Bookmarks

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CITY OF BERKELEY BOND MEASURE FF	
Shall the City of Berkeley issue general obligation bonds not exceeding $26,000,000 to renovate, expand, and make seismic and access improvements at four neighborhood branch libraries, but not the Central Library, with annual reporting by the Library Board to the City Council?	YES NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE FF

A MEASURE TO ISSUE GENERAL OBLIGATION BONDS NOT EXCEEDING $26,000,000 TO RENOVATE, EXPAND AND MAKE SEISMIC AND ACCESS IMPROVEMENTS AT FOUR NEIGHBORHOOD BRANCH LIBRARIES, BUT NOT THE CENTRAL LIBRARY, WITH ANNUAL REPORTING BY THE LIBRARY BOARD TO THE CITY COUNCIL

This bond measure would authorize the issuance of $26 million of general obligation bonds. The bond measure specifies that bond proceeds would be limited to renovation, construction, seismic, and disabled access improvements, and expansion of program areas at the City's four neighborhood branch libraries, but not the Central Library downtown. Current plans for renovation include restoration and refurbishment of historic features at the branch libraries as part of any renovation.

Although the bonds must be issued by the City Council, under the Berkeley City Charter, the Board of Library Trustees is responsible for managing the Library. Thus the bond proceeds, which are allocated for improvements to neighborhood branch libraries, will be administered by the Board of Library Trustees. The measure would also require the Board of Library Trustees to report annually to the City Council on the use of the bond proceeds.

Financial Implications

The year after the first bonds are issued, the tax rate required to meet the estimated debt service would be 0.01822¢ per $100 of assessed valuation. This rate is expected to peak at 0.01822¢ per $100 of assessed valuation and average 0.00836¢ per $100 of assessed valuation during the 30-year issue. The estimated annual tax for a home with

an assessed valuation of $330,500 would be $59 the first year after bonds are issued, peak at $59 and average $27 over the 30-year life of the bonds.

TAX RATE STATEMENT FOR MEASURE FF

An election will be held in the City of Berkeley on November 4, 2008, for the purpose of submitting to the electors of the City, the question of incurring a bonded indebtedness of the City in a principal amount not to exceed $26,000,000. It is expected that bonds would be issued in a single series. The following estimated projections are made assuming said bonds are sold in a single series with an average annual interest rate of 4.95% and using 2008-2009 assessed valuation of the City of Berkeley, County of Alameda, California as the base year. If such bonds are authorized and sold, the principal thereof and interest thereon will be payable from the proceeds of tax levies made upon the taxable property of the City. The following information regarding tax rates is given to comply with Sections 5301 and 5304 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, and assuming the entire debt service will be amortized through property taxation:

1. The best estimate of the tax which would be required to be levied to fund the bond issue during the first fiscal year after the sale of the first series of bonds, based on estimated assessed valuations available at the time of filing of this statement is 1.822 cents per 100 dollars of assessed valuation (or stated another way, $18.22 per $100,000 of assessed valuation).
2. The best estimate of the tax rate which would be required to be levied to fund the bond issue during the first fiscal year after the sale of the last series of bonds and an estimate of the year in which that rate will apply, based on estimated assessed valuation available at the time of filing this statement, is 1.822 cents per 100 dollars of assessed valuation for the year 2009/2010.(or stated another way, $18.22 per $100,000 of assessed valuation).
3. The best estimate of the highest tax rate which would be required to be levied to fund the bond issue and an estimate of the year in which that rate will apply, based on estimated assessed valuation available at the time of filing this statement is 1.822 cents per 100 dollars of assessed valuation for the year 2009/2010
   (or stated another way, $18.22 per $100,000 of assessed valuation).
4. The best estimate of the average tax rate which would be required to be levied to fund the bond issue over 30 years is .836 cents per $100 of assessed valuation (or stated another way, $8.36 per $100,000 of assessed valuation).

