowners to pay half the cost of sidewalk repairs. However, all citizens use the sidewalks, and the backlog of unsafe sidewalks is unacceptable. According to a December 26, 2022, *Berkeleyside* article, the City estimates that $50 million would fully fund sidewalk repair. The Berkeley Path Wanderers Association estimates that all pedestrian paths, which will facilitate evacuation from the hills in the event of wildfire, can be repaired with safety improvements for $5 million. Thus, $55 million will eliminate existing pedestrian safety hazards on our sidewalks and paths.

E. A special parcel tax of $0.13/square foot, conditioned on maintaining the City's General Fund contributions to street maintenance, provides an equitable mechanism to augment General Fund contributions and gas taxes so that all streets, sidewalks, and paths will be safe and in good condition within 12 years.

F. An exemption from the tax for low-income homeowners will help ensure the cost of the measure is not a burden for residents on fixed or limited incomes.

G. Berkeley has an existing 15.8-mile bicycle boulevard network that was designed to provide safe, convenient, and low stress bikeways across most of the city, but it suffers from poor paving and a limited budget for traffic calming. Berkeley's Bicycle Plan envisions increasing that system to 66.3 miles, including 18.4 miles of new physically separated cycle tracks. That plan calls for a planning process to evaluate such improvements and states that such projects will not be implemented until Complete Corridor Studies are completed that include environmental analysis. However, the work program for the Public Works Department in the last two adopted City budgets included updating the Bicycle Plan, including conducting Complete Corridor Studies, but that work has not been completed. Therefore, this measure focuses on safety improvements to the existing bicycle boulevard system, including more than tripling the budget for traffic calming, providing cyclists and users of micro-mobility devices safe, low-traffic transportation corridors.

H. As indicated in Finding A, above, the most recent assessment of the backlog of deferred maintenance for the streets is $259.8 million, in 2024 dollars. When combined with the $55 million necessary to repair the sidewalks and paths, this results in a need for $315 million in total funds to bring the streets, sidewalks, and paths to a safe condition. The City contribution identified in Finding B, $208 million, will leave a shortfall of at least $110 million, so there is a need for additional funding through either the City's General Fund or through a revenue measure. A parcel tax of $0.13/sf on residential and commercial property will generate approximately $12 million a year. Over a 12-year period, such a fee will generate approximately $144 million, covering the shortfall and resulting in some additional funds that can be used for further improvements in pedestrian safety, traffic calming, and green infrastructure.

I. Green infrastructure addresses stormwater runoff pollution through street design features such as cool pavement, bioswales, and trees. Berkeley is required to develop and implement a Green Infrastructure Plan by existing regulations, and voters enacted a Clean Stormwater Fee in 1991 to pay for clean runoff. That fee is the appropriate funding mechanism to meet the minimum legal requirements. However, Berkeley voters have long supported additional Green Infrastructure in their support for Measures M and T1, which provided funds for road pavement and infrastructure. Therefore, this measure includes additional funding so that Berkeley can do more than the bare minimum.

J. As of 2025, a new California "daylighting" law will prohibit parking or stopping a vehicle along a curb at least 20 feet from a marked crosswalk, to make roadways safer for pedestrians, cyclists, and drivers. The law applies to the side of the road of the vehicle's approach to the crosswalk. Since the largest cause of collisions with pedestrians is the failure of drivers to yield at crosswalks, improving lines of sight so that pedestrians can be more readily seen will complement the effectiveness of this measure in improving pedestrian safety.

K. Berkeley adopted a 2020 Pedestrian Plan that identified the street segments that are most hazardous to pedestrians, and a table of projects (Table 10, page 65) that would address the highest priority safety conditions. However, the cost estimates for those projects vary widely—from $18 to $61 million—and many of those street segments like San Pablo, will be funded by other sources. Berkeley has been making progress in implementing that list, but neither updated cost estimates nor analysis of completed projects has been reported on either the Pedestrian Plan or Vision Zero website. This measure includes up to $20 million for pedestrian safety, as well as funds for repairing sidewalks. This funding, with matching funding from Alameda County Transportation Authority should be sufficient to implement the highest priority pedestrian projects that are not being funded by other sources.

L. The U.S. Census American Community Survey for 2019 showed that Berkeley's commute mode for bicycles is only 6.2%, less than the 8.5% share when the Bicycle Plan was developed. Similarly, datausa.io reports Census Bureau data showing that 5.9% of Berkeleyans commuted by bicycles in 2021. The

Council allocated $24.8 million, 65% of the five-year paving budget (60% of street mileage), to bikeways for FY 2023-FY 2027 (2022 Resolution No. 70,204-N.S.) On November 28, 2023, the Council allocated $29.7 million, approximately 34% of the five-year paving budget (50% of street mileage), to bikeways for FY 2024-FY 2028. Allocating limited funds to relatively expensive bicycle infrastructure projects reduces funding available for street rehabilitation, which improves safety for all street users, especially bicyclists and pedestrians.

M. The Berkeley Complete Streets Policy requires annual programmatic evaluations of how well the streets and transportation network of the City of Berkeley are serving each category of users by collecting baseline data, collecting follow-up data on a regular basis, and developing and updating appropriate performance metrics. The City's 2019 Vision Zero Action Plan, which seeks to eliminate traffic deaths and severe injuries through Complete Streets projects and other measures, states that Vision Zero "will be accountable, transparent, and data-driven" and that "annual monitoring, reporting, and evaluation [will be performed] through an equity lens." The most recent, June 28, 2022, Vision Zero Annual Report did not, however, include project evaluations.

Section 3. Code Amendment

A new Chapter 7.11 is hereby added to the Berkeley Municipal Code as follows:

Chapter 7.11

Fix the Streets and Sidewalks Tax.

7.11.010 Special Tax - Purpose

A. A special tax for the purpose of funding street and sidewalk repair, repaving, and reconstruction is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter. The intent of this measure is to augment current City funding for paving and sidewalk repair for a temporary period and allow long-deferred repairs to be made so that the overall condition of the roads will be made acceptable within 12 years and maintenance costs will be reduced. To accomplish that purpose, these funds are primarily intended to repair the existing infrastructure and not to develop new infrastructure. This measure is also intended to ensure that existing city, county, and state road funding is devoted to repair of the existing roads rather than to new infrastructure.

B. The Council may impose the tax authorized by this Chapter up to the rate, and subject to the inflation adjustments, set forth in Section 7.11.030.

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

D. All funds received from the tax are subject to review, allocation, and approval by the City Council.

E. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purposes of enhancing streets and sidewalks, including pedestrian paths, by funding the following types of projects:

1. Street and sidewalk repair, repaving, and reconstruction, including streets in the waterfront.
2. Street and sidewalk safety.

F. ALLOCATION AND FUNDING PRIORITIES

1. At least 36% of the funds, or approximately $52 million, shall be allocated to street repair, repaving, and reconstruction. In developing annual and five-year paving projects, the City shall prioritize streets in failed condition (PCI under 25), beginning with bicycle boulevards and historically under-served neighborhoods in that category, moving next to streets in poor condition (PCI 49-25), beginning with bicycle boulevards and historically under-served neighborhoods in that category, and so on.
2. 35% of the funds, or about $51 million, shall be allocated to sidewalk and pathway repair, repaving, and reconstruction.
3. Up to 13.5% of the funds, or about $20 million, shall be allocated to the highest priority pedestrian safety projects;
4. Up to 7% of the funds, or about $10 million, shall be allocated to traffic calming measures on bicycle boulevards.
5. Up to 7% of the funds, or about $10 million, shall be allocated to green infrastructure and environmental enhancements such as natural vegetation and cool pavements. Since tire particles in street runoff are highly toxic to fish, all projects should include green infrastructure implementing the city's stormwater permit.

Note: these estimates of total dollars allocated are in 2024 dollars and shall be adjusted for inflation each year.

G. Proceeds of the tax may be used to pay or reimburse the City for actual, verifiable costs of City staff when they are performing work on, or necessary and incidental to, such projects.

H. Proceeds of the tax may not be used for repair, repaving, or reconstruction work on any street segment with a PCI above 70.

I. The goal of this tax is to raise Berkeley's overall PCI above 70 (rated as "Good" by the MTC), to repave every street with a PCI below 70, and to eliminate the backlog of damaged sidewalks before December 31st, 2036.

J. Current estimates are that this funding, combined with City, county, and state funding, should be sufficient to bring all streets up to a PCI of 70 in 12 years.

7.11.020 DURATION AND RENEWAL

This measure shall remain in place for 12 years from the effective date, unless extended by the voters, provided, however, that:

> This measure shall only remain in place if the City continues to fund street maintenance and repair through the ESTABLISHING A FISCAL POLICY FOR A STREET MAINTENANCE ALLOCATION FROM THE GENERAL FUND ordinance, Resolution No. 70,456-N.S., adopted on July 26, 2022. If the adopted General Fund eliminates this contribution to fund street maintenance and repair, this measure shall terminate. If the adopted General Fund reduces this contribution, this measure shall be reduced by the same proportion.

7.11.030 Tax Authorized - Tax Rate - Adjustments for Inflation

A. The City Council is hereby authorized to impose a special tax as follows:

1. For all dwelling units, the tax may be imposed at the rate of up to $0.13 per square foot of improvements.

2. For all other property, including parking structures, the tax may be imposed at the rate of up to $0.13 per square foot of improvements.

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

7.11.040 Reporting, Oversight, Public Input, and Accountability

A. The intent of this measure is to assure that careful monitoring of outcomes informs decision-making on funding the repair and possible upgrades of our streets, sidewalks, and bicycle network, including new infrastructure. In particular, the evaluation provisions of the Berkeley Complete Streets Policy shall be followed each year before decisions are made allocating any transportation funds. For compliance, the City is expected to:
   a. Develop a baseline of use by vehicles, pedestrians, bicycles and micro-mobility devices;
   b. Develop and use metrics to assess the impacts of improvements; and
   c. Perform an annual programmatic evaluation of recent expenditures and the net impact on mobility in the city.

B. This initiative shall create an Independent Oversight Commission (per Ordinance No. 7,699-N.S., the Citizens Redistricting Commission, adding Berkeley Municipal Code Chapter 2.10) per a new Chapter 7.6 in the City Charter. The Berkeley City Council shall use Municipal Code 2.10, the Citizens Redistricting Commission, the Independent Redistricting Commission document and the Bylaws of the Berkeley Independent Redistricting Commission to create the commission. (ref: City Charter Section V - Chapter 7.6)

C. The Public Works Department shall prepare an annual report of performance metrics and accomplishments that reflects all street funding. To promote effective communication, the report shall include a dashboard with metrics for the streets paved, cost per mile, changes to the PCI, the condition of all streets as measured by the PCI, progress on green infrastructure, cool pavement technologies and tree planting, including identifying other funding sources, reduction of the backlog of damaged sidewalks and paths, and a schedule that estimates when streets with a PCI below 50 will be repaired.

D. Increased public input for developing the five-year paving program shall be assured by holding at least three workshops annually in different areas of the city to augment the regular meetings of the Transportation and Infrastructure Commission meetings.

E. All expenditures, and verification of progress towards the goal of an overall PCI of 70, and a PCI of at least 70 for every street, shall be accomplished by independent financial audit by the City Auditor, at least once every three years, to confirm that the tax expenditures and reports are accurate and consistent with the intent of this chapter.

7.11.050 Definitions

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

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

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

C. “Square footage” shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

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

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

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

F. “Repair, repaving, and reconstruction” shall refer to a suite of interventions designed to restore and upgrade the physical integrity and functionality of streets, sidewalks, and pedestrian paths, including all ordinary and necessary expenses and features as required by applicable law.

