

Terry Taplin
Councilmember District 2

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: August 3, 2022

Item Number: 2

Item Description: Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements

Submitted by: Councilmember Taplin

This supplemental contains three alternative recommendations for the Berkeley City Council to consider with respect to the proposed Bond Measure, with several primary source materials attached.

- 1. Place a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements, Street Repairs, Sidewalk Repairs, and Traffic Safety Improvements; and Adopt the Vision 2050 Program Plan.*
- 2. Refer proposed General Tax Measure to Tax Vacant Residential Units item to the City Council's Land Use, Housing, and Economic Development (LUHED) committee for further study;*
- 3. Refer proposed Ballot Measure Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76) to the City Manager to survey affected rental properties and conduct further analysis on potential displacement risks.*

Comparison of Proposed and Past Ballot Measures

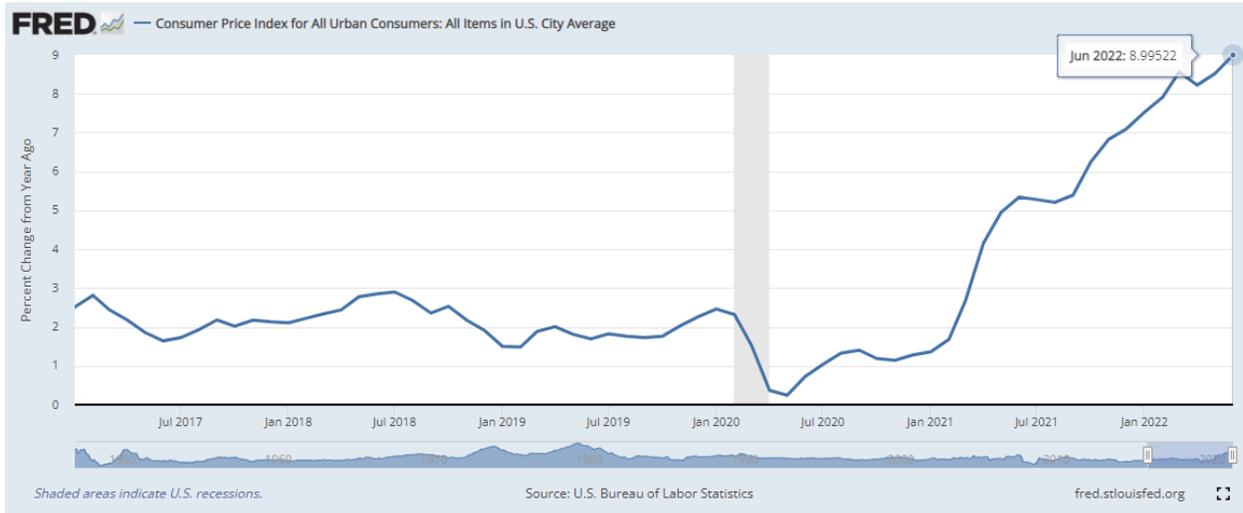
Supporting a \$650 million green infrastructure and affordable housing bond measure for the November 2022 General Election is a Strategic Plan Priority Project, advancing our goals to:

- provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- provide an efficient and financially-healthy City government.
- foster a dynamic, sustainable, and locally-based economy.
- create affordable housing and housing support service for our most vulnerable community members.
- create a resilient, safe, connected, and prepared city.
- champion and demonstrate social and racial equity.
- be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

On July 26, 2022, the Berkeley City Council voted unanimously to: *continue Item 4 [Bond Measure] to a special meeting to be held on August 3 and provide direction to the City Manager to return with a revised single bond measure in an amount from \$600 million to \$650 million, and provide analysis of the various bond amounts, including average tax rate and various bond terms.*

\$300 million – street paving, sidewalks, and complete streets \$150 million – affordable housing \$150 million – other public infrastructure, undergrounding on evacuation routes, civic center improvements, infrastructure at the waterfront, the pier, parks, pools, or other public infrastructure.

Many of these services and capital funds face significant structural deficits, and would further deteriorate without significant investment as soon as possible. Berkeley voters will be asked to make the largest and most significant public investment in the city's history, with greater municipal debt obligations serviced by local taxpayers in an environment with (currently) rising interest rates and inflation, both increasing uncertainty in real borrowing costs and voter resentment toward real cost of living increases. At the same time, given that core inflation has been driven by housing, fuel, and automobile prices, investments in affordable housing and environmentally resilient infrastructure are urgently needed to increase the supply of housing, improve the reliability of public transit and the safety walkable/bikeable streets, and reduce automobile dependence.



The City of Berkeley's prohibition on natural gas in new construction, along with East Bay Community Energy's investments in 100% renewable energy, would further improve the nexus of climate sustainability and disinflationary benefits of transit-oriented affordable housing.

Amid U.S. inflation surge, which prices are rising the most? Fuels, used cars and lodging lead the way

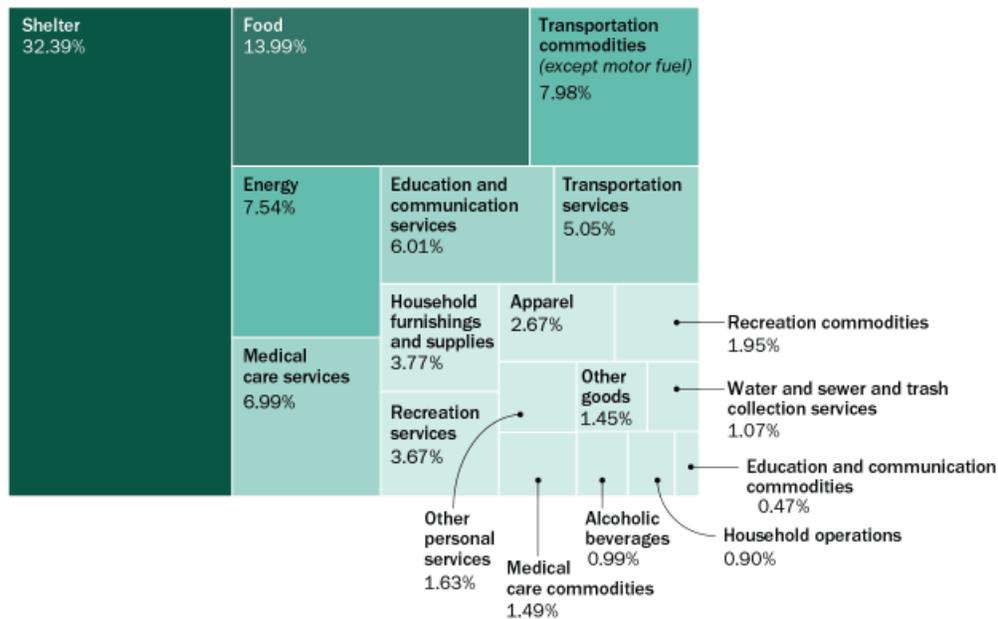
Biggest % increases in consumer prices, December 2020-December 2021



Note: Certain nonspecific "catchall" categories not shown.
Source: U.S. Bureau of Labor Statistics

What goes into the consumer price index?

Relative importance of different expenditure categories, November 2021



Source: U.S. Bureau of Labor Statistics
PEW RESEARCH CENTER

Passing a \$650 General Obligation Bond measure in 2022 would provide a critical investment in Berkeley's future affordability, environmental sustainability, and fiscal

health for generations. Its historic scale is more than merited by the world-historic scale of ecological and economic crises.

In 2018, Berkeley voters passed Measures O, P, and Q by overwhelming margins (77.48%, 72.37%, and 71.40%, respectively).

Measure O approved the issuance of a \$135 million bond for affordable housing, the largest investment in the city's history, which has provided critical funding for several affordable housing projects across Berkeley. Measure P further augmented revenues available in the general fund for affordable housing and supportive services by increasing the tax on the transfer of real property from 1.5 percent to 2.5 percent for property sales and transfers over \$1.5 million for 10 years.

In approving Measure Q, Berkeley voters replied in the affirmative to the following: "Shall the ordinance amending the Rent Stabilization Ordinance [BMC Chapter 13.76] to: [1] account for potential repeal of the Costa-Hawkins Rental Housing Act by preserving vacancy rent adjustments; update the new construction exemption from rent stabilization to a 20-year rolling period; and [2] exempt all lawfully permitted Accessory Dwelling Units from [a] rent stabilization and [b] eviction for good cause protections, be adopted?" The proposed changes to BMC Section 13.76 (RSO) would remove both the 20-year rolling period in the first part of Measure Q, and the good cause exemption for ADUs in owner-occupied properties established by the second provision of the measure.

In 2020, 56.84% of voters approved Measure MM, which authorized the rent stabilization board to set fees for partially exempt units and limited the accessory dwelling unit exemption. This is notably a smaller margin of approval than Measure Q in 2018 by over 10% or roughly 3,000 votes in a higher-turnout election.

On July 12, 2022, the Berkeley City Council voted unanimously to: *Remove the language in Section 13.76.050.N [in proposed Ballot Measure Amending BMC 13.76] which would repeal the exemption of lawfully established and fully permitted Accessory Dwelling Units from just cause for eviction protections. Also, refer to the City Manager to explore noticing requirements of rent/eviction control exemption for ADU units.*

Cost-Benefit Analysis: Other measures place bond measure at high risk for much smaller benefits.

Targeting a narrow subset of owner-occupied properties with additional restrictions and costs, on the same ballot as a large bond measure that requires a higher margin of approval for passage, necessarily creates risks and tradeoffs between the two. In particular, repealing most provisions of the highly popular Measure Q presents a major risk to the viability of supermajority support for the bond measure by potentially undermining voter trust in municipal authority. Simply put, the potential benefits of the bond measure are far greater in scale than the benefits of proposed measures that may put the bond measure at risk.