Attention of all voters is directed to the fact that the foregoing information is based upon projections and estimates only, which are not binding upon the City. The actual times of sales of said bonds and the amount sold at any given time will be governed by the needs of the City and other factors. The actual interest rates at which the bonds will be sold, which in any event will not exceed 12%, will depend upon the bond market at the

time of each bond sale. Actual assessed valuation in future years will depend upon the value of property within the City as determined in the assessment and the equalization process. Hence, the actual tax rates and the years in which such rates are applicable may vary from those presently estimated stated above.

s/PHIL KAMLARZ
City Manager, City of Berkeley

CITY OF BERKELEY MEASURE GG	
To enable the City to keep fire stations open and improve emergency medical response and disaster preparedness, shall a special tax be authorized of $.04083 per square foot of improvements in dwelling units and $.06179 per square foot on all other improvements?	YES
Financial Implications: This tax would raise $3.6 million in the first full year. The annual cost for a 1,900 square foot home would be $78 and for a nonresidential building would be $118.	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE GG

ORDINANCE AUTHORIZING AND ADOPTING A SPECIAL TAX TO FUND FIRE PROTECTION AND EMERGENCY RESPONSE AND PREPAREDNESS

The City's Fire Department, including its capital and operating costs, is supported almost entirely from the City's general fund. This ordinance would authorize a special tax of 4.083¢ per square foot of improvements in dwelling units and 6.179¢ per square foot on all other improvements. Each year Council may adjust the tax rate over the previous year's rate by the greater of the increase in the cost of living in the immediate San Francisco Bay Area, or *per capita* personal income growth in California. Property owned or held by nonprofit corporations and used for charitable purposes would be exempt from this tax, as provided by the California Constitution.

Tax proceeds would be used first to eliminate rotating closures of operating fire stations. Remaining tax proceeds would be used to provide advanced life support ("ALS") personnel (paramedics) and equipment on all first responder vehicles (ambulances, fire engines and ladder trucks) and hire a training officer to provide Emergency Medical Service training for first responders; provide funding to hire staff to conduct Community Emergency Response Training and other similar public disaster training and preparedness efforts and for neighborhood emergency preparedness caches; and to acquire and maintain equipment to enhance emergency preparedness, including equipment to allow compatible radio communications throughout the City and with outside public safety agencies. The Council could alter these spending priorities if it were to declare a fiscal emergency by a two-thirds vote. In such cases the Council would still be required to spend the tax proceeds exclusively for the enumerated purposes. Expenditure reports will be provided to the Disaster and Fire Safety Commission. The Disaster and Fire Safety Commission shall provide recommendations and feedback on the scope of the Emergency Response and Preparedness tax to the City Council.

Financial Implications

The proposed City special tax rate of 4.083¢ per square foot for dwelling units would limit the annual cost for an average 1,900 square foot home to approximately $78. If the tax is not passed, the Council may have to cut funding of other general fund programs, to free up the necessary funds for fire department staffing, or reduce that staffing. Non-residential properties would pay at the higher rate of 6.179¢ per square foot. In FY 2009 the tax would raise $3,600,000.

It is estimated that the tax will cost residential and non-residential taxpayers no more than the following average amounts during FY 2009.

	Square Feet	Annual Tax	Rate
Residential	1900	$78	4.083¢
Non-residential	1900	$118	6.179¢

FULL TEXT OF MEASURE GG

ORDINANCE NO. -N.S.

AUTHORIZING AND ADOPTING SPECIAL TAX TO FUND FIRE PROTECTION AND EMERGENCY RESPONSE AND PREPAREDNESS

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

That Berkeley Municipal Code Chapter 7.81 is hereby added to read as follows:

Chapter 7.81 Special Tax to Fund Fire Protection and Emergency Response and Preparedness

7.81.010 Imposition of special tax for fire protection and emergency response and preparedness.
7.81.020 Tax Rate and inflation adjustments.
7.81.030 Definitions.
7.81.040 Exemptions.
7.81.050 Authority of the City Manager
7.81.060 Planning and oversight.
7.81.070 Interest and penalties.
7.81.080 Refunds.
7.81.090 Collection.
7.81.100 Appropriations limit.
7.81.110 Effective date.
7.81.120 Severability.

7.81.010 Imposition of special tax for fire protection and emergency response and preparedness.

A. A special tax for the purpose of funding fire protection and emergency response and preparedness is hereby authorized to be imposed on all improvements in the City of Berkeley ("City") as more fully set forth in this Chapter.

B. The City Council may impose the tax authorized by this Chapter at the rates, and subject to the inflation adjustments, set forth in Section 7.81.020.

C. This special tax is imposed in compliance with Article 13 of the California Constitution, pursuant to Government Code Section 53978, and the City's constitutional authority under Article 11 section 5 of the California Constitution, in its capacity as a charter city.

D. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used for the purpose of enhancing emergency response and preparedness by funding the following:

1. Eliminating the rotating closure of operating fire stations by enhancing the City's ability to pay costs needed to maintain full staffing;
2. Providing advanced life support ("ALS") personnel (paramedics) and equipment on all first responder vehicles and hiring a training officer to provide Emergency Medical Service ("EMS") training for first responders;
3. Providing funding to hire staff to conduct Community Emergency Response Training and other similar public disaster training and preparedness efforts, and for annual allocation for neighborhood emergency preparedness caches; and
4. Acquiring and maintaining equipment to enhance emergency preparedness, including equipment necessary to allow compatible radio communications throughout the City and with outside public safety agencies, and reserving tax proceeds as necessary to fund such acquisition.

E. Tax proceeds shall be allocated first to the estimated amount necessary to eliminate rotating closures of operating fire stations, provided that the Council may alter this priority allocation in the event it declares a fiscal emergency by a two-thirds vote. In such cases the Council may allocate the proceeds of this tax among the purposes set forth in subdivision (D) of this Section in its sole discretion.

F. For purposes of this Chapter, "first responder vehicle" shall mean any piece of fire department apparatus used to routinely respond to fire and/or medical emergencies.

7.81.020 Tax Rate and inflation adjustments.

A. The rate of tax for the fiscal year 2009-2010 shall be as follows:

1. For all dwelling units, the tax shall be imposed at the rate of $.04083 per square foot.
2. For all other property the tax shall be imposed at the rate of $.06179 per square foot.

B. Annually in May, the City Council may increase the previous year's tax by up to the greater of the cost of living in the immediate San Francisco Bay Area or *per*

capita personal income growth in the state, as verified by official United States Bureau of Labor statistics. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.81.030 Definitions.

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

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

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

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

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

E. “Improvements” means all buildings or structures erected or affixed to the land.

F. “Parcel” means a unit of real estate in one ownership as shown on the most current official assessment role of the Alameda County Assessor.

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

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

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

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

H. “Structure” means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

7.81.040 Exemptions.

A. The following parcels and improvements shall be exempt from the tax imposed by this Chapter:

1. Parcels and improvements owned by federal or state governmental a agencies;

2. Parcels and improvements owned by local governmental agencies; and

3. Parcels and improvements exempt from taxation by the City pursuant to the laws or constitutions of the United States and the State of California.

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

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

7.81.050 Authority of the City Manager.

It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof. The City Manager is charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this chapter, including provisions for the re-examination and correction of returns and payments.

7.81.060 Planning and oversight.

A. The Disaster and Fire Safety Commission shall function as the citizens’ oversight committee for expenditure of the proceeds of this tax. For this purpose, in addition to its other powers, the Commission may:

1. request detailed expenditure plans for tax proceeds annually, which shall be provided to it as early in the budget process as feasible;

2. make recommendations to the City Manager and the City Council as to the rate at which the tax should be set and how any tax proceeds should be spent; and

3. obtain a report on actual expenditures.

B. The City Manager shall cooperate with the Disaster and Fire Safety Commission in providing the information it requests.

7.81.070 Interest and penalties.

The special tax imposed by this Chapter shall be due in the same manner, on the same dates, and subject to the same penalties and interest as established by law for other charges and taxes fixed and collected by the County of Alameda on behalf of the City of Berkeley. The special tax imposed by this Chapter, together with all penalties and interest thereon, shall constitute a lien upon the parcel upon which it is levied until it has been paid, and shall constitute a personal obligation of the owners of the parcel on the date the tax is due.

7.81.080 Refunds.

Whenever it is claimed that the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, such claim shall be subject to the provisions of Chapter 7.20 of the Berkeley Municipal Code or any such successor chapter.

7.81.090 Collection.

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

7.81.100 Appropriations limit.

Pursuant to Article 13B, Section 4 of the California Constitution, the appropriations limit for the City of Berkeley for the fiscal years 2010-2013 is hereby increased by the maximum aggregate amount projected to be collected pursuant to the special tax imposed by this Chapter.

7.81.110 Effective date.

The tax imposed by this Chapter shall be operative on January 1, 2009.