7.11.060 Exemptions.

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

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute “very low-income,” as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

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

D. "Parcel of Taxable Real Property" is defined as any unit of real property in the District that receives a separate tax bill for ad valorem property taxes from the Alameda County Treasurer-Tax Collector. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from this Special Tax in such year.

7.11.070 Duties and Authority of the City Manager.
It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

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

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

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

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

7.11.120 Violation- Penalty.

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

7.11.130 Conflicting measures.
Intent. If any alternative street repair or broad infrastructure measure also qualifies for the 2024 ballot, it is the intent of the voters that, pursuant to California Elections Code Section 9221, that measure will be determined to be a conflicting measure. In that event, if the Fix the Streets and Sidewalks Initiative receives more affirmative votes, that initiative shall control and the conflicting measure shall have no effect.

Section 4. Increase appropriations limit.
Pursuant to California Constitution Article XIIIB, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the twelve fiscal years from 2025 through 2036.

Section 5. Effective date.
The tax imposed by this Chapter shall be operative on January 1, 2025.

Section 6. California Environmental Quality Act Requirements.
This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(3) and 15378(b)(4).

Section 7. Special Tax; Majority Vote Requirement. This Ordinance imposes a special tax for restricted purposes and is being placed on the ballot via signature petition. It shall be effective only if approved by a majority of the voters voting thereon.

Measure FF

Ordinance to Establish a Parcel Tax to Fund Repairs and Improvements to Streets, Sidewalks, and Pedestrian Paths (SAFE STREETS Initiative)

Shall the measure creating a special parcel tax for the purposes of street, sidewalk, and pedestrian path repair, repaving, and reconstruction, safety improvements, and environmental infrastructure, at a rate of $0.17 per square foot of improvements to dwelling units and $0.25 per square foot of improvements to other property, which may be increased annually for inflation; and generating approximately $15 million annually for 14 years, provided other funding for street maintenance is maintained, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE FF

This measure was placed on the ballot by an initiative petition signed by the requisite number of registered voters in the City of Berkeley. It requires a majority vote for passage.

This measure would impose a special parcel tax to fund repairs and improvements to streets, sidewalks, and pedestrian paths in the City, in order to raise the City's overall Pavement Condition Index (PCI), a measurement of pavement quality, to above 70. Starting January 1, 2025, the tax would be imposed at a rate of up to $0.17 per square foot on all dwelling units, and up to $0.25 per square foot on all other improved property. The City Council would be allowed to adjust the tax rates annually for inflation.

The tax would last 14 years (unless extended by the voters); however, if the City Council fails to adopt a budget with at least $15.3 million in funding for street maintenance from sources other than this tax, the City Council would be prohibited from imposing this tax for the following two years, subject to exceptions.

The City estimates the tax would raise roughly $15 million per year, and $267 million, including inflation, over its 14-year duration.

Proceeds from the tax would be placed into a special fund and allocated as follows:

- 60% for streets and sidewalks, with 45% for streets and 15% for sidewalks and pedestrian paths, until the backlog of damaged sidewalks and pedestrian paths is eliminated;

- 30% for safety improvements; and

- 10% for environmental enhancements, fees, and other permissible uses, including auditing costs, updating the City's Transportation Element of the General Plan, reviewing and updating the City's public works project delivery process, and public art, subject to certain conditions.

The fixed, percentage-based allocations would not apply if the City's average PCI reaches 70 or higher. All proceeds from the tax would be subject to City Council review, allocation, and approval, and any project funded by tax must be consistent with the City's transportation plans or policies or other similar plans or policies. Tax proceeds may not be used to fund bicycle-specific safety improvements (such as cycletracks and protected bike lanes) on Hopkins Street between McGee Avenue and Gilman Street.

The measure would establish an oversight committee, require the City Manager to submit an annual performance report to the City Council, require City staff to hold workshops to solicit public input, and require the City Auditor to perform an audit once every three years.

Property that is tax-exempt under state or federal law or owned by persons with "very low-income," as defined by the City Council, would be exempt from the tax. Any person who fails to pay the tax would be guilty of an infraction and subject to penalties under the Berkeley Municipal Code.

Measure EE on the 2024 general election ballot is a conflicting measure. If this measure and Measure EE both pass, the measure with more affirmative votes will become law, and the other measure will not.

ARGUMENT IN FAVOR OF MEASURE FF

Berkeley Firefighters, Sierra Club, Mayor Jesse Arreguin, a City Council supermajority, and Assemblymember Buffy Wicks urge you to vote YES on FF to ensure safer, smoother streets across Berkeley.

Measure FF is the only measure that maintains or improves our streets.

Berkeley streets are crumbling after decades of under-investment. The City Council has doubled the paving budget, but a new City report reveals that's still insufficient. Without significant additional funding, our streets will degrade further.

The City's official report determined Measure FF will provide more than twice the funding for street paving and safety as any other measure on the ballot - enough to maintain or improve our streets over the next 14 years.

Measure FF will make our streets safer for kids and pedestrians.

Most of Berkeley's streets were designed long before SUVs, smartphones, and other dangers were introduced. Now, hundreds of people are injured each year. Measure FF requires the City to implement critical safety features like raised crosswalks and safety flashing beacons. It funds Safe Routes to Schools projects to keep kids safe, helps firefighters and ambulances get to emergencies faster with traffic signal controls, and adds street trees and green stormwater infrastructure for climate resilience.

Measure FF was written with broad community input and has broad community support.

Measure FF was written after six months of input and feedback from community leaders, taxpayers, and City staff. That's why it's the only street funding measure on the ballot with broad support.

Measure FF is the only streets improvement measure with strict oversight protections.

Measure FF's strict oversight protections are stronger than any previous City measure, requiring the City Council to ensure 100% of existing paving funds go towards street improvements as promised, establishing an expert oversight body, and requiring regular audits.

To help fix our streets, protect our kids and pedestrians, Vote YES on FF!

www.berkeleysafestreets.com

s/Jesse Arreguín
Mayor of Berkeley

s/Jenny Wong
Berkeley City Auditor

s/Ana Vasudeo
Berkeley School Board President

s/Laurie Capitelli
Berkeley City Councilmember

s/Julie Sinai
Former Berkeley School Board Director

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE FF

Measure FF promises a lot but won't deliver safe streets and sidewalks for everyone.

Measure FF proponents are the same folks who underfunded street repair for a decade and are now diverting recently increased funding to special interest projects that are more about discouraging driving than promoting safety. That's why Measure FF does not commit to fixing our worst streets and all of our sidewalks. In fact, it is full of loopholes. Under Measure FF, taxes can be diverted to a laundry list of possible projects – including "public art" and "community spaces."

Because Measure FF proponents know that their street re-engineering projects slow down first responders, Measure FF would fund expensive "retractable bollards." We need to stop chasing the latest new thing and go after the basics: funding well-maintained streets and sidewalks. **Only Measure EE does this.**

Measure FF fails to fund adequate sidewalk maintenance, allocating only 15% of tax revenue to sidewalk repairs –Measure EE dedicates 35% to sidewalks.

By "strict oversight," Measure FF proponents mean the same old council-appointed, special-interest-dominated commissions.

Measure FF proponents falsely claim that theirs is the only measure on the ballot that improves our streets. In fact, Measure EE has a disciplined focus on fixing our streets and sidewalks, recognizing that broken pavement hurts people, damages bicycles, and causes costly car repairs that people can't afford. Measure EE funds pedestrian safety and bicycle boulevard improvements and promotes green infrastructure for all street projects.

Join us and vote **No on FF** and **Yes on EE**!

s/Carla Woodworth
Former Berkeley City Councilmember, Berkeleyans for Better Planning

s/Tamar Michai Freedman
Disability Advocate, Berkeley Resident for 35 years, Former Chair of the City of Berkeley Commission on Disability

s/Mary E. Oram
Elmwood small business owner, Willard Neighborhood Association

s/Meryl Siegal
Co-founder, Beautiful San Pablo

s/Michael Katz
Cyclist and former member, Caltrans Bay Bridge Bicycle/Pedestrian Advisory Committee

ARGUMENT AGAINST MEASURE FF

Measure FF does not prioritize fixing Berkeley's streets, sidewalks or pathways. Instead, this measure funds special-interest, street re-engineering projects that won't be monitored for safety, usage, or effectiveness.

Consider:

- Measure FF would cost taxpayers 50% more than Measure EE because it taxes at a higher rate and for two extra years.
- Measure FF claims to allocate 60% of revenues to repair streets and sidewalks, but the City Council can bypass that if our streets reach an ***average*** "good" condition. That means that many streets could remain in failed or poor condition while the City Council diverts funds to projects other than street and sidewalk repair.
- Measure FF claims to allocate 30% of funds to "safety improvements," but that term is defined broadly to include 18 miles of hardscape cycle tracks on major city corridors that would introduce new cycle hazards, while eliminating parking and hurting our small businesses, increasing congestion, and impeding emergency responders. "Safety improvements" can also be used to remove travel lanes and to close off Telegraph Ave. to cars, as the measure's proponents are on record as advocating.
- Because Measure FF does not provide enough funds to fix all of our sidewalks and pathways, pedestrians and wheelchair users will remain at the mercy of homeowners to provide safe sidewalks.

Finally, Measure FF promises a "Citizen Oversight Committee" (handpicked by City Council), but actually permits the City to spend much of the money as it likes – instead of requiring that the City Council fix our streets, sidewalks, and paths.

Vote **No on Measure FF!**

s/Carla Woodworth
Former City Councilmember, Berkeleyans for Better Planning

s/Michael Katz
Cyclist; Former member, Caltrans Bay Bridge Bicycle/ Pedestrain Advisory Committee

s/Steven Sullivan
President and co-founder, Acme Bread; Regular Bicycle Commuter

s/Meryl Siegal
Co-founder Beautiful San Pablo

s/Mary Behm-Steinberg
Disability Rights Activist

REBUTTAL TO ARGUMENT AGAINST MEASURE FF

Measure FF will deliver more than *double* the funding for street paving, safety improvements, and environmental enhancements than any other measure – at only a small additional cost to homeowners (about $1.50 per week). That's **twice as much funding to fix potholes,** twice as many resources to protect our children on our streets, and twice as much money to win critical infrastructure grants from Sacramento and Washington DC.

Measure FF has the strongest oversight and accountability provisions of any measure. That's why it's endorsed by **City Auditor Jenny Wong** and **former City Auditor Ann-Marie Hogan**.

Measure FF's **strict oversight provisions** include:

- Tough restrictions on how revenue is spent, requiring funded projects to be consistent with established City plans and policies.
- Annual City reports tracking street paving and safety progress.
- Regular performance audits.
- Community input process to determine project priorities.
- Annual reviews by the independent Citizen Oversight Commission.

Measure FF is the *only* street paving measure endorsed by the **Berkeley Firefighters Association**, because Measure FF's safety funding can be used to improve emergency response times, enhance evacuation routes, and save lives on Berkeley's streets. No other measure can guarantee even a single penny will be spent to help save lives.

According to an independent City analysis, **Measure FF is the *only* measure projected to maintain or improve our streets.** The only interests prioritized in Measure FF are the interests of Berkeley voters – we deserve smoother, safer streets. Measure FF will deliver.