The tradeoffs of each measure can be roughly compared as follows:

Measure, Year	O, 2018	P, 2018	Bond, 2022	Vacancy Tax, 2022
Costs	<ul style="list-style-type: none"> ● Ballot arguments / campaign for 66.67% “Yes” vote ● Prevailing real interest rates until maturity (can be negative) 	<ul style="list-style-type: none"> ● 50%+1 “Yes” vote ● Tax administered on real property transactions ● Prevailing real interest rates on any revenue bonds 	<ul style="list-style-type: none"> ● 66.67% “Yes” vote ● [Prevailing real interest rate until maturity] 	<ul style="list-style-type: none"> ● 50%+1 “Yes” vote ● Tax administered on qualifying rental properties; more technical assistance needed ● Prevailing real interest rates on any revenue bonds
Benefits	<ul style="list-style-type: none"> ● \$135 million for affordable housing, to be matched with state/fed. funds 	<ul style="list-style-type: none"> ● [General fund revenue through 2029] 	<ul style="list-style-type: none"> ● \$150 million for affordable housing ● \$300 million for street paving, sidewalks, traffic safety ● \$150 million for other infrastructure 	<ul style="list-style-type: none"> ● \$5.8 million- \$8.7 million; 100+ units added to housing supply (author’s estimate, SF Rent Board analysis)
Policy Tradeoffs	<ul style="list-style-type: none"> ● Large debt-financed public investment ● More voter approval needed 	<ul style="list-style-type: none"> ● Special tax for general fund ● Taxing documented transactions, no add’l admin costs ● Less voter approval needed 	<ul style="list-style-type: none"> ● Large debt-financed public investment ● More voter approval needed 	<ul style="list-style-type: none"> ● Special tax for general fund ● Increasing admin. costs, not revenue-maximizing ● Less voter approval needed

Measure, Year	Q, 2018	[RSO], 2022
Costs	<ul style="list-style-type: none"> ● 50%+1 “Yes” vote ● RSO exemption on est. 1000 units 	<ul style="list-style-type: none"> ● 50%+1 “Yes” vote ● Concentrated opposition from voters who benefit from Measure Q ● Incentive to end tenancies/remove 2018-exempted units from rental market
Benefits	<ul style="list-style-type: none"> ● RSO expansion if Prop 10 passed ● Units added to RSO-exempt rental market 	<ul style="list-style-type: none"> ● Partial RSO expansion for ~1000 units

Policy Tradeoffs	<ul style="list-style-type: none"> • Future RSO expansion for 20+ year old apartments, exempting duplexes 	<ul style="list-style-type: none"> • <i>Partial repeal of popular 2018 ballot risks harming voter trust and support for bond measure</i> • <i>Pyrrhic victory for housing stability if newly-regulated ADUs are removed from rental market</i>
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To illustrate just one example, the proposed bond measure would provide \$15 million more for affordable housing than Measure O’s \$135 million investment, while the proposed tax on vacant homes with exemptions for owner-occupied properties and some single-family homes would net less than \$10 million annually in revenue (although the latter is ideally intended to optimize increased housing supply rather than revenue). Assuming an optimistic scenario of \$500,000 per unit construction costs¹ for Below Market-Rate (BMR) affordable housing, and local subsidies added to tenfold matching funds² from state and federal sources, \$150 million in municipal bonds could fund the

¹ Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California’s 9% Low-Income Housing Tax Credit Program. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/LIHTC_Construction_Costs_2020.pdf

² Kneebone, E. & Reid, C. (2021). The Complexity of Financing Low-Income Housing Tax Credit Housing in the United States. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2021/04/LIHTC-Complexity-Final.pdf> [c.f. “Figure 4. Capital Stack Composition for Three 9% New Construction Large Family Properties Awarded in 2019,” page 12]

construction of 3,000 deed-restricted affordable homes, larger than the highest projected housing benefits of the proposed Vacancy Tax Measure and Proposed Measure Amending BMC 14.76.

Unlike owner-occupied properties, BMR housing would not be owned by individual homeowners who can choose to remove the unit from the rental market, so the benefit to housing stability faces less uncertainty. While the City of Vancouver in British Columbia established a successful vacancy tax, when scaled to the population of Berkeley, the number of formerly vacant units added to the rental market supply would be roughly 80 new units of market-rate housing. According to Zuk & Chapple (2016), market-rate housing has positive benefits in rental housing stability at the regional level, and Below Market-Rate affordable housing has “over double the impact.”³ While the proposed Vacancy Tax Measure would have positive benefits that should be explored, care should be taken to ensure that these benefits would be positive-sum by reducing any potential political tension with the proposed Bond Measure.

Aside from ballot measure viability, the downside risks of removing the “golden duplex” exemption from BMC 13.76 may even include a perverse incentive to terminate existing tenancies and remove affected rental properties in anticipation of the measure passing. This is no small risk, as many communications included in this meeting agenda packet express an intent to do the latter, and the future of pandemic eviction moratoria remains uncertain. The loss of public trust and of rental units / tenancies could thus represent a Pyrrhic victory for housing security, increasing it *de jure* while reducing it *de facto*.

While the other measures may confer marginal benefits, their risks warrant further scrutiny. Therefore, this supplemental recommends (1) referring the vacancy tax proposal to the Berkeley City Council Policy Committee on Land Use, Housing, and Economic Development (LUHED); and (2) referring the proposed amendments to BMC 13.76 to the City Manager’s office to further study potential displacement risks to current tenants associated with reversing owner-occupied exemptions.

Further study on the vacancy tax is warranted with particular regard for improving the quality of housing supply and promoting regular maintenance in habitability. A major positive aspect of the proposed tax design is that it yields a public benefit regardless of revenue realized, as it is intended in part “to maximize the availability of existing units that are already built and could be available for rent or sale.” To further pursue this policy goal with an emphasis on *habitability* of existing units, the committee could explore targeting the taxation of imputed rents⁴ on the basis of residential square footage and realized capital gains to avoid the risk of adding vacant units in substandard conditions back to the rental market without habitability improvements.

The benefit of taxing imputed rents broadly after the City of Berkeley’s Housing Element Update is illustrated below:

³ Zuk, M. & Chapple, K. (2016). Housing Production, Filtering and Displacement: Untangling the Relationships. *Berkeley IGS Reserach Brief*. Retrieved from <https://escholarship.org/uc/item/7bx938fx>

⁴ “Imputed rent” defined as “the value of paying yourself, rather than a landlord, even if it’s not paying dividends or increasing in value.” Bobkloff, D. (2016). US homeowners get a huge tax break almost nobody knows about, and it’s even part of GDP. *Business Insider*. Retrieved from <https://www.businessinsider.com/imputed-rent-hidden-tax-break-homeowners-2016-9>



“Vacant units in West Portal, San Francisco” illustration by Mark Mollineaux, 2020.

A Land Value Increment Tax (LVIT) or Land Gain Tax⁵ is one possible method for taxing land rents with lower incidence and greater incentive to invest in improvements, while avoiding limits to ad valorem taxation imposed by California’s Proposition 13 in 1978. This would increase the incentives both to rent out and invest in maintenance and improvements of the existing dwelling units, while avoiding potential tensions between household liquidity and tax incidence on illiquid assets that can strain the budgets of lower-income homeowners and generate resentment against equitable wealth taxation.

Additionally, BMC 12.92.030 lists one two conditions for action as “Buildings designed for residential use that stand vacant for more than 120 consecutive days.” The committee could explore further changes and increased staffing for implementation and enforcement with the aim of returning vacant, blighted properties to the city’s available housing stock in habitable condition.

The committee should also consider ways to optimize such a tax for a “healthy” vacancy rate, rather than minimizing them. The Lincoln Land Institute defines a “reasonable” vacancy rate as a range of 4-8%: “In a community where about half of the properties are owner occupied, half are renter occupied, and the market is working well, overall year-round vacancy rates tend to fall between 4 percent and 6 percent. Rates are likely to be higher in places where the share of rental units is higher, where the market is particularly volatile, or where a lot of new construction— which may absorb more slowly—is taking place. Thus, a local vacancy rate of up to about 8 percent may still be a healthy one.”⁶

By contrast, the Census Bureau’s American Communities Survey data on Berkeley from 2015-2019 indicated 0.3% vacancy in ownership units and 2.4% vacancy in rental units. The majority of vacancies after 2019 were near the UC Berkeley campus, suggesting

⁵ Sagehorn, D. & Hawn, J. (2020). Transit Value Capture for California. *California Common Ground*. Retrieved from http://cacommonground.org/pdf/2020-12_Transit_Value_Capture.pdf

⁶ Mallach et al (2018). The Empty House Next Door: Understanding and Reducing Vacancy and Hypervacancy in the United States. *Lincoln Land Institute*. Retrieved from <https://www.lincolnst.edu/sites/default/files/pubfiles/empty-house-next-door-full.pdf>

that most of the increase in vacancies was due to the departure of students during the COVID-19 pandemic.⁷

Attachments:

- 1: July 26, 2022 Berkeley City Council Special Meeting Minutes
- 2: Special Meeting Item:
- 2: July 12, 2022 Berkeley City Council Meeting Minutes
- 3: Measure Q (2018)

⁷ Markovich, A. (2022). A changing Berkeley: 6 maps show how the past decade has remade the city. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/07/17/berkeley-population-demographics-housing-census-2020-maps>



Office of the City Manager

ACTION CALENDAR
July 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements

RECOMMENDATION

1) Adopt a Resolution determining public interest and necessity for issuing a general obligation bond in the amount of \$300 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.

2) Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action. Election services have seen a steep increase since 2018, with the City's first million-dollar election in 2020. It is uncertain at this time how recent state mandates and the pandemic will affect election costs in an ongoing basis. In addition, the number of measures placed on the ballot, and the length of the measures, are the primary driving factors in the fluctuation of election costs.

CURRENT SITUATION AND ITS EFFECTS

On April 27, 2021, City Council approved a referral to the City Manager to "explore various options for a future city bond measure in November 2022 to support the growing need for infrastructure investment, including street repaving, Complete Streets infrastructure that promotes bike and pedestrian safety, restoration of public buildings and facilities, and affordable housing citywide." On June 30, 2021, City Council adopted a budget that included Vision 2050 implementation and exploration of revenue measures for the November 2022 ballot. In partnership with dedicated Vision 2050 volunteers, staff completed meetings with 25+ City Commissions and community

organizations; conducted a scientific survey on infrastructure priorities in October 2021; updated City Council on progress on November 16, 2021; updated and gained City Council's direction at the January 20, 2022 work session; sent an informational brochure to all Berkeley residents inviting them to one of four large area public meetings; held those public meetings on March 30, April 6, April 13, and April 20; conducted this project's second scientific survey of Berkeley voters in late April; reported to City Council on the City's bond capacity on April 26, 2022; drafted a *Vision 2050 Program Plan* and incorporated public comments received between May 2 and May 12, 2022; submitted to City Council a Strategic Asset Management Plan and gained adoption of an Asset Management Policy on May 10, 2022; issued off agenda memos related to this project on October 4, 2021, December 13, 2021, March 28, 2022, and May 3, 2022; provided direction to staff at the May 31, 2022 City Council meeting; and had an in-depth discussion of the revenue measure at the June 21, 2022 City Council meeting.

At the June 21 meeting, City Council requested more details on the affordable housing component of the bond. While there are many variables to consider, staff estimate between 500-1,000 units can be produced with this level of investment. This range considers the City's experience creating new affordable housing units. For construction of new affordable housing units, the City has historically averaged loans between \$150,000-\$200,000 per unit over the past five years. For acquisition and rehabilitation (i.e., Small Sites), it has been approximately \$284,000 per unit, albeit from a sample of two projects.