7.81.120 Severability.

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

CITY OF BERKELEY MEASURE HH	
Shall the appropriation limit under Article XIIIB of the California Constitution (or ceiling on city expenditures) be increased to allow for the expenditure of taxes previously approved by voters for parks maintenance; libraries; emergency medical services (EMS), and emergency services for severely disabled persons for fiscal years 2009 through 2012? Financial Implications: Not a tax increase, authorizes expenditure of existing voter-approved taxes.	YES NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE HH

A MEASURE TO INCREASE THE APPROPRIATION LIMIT UNDER ARTICLE XIIIB OF THE CALIFORNIA CONSTITUTION TO ALLOW FOR EXPENDITURE OF TAXES PREVIOUSLY APPROVED BY THE VOTERS FOR PARKS MAINTENANCE, LIBRARIES, AND EMERGENCY MEDICAL SERVICES (EMS), AND EMERGENCY MEDICAL SERVICES FOR SEVERELY DISABLED PERSONS FOR FY 2009 THROUGH FY 2012

This measure would authorize the City to continue to spend the proceeds of the Parks Maintenance Tax, Library Relief Tax, Emergency Medial Services Tax, and the Emergency Services for Severely Disabled Personal Tax, all of which were previously approved by the voters. Under Article XIIIB of the California Constitution a city is limited to appropriating (i.e. authorizing expenditure of) the amount of taxes (adjusted by inflation) that it spent in the 1986-1987 fiscal year. This limit may only be exceeded if the voters approve the excess expenditures by a majority vote. This constitutional restriction on appropriations (expenditures) is in addition to the constitutional requirement that special taxes must be approved by a two-thirds (2/3) vote of the people. Although the appropriations (expenditure) limit was raised by the voters to allow continued expenditure of the proceeds of these taxes when the taxes were approved, voter authorization to raise the spending limit must be renewed every four years. A city has two years to obtain voter approval on this expenditure. After that, the tax increase would have to be returned to the taxpayers within two years. Submitting the measures individually would cost $5,000 per measure and could confuse voters since the net effect of the measures is to raise the City's expenditure limit by the amount of taxes previously approved by the voters. For this reason, a single measure would raise the City's expenditure limit by the aggregate amount of the taxes raised by prior voter-approved tax measures.

Financial Implications

The measure would not increase taxes nor adopt a new tax. It would authorize the City to continue to spend tax funds previously approved by the voters for the purposes specified in those voter-approved tax measure for fiscal years 2009 through 2012.

CITY OF BERKELEY MEASURE II	
Shall the City of Berkeley Charter be amended to give the City until December 31st of the third year following the decennial census to adopt new council districts that are as nearly equal in population as feasible? Financial Implications: None.	YES NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE II

AMENDMENT TO SECTION 9 OF THE BERKELEY CITY CHARTER RELATED TO EXTENDING THE DEADLINE FOR COMPLETING THE REDISTRICTING OF CITY COUNCIL DISTRICTS

Currently, the City is required to adopt revised council district boundaries by the end of the year after each decennial census. In part because of disputes about the validity of the 2000 census, late issuance of revised census data and a referendum, the City was not able to meet this deadline after the 2000 census. Beginning with the 2010 decennial census, this Charter amendment would increase the time available for redistricting by extending the deadline to December 31st of the third year following the year in which the census is taken, i.e., December 31, 2013, for the 2010 decennial census. This Charter amendment would not prohibit the City from competing its redistricting sooner, however, if it is able to do so.

Financial Implications
None.

FULL TEXT OF MEASURE II

Section 9. Election.
The Council shall, by ordinance, adjust if necessary the boundaries of the Council districts herein set forth by December 31st of the third ~~in the~~ year following the year in which each decennial federal census is taken, commencing with the 2010 ~~1990~~ census, as provided and required in the Constitution and statutes of the State of California and in order that the eight Council districts shall continue to be as nearly equal in population as may be according to said census. Any such redistricting shall preserve, to the extent possible, the Council districts originally established herein and shall become effective as of the next general election of Councilmembers immediately following the effective date of said ordinance.

CITY OF BERKELEY MEASURE JJ	
Shall the City's ordinances be amended to require the City to issue a permit to medical marijuana dispensaries as a matter of right and without a public hearing, eliminate limits on the amounts of medical marijuana possessed by patients or caregivers; and establish a peer review group for medical marijuana collectives?	YES
Financial Implications: Possible increase in law enforcement costs and possible zoning related cost savings from change in public hearing requirement for marijuana dispensary permits.	NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE JJ

PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

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

1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to posses or cultivate more. The amendment retains but modifies the current limit of 10 **outdoor** cannabis plants on a single parcel, to only count plants that are visible from other property.