Join the Berkeley Firefighters Association, the Sierra Club, and a City Council supermajority in voting YES on Measure FF! www.YesOnFF.com

s/Terry Taplin
Berkeley City Councilmember, District 2

s/Gordon Wozniak
Former Berkeley City Councilmember

s/Tom Bates
Former Berkeley Mayor and State Assemblymember

s/Loni Hancock
Former State Senator and Berkeley Mayor

s/Weldon Bradstreet
Disaster and Fire Safety Commission Chair

MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO LEVY A PARCEL TAX TO FINANCE STREET AND SIDEWALK REPAIR AND TRAFFIC SAFETY

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

Section 1. Title
This measure shall be known as the Sustainable and Accountable Funding for Equitable Street Transformation, Revitalization, Enhancements, and Essential Traffic Safety (SAFE STREETS) Initiative

Section 2. Findings
The People of the City of Berkeley find and declare as follows:

A. The City's Vision 2050 Framework is a comprehensive plan to repair and upgrade Berkeley's infrastructure and facilities to be more sustainable, safe, and resilient and to meet the needs of future generations, including addressing climate and environmental challenges. The Vision 2050 task force identified the highest priority is to rehabilitate Berkeley's core infrastructure, which is the infrastructure within the street right-of-way; and is inclusive of street paving, sidewalks, mobility and traffic safety, quick build transit projects, green infrastructure, and street trees.

B. Berkeley's street pavement has an overall Pavement Condition Index (PCI) of 57 and is currently classified as "at risk" condition by the Metropolitan Transportation Commission and by the City Auditor. Failure to make urgently needed street repairs in a timely manner will result in the need for more costly repairs in the future. City staff estimates show that improving the overall PCI to 70, classified as "good" condition, would require $320 million over 12 years, or an estimated $350 million over 14 years. Funding will continue to come largely from existing sources, such as the General Fund, and augmented by an estimated $110 million in funds from this initiative.

On July 26, 2022, in Resolution No. 70,456-N.S., the City Council committed to increase annual funding of street maintenance from the General Fund to approximately $8 million, for a total of $15.3 million, and to continue that funding and increase it to account for inflation and maintenance once repairs have been made.

C. City staff estimate a backlog of about $35 million is needed to repair sidewalks and pathways.

D. The Berkeley City Council adopted the 2019 Vision Zero Action Plan, with the goal of eliminating fatal and severe traffic crashes by 2028, and outlined a set of priority actions, including implementation of adopted and updated plans such as the 2017 Bicycle Plan and 2020 Pedestrian Plan. The Bicycle and Pedestrian Plans had a total estimated cost of $124 million when initially adopted, but have remained largely unfunded while costs have increased. This initiative will prioritize the most critical projects to improve pedestrian and bike safety and will require an investment of about $70 million, which will be leveraged as matching funds to win additional grant monies.

The pedestrian safety projects are described in the 2020 Pedestrian Plan, and include signal, intersection and street improvements at 10 priority street segments. The estimated cost ranges from $18 to $61 million.

Bicycle safety projects will prioritize Tier I projects described in the 2017 Bicycle Master Plan Appendix E, primarily consisting of improvements to existing bicycle routes, including traffic calming on bike boulevards and intersection improvements (including protected intersections and flashing beacons). The Executive Summary of the Bicycle Master Plan estimates the Tier I bicycle projects at a total cost of $48 million.

E. Berkeley has declared a climate emergency and set a goal of achieving 100% sustainable transportation by 2040. The State has mandated the inclusion of green infrastructure in roads that are reconstructed. This initiative includes funding for environmental improvements, including the use of green infrastructure, permeable surfaces, use of native plants, and tree plantings, as well as community spaces, benches, bus shelters, and other appropriate uses to improve the environment of our streets and adapt to a changing climate. The funding allocated in this measure for these types of improvements is roughly $20 million.

F. A special parcel tax within the City provides an equitable mechanism for funding capital investments and ongoing maintenance and improvements of streets, sidewalks, and traffic safety features, including for pedestrian and bicyclist safety. An exemption from the tax for low-income homeowners will help ensure the cost of the measure is not a burden for residents on fixed or limited incomes. A split-roll tax under which commercial properties pay more than residential properties, as used in numerous prior parcel taxes, ensures equity in raising funds.

G. The intent of this measure is to augment current city funding for paving and sidewalk repair for a temporary period and allow long-deferred repairs to be made so that the overall condition of the roads and sidewalks will be made acceptable and safe within 14 years, and maintenance costs will be reduced.

Section 3. Code Amendment
A new Chapter 7.11 is hereby added to the Berkeley Municipal Code as follows:

Chapter 7.11

Sustainable and Accountable Funding for Equitable Street Transformation, Revitalization, Enhancements, and Essential Traffic Safety (SAFE STREETS) Tax

7.11.010 Special Tax - Use.

A. A special tax for the purpose of funding repairs and improvements to streets, sidewalks, and pedestrian paths is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter.

B. The Council may impose the tax authorized by this Chapter up to the rate, and subject to inflation adjustments, set forth in Section 7.11.020.

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

D. All proceeds of the tax are subject to review, allocation, and approval by the City Council.

E. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purposes of enhancing streets, sidewalks, and pedestrian paths within City limits by funding the following types of projects:

1. Repair, repaving, and reconstruction of streets, sidewalks, and pedestrian paths,
2. Safety improvements to streets, sidewalks, and pedestrian paths,
3. Environmental enhancements to streets, sidewalks, and pedestrian paths.

F. Proceeds of the tax may be used to pay or reimburse the City for actual, verifiable costs of City staff when they are performing work on, or necessary and incidental to, projects funded by the tax, or public input, oversight, and accountability elements required by this chapter. Proceeds of the tax may also be used to pay or reimburse the City for the costs of City Auditor staff time spent auditing the tax expenditures of this measure.

G. Proceeds of the tax may be used to pay or reimburse the City for the costs of updating the Transportation Element of the General Plan, once every ten years, to integrate and reflect all relevant adopted plans and policies.

H. Proceeds of the tax may be used to pay or reimburse the City for the costs of reviewing and updating the City's public works project delivery process, once every ten years.

I. Proceeds of the tax may be used for public art, limited to no more than 1.75% of applicable project budgets and consistent with Section 6.13.020. Public art funded by this tax shall be in public spaces.

J. Proceeds of the tax may not be used to fund bicycle-specific safety improvements (such as cycletracks or protected bike lanes) on Hopkins Street between McGee and Gilman.

K. The goal of this tax is to achieve the following by December 31, 2036:

1) Raise Berkeley's Pavement Condition Index (PCI) to or above 70 (rated as "Good" by the Metropolitan Transportation Commission), ideally with no streets having a PCI below 50; and
2) Eliminate the backlog of damaged sidewalks and pedestrian paths in Berkeley; and
3) Significantly reduce or eliminate fatal and severe traffic crashes throughout the city, particularly involving pedestrians or cyclists.

It is also a goal of this tax to achieve the above in a way that is in line with current best practices, ensures accessibility for all users, enhances the sustainability and resiliency of Berkeley's public right-of-way facilities, and provides benefits to Berkeley's entire community.

7.11.020 Tax Authorized - Tax Rate and Allocation - Adjustments for Inflation

A. The City Council is hereby authorized to impose and allocate a special tax as follows:

1) **Residential Rate:** For all dwelling units, the tax may be imposed at the rate of up to $0.17 per square foot of improvements.
2) **Non-Residential Rate:** For all other property, the tax may be imposed at the rate of up to $0.25 per square foot of improvements.

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

C. Tax proceeds shall be allocated approximately as follows:

1) 60% for streets and sidewalks, of which roughly three quarters (45%) will be for streets and one quarter (15%) will be for sidewalks and pedestrian paths, until the backlog of damaged sidewalks and pedestrian paths is eliminated.
2) 30% for safety improvements.
3) The remaining 10% shall include environmental enhancements, any required fees to the County, and any permitted uses as specified in Section 7.11.010.

D. When the City's average PCI is 70 or higher, the allocations specified in Section 7.11.030(C) shall not be required.

E. If another measure providing an additional source of revenue for uses covered in this tax is approved by the voters on the same ballot as this measure, the tax rates authorized in Section 7.11.020(A) shall be reduced by an equivalent amount, and the percentages specified in 7.11.020(C) shall be adjusted as necessary to meet the goals of this chapter, while that measure remains in effect.

7.11.030 Duration and Renewal - City Funding Required

A. This measure shall remain in place for 14 years from the effective date, unless extended by the voters.

B. If the City Council fails to adopt a budget with at least $15.3 million in funding for street maintenance, from sources other than this tax, and adjusted for inflation, per Resolution No. 70,456-N.S. (adopted July 26, 2022), the City Council shall not be authorized to impose the special tax for the following two years.

C. In the event of a loss of any external funding source for street maintenance, or a decline in the amount provided for street maintenance by an external funding source included in the 2023-24 budget (adjusted for inflation), the required budgeted amount in Section 7.11.030(B) shall be reduced by an equivalent amount.

D. Section 7.11.030(B) shall not apply for years in which the City Council draws upon $1 million (or more) from the Stabilization Reserve in order to adopt a budget, or the City of Berkeley is included in the site of a natural disaster recognized by the Federal Emergency Management Agency or in a state or federal declaration of a state of emergency.

7.11.040 SAFE STREETS Citizen Oversight Committee

A. The City Council shall establish a SAFE STREETS Citizen Oversight Committee (SSCOC) to review expenditures and progress reports from the City Manager and City Auditor to ensure compliance with the intent of this chapter, evaluate the impacts and outcomes of tax expenditures on this chapter's stated goals, and prepare public reports on the committee's findings.

B. Composition:

1. The SSCOC shall consist of seven members, as follows:
   (a) Two members of the Transportation and Infrastructure Commission
   (b) One member of the Environment and Climate Commission
   (c) Four members of the public who are Berkeley residents

2. SSCOC members from commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the City Council as a whole. Members of the public shall be required to have a background in civil engineering, transportation engineering, infrastructure program management, or the implementation of municipal bond or tax measures.

3. The SSCOC annually shall elect one of its members as the chairperson and one of its members as the vice-chairperson.

C. The City Manager shall designate a staff person to serve as secretary of the committee.

D. The committee shall establish a regular place and time for 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. The frequency of committee meetings shall be as determined by City Council Resolution, but no less than four per year.

E The committee may make and alter rules governing its organization and procedures which are consistent with this Chapter or any other applicable ordinance of the City. A majority of the members appointed to the committee shall constitute a quorum and the affirmative vote of a majority of the members appointed is required to take any action.

F. The Committee shall prepare an annual independent report of progress and performance. Each report shall be made publicly available on the City's website and submitted to the City Council.

7.11.050 Public Input, Reporting, and Accountability

A. To ensure public input for the projects and priorities funded by this measure, City staff shall hold at least three workshops in different areas of the city, every three years, to solicit input on projects and priorities from residents and civic, neighborhood, and business organizations, in addition to the regular meetings of the Transportation and Infrastructure Commission.

B. The City Manager shall prepare and submit to the City Council and the SSCOC an annual report of performance metrics, outcomes, and accomplishments that reflects all City street, sidewalk, and safety funding. To promote effective communication, the report shall also be presented in an online dashboard, and include the following metrics:

1. Streets paved, cost per mile, changes to the citywide average PCI, the PCI of all streets, and a schedule that estimates which streets will be paved in the next 5 years; and
2. Progress on sidewalks and pedestrian paths; and
3. Safety projects implemented, and fatal and severe injuries over time; and
4. Progress on green infrastructure, tree planting, climate resiliency measures, and changes in trip modality; and
5. Awarded and in-progress grants.

C. All expenditures, and verification of progress towards the goals set forth in Section 7.11.010(K), shall be subject to an independent performance audit by the City Auditor, at least once every three years, to confirm that the tax expenditures and reports are accurate and consistent with the intent of this chapter.

7.11.060 Use of Adopted Plans and Policies

A. Any project funded by the proceeds of the tax must be consistent with one or more adopted City of Berkeley plans or policies. Adopted City of Berkeley plans and policies shall inform project prioritization.

B. Any project funded by the proceeds of the tax which includes street repair, repaving, and/or reconstruction shall implement safety improvements concurrently, unless the City Council adopts a written finding based on substantial evidence that there are no improvements which would materially increase safety and are consistent with an adopted City plan or policy.