Affordable housing units developed from bond funding would follow the City's Housing Trust Fund (HTF) Guidelines. The HTF Guidelines require eligible developers to designate at least 20% of new construction units for Extremely Low-Income households, which are 30% of area median income (AMI) and 40% to at least Low-Income Households (60% AMI). Projects leveraging tax credits (the most common funding source for affordable projects) must also average 60% AMI.

Historically, local new construction projects leverage additional subsidies to support Extremely-Low and Very-Low Income households, including Section 8 Project-Based Vouchers, Permanent Supportive Housing funding, and other population-specific subsidies for Transition-Aged Youth and people with disabilities. With dedicated local funding from sources such as the GO Bond, the City of Berkeley is at an advantage in competing for affordable housing funding.

While the Finance Department advises on a bond's specific disbursement schedule, staff anticipates that a bond approved in November could be allocated to support affordable housing at both the North Berkeley and Ashby BART given the current development timelines of between 10 to 15 years projected at both BART sites. The bond could also support other sites throughout the City over the course of the next ten years as the City's pipeline continues to grow.

Staff are confident there is sufficient demand for the bond. Measure O was completely allocated within three years of its adoption. In 2015, the City had eight projects in predevelopment or development. There are currently 20 projects in predevelopment or development at least in part due to Measure O.

Staff anticipates this bond will mirror the requirements of the Measure O Bond, which appropriated funding for the construction and acquisition of new construction affordable housing. The HTF Guidelines also establish standards for sustainability, accessibility, and labor in addition to the affordability requirements.

As to the question of affirmatively furthering fair housing and equitably locating projects in higher income and resource neighborhoods, it is often too difficult to control project locations as so much is reflective of the housing market. However, the scoring for competitive tax credit financing, the primary driver of new construction affordable projects, incentivizes development in high resourced areas. City Council may consider adopting a priority or tiebreaker for site locations according to such criteria. Staff also consider other factors in determining site locations including proximity to transit and other amenities including schools, community centers, and grocery stores.

As to the detail regarding the climate change resiliency, wildfire protection, and other public infrastructure improvements, staff updated the *Vision 2050 Program Plan* to include the detail provided by staff at the June 21 City Council meeting.

If this bond measure were placed on the ballot and approved by two-thirds of the voters, additional funds would be generated for affordable housing and climate change resiliency, wildfire protection, and other public infrastructure improvements. The average annual amount collected over the projected period the bonds are outstanding would be approximately \$130 for a home with the City's mean assessed valuation of \$647,972.

The measure permits the City to issue general obligation bonds to finance the acquisition and improvement of real property for affordable housing, including by the City directly, or indirectly through third parties, and to reimburse City funds for the prior acquisition and improvement of property to be used for affordable housing.

With respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

Staff recommends that the City Council make a finding that the proposed bond measure is not a project under the California Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.) ("CEQA") or the related CEQA Guidelines (15 Cal. Code Regs. Title 14, Sections 15000 et seq.) ("CEQA Guidelines") because, as

contemplated by Section 15378(b)(4) of the CEQA Guidelines, the proposed bond measure involves the creation of a government funding mechanism and does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The use of bond proceeds to finance any project or portion of any project will be subject to approval of the applicable decision-making body at that time, upon completion of planning and any further required environmental review under CEQA.

BACKGROUND

The City Manager is presenting this measure for addition to the November 8, 2022 ballot pursuant to the direction provided by the City Council at the May 31 and June 21, 2022 City Council meetings.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Implementing Vision 2050 would result in more resilient public infrastructure that creates fewer greenhouse gases, and reduces conflict between our built and natural environment. More affordable housing in Berkeley would reduce greenhouse gas emissions caused by employees finding lower cost housing farther away from employment centers and requiring longer commutes.

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the May 31 and June 21, 2022 meetings.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

Exhibit B: Tax Rate Statement

RESOLUTION NO. -N.S.

DETERMINING THAT PUBLIC INTEREST AND NECESSITY DEMAND THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION OR IMPROVEMENT OF REAL PROPERTY FOR AFFORDABLE HOUSING, AND CLIMATE CHANGE RESILIENCY, WILDFIRE PROTECTION, AND OTHER PUBLIC INFRASTRUCTURE AND FACILITIES, AND SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 8, 2022 BALLOT A MEASURE TO AUTHORIZE GENERAL OBLIGATION BONDS FOR SUCH PROJECTS

WHEREAS, the accelerating impacts of climate change and growing need for affordable housing create new challenges for safety, resiliency, and sustainability within the City; and

WHEREAS, the City has identified over \$1 billion in infrastructure needs, including to reduce the City's environmental footprint, adapt to climate change, reduce the risk of flooding and wildfires, and better withstand the consequences of flooding and fires when they do occur; make the City's public spaces more attractive, vibrant, and green; and otherwise improve the City's infrastructure and make it more sustainable and resilient; and

WHEREAS, the *Vision 2050 Framework* and *Program Plan* are long-term plans to build, upgrade and repair Berkeley's aging infrastructure to be more sustainable and resilient in order to meet the serious challenges of the future, including climate change, and, to these ends, the City Council has determined that affordable housing and infrastructure are connected; and

WHEREAS, a regional housing needs assessment showed the City needed an additional 3,854 affordable housing units, a crisis affecting unhoused, low-income and working families and individuals, including, but not limited to, teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations; and

WHEREAS, the size and scale of local infrastructure need and affordable housing need show the challenge ahead despite the proactive steps taken to address these issues over the last decade; and

WHEREAS, existing funds and funding sources are inadequate for these infrastructure and affordable housing needs; and

WHEREAS, the City is authorized to issue general obligation bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (each, the "Bond Law"); and

WHEREAS, the City is authorized to issue general obligation bonds for the acquisition or

improvement of affordable housing projects, pursuant to the provisions of Section 7.64 of the Berkeley Municipal Code; and

WHEREAS, under the Bond Law and Chapter 7.64, the City intends to issue general obligation bonds (the “Bonds”) to finance the acquisition or improvement of real property for affordable housing (“Affordable Housing Improvements”), including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts; and

WHEREAS, under the Bond Law and Chapter 7.64, the City further intends to issue the Bonds to finance the acquisition or improvement of real property for public infrastructure and facilities (“Infrastructure Improvements”; together with Affordable Housing Improvements, “Improvements”), including the City’s storm drains; above or on ground utilities, especially those that can be undergrounded; green infrastructure; retaining walls; park, recreation, and senior facilities; parks, natural areas, waterfront, marina, and other open space; public buildings; and other public infrastructure, including repair, renovation, replacement, or reconstruction so that the public can continue to benefit from Infrastructure Improvements as they become more resilient and sustainable, and the Infrastructure Improvements will include any public art integrated into the Infrastructure Improvements consistent with Berkeley Municipal Code Chapter 6.13; and

WHEREAS, the City may have the opportunity to leverage State and County of Alameda (“County”) funds allocated for these affordable housing and infrastructure needs if it issues the Bonds to address these needs; and

WHEREAS, fiscal accountability protections including public disclosure of all spending, annual audits and independent oversight help ensure funds will be spent as promised; and

WHEREAS, funding from the Bonds should be guided by the City’s adopted plans and policies, including the *Vision 2050 Framework* and *Program Plan*; and

WHEREAS, funding from the Bonds should be attentive to creating attractive, green spaces that invite walking and biking, and support community gathering; and

WHEREAS, by law, all funds must remain under local control in the City and cannot be taken away by the State or the County or used for other purposes; and

WHEREAS, the City Council recognizes the importance of ensuring adequate maintenance funding from existing sources for Infrastructure Improvements financed by

the Bonds and not supplanting existing City infrastructure funding with proceeds of the Bonds; and

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse certain of the proposed expenditures referenced herein; and

WHEREAS, proceeds from the sale of the Bonds will be used to finance the Improvements, and all expenditures will be subject to annual independent financial audits and oversight by multiple City commissions; and

WHEREAS, the Council desires to submit the measure described herein to be placed upon the ballot at the November 8, 2022 Statewide General Election, consistent with the Council's Resolution No. 70,336-N.S., adopted on May 10, 2022, calling for a General Municipal Election to be consolidated with said statewide election; and

WHEREAS, the Council's Resolution No. 70,336-N.S., adopted on May 10, 2022, adopted the provisions of Elections Code Section 9285(a) providing for the filing of rebuttal arguments for city ballot measures, pursuant to Elections Code Section 9285(b).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the public interest and necessity require the issuance of one or more series of general obligation bonds in the amount of \$300,000,000 to fund the Improvements, subject to completion of the proceedings required by the Bond Law.

BE IT FURTHER RESOLVED that this resolution is adopted pursuant to and in conformance with Chapter 7.64 of the Berkeley Municipal Code.

BE IT FURTHER RESOLVED that:

- A. A ballot measure authorizing the City to issue general obligation bonds to finance the acquisition and improvement of real property for the Improvements (the "Measure"), a copy of which is attached hereto as Exhibit A, shall be placed before the voters at the election on November 8, 2022.
- B. The estimated cost of the Affordable Housing Improvements to be funded by the Bonds is \$150,000,000, and the estimated cost for the Infrastructure Improvements to be funded by the Bonds is an additional \$150,000,000.

- C. The maximum rate of interest on the indebtedness shall not exceed twelve percent (12%) in accordance with Government Code Section 53531.
- D. The estimated cost of the Improvements may include legal and other fees, and the cost of printing the Bonds, and other costs and expenses incidental to or connected with the issuance and sale of the Bonds.
- E. Proceeds of the Bonds shall be used to finance the acquisition and construction of real property for the Improvements, and to pay any fees and costs in connection with issuance of the Bonds, including but not limited to, legal fees and bond printing costs.
- F. The Improvements will be completed as needed, and each is assumed to include its share of costs, including planning, program management and construction costs. The final cost of each Improvement will be determined as real property is purchased, plans are finalized, construction bids are awarded, or projects are completed. In addition, certain acquisition or improvement funds are expected from non-bond sources, including funds which have not yet been secured. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.
- G. For the Affordable Housing Improvements, proceeds of the Bonds shall be used to finance the acquisition or improvement of real property for affordable housing, including the application of bond proceeds for the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts.
- H. As part of the process to adopt a budget, the City Manager shall provide to the City Council a comprehensive report of funds received from any Bonds authorized by this Measure.
- I. The following commissions or their successors shall provide oversight by reporting to the City Council on an annual basis regarding projects funded by the Bonds and the expenditure of proceeds of the Bonds, whether those expenditures are consistent with the purposes of the Bonds set forth in this Resolution, and recommendations on projects proposed to be funded by the Bonds and proposed expenditures of the proceeds of the Bonds:

1. The Parks, Recreation, and Waterfront Commission shall provide oversight on Infrastructure Improvements related to properties and facilities identified in Municipal Code Section 3.26.040.A, including all parks, recreation, and waterfront improvements.
 2. The Transportation and Infrastructure Commission shall provide oversight on the Infrastructure Improvements related to transportation and other public infrastructure.
 3. The Housing Advisory Commission shall provide oversight on the Affordable Housing Improvements.
- J. All expenditures will be subject to an annual independent financial audit to confirm that expenditures of proceeds of the Bonds are consistent with the intent of this Resolution.