2. The ordinance would eliminate the existing limits of 12.5 pounds of dried cannabis and 50 cannabis plants that a collective composed of qualified patients and primary caregivers can possess, and provide instead that such a collective may possess a reasonable quantity of dried cannabis and cannabis plants to meet the medical needs of patient members as long as no more cannabis is accumulated than is necessary to meet such needs.

3. The ordinance would establish a Peer Review Committee composed to certify that any new cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee, and to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.

4. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as "Drug Control Officers" for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), and reasonably accommodate the provision of medical cannabis to patients and their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law.

5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.

6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City's existing zoning ordinance, BMC Title 23, in districts where such uses are otherwise permitted. Under current law such uses would be subject to a use permit and thus require a public hearing.

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

<u>FULL TEXT OF MEASURE JJ</u>

THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

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

THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

SECTION 1 TITLE

This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2008.

SECTION 2 FINDINGS AND DECLARATIONS

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

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

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

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

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

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

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

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

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

SECTION 3 AMENDMENTS TO BERKELEY MUNICIPAL CODE CHAPTER 12.26

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

Section 12.26.010 Purposes.

The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 and to regulate the location of facilities lawfully used for the storage, dispensing and use of medical cannabis, other than the cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver's home, lawfully incident to the residential use of that home. The Compassionate Use Act is the state law removing state law

penalties for qualified patients, and primary care givers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

A. To help ensure that seriously ill Berkeley residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate and recommended or approved by a physician who has determined that the patient's health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. To help ensure that qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient's medical treatment with the recommendation or approval of a physician are not subject to criminal prosecution or sanction.

C. To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of medical cannabis to patients whose medical doctors approve or recommend medical cannabis to treat a serious illness or condition.

D. To protect citizens from the adverse impacts of irresponsible medical cannabis distribution, storage and use practices. (Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.030 Definitions.

A. "Cannabis" shall have the same meaning as the definition of "Marijuana" provided in California Health and Safety Code Section 11018 at this time, but if that definition is amended by state law in the future, as amended. Currently, under Health and Safety Code Section 11018, "marijuana means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."

B. "Qualified patient" shall mean a person who has a written or oral recommendation or approval from a licensed medical doctor to use cannabis for medical purposes.

C. "Primary caregiver" shall mean the individual person or persons designated by a qualified patient, provided that said individual person or persons has consistently assumed responsibility for the housing, health, or safety of the qualified patient.

D. "Medical cannabis collective" shall mean a cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients, the purpose of which is to provide education, referral, or network services to qualified patients, and to facilitate or assist in the cultivation and manufacture or acquisition of medical cannabis for qualified patients.

E. "Medical cannabis dispensary" shall mean any person or entity that dispenses, cultivates, stores or uses medical cannabis except where such cultivation, storage or use is by a patient or that patient's caregiver, incidental to residential use by such

patient, and for the sole use of the patient who resides there. (Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

Section 12.26.040 Medical cannabis collectives.

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

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

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

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

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

E. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of medical cannabis will create a risk of theft and violence due to the high monetary value of a large number of cannabis plants and the relative ease of theft by trespassing. Large-scale outdoor cannabis cultivation will also unfairly create tension and fear among the surrounding residents of trespassing, thefts, and violence. Accordingly, any medical cannabis collective or Collectives that cultivate medical cannabis plants outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property, can only cultivate 10 such plants at one time on a single parcel or adjacent parcels of property.

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

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

Section 12.26.050 Availability in pharmacies.

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

Section 12.26.060 Quality control encouraged.

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

Section 12.26.070 Permissible quantities of medical cannabis.

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

her Primary Caregiver can possess enough cannabis to meet the Qualified Patient's personal medical need.

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

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

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

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

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

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

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

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

~~D. Outdoor Cannabis Plants. In addition, qualified patients who cultivate cannabis outdoors may also possess up to 10 cannabis plants, for personal medical use, provided that such cultivation meets the guidelines set forth in Section 12.24.040(E) of this chapter. This 10 plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' primary caregiver(s), but the total amount of plants possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 10 plants for that qualified patient. (Ord. 6620-NS § 1, 2001)~~

Section 12.26.080 Transportation of medical cannabis.

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

Section 12.26.090 Medical cannabis paraphernalia.

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

Section 12.26.100 Police procedures and training.

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

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

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

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

Section 12.26.110 Peer Review Committee.

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

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

B. New Dispensaries. The peer review committee shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis Collective or dispensary. The peer review committee shall certify that the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

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

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

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

Section 12.26.120 Emergency Distribution.