C. Any project funded by proceeds of the tax which includes safety improvements must be consistent with one or more of the following City of Berkeley plans and policies, as may be amended from time to time, or their successor plans as adopted by City Council:

i) the Vision Zero Action Plan, adopted March 10, 2019; or
ii) the Pedestrian Plan, adopted January 26, 2021; or
iii) the Berkeley Bicycle Plan, adopted May 7, 2017; or
iv) the Complete Streets Policy, adopted December 11, 2012.

A project funded by the proceeds of the tax which includes safety improvements may alternatively be consistent with one or more Safe Routes to Schools Safety Assessment and/or Improvement Plan, as may be amended from time to time by the Berkeley Unified School District and Alameda County Transportation Commission.

D. Additional City of Berkeley adopted plans and policies, such as the Vision 2050 Framework, Street Maintenance and Rehabilitation Policy, Repaving Plan, Berkeley Strategic Transportation Plan (BeST), Age-Friendly Berkeley Action Plan, Streets and Open Space Improvement Plan (SOSIP), Green Infrastructure Plan, Stormwater Management Plan, Local Hazard Mitigation Plan, Berkeley Electric Mobility Roadmap, Berkeley Resilience Strategy, Berkeley Transit-First Policy Implementation Plan, or area-specific plans, including the Adeline Corridor Specific Plan, Downtown Area Plan, South Shattuck Strategic Plan, Southside Plan, University Avenue Strategic Plan, and West Berkeley Plan, shall be considered, as appropriate, when identifying or evaluating projects to be funded by proceeds of this tax.

7.11.070 Definitions

For the purposes of this chapter, the following terms shall be defined as set forth below:
A. “Building” shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word “building” includes the word “structure.”

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

C. “Square footage” shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

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

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

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

F. “Repair, repaving, and reconstruction” shall refer to a suite of interventions designed to restore and upgrade the physical integrity and functionality of streets and sidewalks, including pedestrian paths, including all ordinary and necessary expenses and features as required by applicable law.

G. “Safety improvements” shall mean improvements to sidewalks, streets, and highways inclusive of state highways that implement features designed to reduce collisions, injuries, and fatalities, including traffic calming measures. Safety improvements shall include features recommended by the Urban Street Design Guide published by the National Association of City Transportation Officials (NACTO), features recommended by the Proven Safety Countermeasures initiative published by the Federal Highway Administration, and/or other similar features to reduce collisions, injuries, and fatalities recommended by national organizations of planning or transportation experts. Safety improvements shall also include improvements to emergency vehicle access and response times, such as fire/emergency evacuation lanes, transit lanes that also serve emergency vehicles, cycle tracks that can accommodate emergency vehicles, traffic signal controls for emergency vehicles, retractable bollards, curb management, and signage for evacuation routes.

H. “Traffic calming measures” shall mean safety improvements specifically designed to reduce vehicle speeds, including horizontal or vertical deflections (such as chicanes and speed bumps), width reductions (such as bulb-outs and medians), and routing restrictions (such as diverters and bollards), or other similar measures recommended by the Institute of Traffic Engineers, the Federal Highway Administration, or other national organizations of transportation experts.

I. “Environmental enhancements” shall mean improvements to sidewalks, streets, and highways, inclusive of state highways, that improve resiliency or sustainability, and/or provide community amenities. Environmental enhancements shall include, but not be limited to, green infrastructure, permeable surfaces, native plants, street trees, planted verges and medians, transit rider facilities, and community spaces.

J. “Transit rider facilities” shall mean improvements to sidewalks, streets, and highways inclusive of state highways that implement features to improve comfort and reliability for transit riders, such as elements recommended in the Transit Street Design Guide published by NACTO, including but not limited to bus shelters, benches, and bus station islands.

K. “Pavement Condition Index” or “PCI” shall refer to the numerical index between 0 to 100 used to determine the general condition of the pavement, following standards set forth by ASTM D6433 - 20, or an equivalent appropriate methodology developed for non-asphalt surfaces.

7.11.080 Exemptions.

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

B. The tax imposed by this Chapter shall not apply to any property owned by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute “very low-income,” as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

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

7.11.090 Duties and Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.11.100 Collection with Property Tax - Penalties and Interest.

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

7.11.110 Collection.

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

7.11.120 Refunds.

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

7.11.130 Savings clause - Severability.

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

7.11.140 Violation - Penalty.

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

Section 4. Increase appropriations limit.

Pursuant to California Constitution Article XIIIB, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2025 through 2028.

Section 5. Effective date.

The tax imposed by this Chapter shall be operative on January 1, 2025.

Section 6. Conflicting Ballot Measures

(a) In the event that this measure and another measure(s) relating to local taxes to fund any or all of the uses permitted in this measure are approved by a majority of the voters at the same election, and this measure receives a greater number of affirmative votes than any other such measure(s), this measure shall control in its entirety, and the other measure(s) shall be rendered void and without any legal effect. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than the other measure(s), this measure shall take effect to the extent permitted by law.

(b) If any provisions of this measure are superseded by the provisions of any other conflicting measure approved by the voters and receiving a greater number of affirmative votes at the same election, and the conflicting measure is subsequently held to be invalid, repealed, or terminated, the provisions of this measure shall be revived and shall have full force of law.

Section 7. Amendment, repeal, and reenactment.

(a) Without voter approval, the City Council may repeal this ordinance or amend it in any manner that does not:

1) Result in an increase in the tax authorized to be imposed;
2) Expand the permissible uses in Section 7.11.010, or materially alter relevant definitions in Sections 7.11.070, in a way that is inconsistent with the original intent of this chapter;
3) Alter the allocations of Section 7.11.020;
4) Extend the sunset or reduce the City budgeting requirements set forth in Section 7.11.030;
5) Reduce the public input, oversight, and accountability processes set forth in Section 7.11.040 and 7.11.050;
6) Reduce the use of adopted plans and policies in Section 7.11.060;
7) Lower the threshold of “substantial evidence” in Section 7.11.060(B);
8) Add or modify exemptions (in a manner that would increase the tax).

(b) If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not:

1) Result in an increase in the tax authorized to be imposed;
2) Expand the permissible uses in Section 7.11.010, or materially alter relevant definitions in Sections 7.11.070, in a way that is inconsistent with the original intent of this chapter;
3) Alter the allocations of Section 7.11.020;
4) Extend the sunset or reduce the City budgeting requirements set forth in Section 7.11.030;
5) Reduce the public input, oversight, and accountability processes set forth in Section 7.11.040 and 7.11.050;
6) Reduce the use of adopted plans and policies in Section 7.11.060;
7) Lower the threshold of “substantial evidence” in Section 7.11.060(B);
8) Add or modify exemptions (in a manner that would increase the tax).

(c) In the event that this measure and another measure(s) relating to local taxes to fund street and sidewalk repair, repaving, and reconstruction both take effect, the City Council may make any amendments to this ordinance necessary to consolidate and align this measure with the other measure(s), that does not result in a tax authorized to be imposed greater than the tax authorized by this measure.

Section 8. California Environmental Quality Act Requirements.

This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(3) and 15378(b)(4).

Section 9. Special Tax; Majority Vote Requirement. This Ordinance imposes a special tax for restricted purposes and is being placed on the ballot via signature petition. It shall be effective only if approved by a majority of the voters voting thereon.

Measure GG
Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger (Initiative)

Shall the measure adopting a tax of $2.9647/therm of natural gas consumed annually in buildings of 15,000 square feet or larger except government buildings, single-family residences, and residential buildings with at least 50% affordable units, adjusted annually for inflation plus 6%; allocating revenues to building decarbonization programs, and administration; and establishing an oversight committee, generating an estimated $26.7 million the first year and more thereafter until its expiration in December 31, 2050, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE GG

This measure was placed on the ballot by an initiative petition signed by the requisite number of registered voters in the City of Berkeley. It requires a majority vote for passage.

This measure would impose a new special tax on natural gas consumption in buildings of 15,000 square feet or larger that are actively heated or cooled.

The tax rate would be roughly $2.9647 per therm (a unit of energy) of natural gas consumed in a building during the tax year. It would be calculated as the sum of the following:

(1) The product of $382 X [total therms] X [natural gas carbon emissions factor of 0.0053]

(2) The product of $10,044 X [total therms] X [natural gas leakage factor of 0.04] X [natural gas methane content factor of 0.9] X [natural gas therm to metric ton factor of 0.0026]

The City estimates this tax would generate annual revenues of roughly $26.7 million per year. The tax would be charged to building owners, who would be prohibited from passing the tax onto tenants in residential or mixed-use buildings in the form of increased rent or costs. The tax would not apply to 1-to-4 unit residential buildings, residential buildings where more than 50% of the units are deed-restricted to be affordable to households making less than 80% of the Area Median Income, or government-owned buildings. The City Council could exempt 501(c)(3) tax-exempt organizations with annual revenues under $1,000,000, provided certain conditions are met. The measure prohibits the City Council from adopting other exemptions.

The measure would take effect January 1, 2025, and expire December 31, 2050. The tax would be due February 28, 2026, and annually thereafter, subject to a penalty of 10% of the amount due plus interest of 1% per month for delinquent payments. The base tax rates would be adjusted every year, beginning January 1, 2026, by the sum of the percentage increase in the Consumer Price Index plus 6%. The measure would prohibit the City Council from reducing the tax rates or otherwise reducing the tax absent a finding, supported by substantial evidence, that doing so is necessary to temporarily address unusual circumstances, such as a natural disaster, and that the reduced tax will nevertheless achieve the measure's purposes.

All tax proceeds would be deposited into a special purpose fund to be used for administering the measure (up to 3%); any refunds; a program of natural gas conversions and building decarbonization retrofits (90% of the remainder); and permanent unionized City staff for this program (10% of the remainder). In using the proceeds, the City would be required to prioritize tenant protection and impact on communities identified by the state as vulnerable to effects from pollution, as well as natural gas conversion and decarbonization retrofits in low-rise residential buildings and restaurants.

The City's Environment and Climate Commission would oversee administration of the fund, conduct an annual needs assessment regarding retrofitting existing buildings in the City, and make recommendations to City Council.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE GG

Vote YES on GG to 'Go Green' and fund **climate-friendly building upgrades for all Berkeley residents and businesses** through a **carbon tax** on the **largest polluters!**

<u>Who pays?</u>

This special tax would **only** be applied to **owners** of the **largest greenhouse gas emitting buildings 15,000 square feet or larger.** Owners are prohibited from passing tax on to residential tenants.

<u>Berkeley Residents Benefit</u>

1. **Clean upgrades for all** – homeowners, renters, restaurants, nonprofits, other businesses, and those who are taxed! Upgrades include solar, battery storage, heat pumps, ACs, induction cooktops, panel upgrades, wiring, EV charging, insulation, and more;
2. **Incentivizes** the largest buildings to reduce harmful methane emissions and improve air quality. Methane increases asthma risk and smog.

This measure would **generate an estimated $26.7 million per year Just Transition Fund** to help all residents fight climate change, improve health, and create well-paying green jobs. Proceeds can only be used to support climate action supervised by an oversight committee.

<u>Reduce Berkeley's Climate Emissions</u>

Methane use in buildings accounts for nearly ⅓ of Berkeley's climate emissions, but there's currently no plan to reduce them. This measure would curb emissions and account for societal costs of burning and leaking methane. It would also fund almost the entire estimated cost to eliminate emissions from all low-rise residential buildings.