BE IT FURTHER RESOLVED that the City hereby declares that it reasonably expects (i) to pay certain costs of the acquisition and improvement of real property for the Improvements prior to the date of execution, delivery or issuance of the Bonds, and (ii) to use a portion of the proceeds of the Bonds for reimbursement of such expenditures that are paid before the date of execution, delivery or issuance of the Bonds.

BE IT FURTHER RESOLVED that, pursuant to California Elections Code sections 10002 and 10403, this City Council does hereby call an election on Tuesday, November 8, 2022, and requests that the Alameda County Board of Supervisors consolidate said election with the Statewide General Election on that same date in the manner and schedule established by Resolution No. 70,336-N.S., adopted on May 10, 2022, and submit to the qualified voters of the City, at said consolidated election, the Measure, such approval to constitute the authorization to issue the Bonds.

BE IT FURTHER RESOLVED that the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election.

BE IT FURTHER RESOLVED that the City proposes to issue and sell general obligation bonds of the City, in one or more series, in the maximum amount and for the objects and purposes set forth above, payable from and secured by ad valorem taxes levied and collected in the manner prescribed by laws of the State of California, all equally and ratably secured, without priority, by the taxing power of the City, if two-thirds of all qualified voters voting on the Measure vote in favor thereof.

BE IT FURTHER RESOLVED that said proposed Measure shall be placed on the ballot for the November 8, 2022 election with the statement of the Measure to be printed in the ballot in the following form:

CITY OF BERKELEY GENERAL OBLIGATION BOND MEASURE	
Shall the measure authorizing the City of Berkeley to issue \$300 million in general obligation bonds to fund affordable housing and improvements to public infrastructure, including utilities, parks, waterfront, marina, public buildings, and other improvements to increase sustainability and climate change resiliency, subject to oversight by City commissions and independent audits, be adopted? Projected levy over expected 45-year period bonds are outstanding is approximately \$0.02 per \$100 of assessed value; raising approximately \$11,600,000 annually.	BONDS YES
	BONDS NO

BE IT FURTHER RESOLVED that at this time, the best estimate of the average and highest tax rates expected to be levied for debt service on the Bonds is set forth in the Tax Rate Statement attached hereto as Exhibit B.

BE IT FURTHER RESOLVED that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the Measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley, and that ballots for the election shall be provided in the form and in the number provided by law. Voters shall be provided an opportunity to vote for or against the Measure on the ballot, in accordance with procedures to be adopted by the authorized officers of the County.

BE IT FURTHER RESOLVED that the full text of the Measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California, and to file a certified copy of this Resolution, including all exhibits, no later than the close of business on August 12, 2022, with the County Registrar of Voters and the Clerk of the County Board of Supervisors.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the

statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the Measure on the ballot.

BE IT FURTHER RESOLVED that the Mayor, the City Manager, the Finance Director, the City Attorney and the City Clerk, and any of their designees, are hereby authorized to execute any documents and to perform all acts necessary to place the Measure on the ballot, and to make any changes to the text of the Measure, the statement of the measure or the Tax Rate Statement to conform to any legal requirements of the County Registrar, in order to cause the election to be held and conducted in the City.

BE IT FURTHER RESOLVED that the City Council directs the City Clerk to transmit a copy of the Measure to the City Attorney, who shall prepare an impartial analysis of the Measure showing the effect of the Measure on the existing law and the operation of the Measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

BE IT FURTHER RESOLVED that the filing of ballot arguments shall conform to the manner and schedule established by Resolution No. 70,336-N.S., adopted on May 10, 2022.

BE IT FURTHER RESOLVED that the City Council, having reviewed the Measure, hereby finds that this action is not subject to the California Environmental Quality Act ("CEQA") because it involves the establishment of a government financing mechanism that does not involve any commitment to specific projects to be constructed with proceeds of the Bonds. The use of the proceeds of the Bonds to finance any project or portion of any project will be subject to approval of the applicable decision-making body at that time, upon completion of planning and any further required environmental review under CEQA.

BE IT FURTHER RESOLVED that this Resolution shall take effect from and after the date of its passage and adoption.

BE IT FURTHER RESOLVED that the City Clerk shall certify to the passage and adoption thereof.

Exhibits

A: Text of Measure

B: Tax Rate Statement

EXHIBIT A

MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO ISSUE GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION OR IMPROVEMENT OF REAL PROPERTY FOR AFFORDABLE HOUSING, AND CLIMATE CHANGE RESILIENCY, WILDFIRE PROTECTION, AND OTHER PUBLIC INFRASTRUCTURE IMPROVEMENTS AND FACILITIES

Section 1. Findings.

WHEREAS, the accelerating impacts of climate change and growing need for affordable housing create new challenges for safety, resiliency, and sustainability within the City; and

WHEREAS, the City has identified over \$1 billion in infrastructure needs, including to reduce the City's environmental footprint, adapt to climate change, reduce the risk of flooding and wildfires, and better withstand the consequences of flooding and fires when they do occur; make the City's public spaces more attractive, vibrant, and green; and otherwise improve the City's infrastructure and make it more sustainable and resilient; and

WHEREAS, the *Vision 2050 Framework* and *Program Plan* are long-term plans to build, upgrade and repair Berkeley's aging infrastructure to be more sustainable and resilient in order to meet the serious challenges of the future, including climate change, and, to these ends, the City Council has determined that affordable housing and infrastructure are connected; and

WHEREAS, the City Council recognizes the importance of ensuring adequate maintenance funding from existing sources for infrastructure improvements financed by the bonds and not supplanting existing City infrastructure funding with proceeds of the bonds; and

WHEREAS, a regional housing needs assessment showed the City needed an additional 3,854 affordable housing units, a crisis affecting the unhoused, low-income and working families and individuals, including, but not limited to, teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations; and

WHEREAS, the size and scale of local infrastructure need and affordable housing need show the challenge ahead despite the proactive steps taken to address these issues over the last decade; and

WHEREAS, existing funds and funding sources are inadequate for these infrastructure and affordable housing needs; and

WHEREAS, the City is authorized to issue general obligation bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (each, the “Bond Law”); and

WHEREAS, the City is authorized to issue general obligation bonds for the acquisition or improvement of affordable housing projects, pursuant to the provisions of Section 7.64 of the Berkeley Municipal Code; and

WHEREAS, under the Bond Law and Chapter 7.64, the City intends to issue general obligation bonds (the “Bonds”) to finance the acquisition or improvement of real property for affordable housing (“Affordable Housing Improvements”), including the application of bond proceeds by the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations, and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts;

WHEREAS, under the Bond Law and Chapter 7.64, the City further intends to issue the Bonds to finance the acquisition or improvement of real property for public infrastructure and facilities (“Infrastructure Improvements”; together with Affordable Housing Improvements, “Improvements”), including the City’s storm drains; above or on ground utilities, especially those that can be undergrounded; green infrastructure; retaining walls; park, recreation, and senior facilities; parks, natural areas, waterfront, marina, and other open space; public buildings; and other public infrastructure, including repair, renovation, replacement, or reconstruction so that the public can continue to benefit from Infrastructure Improvements as they become more resilient and sustainable, and the Infrastructure Improvements will include any public art integrated into the Infrastructure Improvements consistent with Berkeley Municipal Code Chapter 6.13; and

WHEREAS, the City may have the opportunity to leverage State and County of Alameda (“County”) funds allocated for these affordable housing and infrastructure needs if it issues the Bonds to address these needs; and

WHEREAS, fiscal accountability protections including public disclosure of all spending, annual audits and independent oversight help ensure funds will be spent as promised; and

WHEREAS, by law, all funds must remain under local control in the City and cannot be taken away by the State or the County or used for other purposes; and

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

WHEREAS, the City Council has therefore determined that the public interest requires additional funding for the Improvements; and

WHEREAS, the People of the City of Berkeley find that the public interest requires the issuance of the Bonds in the amount of \$300,000,000 to fund the Improvements.

Section 2. Object and Purpose of Bonds.

This measure (the “Measure”) authorizes the issuance of general obligation bonds (the “Bonds”), the object and purpose of which is to finance, by the City of Berkeley or a third party, as applicable, the acquisition or improvement of real property for the Improvements.

The Improvements will be completed as needed, and each is assumed to include its share of costs, including planning, program management and construction costs. The final cost of each Improvement will be determined as real property is purchased, plans are finalized, construction bids are awarded, or projects are completed. In addition, certain acquisition or improvement funds are expected from non-bond sources, including funds which have not yet been secured. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.

For the Affordable Housing Improvements, proceeds of the Bonds shall be used to finance the acquisition or improvement of real property for affordable housing, including the application of bond proceeds for the City directly, or indirectly through third parties as loans, grants, or other disbursements to qualified individuals, not-for-profit entities acting alone or together with tax credit investors, not-for-profit corporations, partnerships, associations and government agencies, to acquire real property for the purpose of constructing, rehabilitating or preserving affordable housing, or to construct, rehabilitate or preserve affordable housing; including but not limited to supportive housing, nonprofit rental housing, and limited-equity housing cooperatives affiliated with community land trusts.

Proceeds of the Bonds may be used to reimburse the City for expenditures on the Improvements that are paid before the date of execution, delivery or issuance of the Bonds.

Section 3. Estimated Cost of Improvements.

The estimated cost of the Affordable Housing Improvements to be funded by the Bonds is \$150,000,000, and the estimated cost for the Infrastructure Improvements to be funded by the Bonds is an additional \$150,000,000.

The estimated cost includes legal and other fees and the cost of printing the Bonds and other costs and expenses incidental to or connected with the authorization, issuance or sale of the Bonds. The cost of the Improvements include planning, programs management and construction costs.

Section 4. Principal Amount of Bonds.

The aggregate principal amount of Bonds to be issued shall not exceed \$300,000,000.

Section 5. Maximum Interest Rate.

The maximum rate of interest to be paid on the Bonds shall not exceed twelve percent (12%) per annum.

Section 5. Accountability Requirements.