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

Section 12.26.130 Medical cannabis dispensary.

No more than three medical cannabis dispensaries shall be located within the limits of the City of Berkeley. No such dispensary shall be located within a 1000 foot range of another such dispensary, nor within 1000 feet of a public elementary, middle or high school. Any dispensary existing at the time this ordinance becomes effective, may continue at its current location, notwithstanding its violation of the de-concentration

requirements of this section. The City Manager may issue regulations to implement this section. (Ord. 6826-NS § 2 (part), 2004)

Section 12.26.140 Compliance with all applicable laws.

Nothing in this chapter shall be construed as excusing any person or entity from compliance with all other applicable federal, state and local laws. The City may make compliance with such laws a condition of deeming such person or entity in compliance with local law, except to the extent it would conflict with the purposes of this chapter. (Ord. 6826-NS § 2 (part), 2004)

SECTION 4 PERMITTING OF DISPENSARIES

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

Section 23C.16.060 Medical Cannabis Residential Cultivation

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

Section 23E.16.070 Medical Cannabis Collectives

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

SECTION 5 SEVERABILITY

If any provision of this initiative, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this initiative that can be given without the invalid provision or application; and to this end, the provisions or applications of this initiative are severable.

CITY OF BERKELEY MEASURE KK	
Shall the initiative ordinance Requiring Voter Approval of Exclusive Transit-Only and HOV/Bus-Only Lanes be adopted? Financial Implications: $250,000 - $500,000 per designation plan such as for the currently proposed Bus Rapid Transit project, plus the cost of placing a designation plan on the ballot ($15,000), and potentially, holding a special election, (about $350,000 if conducted by mail, and more than $700,000 if conducted with polling places).	YES NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE KK

INITIATIVE ORDINANCE REQUIRING VOTER APPROVAL OF EXCLUSIVE TRANSIT-ONLY AND HOV/BUS-ONLY LANES

The proposed ordinance would require voter approval before the City of Berkeley could dedicate a public street or lane of traffic to “bus-only, transit-only, or high-occupancy vehicle-only use”. Voter approval would not be required for minor changes such as creating a new bus stop or temporary changes for special street events or “unique” circumstances.

The voter approval process would include preparation of a “designation plan”, which is defined as a comprehensive plan for the creation of the transit-only, or high-occupancy vehicle/bus-only lanes. The designation plan would be required to include information on the impacts of lane designation on drivers, pedestrians, bicyclists, businesses, parking and emergency access, and the fiscal impacts of each proposed lane or street designation, and specify how the designation plan could be modified.

Designation plans would be guided by the Planning Commission and such other commissions as the City Council deems appropriate, and would involve substantial public input, including public hearings.

The proposed ordinance would also purport to require amendment of the City’s General Plan Transportation Element to conform to the proposed ordinance.

The requirements for preparation of a designation plan and subsequent voter approval would increase the amount of time needed to approve exclusive lanes for the use of buses (also known as Bus Rapid Transit or BRT) which could place time-sensitive outside funding sources at risk or prevent the City or other agencies from applying for available funding. The initiative would lead to increased costs to prepare the required plan, to place it on the ballot, and potentially to hold a special election if necessary to

meet funding deadlines. The initiative would increase uncertainty in the BRT planning process and reduce flexibility in regard to project implementation should the voters approve a designation plan.

The proposed ordinance is a significant impediment to implementing General Plan goals and policies relating to promoting alternatives to automobiles and improving public transit.

It is not clear whether the voter approval requirement of the ordinance is lawful because it conflicts with California Vehicle Code section 21655.5 which appears to delegate the authority to create HOV lanes on City streets to the City Council.

Financial Implications
Each time a designation plan would be required to be placed on the ballot under this measure, the City would incur various costs. Preparation of a designation plan (such as for the currently proposed Bus Rapid Transit project) could cost approximately $250,000 - $500,000, inclusive of staff time. In addition, the cost of placing a designation plan on the ballot would be approximately $15,000. If necessary to accommodate external funding deadlines, the cost of a special election would be about $350,000 if conducted by mail, and more than $700,000 if conducted in a standard fashion with polling places.

FULL TEXT OF MEASURE KK

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

Section 1: Title

The title of this ordinance shall be "Voters' Right to Approve Certain Major Transportation Changes."

Section 2: Findings and Purpose

The purpose of this measure is to enable the people of the City of Berkeley, by majority vote, to decide whether City streets or portions thereof shall be converted to transit-only or HOV/bus-only lanes, prior to dedication of such lanes.