<u>Community Over Profits</u>

Don't be fooled: the opponents are led by **the biggest corporations** and **real estate interests.** Their goals **align with the fossil fuel industry: inaction**. They claim to represent our community and support the climate, but **profit is their bottom-line.**

Measure GG is supported by doctors, City workers, environmentalists, tenants' advocates, community: 350 Bay Area, Sunrise Movement Bay Area, Berkeley NAACP, Berkeley Tenants Union, Berkeley Black Ecumenical Ministerial Alliance, SEIU Local 1021, AFSCME PEU Local 1, Wellstone Democratic Renewal Club of the East Bay, California Climate Voters PAC, Berkeley Community Action, Berkeley People's Alliance, and more.

We can fight the climate crisis and improve quality of life by taxing the largest polluters.
Vote YES on GG.

FossilFreeBerkeley.org

s/Daniel Tahara
350 Bay Area Board Member and Berkeley Environment and Climate Commission

s/Robert M. Gould, MD
President, SF Bay Physicians for Social Responsibility

s/Nathan Mizell
Commissioner, Berkeley Rent Board

s/Tajmal Payne
President, Berkeley NAACP

s/Jocelyn Goldsmith De Sena
Community Health Worker Specialist and Chapter Officer, Berkeley SEIU 1021
CSU/PTRLA

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE GG

Berkeley is making great progress in reducing natural gas use. Measure GG doesn't just tax Berkeley's "largest polluters." It will force many nonprofits, schools, places of worship and small businesses to cut programs and staff, close, or leave Berkeley.

Berkeley Repertory Theatre. Berkeley YMCA. The environmental and social justice nonprofits at David Brower Center. Berkeley Bowl. Boichik Bagels. All want to transition from natural gas, but none are capable of doing that immediately. The technology simply doesn't exist yet for them to transition.

See just some of those who GG dramatically impacts: NOonGG.org/impact

Measure GG impacts renters, not just building owners. The City's own independent report says GG could cause "displacement," "higher rental costs," and "force renters out of their homes."

Measure GG could expose the city to costly lawsuits.

GG proponents wrote: "we are fairly confident that this measure will stand up to scrutiny, for legal and practical reasons." "Fairly confident" isn't a gamble to take when GG could generate lawsuits costing taxpayers millions—funding better spent on effective climate action.

It's unlikely GG would significantly reduce emissions.

Businesses that leave will lose access to our clean electricity grid, and force Berkeleyans to drive further to shop, increasing emissions.

Measure GG was written without real input from the City or electricity grid experts.

The City is already working with nonprofits and small businesses to transition in a way that makes corporations pay their fair share while protecting nonprofits, renters and small businesses. We're eager to join them, to do this in a sustainable, effective, Berkeley way.

www.NOonGG.org

s/Susan Wengraf
Vice Mayor and District 6 Councilmember

s/Janet Cordova-Miyake
Human Resources Benefits Manager, Berkeley Bowl Marketplace

s/Tom Parrish
Managing Director, Berkeley Repertory Theatre

s/Stefan Elgstrand
Commissioner, Berkeley Rent Stabilization Board

s/Ric O’Connell
Executive Director, GridLab

ARGUMENT AGAINST MEASURE GG

Don't hurt Berkeley's nonprofits, renters and small businesses. Vote NO on GG, the unsustainable building tax.

Berkeley's nonprofits and small businesses are eager to fight climate change by transitioning off natural gas. But this dramatic, unsustainable tax triples natural gas costs for hundreds of small businesses and nonprofits–costing thousands to millions of dollars annually. For many, it could be years before it's possible to transition, and this measure does nothing to help in the meantime. GG was written without real community input and has multiple unintended consequences.

GG hurts struggling nonprofits.

Measure GG would adversely impact many nonprofits with community programs that often benefit low-income residents and seniors. This tax would cost the Berkeley YMCA $180,000 annually, as they struggle to recover from the pandemic. We should help–not hurt–our nonprofits.

GG hurts vulnerable renters.

The City's report says the measure could cause "displacement … [or] higher rental costs." Rental "units could be removed from the market altogether…" and landlords could use "construction-as-harassment" to "force renters out of their homes."

GG puts small businesses in jeopardy.

The City's report says the measure could force small businesses still recovering from the pandemic "out of business completely." Many businesses, like Boichik Bagels, use specialized natural gas equipment, and this would push them out of Berkeley. GG will deprive Berkeley of good-paying jobs, while forcing remaining businesses to raise prices. Berkeley Bowl would face an additional $280,000 annually. That's unsustainable.

Measure GG hits healthcare providers with an unaffordable tax increase almost immediately, hurting their ability to deliver quality care.

Our healthcare providers depend on natural gas for many essential patient services. The added financial burden could lead to difficult decisions about staffing and resources, and may impact patient care.

Join Berkeley nonprofits, environmentalists and small businesses: Vote NO on GG.

www.NOonGG.org

s/Jesse Arreguín

Berkeley Mayor

s/David Phillips
Board Member, David Brower Center

s/Tim Frank
Building Trades Representative

s/Emily Winston
Founder & CEO, Boichik Bagels

REBUTTAL TO ARGUMENT AGAINST MEASURE GG

Vote **YES on GG** to **help Berkeley** businesses, non-profits, and residents **"Go Green!"** Refreshingly, **this tax applies only to owners of climate polluting buildings 15,000 sqft.** or larger, ***not*** homeowners and renters.

Mega real estate corporations are funding the opposition while homes in the hills go without insurance, residents choke on wildfire smoke, and sea level rises unchecked.

GG Supports Businesses and Climate Action

GG is a win-win! It provides everyone, including businesses subject to the tax, the funds to fight climate change.

GG Supports Renters

GG was written in consultation with Berkeley Rent Board members and endorsed by tenants' advocates. It **prohibits landlords from passing the tax onto their renters, prevents displacement**, and gives landlords incentive to improve energy efficiency, **reducing energy bills** for all.

Misleading Scare Tactics

The opposition **grossly exaggerates** the tax burden.

Public data shows that the tax **is a tiny fraction of annual business revenue**:

- Kaiser: **0.0006%** on $100 billion
- Sutter: **0.05%** on $10 billion
- Boichik Bagels: **0.1%** on $5.36 million
- YMCA East Bay: **0.26%** on $69 million

Voters in 2006 decided to cut emissions to save the planet, but **the City's plan is severely underfunded** and **emissions are rising** in large buildings.

Fortunately, the Berkeley Planning Department says Measure GG could: "help achieve Berkeley's goal of becoming a Fossil Fuel Free City and mitigate climate change impacts."

GG helps those with less resources and asks big property owners to do their share.

Vote YES on GG to improve health, support residents/businesses, and fund climate action.

s/Nathan Mizell
Commissioner, Berkeley Rent Board

s/Daniel Tahara
350 Bay Area Board Member & Berkeley Environment and Climate Commissioner

s/Micah J. Perlin
Director, California Climate Voters PAC

s/Tajmal Payne
President, Berkeley NAACP

s/Jocelyn E. Goldsmith-De Sena
Community Health Worker Specialist and Chapter Officer, Berkeley SEIU 1021 CSU/PTRLA

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

ADDING CHAPTER 7.77 TO THE BERKELEY MUNICIPAL CODE TO IMPOSE AN EXCISE TAX ON GENERATING GREENHOUSE GAS EMISSIONS IN LARGE BUILDINGS

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

Section 1. Adoption. That Chapter 7.77 of the Berkeley Municipal Code is hereby adopted to read as follows:

Chapter 7.77

LARGE BUILDINGS FOSSIL FUEL EMISSIONS TAX

Sections:

7.77.010 Short Title.
This Chapter shall be known as the “Large Buildings Fossil Fuel Emissions Tax Ordinance,” and the tax it imposes shall be known as the “Large Buildings Fossil Fuel Emissions Tax.”

7.77.020 Findings and purpose.
The people of the City of Berkeley find and declare as follows:
A. Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.

B. The following addition to the Berkeley Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:

(1) As a coastal city located on the San Francisco Bay, Berkeley is vulnerable to sea level rise, and human activities releasing greenhouse gases into the atmosphere cause

increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water — resulting in rising sea levels.

(2) Berkeley is already experiencing the repercussions of excessive greenhouse gas emissions as rising sea levels threaten the City's shoreline and infrastructure, have caused significant erosion, have increased impacts to infrastructure during extreme tides, and have caused the City to expend funds to modify its sewer system.

(3) Berkeley is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.

(4) Structures in Berkeley are located along or near the Hayward fault, which is likely to produce a large earthquake in the Bay Area.

C. The following addition to the Berkeley Municipal Code is also reasonably necessary because of health and safety concerns as Berkeley residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.

D. The people of Berkeley, as codified through Measure G (Resolution No. 63,518-N.S.), the City of Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), Prohibition of Natural Gas Infrastructure in New Buildings (Ordinance 7672-NS), all recognize that rapid, far-reaching and unprecedented changes in all aspects of society are required to limit global warming and the resulting environmental threat posed by climate change, including the prompt phasing out of natural gas as a fuel in buildings.

E. Substituting electric heating and cooling infrastructure in new buildings fueled by less greenhouse-gas-intensive electricity is linked to significantly lower greenhouse gas emissions.

F. All-electric building design benefits the health, welfare, and resiliency of Berkeley and its residents.

G. In 2020, the City's building sector accounted for the majority of the City's community-wide greenhouse emissions and natural gas combustion in the residential and commercial sectors respectively accounted for 18 and 14 percent of community-wide emissions.

H. Methane gas leaked into the atmosphere is 84 times more potent as a greenhouse gas than carbon dioxide over the first 20 years of emission.

I. The true greenhouse-gas-emissions impact of Berkeley's natural gas combustion, procurement and transportation is likely many times higher than reported due to leaks of methane gas across the natural gas system, including within Berkeley.

J. It is the intent of the People to disincentivize obsolete natural gas infrastructure and associated greenhouse gas emissions in existing commercial and large residential buildings, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

K. The City is also working to ensure all public funds available to electrify existing buildings from the City, regional, State and Federal governments are maximized.

L. Even with the addition of City, regional, State, and Federal resources, the City is unable to assist all of its residents with services and funds to convert natural gas appliances and infrastructure to use cleaner electricity.

M. The increased costs of meeting the challenges of electrifying existing buildings, which the City estimates will cost $1.4 billion for low-rise residential buildings alone, has impacted the City's finances and its capacity to respond to the climate challenges described here.

N. The City needs new funds to pay for municipal services. The Buildings Emissions Tax is intended to disincentivize natural gas consumption and greenhouse gas emissions, thereby increasing the number of commercial and large residential property owners switching energy sources from fossil fuel gas to electricity, while also raising funds for municipal services, including funding a program to: reduce greenhouse gas emissions rapidly through decarbonizing buildings; support unionized trades and municipal jobs; and improve public safety, health, and indoor and outdoor air quality.

O. The special tax this measure imposes is an excise tax on the privilege of consuming natural gas in large buildings to fund climate mitigation strategies and other City services and on the privilege of access to municipal services. It is not a tax on title to property or on the value of property.

P. The Buildings Emissions Tax is intended to incentivize climate mitigation improvements to large buildings in Berkeley but shall not permit the costs of such improvements to be passed on to residential tenants in the form of rent increases or other increased costs.

7.77.030 Definitions.
Unless otherwise defined in this Chapter, the terms used in this Chapter shall have the meanings given to them in Chapters 2.44, 9.04, and 19.81, as amended from time to time. For purposes of this Chapter, the following definitions apply:
A. "Alternative Infrastructure and Appliances" means building improvements or infrastructure and appliances that operate on or generate electricity or other zero-carbon-emissions energy sources that are non-fossil-fuel-based or -derived, to include but not limited to those associated with plumbing, HVAC, cooking, clothes drying, heat pumps, solar panels, battery storage, electric panel upgrades, electric vehicle and mobility charging, and any related building electrical system upgrades.
B. "Base Amount" is defined in section 7.77.070(E)(1).
C. "Building Decarbonization Retrofits" means Natural Gas Conversion performed by labor subject to Minimum Labor Standards.