The following accountability measures apply to the issuance of Bonds pursuant to this Measure:

- A. The specific purpose of the Bonds is to finance the acquisition or improvement of real property for the Improvements; and
- B. The proceeds from the sale of the Bonds will be used only for the purposes specified in this Measure, and not for any other purpose; and
- C. The proceeds of the Bonds will be deposited into an account to be created and held by the City; and
- D. The proceeds from the sale of the Bonds may be used to reimburse the City for amounts advanced from the general fund or other funds or accounts to acquire real property for Improvements, when such purchases are made prior to the availability of Bond proceeds; and
- E. As part of the process to adopt a budget, the City Manager shall provide to the City Council a comprehensive annual report of funds received from any bonded indebtedness authorized by this Measure, funds expended, and the status of the Improvements.
- F. The following commissions or their successors shall provide oversight by reporting to the City Council on an annual basis regarding projects funded by the bond and bond expenditures, whether those bond expenditures are consistent with the purposes of the bond, and recommendations on projects proposed to be funded by the bond and bond expenditures:
 - 1. The Parks, Recreation, and Waterfront Commission shall provide oversight on Infrastructure Improvements related to properties and facilities identified in Municipal Code Section 3.26.040.A, including all parks, recreation, and waterfront improvements.

2. The Transportation and Infrastructure Commission shall provide oversight on the Infrastructure Improvements related to transportation and other public infrastructure.
3. The Housing Advisory Commission shall provide oversight on the Affordable Housing Improvements.

G. All expenditures will be subject to an annual independent financial audit to confirm that Bond expenditures are consistent with the intent of this Measure.

EXHIBIT B

TAX RATE STATEMENT

An election will be held in the City of Berkeley (the "City") on November 8, 2022, to authorize the sale of up to \$300 million in bonds of the City to finance the specific projects listed in the measure. If such bonds are authorized, the City expects to sell the bonds in one or more series. Principal and interest on the bonds will be payable solely from the proceeds of ad valorem tax levies made upon the taxable property in the City. The following information is provided in compliance with Sections 9400-9404 of the California Elections Code. Such information is based upon the best estimates and projections presently available from official sources, upon experience within the City, and other demonstrable factors.

Based upon the foregoing and projections of the City's assessed valuation:

1. The best estimate of the average annual tax rate that would be required to be levied to fund the bond issue over the entire duration of the bond debt service, based on a projection of assessed valuations available at the time of filing of this statement is 2.00 cents per \$100 (or \$20.00 per \$100,000) of assessed valuation of all property to be taxed. The best estimate of the final fiscal year in which the tax is anticipated to be collected is 2067/68.
2. The best estimate of the highest tax rate that would be required to be levied to fund the bond issue, based on a projection of assessed valuations available at the time of filing this statement is 3.68 cents per \$100 (or \$36.77 per \$100,000) of assessed valuation of all property to be taxed. The best estimate of the first year in which the highest tax rate will apply is 2038/39.
3. The best estimate of the total debt service, including the principal and interest, that would be required to be repaid if all the bonds are issued and sold is \$520,000,000.

Voters should note that such estimated tax rates are specific to the repayment of bonds issued under this authorization and will be in addition to tax rates levied in connection with other bond authorizations approved or to be approved by the City or any other overlapping public agency.

Voters should note that the estimated tax rate is based on the ASSESSED VALUE of taxable property on Alameda County's official tax rolls, not on the property's market value. In addition, taxpayers eligible for a property tax exemption, such as the homeowner's exemption, will be taxed at a lower effective tax rate than described above. Property owners should consult their own property tax bills to determine their property's assessed value and any applicable tax exemptions.

Attention of all voters is directed to the fact that the foregoing information is based upon projections and estimates only, which amounts are not maximum amounts or durations and are not binding upon the City. The actual debt service amounts, tax rates and the years in which they will apply may vary from those presently estimated, due to variations from these estimates in the timing of bond sales, the amount of bonds sold and market interest rates at the time of each sale, and actual assessed valuations over the term of repayment of the bonds. The dates of sale and the amount of bonds sold at any given time will be determined by the City based on need for funds and other factors. The actual interest rates at which the bonds will be sold will depend on the bond market at the time of each sale. Actual future assessed valuation will depend upon the amount and value of taxable property within the City as determined by the Alameda County assessor in the annual assessment and the equalization process.

Dated: July __, 2022

/s/ DEE WILLIAMS-RIDLEY
City Manager, City of Berkeley

ANNOTATED AGENDA SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Tuesday, July 26, 2022
3:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/89491193768>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **894 9119 3768**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified..

Preliminary Matters

Roll Call: 3:05 p.m.

Present: Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Bartlett

Councilmember Kesarwani present at 3:07 p.m.

Councilmember Bartlett present at 3:21 p.m.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 0 speakers.

Action: M/S/C (Arreguin/Wengraf) to adopt the Consent Calendar in one motion except as indicated.

Vote: Ayes – Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

Consent Calendar

1. **Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245**

From: City Manager

Recommendation: Adopt two Resolutions:

1. Adopting a successor three-year Memorandum Agreement (MA) with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of July 1, 2022 through June 30, 2025, authorizing the City Manager to execute and implement the revised terms and conditions of employment set forth in the Memorandum Agreement; and
2. Approving a new salary resolution for Representation Unit C that implements the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 69,962-N.S.

Financial Implications: See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 70,453–N.S. (IBEW Local 1245), and Resolution No. 70,454–N.S. (Representation Unit C).

Consent Calendar

2. **Side Letter of Agreement – SEIU Local 1021 Maintenance and Clerical Chapters**
From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with Service Employees International Union Local 1021 Maintenance and Clerical Chapters to modify Section 31.3 of the Memorandum Agreement regarding the Pre-Age 65 Retiree Health Insurance. Effective 7/1/2022 through 6/30/2023, the City shall contribute an additional \$200.00 toward both single and two-party rate for active employees who retire from city service and file such retirement within thirty (30) days of separation from the city with CalPERS. This enhanced retiree incentive shall continue until Section 31.4 become applicable.

Financial Implications: See report

Contact: Donald E. Ellison, Human Resources, (510) 981-6800

Action: Adopted Resolution No. 70,455–N.S.

Action Calendar – New Business

3. **Establishing Policy for Adequate Annual General Fund Contribution for Street Maintenance to Prevent Deterioration of Pavement Condition**

From: Councilmember Wengraf (Author), Councilmember Kesarwani (Author), Mayor Arreguin (Author), Councilmember Taplin (Co-Sponsor)

Recommendation: Adopt a Resolution establishing a Council fiscal policy to allocate \$8 million annually in General Fund monies for street maintenance, adjusted annually for inflation. The allocation will augment the existing General Fund street paving budget of \$7.3 million, for a total of \$15.3 million annually, adjusted for inflation. The policy allows for suspension in any year in which there is a budget deficit or emergency under two circumstances (1) the City Council draws upon \$1 million (or more) from its Stabilization Reserve in order to adopt a final budget; or (2) a two-thirds vote of the City Council.

This policy is needed to ensure that deferred street maintenance is supported by an ongoing adequate General Fund contribution. Without adequate ongoing street maintenance funding, analysis shows that a one-time infusion of resources will only lead to a temporary improvement in the pavement condition.

Financial Implications: See report

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action: 5 speakers. M/S/C (Wengraf/Arreguin) to adopt Resolution No. 70,456–N.S. with the changes to resolved clauses noted in the underlined text below.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a fiscal policy is hereby established requiring the allocation of \$8 million dollars annually from the General Fund to the Street Maintenance Fund, in addition to the existing baseline \$7.3 million allocation, for a total amount of \$15.3 million to be adjusted annually for inflation using 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, or other construction index as recommended by the City Manager.

BE IT FURTHER RESOLVED that this fiscal policy to fund street maintenance at a level of \$15.3 million (as adjusted for inflation) may be suspended in any year in which the City Council draws upon \$1 million (or more) from the Stabilization Reserve in order to adopt a final budget or by a two-thirds vote of the City Council.

Vote: All Ayes.

Action Calendar – New Business

4. **Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements**

From: City Manager

Recommendation:

1. Adopt a Resolution determining public interest and necessity for issuing a general obligation bond in the amount of \$300 million for affordable housing, climate change resiliency, wildfire protection, and other public infrastructure improvements, submitting to the Berkeley electorate on the November 8, 2022 ballot a measure to authorize a general obligation bond in that amount, and finding that the proposed measure is not a project under the California Environmental Quality Act.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: 15 speakers. M/S/C (Arreguin/Kesarwani) to continue Item 4 to a special meeting to be held on August 3 and provide direction to the City Manager to return with a revised single bond measure in an amount from \$600 million to \$650 million, and provide analysis of the various bond amounts, including average tax rate and various bond terms. Bond measure text should categories the funding as noted below.

\$300 million – street paving, sidewalks, and complete streets

\$150 million – affordable housing

\$150 million – other public infrastructure, undergrounding on evacuation routes, civic center improvements, infrastructure at the waterfront, the pier, parks, pools, or other public infrastructure.

Vote: All Ayes.

5. **Placing a Special Tax Measure on the November 8, 2022 Ballot to Fund Street Repairs, Sidewalk Repairs, and Traffic Safety Improvements; and Adopting the Vision 2050 Program Plan**

From: City Manager

Recommendation:

1. Adopt a Resolution submitting a ballot measure to fund street repairs, sidewalk repairs, and traffic safety improvements to a vote of the electors at the November 8, 2022 General Municipal Election.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

3. Adopt a Resolution adopting the Vision 2050 Program Plan.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: 6 speakers. M/S/C (Arreguin/Wengraf) to take no action on Item 5.

Vote: All Ayes.

Recess 5:59 p.m. – 6:15 p.m.

Action Calendar – New Business

6. Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

From: City Manager

Recommendation:

1. Adopt a Resolution submitting a ballot measure to tax vacant residential units to a vote of the electors at the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: M/S/C (Arreguin/Robinson) to accept revised materials from Vice-Mayor Harrison on Item 6.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste.

Action: 45 speakers. M/S/C (Arreguin/Harrison) to continue the item to the August 3 special meeting including revised material submitted at the meeting by Vice-Mayor Harrison.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – Droste.

Adjournment

Action: M/S/C (Arreguin/Harrison) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 8:56 p.m.