The first goal of the City of Berkeley's General Plan is to "preserve Berkeley's unique character and quality of life."

Among competing visions for Berkeley's future, there is dispute over what policies or changes will best preserve our unique character and quality of life, especially in the areas of land use and transportation.

When a change is modest or uncontroversial, it is appropriate to rely on elected representatives to make these decisions, but if the change is significant or potentially

harmful, the citizens should have the opportunity to decide their own future directly through the ballot.

Section 3. Provisions

A. No public street, or portion thereof, owned or controlled by the City, or agency thereof, shall be dedicated to a bus-only, transit-only, or high-occupancy vehicle (HOV)-only use without the Berkeley City Council first having submitted a designation plan (as defined herein) to the citizens for approval by a majority of registered Berkeley voters voting in a general or special election.

B. Exceptions:
   1. Voter approval is not required to dedicate space reasonably needed for bus stops for the loading and unloading of passengers.
   2. Voter approval is not required for temporary dedication of lanes for special events or unique circumstances.

Section 4. Definitions

For purposes of this ordinance, the following terms are defined:

A. "Designation" or "designation plan" refers to a comprehensive plan involving creation of transit-only or HOV/bus-only lanes on streets or portions of streets that were available to automobile, pedestrian, or bicycle use, or used for street plantings, prior to April 15, 2008. This plan shall include information by which a reasonable person can assess how the designation and use will affect them. The plan shall include but not be limited to specific information on such items as the physical features that will impact drivers, transit riders, pedestrians, bicyclists, parking, neighborhoods, businesses, and emergency access, and the estimated fiscal impacts of the designation and use on the City and its taxpayers. The plan shall also specify legislative, administrative, and/or electoral methods for modifying the plan and its accompanying dedicated lanes.

B. "Dedication" refers to the transfer of rights for exclusive use of high-occupancy vehicles, buses, or other transit on portions of streets that were available to automobile, pedestrian, bicycle, or street-planting use prior to April 15, 2008.

Section 5. Implementation

A. The plan for the designation of lanes shall be guided by the Planning Commission and other commissions as the City Council deems appropriate, and shall be approved by the City Council. The designation planning process shall permit frequent and significant public input, including public hearings before the involved commissions and the City Council.

B. Any City approval of transit-only or HOV/bus-only lanes, exclusive of the exceptions above, approved on or after April 15, 2008 that does not comply with this ordinance shall be declared null and void.

C. The Berkeley General Plan Transportation Element shall be modified to be consistent with this ordinance.
D. The terms of this ordinance shall be interpreted liberally to give full effect to the foregoing policies adopted by the people of Berkeley.

<u>Section 6. Severability</u>

If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are severable.

CITY OF BERKELEY MEASURE LL	
Shall Ordinance No. 6,958–N.S., Repealing and Reenacting Berkeley Municipal Code (BMC) Chapter 3.24 (Landmarks Preservation), passed by City Council, granting the Landmarks Preservation Commission new authority to prohibit, instead of suspend, demolition of historic resources; eliminating property owners' approval in establishing historic districts; and substantially revising procedures for designating historic resources (including limiting reconsideration of properties not designated) and regulating alteration or demolition of historic resources, subject to appeal to the Council, be adopted?	YES NO

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE LL

REFERENDUM ON THE LANDMARKS PRESERVATION ORDINANCE 6,958–N.S.

The current Landmarks Preservation Ordinance ("LPO") establishes a 9 member Landmarks Preservation Commission ("LPC") appointed by the City Council. The LPC's main powers are to designate landmarks, structures of merit, and historic districts ("historic resources"), and to regulate alterations to them. The LPC does not regulate demolition of historic resources, which is controlled by the City's Zoning Adjustment Board. The LPC's decisions are subject to appeal to the City Council. The LPO as currently in effect grants the LPC authority to suspend demolition of historic resources for up to one year ("suspension power").

In 2006, the City Council repealed and reenacted the LPO, substantially revising it.. These revisions, in combination with accompanying changes to the Zoning Ordinance, were designed to provide earlier public notice of proposals to alter or demolish historic resources and to grant the LPC new authority to regulate their demolition, while streamlining the process for LPC decision making.

As the result of a citizen referendum petition, the revised ordinance has been placed on the ballot. This measure asks the voters to approve or reject the revised ordinance adopted by the City Council, described below.