D. “Eligible programs” is defined in section 7.77070(E)(2).
E. “Environmental Justice” is defined in section 7.77.080(C).
F. “Fund” or “Fossil Fuel Free Buildings Just Transition Fund” is defined in Section 7.77.070(A).
G. “Gross Floor Area” means the total area, as measured between the principal exterior surfaces of the enclosed fixed walls of the building(s). This includes all areas inside the building(s) such as: occupied tenant areas, common areas, meeting areas, break rooms, restrooms, elevator shafts, mechanical equipment areas, and storage rooms. Gross Floor Area should not include interstitial plenum space between floors, which may house pipes and ventilation.
H. “Minimum Labor Standards” means labor or contractors subject to or providing all of the following:
(1) a bona fide collective bargaining agreement;
(2) compliance with applicable prevailing wage determinations made by the Director of Industrial Relations Pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773, & 1773.1;
(3) employer contributions to worker skills and training;
(4) healthcare and pension benefits;
(5) targeted hiring requirements, including a minimum percentage of work hours performed by disadvantaged workers and/or graduates from approved MC3 (multi-craft core curriculum) pre-apprenticeship programs, and a minimum percentage work hours performed by registered apprentices; and
(6) any other applicable City of Berkeley labor standards under this Code or any ordinance of the City Council implementing this Chapter.
I. “Natural Gas Conversion” means the material and labor associated with replacing natural gas building appliances and infrastructure with Alternative Infrastructure and Appliances.
J. “Taxable Non-Residential Building” means a building with at least 15,000 square feet of Gross Floor Area that is used or could be used for any occupancy type(s) other than residential where the interior of such Gross Floor Area is actively heated or cooled.
K. “Single-Family Building” means any building comprised solely of 1 to 4 residential units, regardless of size.
L. “Tax Proceeds” is defined in section 7.77.070(A).
M. “Taxable Residential Building” means a building with at least 15,000 square feet of Gross Floor Area that is used or could be used for any residential or mixed-use occupancy type(s) where the interior of such Gross Floor Area is actively heated or cooled. Taxable Residential Building shall not mean Single-Family Buildings and residential buildings more than 50 percent of the units of which are deed-restricted to be affordable to households making less than 80 percent of the Area Median Income.
N. “Oversight Committee” or “Fossil Fuel Free Buildings Just Transition Oversight Committee” is defined in Section 7.77.070(E).
O. “Owner” means a person possessing title to a Taxable Non-Residential Building or Taxable Residential Building as of 11:59 p.m. on December 31 of any calendar year. In the case of a building held in cooperative, condominium, tenants in common, or joint tenants form of ownership, “Owner” means the board of managers, board of directors, homeowners association, or other representative body of the jointly owned building with

authority to make decisions about assessments or charges on joint owners to fund maintenance and alterations.

7.77.040 Imposition of Tax.

A. Except as otherwise provided in this Chapter, for the purposes described in Section 7.77.080, the City imposes an annual Large Buildings Fossil Fuel Emissions Tax on each Owner generating greenhouse gas emissions from Taxable Non-Residential Buildings and Taxable Residential Buildings.

B. Large Buildings Fossil Fuel Emissions Tax amounts shall be determined based on the estimated greenhouse gas emissions in metric tons of carbon dioxide equivalent and methane of each Taxable Non-Residential Building and Taxable Residential Building for a tax year, calculated as the sum of:

(1) The product of $382, the total therms of natural gas consumed in the Taxable Non-Residential Building or Taxable Residential Building during the tax year, and the natural gas carbon emissions factor; and

(2) The product of $10,044, the total therms of natural gas consumed in the Taxable Non-Residential Building or Taxable Residential Building during the tax year, the natural gas leakage factor, the natural gas methane content factor, and the natural gas therm to metric ton factor.

C. For purposes of this Chapter:

(1) The natural gas carbon emissions factor shall be 0.0053.

(2) The natural gas therm to metric ton factor shall be 0.0026.

(3) The natural gas leakage factor shall be 0.04.

(4) The natural gas methane content factor shall be 0.9.

D. The City Manager, based on calculations from the Finance Department, shall annually adjust the base tax rates in subsection 7.77.040 B. (Originally, $382 and $10,044), commencing on January 1, 2026, by the sum of:

(1) The percentage increase in the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/Hayward Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the preceding year, beginning with the 2025 tax year; plus

(2) 6%.

E. The Large Buildings Fossil Fuel Emissions Tax shall be payable by the Owner. Not more than one tax per Taxable Non-Residential Building or Taxable Residential Building shall be imposed under this Section 7.77.040 for a tax year by reason of multiple Owners subject to tax. If there are multiple Owners subject to tax, each shall be jointly and severally liable for the tax.

F. The Large Buildings Fossil Fuel Emissions Tax shall take effect on January 1, 2025 and is first due on February 28, 2026. The Large Buildings Fossil Fuel Emissions Tax shall expire at the end of the day on December 31, 2050.

7.77.050 Exemptions and Exclusions.

A. For only so long as, and to the extent that, the City is prohibited from imposing the Large Buildings Fossil Fuel Emissions Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Large Buildings Fossil Fuel Emissions Tax shall be exempt from the Large Buildings Fossil Fuel Emissions Tax.

B. The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Large Buildings Fossil Fuel Emissions Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

C. The City Council by a vote of two-thirds of all City Councilmembers may by Ordinance adopt further exemptions, waivers, discounts, or rebates for the tax for an organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, and that has total annual revenues under $1,000,000, and provided that the Council (i) must renew each such exemption annually and (ii) makes an affirmative determination that the imposition of the tax otherwise required by this Chapter would make continued ownership of the property infeasible and that the benefits to the City from the particular organization outweigh the burden to the climate, the City's climate program, and/or other impacts which reasonably may be anticipated to be generated by modification of the tax.

7.77.060 Administration — Penalties.

A. Except as otherwise provided under this Chapter, the City Manager or their designee shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations to facilitate administration and enforcement of this Chapter.

B. The tax required by this Chapter is delinquent if not received by the City on or before February 28 of each year.

C. Any person who fails to timely pay tax due under this Chapter shall pay a one-time penalty of 10 percent of the amount due, in addition to the tax, plus interest on the unpaid tax at the rate of one percent per month from the date on which the tax became due until the date of payment.

D. Transactions with the principal purpose of avoiding or evading all or a portion of the Large Buildings Fossil Fuel Emissions Tax shall be disregarded for purposes of determining the amount of the Large Buildings Fossil Fuel Emissions Tax and whether the Large Buildings Fossil Fuel Emissions Tax is due. Any Owner determined to have engaged in one or more transactions with the principal purpose of avoiding or evading all or a portion of the Large Buildings Fossil Fuel Emissions Tax shall be liable for the Large Buildings Fossil Fuel Emissions Tax and also liable for a penalty in an amount equal to the Large Buildings Fossil Fuel Emissions Tax. If unpaid, the penalty shall be subject to interest under paragraph C of this section, but not to the 10 percent penalty provided there.

E. Any tax required to be paid by an Owner under this Chapter shall be deemed a debt owed by the Owner to the City. Any person owing money to the City under this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, along with any collection and other costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys' fees, plus interest and penalties as provided in this Chapter.

7.77.070 Fossil Fuel Free Buildings Just Transition Fund; Deposit of Proceeds.

A. Establishment of Fund. The Fossil Fuel Free Buildings Just Transition Fund ("Fund") is hereby established as a special purpose fund, and shall receive all taxes, penalties, interest, and costs collected from the Large Buildings Fossil Fuel Emissions

Tax imposed under this Chapter ("Tax Proceeds").
B. Use of Fund. Monies in the Fund shall be used exclusively for the purposes described in Section 7.77.080 of this Chapter.
C. Administration of Fund. Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the City Manager shall file annually with the Council, by February 15 of each year, a report of the monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 7.77.080, and such other information as the Finance Director, in the Finance Director's sole discretion, deems relevant to the implementation of this Chapter.
D. Accounting. All Tax Proceeds shall be deposited in the Fund. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose and shall be maintained in the Fund for the purposes described in Section 7.77.080.
E. Appropriations May Not Supplant Existing Expenditures. Monies in the Fund shall be expended only for Eligible Programs. Monies in the Fund shall not be spent to supplant existing programs funded by the City for climate programs, which shall continue to be funded, at a minimum, at the Base Amount. All funds unexpended from the Fund shall be held in the Fund and may be expended on Eligible Programs. For purposes of this subsection E:
(1) "Base Amount" means the City Department of Finance's calculation of the amount of City appropriations (not including appropriations from the Fund and exclusive of expenditures funded by private funding or funded or mandated by state or federal law) for Eligible Programs for the fiscal year ending June 30, 2024.
(2) "Eligible Programs" means all programs and expenditures described in Section 7.77.080.

7.77.080 Expenditure of Proceeds.
Monies in the Fund shall be appropriated and used exclusively for the following purposes:
A. Up to 3% of the Tax Proceeds distributed in any proportion to the Finance Department and other City Departments for the administration of the Tax and of the Fund.
B. Refunds of any overpayments of the Tax, including any related penalties, interest, and collection costs.
C. All remaining amounts for the following purposes, in the following percentages, which amounts shall include the costs of administering the programs described. The voters also intend that, in expending remaining amounts, the City prioritize principles of environmental justice, tenant protections and other initiatives to prevent displacement of residents; retrofit projects at a neighborhood, block, utility zone or designation, or other comparable geographic scale; and ensure compliance with Berkeley Municipal Code Chapter 13.84 specifying requirements for property owners who relocate residents for tenant improvements. For purposes of this section, "environmental justice" means mitigating disproportionate impacts on communities identified in the State of California's Enviroscreen database or any successor to that database. The voters also intend that

the City prioritize the use and support of labor satisfying the definition of 7.77.030.C ("Minimum Labor Standards").

(1) 90% to fund expenses associated with Natural Gas Conversion of existing buildings, prioritizing Building Decarbonization Retrofits. The City shall prioritize funding for Natural Gas Conversion and Building Decarbonization Retrofits in low-rise residential buildings and restaurants, including low- or no-interest loans to assist property owners in retrofitting properties or otherwise to achieve the purposes of this Chapter.
(2) 10% to fund permanent, career, City positions in an employee bargaining unit subject to a collective bargaining agreement to administer and facilitate a citywide program of Natural Gas Conversion and Building Decarbonization Retrofits and administrative expenses connected therewith.

D. Notwithstanding subsections C(1) and (2) of this section, if the Council finds on the basis of substantial evidence that the infrastructure and appliances of the building stock in the City have been completely and permanently transitioned from natural gas, remaining Tax Proceeds may fund other City programs that directly reduce or avoid greenhouse gas emissions.
E. The Fossil Fuel Free Buildings Just Transition Oversight Committee established under Section 7.77.090 ("Oversight Committee") shall make recommendations to the Council to ensure the Fund is administered consistently with this section.

7.77.090 Fossil Fuel Free Buildings Just Transition Oversight Committee.
A. The Environment and Climate Commission established pursuant to Chapter 3.82 of this Code or any successor to that commission shall serve as the Oversight Committee and make recommendations to the Council to ensure the Fund is administered consistently with section 7.77.080.
B. The Oversight Committee shall monitor, and make recommendations as to, the administration of the Fund, to ensure it is administered in a manner that is accountable to the community and consistent with this Chapter and other law, and to advise the Council on appropriations from the Fund. The Oversight Committee shall:
(1) Develop recommendations for the use of the Fund;
(2) By December 31, 2025, and every year thereafter, conduct a needs assessment as to retrofitting existing buildings in the City and make annual recommendations about appropriations from the Fund to the Council informed by that needs assessment;
(3) Promote and facilitate transparency in the administration of the Fund;
(4) Promote implementation of the programs funded by the Fund in a manner that is equitable, culturally sensitive, and supportive of labor;
C. The City shall provide adequate staffing to the Oversight Committee to achieve its purposes.
D. The Transportation and Infrastructure Commission or any successor to it, the Labor Commission or any successor to it, the Council Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee or any successor to it, may each make recommendations to the Council to ensure the Fund is administered consistently with this Chapter.