Communications

Item #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

1. Adriel Hampton

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #4 Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements

2. James McGrath

Item #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

3. Revised material, submitted by Councilmember Harrison

4. Kelly Hammargren
5. The Berkeley Progressive Alliance
6. Sam Greenberg, on behalf of East Bay for Everyone, Telegraph for People, and Cal Berkeley Democrats

Supplemental Communications and Reports 3

Item #3: Establishing Policy for Adequate Annual General Fund Contributions for Street Maintenance to Prevent Deterioration of Pavement Condition

7. Ben Gerhardstein, on behalf of Walk Bike Berkeley

Item #4 Placing a General Obligation Bond Measure on the November 8, 2022 Ballot for Affordable Housing, Climate Change Resiliency, Wildfire Protection, and Other Public Infrastructure Improvements

8. Presentation, submitted by Public Works
9. Vanessa Marrero
10. Anne McClintock
11. Alejandro Garcia-Paredes
12. Rie Takahashi
13. Berkeley Tenants Union
14. Ignacio Dayrit
15. Karin Wertheim
16. Summer Brenner
17. La Fan
18. Chimey Lee
19. Michael Brown
20. Shelley Pitts

Item #6: Placing a General Tax Measure on the November 8, 2022 Ballot to Tax Vacant Residential Units

21. Paola Laverde
22. Tracy Parent, on behalf of the Bay Area Community Land Trust
23. Robin Rattan
24. Sylvia Chapman
25. Julia Cato
26. Gale Garcia
27. Elana Auerbach
28. Bryce Nesbitt
29. Andrea Mullarkey, on behalf of SEIU 1021
30. Sandra Fini
31. Igor Tregub
32. Martin Nicolaus
33. Ida Martinac
34. Diana Bohn
35. Jordan Burns

ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, July 12, 2022
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81476464690>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **814 7646 4690**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 6:08 p.m.

Present: Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Bartlett

Councilmember Bartlett present at 6:10 p.m.

Report from Closed Session

City Council met in closed session on July 7, 2022, Pursuant to Government Code Section 54956.9(d)(2) and provided direction to outside counsel and approved a settlement by Compromise and Release, or else in the alternative by stipulated award of permanent disability with an Award of lifetime future medical care, as to workers' compensation matter WCAB Case Number: ADJ11219150.

Ceremonial Matters:

1. Adjourned in Memory of Thomas Lord, Local Activist and Former Commissioner

City Manager Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 16 speakers.

Action: M/S/C (Arreguin/Droste) to accept supplemental materials from Councilmember Taplin on Item 18.

Vote: All Ayes.

Action: M/S/C (Arreguin/Wengraf) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Consent Calendar

1. FY 2023 Annual Appropriations Ordinance

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,828-N.S. adopting the FY 2023 Annual Appropriations Ordinance (AAO) in the amount of \$754,176,624 (gross appropriations) and \$625,939,999 (net appropriations).

First Reading Vote: Ayes - Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Arreguin; Noes - None; Abstain - None; Absent - Harrison, Droste.

Financial Implications: See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Action: Adopted second reading of Ordinance No. 7,828-N.S.

Consent Calendar

- 2. goBerkeley SmartSpace Pilot Program Implementation Recommendations**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,829-N.S. repealing and reenacting Berkeley Municipal Code Chapter 14.52 Parking Meters to enable demand-responsive paid parking for non-RPP permit holders in the 2700 blocks of Durant Avenue, Channing Way, and Haste Street and the 2300-2400 blocks of Piedmont Avenue (a portion of Residential Preferential Parking Program Area I) for the duration of the grant-funded goBerkeley SmartSpace pilot program, and allow payment via license plate entry pay stations (“pay-by-plate”) to improve convenience and enforcement.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted second reading of Ordinance No. 7,829–N.S.
- 3. Voting Delegates – League of California Cities Annual Conference**
From: City Manager
Recommendation: Designate, by motion, a voting delegate and alternate for the business meeting of the Annual League of California Cities conference to be held on Friday, September 9, 2022, in Long Beach.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved recommendation appointing Councilmember Hahn as the voting delegate and Councilmember Taplin as the alternate.
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on July 12, 2022**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager’s threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$3,620,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.

Consent Calendar

- 5. Contract No. 32000243 Amendment: Waters Moving & Storage for Facility Moves**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000243 with Waters Moving & Storage for moving office furniture between various Health, Housing, & Community Services Department (HHCS) facilities, as part of HHCS program relocations. These facility sites include, but are not limited to, the North Berkeley Senior Center, West Berkeley Service Center, 830 University Avenue, and 1947 Center Street. The contract is being amended to add to the scope and increase the original contract by \$10,000 to the original contract amount of \$50,000 to move Aging Services back into the newly rehabilitated North Berkeley Senior Center. The total amended amount will not exceed \$60,000 for the period June 1, 2020 through December 30, 2022.
Financial Implications: General Fund - \$10,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 70,445–N.S.
- 6. Contract No. 8958F Amendment: Bartel Associates, LLC for Actuarial Consulting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 8958F increasing contract amount by \$110,000 with Bartel Associates, LLC for Actuarial Consulting Services, for a revised total contract amount not to exceed \$380,000 through December 31, 2023.
Financial Implications: Various Funds - \$110,000
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 70,446–N.S.
- 7. Contract No. 31900045-3 Amendment: Vestra Resources, Inc. for Additional Geographic Information System (GIS) Projects**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900045-3 with Vestra Resources, Inc. for Geographic Information System (GIS) professional services, for a total not to exceed \$28,679 and for a total contract value of \$64,990 from September 15, 2018 to June 30, 2024.
Financial Implications: IT Cost Allocation Fund - \$28,679
Contact: Michael Sinor, Information Technology, (510) 981-6500
Action: Adopted Resolution No. 70,447–N.S.

Consent Calendar

- 8. Contract No. 31900193 Amendment: Hamilton Tree Service, Inc. for As-Needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900193 with Hamilton Tree Service, Inc, for as-needed tree services, increasing the amount by \$300,000 for an amended total amount not to exceed \$500,000.
Financial Implications: Various Funds - \$300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,448–N.S.
- 9. Contract No. 31900218 Amendment: West Coast Arborists, Inc. for As-Needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend contract No. 31900218 with West Coast Arborists Inc., for as-needed tree services, increasing the amount by \$200,000 for an amended total amount not to exceed \$700,000.
Financial Implications: Various Funds - \$200,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,449–N.S.
- 10. Contract No. 32200076 Amendment: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200076 with OBS Engineering, Inc. for the John Hinkel Park Amphitheater Area Improvements Project, increasing the amount by \$26,000 for an amended total amount not to exceed \$1,145,580.
Financial Implications: Parks Tax Fund - \$26,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 70,450–N.S. as revised in Supplemental Communications Packet #2 by the City Manager to increase the amount by \$80,000 for an amended total amount not to exceed \$1,199,580.

Consent Calendar

11. **Berkeley's Financial Condition (FY 2012 – FY 2021): Pension Liabilities and Infrastructure Need Attention**
From: Auditor
Recommendation: We recommend City Council request that the City Manager report back by November 2022, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the City Manager and Finance Department. They have agreed to our findings and recommendations. Please see our report for their complete response. This audit report has been updated with new information regarding the City's Section 115 Trust.
Financial Implications: See report
Contact: Jenny Wong, Auditor, (510) 981-6750
Action: Approved recommendation.

12. **Contract No. 32000196 Amendment: Szabo & Associates for Communications Consulting Services**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000196 with Szabo & Associates for communications consulting services for the Mayor's Office, increasing the contract amount by \$78,000 for a new total not to exceed \$227,500, and extending the contract term to June 30, 2023.
Financial Implications: Mayor's Office Budget - \$78,000
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 70,451–N.S.

Council Consent Items

13. **Joining the House America Initiative**
From: Mayor Arreguin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Adopt a Resolution joining House America, an initiative of the U.S. Department of Housing and Urban Development and the U.S. Interagency Council on Homelessness to form partnerships with state, tribal and local governments to rehouse people experiencing homelessness.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 70,452–N.S.

14. **Support for Assembly Constitutional Amendment 3**
From: Councilmember Taplin (Author)
Recommendation: Send a letter of support for ACA-3 to members of the state legislature including Senator Kamlager (D-Los Angeles), Senator Skinner (D-Berkeley), and Assemblymembers Kalra and Wicks.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Approved recommendation as revised in Supplemental Communications Packet #1 by Councilmember Taplin.

Council Consent Items

- 15. Support for AB-1816: Reentry Housing and Workforce Development Program.**
From: Councilmember Taplin (Author)
Recommendation: Send a letter of support for Assembly Bill 1816 to Assemblymember Isaac Bryan (D-Los Angeles) and state legislators representing the City of Berkeley (Skinner/Wicks).
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Approved recommendation as revised in Supplemental Communications Packet #1 by Councilmember Taplin.
- 16. Support for SB 1063: Flexibility for Energy Innovation**
From: Councilmember Robinson (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Send a letter to Senator Nancy Skinner and Assemblymember Buffy Wicks in support of Senate Bill 1063, which would authorize the California Energy Commission (CEC) to make new technology standards effective sooner, enabling the Commission to expedite the rollout of new green technologies and be more responsive to climate emergencies.
Financial Implications: Staff time
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: Vice-Mayor Harrison added as a co-sponsor. Approved recommendation.

Action Calendar – Public Hearing

17. Zoning Ordinance Amendments Making Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt first reading of an Ordinance containing technical edits, corrections and other non-substantive amendments to the following sections of the Zoning Ordinance:

BMC Section 23.202.140 (R-SMU Zoning District)

BMC Section 23.204.020 (Commercial Districts -- Allowed Land Uses)

BMC Section 23.204.030 (Additional Permit Requirements)

BMC Section 23.204.060 (C-U Zoning District)

BMC Section 23.204.130 (C-DMU District)

BMC Section 23.206.202 (Manufacturing Districts – Allowed Land Uses)

BMC Section 23.302.030 (Temporary Uses and Structures)

BMC Section 23.302.070 (Use-Specific Regulations)

BMC Section 23.404.040 (Public Notice)

BMC Section 23.502.020 (Glossary)

Financial Implications: None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Public Testimony: The Mayor opened the public hearing. 1 speaker. M/S/C (Arreguin/Wengraf) to close the public hearing.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste.

Councilmember Droste absent 7:15 p.m. – 7:20 p.m.

Action: M/S/C (Hahn/Harrison) to adopt first reading of Ordinance No. 7,830-N.S. Second reading scheduled for July 26, 2022.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste.

Action Calendar – Old Business

18. **Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual** (Continued from May 24, 2022) (Item contains revised material) (Reviewed by the Public Safety Committee)

From: Councilmember Droste (Author), Councilmember Taplin (Author)

Recommendation: Revise Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department (BPD) Law Enforcement Services Manual to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches individuals on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions.

Policy Committee Recommendation: Send the item to the City Council with a qualified positive recommendation, as revised by the committee and subject to legal review.

Financial Implications: See report

Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Action: Moved to Consent Calendar. Adopted the policy revision as introduced in the supplemental material submitted by Councilmember Taplin. Councilmembers Droste and Hahn added as co-sponsors on the supplemental material.

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

~~Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status.~~ **Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses¹ may be searched pursuant to the terms of their Supervised Release conditions.** The decision to detain a person and conduct a probation or parole search or otherwise enforce probation or parole conditions **for those on supervised release for nonviolent crimes²**, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime **or which demonstrate that the individual is connected in some way to criminal activity or that the individual is an imminent threat to officer or citizen safety.** In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.

¹ Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c)., fall into the categories of violent crimes, weapons offenses, sex crimes and/or crimes involving threats to public safety in accordance with state law.

² "Non-Violent Offenses" are defined as offenses in which violence or use of a weapon or threat to life safety is not a factor.

Action Calendar – Old Business

19. Restoring and Improving Access to City of Berkeley Website and Archival Materials *(Continued from June 14, 2022)*

From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor)

Recommendation: Direct the City Manager to:

1. Restore at previous URLs all PDF documents previously hosted on the City of Berkeley website.
2. Create a publicly accessible archival copy of the City's previous website, CityofBerkeley.info, that can be accessed without logins and via internet search engines. Include a prominent disclaimer noting the date the website, page, or document was archived, with links redirecting to the active website or other responsive resource.
3. On the new website, update Commission pages to include a minimum of 2 years of historic agendas and other materials and update City Council and Council Committee pages to include at least 3 years of complete materials.
4. By July 15, 2022 develop and make available to all City staff and to the public training at beginner to expert levels on use of the City's Records Online search function and create more extensive and less technical self-help resources covering basic and expert use.
5. In recognition of increased public traffic, update the Records Online homepage to explain how the portal works and link to more robust self-help resources and alternative search functions.
6. Coordinate with agency staff to include all relevant records (agendas, minutes, etc.) from Rent Board and Housing Authority in Records Online Portal.
7. Update any remaining 404 pages to explain that the City's website has been moved/updated, and provide links to helpful pages, search functions and/or pathways to access responsive materials. As quickly as possible, consider implementing redirects with wildcards to direct as many old links to relevant new website pages in lieu of the standard 404 page. E.g. cityofberkeley.info/planning* to the Planning Department site map/homepage, or Department Specific 404 page explaining new navigation.

Refer to the City Manager the following additional improvements to Records Online:

1. Within Records Online, provide unique archival/search categories for each City Commission, Board, Committee and Rent Board, and consider other useful categories, to assist users in narrowing results and identifying responsive materials.
2. Allow Records Online search results to be sorted by date and by other searchable factors. Consider means to integrate records online into default site search bar.
3. Explore and report back to Council options for improving the scope of Records Online, improving search options and sorting, and making all materials – or materials from January 1, 2000 (or an earlier recommended date) forward, searchable using internet search engines.

Financial Implications: Staff time

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Action: Item 19 continued to July 26, 2022.

Action Calendar – New Business

20. Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

From: 4 x 4 Joint Committee on Housing City Council/Rent Board

Recommendation:

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Matt Brown, Rent Stabilization Board, (510) 981-7368

Recess 8:10 p.m. – 8:20 p.m.

Action: 54 speakers. M/S/C (Arreguin/Harrison) to:

Delay final action tonight and continue Item #20 to the July 26, 2022 regular City Council meeting and direct the City Attorney to bring back revised measure language reflecting the following changes:

1. Bring back revised language for Section 13.76.050.F to continue the exemption from just cause and rent control for owner occupied “Golden Duplexes” if the duplex was owner-occupied as of July 1, 2022 and continues to be occupied by the same owner. Once the current owner no longer resides there, then it would be no longer be exempt.

Action: M/S/Failed (Wengraf/Kesarwani) to take no action on the golden duplex provisions in Part 1 of the Main Motion.

Vote: Ayes – Kesarwani, Taplin, Wengraf, Droste; Noes – Harrison, Hahn, Robinson, Arreguin; Abstain – None; Absent – Bartlett (Recused – resides in golden duplex).

Action: M/S/Failed (Arreguin/Harrison) to approve Part #1 of the Main Motion.

Vote: Ayes – Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Taplin, Wengraf, Droste; Abstain – None; Absent – Bartlett (Recused – resides in golden duplex).

Councilmember Bartlett recused 9:45 p.m. – 10:35 p.m.

2. Remove the language in Section 13.76.050.N which would repeal the exemption of lawfully established and fully permitted Accessory Dwelling Units from just cause for eviction protections. Also, refer to the City Manager to explore noticing requirements of rent/eviction control exemption for ADU units.

Action: M/S/C (Arreguin/Robinson) to suspend the rules and extend to 11:30 p.m.

Vote: All Ayes.

Action Calendar – New Business

Action: M/S/C (Hahn/Harrison) to approve Part #2 of the Main Motion.

Vote: All Ayes.

3. Bring back the proposed language in Section 13.76.040 to modify the new construction exemption for SB 330 replacement units and other units if permitted by state or local law.

Action: M/S/C (Arreguin/Harrison) to approve Part #3 of the Main Motion.

Vote: Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Taplin, Wengraf, Droste.

4. Bring back the proposed language in Section 13.76.060.Q as proposed by the Rent Board, “Rent Stabilization Ordinance/Decontrol”.

Action: M/S/C (Arreguin/Harrison) to approve Part #4 of the Main Motion.

Vote: Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Taplin; Absent – Droste.

5. Remove the language in Section 13.76.130, “Additional Occupants.”

Action: M/S/C (Arreguin/Harrison) to approve Part #5 of the Main Motion.

Vote: All Ayes.

Vote: Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Kesarwani, Droste; Abstain – Taplin, Wengraf.

Information Reports

21. Youth Commission Work Plan 2022

From: Youth Commission

Contact: Ginsi Bryant, Commission Secretary, (510) 981-6700

Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 7 speakers.

Adjournment

Adjourned at 11:30 p.m.

Communications

Item #19: Restoring and Improving Access to City of Berkeley Website and Archival Materials

1. David Lerman (2)

Berkeley Marina Area Specific Plan and Cesar Chavez Park

2. Laura Katz
3. Sarah Elzea
4. Helen Greenspan
5. Margaret and Laura Goodman
6. Kristi Bennewitz
7. Ric Keeley
8. Robin Slovak
9. Nancy Schimmel
10. Leslie Brogan
11. Kate Greswold
12. Mort Cohn
13. Rose Glickman
14. Karen Hoffman
15. Nel Benningshof
16. Phyllis Olin
17. Claire Kahane
18. Kathleen Tandy
19. Kellie Gan
20. Nick Despota
21. Robin Freeman
22. Carol Ginsburg and Joseph Como
23. Kate Greswold
24. Sahana Rajasekar
25. Caroline Powell
26. Stefani Berger

Vacancy Tax

27. Elana Auerbach
28. Avram
29. Barbara Gilbert (2)
30. Toni Mester

Hopkins Corridor

31. Rachel Bradley
32. Tanya Bustamante, on behalf of The Commission on Aging
33. Susan Taylor

eScooters

34. Robert Byler
35. Anne McClintock (2)
36. Melanie Beasley, on behalf of the City Manager's Office

People's Park

37. Moni Law

Climate

38. Thomas Lord

Neighbors Smoking – Modify B.M.C. 12.70.035

39. Anne Marie (2)

Plastic Bag Ordinance

40. Dakota Peebler

Hybrid Council Meetings

41. Elana Auerbach

Homelessness

42. M. Emillie Keas

43. Gordon Peterson

Illegal Short-Term Rental

44. Ramona Cavanaugh

1740 San Pablo New Construction – Funding Application

45. Kate Traynor, on behalf of BRIDGE Housing

Reimagining Public Safety

46. Nan McGuier

Shellmound

47. Zahcary Bell

Eviction Moratorium

48. Anne

African American Holistic Resource Center (AAHRC)

49. George Lippman, on behalf of Berkeley Peace and Justice Commission

Traffic at Intersections of 80 and University and Gilman

50. Nick Roosevelt

51. Farid Javandel

SB 1183

52. Seena Hawley

BART Development

53. Nancy Lieblich

Needles and Drug Use Downtown

54. Alex Merenkov

Fire Anniversary of September 17, 1923

55. Margot Smith

Eviction of the Pacific Center at 2712 Telegraph Avenue

56. Lasara Firefox

Double Parking on Durant

57. Alex Merenkov

Housing Element

58. Kelly Hammargren

Fire Danger at People's Park

59. Max Ventura

Accept Haitian Migrants to Berkeley

60. Nin Ichikawa

UN Secretary General

61. Thomas Lord

Arson and Wildfires

62. Barbara Gilbert

Tenants Opportunity to Purchase Act

63. Kelly Hammargren

64. 56 similarly-worded from letters from "campaigns@good.do"

Supplemental Communications and Reports 1

Item #1: FY 2023 Annual Appropriations Ordinance

65. Eric Friedman

Item #14: Support for Assembly Constitutional Amendment 3

66. Supplemental material, submitted by Councilmember Taplin

Item #15: Support for AB-1816: Reentry Housing and Workforce Development Program

67. Supplemental material, submitted by Councilmember Taplin

Item #18: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual

68. Supplemental material, submitted by Councilmember Taplin

Item #19: Restoring and Improving Access to City of Berkeley Website and Archival Materials

69. Melanie Beasley, on behalf of the City Manager's Office

Item #20: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

- 70. Revised material, submitted by the City Attorney's Office
- 71. Dan McDunn
- 72. William Campbell
- 73. Kevin Casey

Supplemental Communications and Reports 2

Item #10: Contract No. 32200076 Amendment: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project

- 74. Revised material, submitted by Parks, Recreations & Waterfront

Item #18: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual

- 75. Supplemental material, submitted by Councilmember Taplin
- 76. Revised material, submitted by Councilmember Droste
- 77. Bryce Nesbitt
- 78. Michael Brodheim
- 79. Todd Andrew
- 80. Andree Jones
- 81. Carolyn
- 82. Lorenzo Avila
- 83. Rachel Bradley
- 84. Isabelle Gaston
- 85. Steve Kromer
- 86. Rob Yohai
- 87. Jon McAuliffe
- 88. 38 similarly-worded form letters

Item #20: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

- 89. Revised material, submitted by the City Attorney's Office
- 90. Joann Sullivan
- 91. Alicia Moore
- 92. Vanessa Marrero
- 93. Kirsten Rose
- 94. Norma Harrison
- 95. Debbie Woods
- 96. Jerry Fillingim
- 97. Charlene Woodcock
- 98. Robin R
- 99. Cecile Leneman
- 100. Erica Cleary
- 101. Yoni Mayeri
- 102. Chris Ballinger
- 103. Judy MacLean

104. Jeffrey Carter
105. John Tortorice
106. Sheila Goldmacher
107. Diana Bohn
108. Michele Muenning
109. John Selawsky
110. Fredric Fierstein
111. Angela Carlton
112. Beth Gerstein, on behalf of Councilmember Kesarwani
113. Thomas Luce
114. Diana Bohn
115. Anne McClintock
116. Matthew Lewis
117. Claudia Kawczynska
118. Debra Sanderson, Co-chair ADU Task Force
119. Julieta Pisani McCarthy
120. Cameroon Woo
121. 7 similarly -worded form letters