E. Nothing in this section 7.77.090 shall limit the authority of the Council to propose, amend, and adopt a budget under the Charter.

7.77.100 Technical Assistance to the Finance Department.
The Office of Energy and Sustainable Development or any successor office or department shall provide technical assistance to the Finance Department upon the City Manager's or Director of Finance's request to administer the Large Buildings Fossil Fuel Emissions Tax.

7.77.110 Prohibited Conduct.
Except as the Berkeley Rent Stabilization Board expressly determines, the Owner of a Taxable Residential Building shall not pass on the tax imposed by this Chapter to tenants in the form of rent increases or in any other manner. Inclusion of such charges shall be a complete defense to any action for unlawful detainer for failure to pay rent absent such express determination of the Berkeley Rent Stabilization Board.

7.77.120 Amendment of Ordinance.
A. The Council may, by two-thirds vote of the entire City Council, amend this Chapter to further its purposes, provided that such amendments do not constitute a tax increase within the meaning of California Government Code section 53750, subdivision (h) or expand the exemptions provided by section 7.77.050, or amend this section 7.77.120.
B. The City Council shall not reduce the inflation-adjusted tax rates authorized by this Chapter or otherwise reduce the tax absent a finding supported by substantial evidence that doing so is necessary to address unusual circumstances such as a natural disaster, the undercollection is temporary, and the reduced tax will nevertheless achieve the purposes of this Chapter.
C. For purposes of this section 7.77.120, the purposes of this Chapter are those stated in section 7.77.020 and the expenditures authorized by section 7.77.080.

7.77.130 Severability.
If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each word, phrase, sentence, part, section, subsection, or other portion hereof, irrespective of the fact that any one or more words, phrases, sentences, parts, sections, subsections, or other portions hereof has been declared invalid or unconstitutional.

<u>Section 2.</u> <u>Increase Appropriations Limit.</u> Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 5, 2024, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax

imposed under this ordinance.

Section 3. Special Tax; Majority Vote Requirement. This Ordinance imposes a Special tax and shall be effective only if approved by a majority of the voters voting thereon.

Section 4. Certification; Publication; Numbering.

A. Upon approval by the voters, the City Clerk shall assign this ordinance an ordinance number and insert it where indicated on the first page above, certify to the passage and adoption of this ordinance, and cause it to be published according to law.
B. Upon approval by the voters, the Mayor and City Clerk shall execute this ordinance where indicated below to give evidence of that approval.

We hereby certify that the foregoing ordinance was duly adopted by the voters of the City of Berkeley participating in the November 5, 2024 election.

____
, Mayor

Attest:

____
Mark Numainville, City Clerk

Measure HH
Ordinance Requiring the Adoption of Minimum Indoor Air Quality Standards in City-Owned and City-Leased Buildings (Initiative)

Shall the measure setting new indoor air quality standards for City-owned and -leased buildings; prohibiting compliance with those standards through the use of air filtration or disinfection technologies emitting ozone, volatile organic compounds, oxidation byproducts, excessive sound, or ultraviolet light; requiring repair, closure, evacuation, and/or provision of alternative services to the public due to building closure when standards are not met; and creating a private right to sue over alleged violations, be adopted?

CITY ATTORNEY'S IMPARTIAL ANALYSIS
OF MEASURE HH

This measure was placed on the ballot by an initiative petition signed by the requisite number of registered voters in the City of Berkeley. It requires a majority vote for passage.

The measure would require the City to adopt minimum air quality standards in regularly occupied City-owned and City-leased buildings to reduce the spread of communicable diseases. By April 1, 2025, the City would need to adopt American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 241-2023 or a standard of equal or superior stringency. The City would also need to maintain, in all covered buildings during operating hours, the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023. The measure would prohibit the City from seeking to achieve this requirement by using ultraviolet light that would contact human skin, or by using technologies that emit ozone, volatile organic compounds, oxidation byproducts, or excessive decibels.

Under the measure, the City would also be required to maintain the necessary equipment used to achieve the required standards. If such equipment malfunctions, the City would be required to close and evacuate affected buildings and to repair the equipment in an expeditious manner. If the City cannot repair the problems within 24 hours of a notice of malfunction, the City would be required to provide alternative services for individuals unable to obtain services because of the closure of affected buildings, and to pay City employees who work in the affected buildings at their full rate for all scheduled hours during the closure. The City would not be required to provide such alternative services during any period where it is prevented from repairing the malfunctioning equipment because of a natural disaster or act of God, other than a pandemic or other infectious disease outbreak.

The measure would further require the City to display conspicuous public signs in affected buildings attesting to compliance, detailing the normal maintenance schedules, and procedures to request more technical information about the City's equipment. Additionally, from January 1, 2025, through April 1, 2025, before the above requirements take effect, the City would be required to take interim measures to improve ventilation, including by ensuring that all windows that can open are open during operating hours (except during inclement weather), and by installing high-efficiency air filters for areas of buildings where windows cannot open.

The measure would grant private parties the right to sue and seek injunctive relief and civil penalties to enforce the measure; however, before filing a lawsuit, a party must notify the City of any violations and allow the City to cure the violations within five days of receiving notice. A prevailing plaintiff would be entitled to an award of reasonable attorney's fees and costs.

According to the City's estimates, the estimated cost range for facility assessments is $2 million to $4 million, with additional costs anticipated for system upgrades, staff training, and ongoing maintenance.

s/FARIMAH FAIZ BROWN
Berkeley City Attorney

ARGUMENT IN FAVOR OF MEASURE HH

Vote YES on Measure HH to **protect** infants, children, seniors, the public, and workers from **wildfire smoke**, toxic **pollutants,** and **infections** with common sense air quality standards in municipal buildings that pay for themselves.

Berkeleyans stopped drinking dirty water over a century ago–why breathe poisonous air?

The Public Works Department concluded the standard in this measure: **"is essential for enhancing indoor air quality and reducing the risk of airborne disease transmission."**

<u>City Buildings Are Not Safe</u>

- City-owned and leased buildings, e.g., libraries, senior/recreation/permit centers, health facilities are **not adequately ventilated**.
- City data shows COVID-19 **outbreaks** remain frequent**, negatively impacting the public**. At least one City employee died of COVID likely contracted at work. Many more developed **long COVID**.
- During wildfires and heatwaves, City buildings become **dangerous** and **unfit** as designated **disaster shelters**.

<u>Making Them Safe</u>

To protect occupants, the measure requires the City to achieve **minimum air quality**. These standards were developed by the **White House COVID-19 Response Team** and American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). Governments and businesses have already adopted it.

<u>Pays for Itself</u>

Senior economists at Johns Hopkins Center for Health Security specializing in cost-benefit analysis of public health policy found that each COVID infection costs society (including the City) $1,900 and that the ASHRAE standard in this measure **could save up to $62,000 per room annually**! There's also City savings from avoided sick leave, workers' compensation, and health care.

The City overestimates the cost of clean air. Simple measures are both inexpensive and effective: opening windows - $0; Corsi-Rosenthal Boxes - $65; portable HEPA filters - $150.

As part of the American Rescue Plan Act in 2021, **the City received $67 million from Congress** intended in part for ventilation upgrades to protect the public, but has failed to act!

Endorsed by: Berkeley NAACP, Berkeley Black Ecumenical Ministerial Alliance, 350 Bay Area, AFSCME PEU Local 1, Berkeley Tenants Union, California Climate Voters PAC, Wellstone Democratic Renewal Club of the East Bay, Berkeley Community Action, and Berkeley People's Alliance.

We can protect our community from bad air. **Vote YES** on the Healthy City Buildings Ordinance.

s/Robert M. Gould
President, SF Bay Physicians for Social Responsibility

s/Tajmal Payne
President, Berkeley NAACP

s/Jocelyn Goldsmith-De Sena
Community Health Worker Specialist and Chapter Officer, Berkeley SEIU 1021 CSU/PTRLA

s/Moni T. Law
Berkeley Resident, City Worker, and Berkeley SEIU 1021/CSU/PTRLA Member

s/Daniel Tahara
350 Bay Area Board Member and Berkeley Environment and Climate Commissioner

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE HH

Cities across the country face budgetary deficits. In Berkeley, we have passed a balanced budget in spite of these fiscal challenges, making sure programs that address public safety, housing, homelessness, and critical infrastructure are funded. If Measure HH passes, the City may need to make cuts to these essential programs, placing our community at risk.

The City has already upgraded many public buildings and designated disaster shelters. Measure T1 has enabled us to upgrade HVAC systems in senior centers, fire stations, and other buildings that serve the public. COVID outbreaks among City employees are minimal. **Why would we disrupt this progress by passing a redundant measure that imposes unknown and likely expensive costs?**

Proponents claim this will pay for itself, because they don’t even know its full costs. Labor, staff training, inspections, installation, and maintenance are not free. A report on Measure HH says that the analysis alone could cost up to $4 million, with implementation **“likely to far exceed existing budget allocations for facility maintenance”**. **We could be forced to pay tens of millions of dollars to implement Measure HH.**

It is disappointing that proponents would make the false claim that the City failed to act on the American Rescue Plan Act. The truth is, **all the funds have been spent** to support the Berkeley community, keeping people in their homes, getting people off the streets, saving countless jobs, arts organizations, and nonprofits, and other critical services that support community needs.

We can have safe buildings without this expensive, poorly thought-out proposal. Vote No on HH.

s/Jesse Arreguín
Mayor of Berkeley

ARGUMENT AGAINST MEASURE HH

Vote No on HH. A blank check which could cost the city tens of millions at the expense of critical city services.

All City employees and residents deserve clean air and safe workplaces. That's why the City of Berkeley follows strict COVID protocols, promotes ventilation in buildings and installs and maintains air filtration systems. Berkeley's effective efforts throughout the pandemic resulted in some of the lowest COVID-19 case rates in the country.
Yet despite these efforts, Measure HH was put on the ballot without any consultation with city leaders.

Berkeley currently owns 95 different facilities, some of which are historic landmarks. Measure HH imposes excessive air quality standards for all city-owned and leased properties. It would force tenants who lease city buildings, including non-profits, to install and maintain expensive HVAC systems, even if unnecessary and infeasible. Measure HH creates civil penalties and a right to sue the city, potentially costing thousands in lawsuits.

A recent City report found that the cost of "***adopting the Healthy City Buildings Ordinance are significant***". The report couldn't even evaluate the full cost of implementation due to its immense scope. The estimated cost of facility assessments alone would total at least $2-4 million dollars, **with additional <u>unknown</u> hard and soft costs for facility upgrades**.

Measure HH is an unfunded mandate with no source of city funding identified. Berkeley needs to fix our roads and infrastructure, hire additional police officers and reduce homelessness. Measure HH would force the City to sacrifice these important services to fund expensive and unnecessary new indoor air quality systems in all city-owned buildings.

We can have both safe buildings and fund essential city services. Vote No on Measure HH. Tell proponents to go back to the drawing board and work with city leaders to come up with a more sensible and less costly plan.

s/Jesse Arreguin
Mayor of Berkeley

s/Susan Wengraf
Vice Mayor, Councilmember District 6

s/Mark Humbert
Berkeley Councilmember, District 8

REBUTTAL TO ARGUMENT AGAINST MEASURE HH

Vote YES on HH for "Healthy Halls" to **enhance Berkeley's resilience** to wildfire smoke, airborne diseases, and severe heat within City buildings!