Supplemental Communications and Reports 3

Item #16: Support for SB 1063: Flexibility for Energy Innovation

122. D.S.

Item #18: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual

123. Supplemental material, submitted by Councilmember Taplin
124. Fran Haselsteiner
125. Sara Shnider
126. April Gilbert
127. Ben Finkel
128. Barbara Gilbert
129. Jake Teitebaum
130. Elliot Halpern
131. Kitt Saginor
132. Meryl Siegal
133. Karen Weidert
134. Diana Bohn
135. Laralynn Rapoza
136. John Rea
137. Mike Perlmutter
138. Carol Denney
139. Meghan Schwartz
140. Vicki Sommer
141. Terrence Kotsatos
142. Kellicia Kotsatos
143. Margaret Pritt

144. Raul Delarosa
145. Max Ventura
146. Tracy Rosenberg
147. Julia Cato
148. Glenda Citragno
149. Edward Opton
150. Lynda Caesara
151. Alicia Moore
152. Wendy Alfsen
153. Larry Hartsough
154. Elana Auerbach
155. John Vias
156. Josh Buswell-Charkow
157. Lisa Ferguson
158. Negeene Mosaed
159. Fred Krieger
160. Christoverre Kohler
161. Laura Klein
162. Debbie Woods
163. Anna Sophie Loewenberg
164. Jan Baerwald
165. Mark McGoldrick
166. Kelly Hammargren
167. Adolfo Cabral
168. Bill Newton
169. Beth Goldstein
170. Hongnian Guo
171. Dennis Weikel
172. Marcia Dubois
173. Stephanie Lim
174. Seena Hawley
175. Andrea Kamman
176. Dai Ying Zhang
177. Selena Chu
178. Laurie Lenrow
179. Kellicia Wong Kotsatos
180. David Lerman
181. Bill Pottinger
182. J. Frederick Clark Jr.
183. Gina Rieger
184. Joshua Reich
185. Simon Leemann
186. Alyse Jacobson
187. Becky Dalton
188. Sheila Moran
189. Ari Lev

190. Catherine Shalen
191. Sunny Yoon
192. Richard Bunce
193. Christine Staples
194. John E. Rosenthal
195. Suzanne McKee
196. Steven Berger
197. John Rice
198. Seth Engel
199. David Fogarty
200. Irene Marcos
201. Feliciano Mejia
202. Alex Jordan
203. Wenxia Maclay
204. Peter Hosemann
205. Julia Zhang
206. Diego Aguilar-Canabal
207. Bethany del Lima
208. William Rosen
209. Lisa Tsang
210. Shuang Li
211. Bruce Feingold
212. Frannie Mok
213. Susan Orbuch
214. wenijingxu@
215. Erik Schmitt
216. Audrey Richards
217. Mari Vlastos
218. Liz Ruhland

Item #20: Placing a Measure on the November 8, 2022 Ballot Amending the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

219. Norma Harrison
220. Neil Sawhney
221. Julia Cato
222. Tobey Wiebe
223. Karen Gosling
224. Negeene Mosaed
225. Becca Freed
226. Diana Bohn
227. Katharine Bierce
228. Chimey Lee
229. Bryce Nesbitt
230. Jeanne Clinton
231. Scott Curtin
232. Cris Benton
233. Michael O'Heaney

234. Tony Warwick
235. Michael Katz
236. Claire Sherman & Ed Anisman
237. Virginia Browning
238. Lauren Schiller
239. Lori Kossowsky
240. Laura Bixby
241. Daren Fields
242. Mathias Kondolf
243. Alejandro Garcia-Paredes
244. Katharine Vidt
245. Teresa Paris
246. Rebecca Champion
247. Erin Chalmers
248. Elena Gonzalez
249. Carol Perez
250. Lawrence Kaplan and Marie Champlin (2)
251. Stephen Knight
252. The Casita Coalition
253. Brenda Richardson
254. Sean McMurray
255. Barbara Gilbert (2)
256. Jeanne Clinton
257. Todd Andrew (2)
258. Tuan Ngo
259. Jesus Mejia
260. Rie Takahashi



BALLOT MEASURE SUBMITTAL FORM

#3 - amendments to Berkeley rent

RECEIVED
Official Use Only: Date Stamp

Alameda County

AUG 07 2018

Reg. of Voters

BALLOT MEASURE QUESTION

Jurisdiction Name: **City of Berkeley**

Election Date: **11/6/2018**

Note: The information as it appears within the text box will be printed on the ballot and voter guide.

Insert ballot question text here:

Shall the ordinance amending the Rent Stabilization Ordinance to: account for potential repeal of the Costa-Hawkins Rental Housing Act by preserving existing vacancy rent adjustments; update the new construction exemption from rent stabilization to a 20-year rolling period; and exempt all lawfully permitted Accessory Dwelling Units from rent stabilization and eviction for good cause protections, be adopted?

TYPE OF MEASURE

- Regular Measure Parcel Tax
 Bond Measure Charter Amendment

PERCENTAGE NEEDED TO PASS

- 50% + 1 66.6667% 2/3
 Other: _____

FULL TEXT OPTION

Full Text to be printed in the Voter Information Pamphlet:

- YES (*note: must submit separate copy of Full Text along with this form and provide a MS Word file*)
 NO – A Full Text was not submitted
 NO – Do not print, but it's accessible at: _____

AUTHORIZED REPRESENTATIVE

Print Name: [REDACTED] [REDACTED] Date: 8/6/2018

CONTACT INFORMATION (for office use)

Phone #: [REDACTED]
E-Mail: [REDACTED]

CONTACT INFORMATION (for public)

Phone #: (510) 981-6900
E-Mail: clerk@cityofberkeley.info
Website: www.cityofberkeley.info/elections

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE __

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

Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) requires landlords to register rental units, limits how much landlords can increase rents on many rental units, and provides that certain tenants may only be evicted for good cause. Berkeley's Ordinance is currently limited by a state law known as the Costa-Hawkins Rental Housing Act. Costa-Hawkins bars cities from establishing or limiting rents for single-family homes or newly built housing completed on or after February 1, 1995, or earlier if the city had previously adopted a local exemption for newly constructed units, and from regulating how much rent landlords may charge tenants moving into vacant rental units.

A statewide initiative on the November 6, 2018 ballot, Proposition 10, would repeal Costa-Hawkins and allow local governments to adopt laws governing a landlord's right to establish and increase rents on newly built housing, notwithstanding the date of construction. Existing Berkeley law does not specify what will happen to rent increases imposed under state law in the event that California voters approve Proposition 10.

This proposed measure would amend Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance to account for the potential repeal or amendment of Costa-Hawkins. If state law changes to remove current limits on Berkeley's Ordinance, this measure would do the following:

1. Berkeley's rent stabilization and registration requirements would begin applying to newly built housing twenty years after that housing is built. For the first twenty years, newly built housing would be exempt from these requirements. This differs from current City law, which permanently exempts all housing completed on or after June 30, 1980, from rent stabilization and registration requirements.
2. This measure would preserve rent increases that were legally imposed on new tenants moving into vacant rental units while Costa-Hawkins was in effect. This would not significantly change the way rent control is implemented in Berkeley, but ensures that existing lawful rent increases remain in effect if state law changes.

In addition, this measure would exempt a rental unit in a residential property that contains a single Accessory Dwelling Unit from rent stabilization and limitations on the reasons for evicting tenants, if the owner resides on the property, and the Accessory Dwelling Unit is lawfully established and fully permitted. The exemption would not apply to tenancies created before November 7, 2018. This amendment would take effect regardless of whether Costa-Hawkins is repealed.

s/FARIMAH BROWN
Berkeley City Attorney

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

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ACCOUNT FOR POTENTIAL REPEAL OF THE COSTA-HAWKINS RENTAL HOUSING ACT BY PRESERVING EXISTING VACANCY RENT ADJUSTMENTS AND UPDATE NEW CONSTRUCTION EXEMPTION FROM RENT STABILIZATION TO A ROLLING 20-YEAR PERIOD; AND TO EXEMPT LAWFULLY PERMITTED ACCESSORY DWELLING UNITS

The People of the City of Berkeley ordain as follows:

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

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 board 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. 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. "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. "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. "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.

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

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 chapter, 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.

Section 2. Section 13.76.050 of the Berkeley Municipal Code is amended to read 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 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., G., and N., 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 13.76.080, 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. 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 a 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 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.

Section 3. Section 13.76.100 of the Berkeley Municipal Code is amended to read as follows:

13.76.100 Establishment of base rent ceiling and posting.

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

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

C. Previously Exempt Units. For rental units specified in Section 13.76.050.F., the base rent ceiling shall be the rent in effect on December 31, 1981. For such rental units where no rent was in effect on December 31, 1981, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on December 31, 1981, or during the six months preceding that date and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be 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.

ARGUMENT IN FAVOR OF MEASURE Q

Vote Yes on Measure Q to keep rent control fair for everyone.

Berkeley and the entire state is facing a housing affordability crisis. Rents continue to increase and more renters are facing displacement. We need a balanced housing policy, that encourages new construction and protects sitting tenants.

Measure Q would prevent unfair rent rollbacks, give tenants in buildings from the 1980s and 1990s rent control protections, and homeowners would be incentivized to build new Accessory Dwelling Units (ADUs) to address the housing shortage.

Proposition 10 on the November ballot would repeal the Costa-Hawkins Rental Housing Act and expand rent control protections for tenants. To prepare for the potential passage of Prop 10, the City Council placed Measure Q on the ballot. Measure Q provides clarity and sets a fair standard that whatever the rent is at the time Prop 10 passes will be the rent ceiling going forward.

Newly constructed buildings are exempt from rent control, but buildings built in the '80s and '90s aren't "new" anymore. If Prop. 10 passes, Measure Q would give much-needed rent control to tenants in all buildings over 20-years old. It will also continue Berkeley's long-standing policy of permitting rent control, but not hindering new construction.

The housing shortage is critical, and we need more units, including Accessory Dwelling Units. We also need multi-generational housing opportunities. Measure Q would exempt lawfully established ADUs from rent controls, and also exempt the main house if the owner resides in their ADU. This will allow owners to age in place and increase housing opportunities.

Berkeley deserves clarity about the effects of Prop 10, a fair standard for new construction, and incentives for homeowners to build additional housing units.

Please join the Mayor, City Councilmembers and the League of Women Voters in supporting Measure Q.

s/Jesse Arreguín
Berkeley Mayor

s/Sophie Hahn
Berkeley City Councilmember

s/Lisa Stephens
Chair, Berkeley Rent Stabilization Board, 2008-2014

s/Tirien Steinbach
Executive Director, East Bay Community Law Center

s/David A. Blake
small Berkeley landlord