The Public Works Department says implementing this measure is **"essential."**

Clean Air Pays for Itself

Cost estimates cited by opponents are misinformed, without evidence, and exaggerated to scare voters.

The measure **pays for itself through** avoided medical costs, sick days, life insurance, and workers' compensation. A no-brainer!

The Johns Hopkins Center for Health Security found for COVID infections alone:

- $175 **saves $5,000** per medical waiting room;
- $61 **saves $1,700** per cell block;
- $41 **saves $158** per office;
- $8 **saves $183** per patient room;
- $7 **saves $100** per dwelling unit.

City Buildings Are Sick Buildings

- City buildings providing essential services for seniors, kids, and people with disabilities **dangerously recirculate dirty air**.
- City Hall has **no clean supply air** except through outdated windows/doors.
- Workers out sick harm services and increase staffing costs.

Air Pollution Kills Millions

The New York Times: **"Wildfire Smoke is Erasing Progress on Clean Air."**

The World Health Organization:

- Air pollution **kills 6.7 million people prematurely per year;**
- Bad air contributes to **stroke**, **heart disease**, **lung cancer**, and **asthma**.

Ventilation Needed as City Abandons Infection Protocols

COVID is more infectious than ever, but the **City is not taking the simple steps** required to prevent disease transmission.

City Falling Behind National Standards

Schools/businesses across the country are adopting the national air quality standard in this measure to protect health.

Healthy City buildings pay for themselves. **Vote YES on HH!**

s/Robert M. Gould, MD
President, SF Bay Physicians for Social Responsibility

s/Tajmal Payne
President, Berkeley NAACP

s/Jocelyn E. Goldsmith-De Sena
Community Health Worker Specialist and Chapter Officer, Berkeley SEIU 1021 CSU/PTRLA

s/Moni T. Law
Berkeley Resident, City Worker, and Berkeley SEIU 1021 CSU/PTRLA Member

s/Daniel Tahara
350 Bay Area Board Member & Berkeley Environment and Climate Commissioner

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

ADDING CHAPTER 12.12 TO THE BERKELEY MUNICIPAL CODE TO REQUIRE CONTROL OF INFECTIOUS AEROSOLS IN CITY BUILDINGS

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

Section 1. That Chapter 12.12 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.12

CONTROL OF INFECTIOUS AEROSOLS IN CITY BUILDINGS

Sections:

12.12.010 Short Title.
This Chapter shall be known as the "Healthy City Buildings Ordinance."

12.12.020 Findings and Purpose.
The people of the City of Berkeley find as follows:
A. Airborne transmission of communicable diseases occurs when a susceptible person inhales a sufficient number of active pathogens to cause an infection, i.e., an infectious dose. Engineering design and controls—dilution ventilation, filtration, and air disinfection—can reduce the concentration of active pathogens in the air, which tends to reduce risk of infection. Engineering design and controls are only one element of a well-designed risk management plan. They cannot eliminate risk; however, inadequate control of indoor exposures has been demonstrated to contribute to elevated risk.
B. Explicit requirements for airborne infection risk management have been absent for a century from indoor air quality (IAQ) standards with the exception of those written for health care facilities and laboratories.
C. The COVID-19 pandemic and other infectious airborne disease have caused and continue to cause enormous personal, societal, and economic damage, much of which resulted from the closure of public buildings due to widespread perception (supported by considerable evidence) that they are high-risk environments for infection transmission.
D. Recognizing that indoor environments were not well-prepared to mitigate the risk of COVID-19 transmission, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), a global society aimed at advancing heating, ventilation, and air conditioning (HVAC) technology for the built environment, formed its Epidemic Task Force early in 2020 and developed a large body of guidance regarding ventilation, filtration and air cleaning, air distribution, HVAC system operation, and commissioning for multiple building types that laid the groundwork for the development of ASHRAE Standard 241. The catalyst for the development of Standard 241 was discussion between ASHRAE and the White House COVID-19 Response Team about the need for new and better IAQ standards.
E. Given the persistent threat and transmission of COVID-19, long-COVID and related sequelae, other infectious diseases, and poor indoor air quality due to pollution and wildfire smoke, it is in the public interest to protect health and safety through requiring the City to achieve, implement and maintain in City-owned or City-leased occupied buildings the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023 and all applicable engineering standards therein during operating hours.

12.12.030 Definitions.
"Building Occupants" means City employees, City contractors, patrons, customers, inmates, clients, patients, children, or community members.
"Occupied Building" means any City-owned or City-leased building or subdivision thereof, and any and all rooms therein, regularly occupied by Building Occupants during Operating Hours.
"Operating Hours" means the period of time the building is occupied during normal,

extended, janitorial hours, or security hours, in connection with performing or maintaining municipal services by City employees or contractors.
"Personal Protective Equipment" means well-fitting respirators equal to or greater than N95 and approved by the National Institute for Occupational Safety and Health.

12.12.040 Adoption of Standards for Control of Infectious Aerosols in City Buildings and Related Requirements in City Buildings.
A. By April 1, 2025, the City shall adopt ASHRAE Standard 241-2023 or a standard of equal or superior stringency for control of infectious aerosols in all Occupied Buildings and implement the requirements so adopted.
B. When the Authority Having Jurisdiction as specified in ASHRAE Standard 241-2023 is the City or an agency or agent of the City, in no case shall the Authority Having Jurisdiction implement, interpret or apply any standards, specifications, or requirements of ASHRAE Standard 241-2023 in a manner less stringent than set forth therein.
C. Notwithstanding any exceptions or voluntary provisions embedded in ASHRAE Standard 241-2023 and except as provided by Section 12.12.050(B) and (C), at a minimum, the City shall achieve, implement and maintain in Occupied Buildings the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023 and all related and applicable engineering standards therein indefinitely during Operating Hours. In so doing, the City shall not use any air filtration or air disinfection technologies that emit ozone, volatile organic compounds, oxidation byproducts, or excessive decibels, and shall not install any ultraviolet light disinfection technology in such a manner that the light will come into contact with human skin.
D. The City acknowledges that any compromise, disrepair, or malfunction of ventilation, filtration, or air disinfection systems related to meeting the requirements of this section may harm Building Occupants.

12.12.050 Duty of City to Maintain and Repair Control of Infectious Aerosols Systems and to Provide Alternative Services.
The City shall have the following obligations as of April 1, 2025:
A. Duty to conduct regular maintenance: the City shall establish a program of regular maintenance of ventilation, filtration, or air disinfection systems adopted pursuant to Section 12.12.040 to ensure that ventilation, filtration, or air disinfection requirements in its Occupied Buildings during Operating Hours under Section 12.12.040(C) remain safe and operable at all times and that any servicing needed is completed within the shortest practicable time outside of Operating Hours to the extent that such repairs and servicing may reasonably prevent the City from meeting the requirements of Section 12.12.040(C). A licensed engineer shall certify compliance with Section 12.12.040(C) on an annual basis.
B. Duty to repair malfunctions expeditiously and protect public safety: Where a ventilation, filtration, or air disinfection system in an Occupied Building malfunctions, is compromised, or in a state of disrepair, and such malfunction, compromise, or disrepair may reasonably compromise the City's ability to meet the requirements of Section 12.12.040(C), except for emergency or City maintenance personnel or maintenance subcontractors wearing Personal Protective Equipment, the Occupied Building shall be

immediately closed to all Building Occupants, any Building Occupants therein shall be immediately evacuated, and the malfunctioning system or systems shall be repaired at the earliest practicable time, except as provided by subsection C. Occupied Buildings closed or evacuated under this subsection shall be reoccupied only upon certification and attestation by the City's engineer that all requirements of Section 12.12.040(C) are satisfied.
(1) Duty to provide alternative services pending ventilation, filtration, or air disinfection repair: If the City is unable to complete a repair of ventilation, filtration, or air disinfection within twenty-four hours of notice of its malfunction pursuant to subsection B, the City shall reasonably locate and provide alternative services for any person reasonably seeking City services because of such person's impaired ability to access such City services due to the Occupied Building's closure. The duty to provide alternative services shall not arise if the City is prevented from repairing the ventilation, filtration, or air disinfection system or systems within twenty-four hours or any time thereafter due to a natural disaster or an act of God other than a pandemic, epidemic, or infectious disease outbreak, provided that the building operator shall be relieved of this duty only during the period that the inability to repair is caused by such natural disaster or act of God.
(2) City Employees who work in Occupied Buildings that are closed or evacuated shall be paid at their full rate for any and all scheduled work hours during such time that Occupied Buildings are closed or evacuated.
C. Exception during certain natural disasters and acts of God: Notwithstanding subsection B, Occupied Buildings closed or evacuated in connection with ventilation, filtration, or air disinfection system malfunctions may be reoccupied by Building Occupants in order to reasonably protect the public during a natural disaster or an act of God other than a pandemic, epidemic, or infectious disease outbreak.

12.12.060 Noticing and Monitoring Requirements.
A. As of April 1, 2025, the City shall reasonably display conspicuous and legible signage at the entrance of all Occupied Buildings subject to this Chapter and open to Building Occupants attesting to compliance with Sections 12.12.040(C) and 12.12.050(A).
(1) Signage shall summarize and enumerate the specific methods employed to comply with Section 12.12.040(C). When natural or portable equivalent clean airflow systems are used, signage shall specify as applicable their filtration type, location, and quantity.
(2) Signage shall detail the normal maintenance schedule for applicable methods or equipment.
(3) Signage shall detail procedures for the public to reasonably request additional technical information about the City's systems, equipment, and engineering certifications and design.
B. As of April 1, 2025, the City shall install conspicuous carbon dioxide monitors with non-dispersive infrared or equivalent or superior technology in each regularly occupied room of all Occupied Buildings subject to this Chapter and with signage explaining how to read and interpret results.

12.12.070 Interim Measures.
By January 1, 2025, the City shall take all feasible measures to improve ventilation, filtration, and air disinfection in Occupied Buildings, including at least the following:

A. Ensure that all windows that can open are open during Operating Hours unless there is inclement weather.
B. Purchase and install high-efficiency particulate air (HEPA) filters for areas of Occupied Buildings where windows cannot open.

12.12.080 Private Right of Action.
A. Right to Cure. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief or civil penalties against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk by e-mail or mail, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website and any applicable Occupied Buildings that describes, to the extent permissible by law, the corrective measures taken to address the violation.
B. Cause of Action. Other than with respect to Section 12.12.050(B), if a specific alleged violation is not remedied within five (5) days of the written notice specified in subsection A, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance and may also seek civil penalties. With respect to Section 12.12.050(B), if a specific alleged violation is not remedied with two (2) hours of the written notice specified in subsection A, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce Section 12.12.050(B) and may also seek civil penalties.
C. Civil Penalties. If the City is found liable in a cause of action brought under subsection B above for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty as determined by the court. In determining the amount of civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.
D. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection B reasonable attorney's fees and costs.
E. Limitations on Actions. Any person bringing an action for money or damages for a violation of this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
F. Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 13.105.030C.2 shall be guilty of a misdemeanor and up to a $1,000 fine.

12.12.090 Amendment.
The Council may, by majority vote of the entire City Council, amend this Chapter in furtherance of its purposes or to:
(1) correct ambiguities or errors in language, provided that such amendments do not cause the City to achieve, implement, and maintain standards less stringent in City Buildings than those specified in Section 12.12.040, modify the obligations under Sections 12.12.050 and 12.12.070, or modify the noticing and monitoring requirements, procedures, or penalties, as specified under Sections 12.12.060 and 12.12.080;

(2) adopt successor standards in whole or in part to ASHRAE Standard 241-2023 only insofar as and to the extent that new standards are more stringent than ASHRAE Standard 241-2023 and the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023.

12.12.100 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.