New authority of LPC: The revised ordinance grants the LPC new authority to designate historic districts without the consent of a majority of property owners or residents of the proposed district, and to prohibit demolition of historic resources.

Environmental review: The revised ordinance clarifies the role of the LPC with respect to environmental review of projects that may affect historic resources, and establishes timelines for LPC action with respect to such environmental review .

Suspension: The revised ordinance repeals the suspension power of the LPO. The City has not been implementing this power, based on the City Attorney's advice that it conflicts with permit processing deadlines imposed by State law.

Procedural changes: The revised ordinance establishes new processes for property owners to obtain a decision from the LPC about whether a property is a historic resource, and requires the LPC to make such decisions within a set period of time. Properties that are not designated could not be reconsidered for two years. The revised ordinance streamlines the LPC process for reviewing and approving or denying applications to alter or demolish historic resources.

Standards for designation, alteration and demolition: The revised ordinance would require that historic resources retain sufficient characteristics to reflect their historic, cultural or architectural significance. The revisions also modify the findings required for alteration of historic resources to allow the City more flexibility.

Appeals: The revised ordinance would expand the right of appeal by allowing any person to appeal a decision of the LPC to the Council.

Qualifications: LPC members must have additional qualifications, consistent with state requirements for "Certified Local Governments".

Other changes: The revisions also made a number of technical amendments to the LPO.

A "yes" vote would allow the revised ordinance adopted by the City Council to become law. A "no" vote would reject the Council's revised ordinance and leave in place the current LPO.

FULL TEXT OF MEASURE LL

ORDINANCE NO. 6,958–N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 3.24 (LANDMARKS PRESERVATION)

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

Section 1. That Berkeley Municipal Code Chapter 3.24 is repealed and reenacted to read as follows:

Article I General Provisions

3.24.010 Findings and purposes of provisions.
3.24.020 Established—Powers and duties transferred when.

3.24.030 Membership—Appointments—Organization and officers.
3.24.040 Preservation incentives.
3.24.050 List of structures and sites—To be established and maintained—Contents.
3.24.060 List of structures and sites—Landmarks, historic districts and structures of merit designated—Permit application review.
3.24.070 Powers and duties generally.
3.24.080 Annual report required.

Article II Initiation and Designation

3.24.100 Landmarks, historic districts and structures of merit—Designation—Procedures required—Controls and standards.
3.24.105 Definitions.
3.24.110 Landmarks and historic districts—Criteria for consideration.
3.24.115 Structures of merit—Criteria for designation.
3.24.120 Summary of procedures and timelines for initiating and designating historic resources.
3.24.125 Process for initiating and designating landmarks, structures of merit and historic districts—No Application pending.
3.24.126 Process for initiating and designating landmarks, structures of merit and historic districts—Application pending.
3.24.127 Process for considering Requests for Determination—No Application pending.
3.24.128 Process for considering Requests for Determination—Application pending.
3.24.130 Reserved.
3.24.140 Notice of public hearings—Hearing procedure.
3.24.150 Reserved.
3.24.160 Designation proposal—Notice of decision required.
3.24.170 Reserved.
3.24.180 Landmarks, historic districts and structures of merit—Designation –Recording required.
3.24.190 List of designated and initiated resources—referral of applications to Commission.

Article III Regulatory Authority and Environmental Review

3.24.200 Construction, alteration or demolition—Approval required.
3.24.210 Ordinary maintenance and repairs.
3.24.220 Environmental review.
3.24.230 Permit application—Public hearing notice requirements.
3.24.240 Permit application—Decision—Time limitations—Review standards and criteria.
3.24.250 Notice of decision.
3.24.260 Reserved.
3.24.270 Reserved.

3.24.280 Landmarks, historic districts or structures of merit—Unsafe or dangerous conditions—Effect.
3.24.290 Landmarks, historic districts and structures of merit—Good repair and maintenance required.

Article IV Appeals

3.24.300 Appeals—Procedures required—City Council authority.

Article V Miscellaneous Provisions

3.24.310 Advice and guidance.
3.24.320 Property owned by public agencies—Cooperation—Consultation and report requirements.
3.24.330 Other procedures authorized.
3.24.340 Landmarks, historic districts or structures of merit—Filing fees required when.
3.24.350 Applicability of provisions.
3.24.360 Enforcement—Exemption for financial hardship when.
3.24.370 Enforcement—Authority.
3.24.380 Enforcement—Methods authorized.
3.24.390 Violation—Penalty.
3.24.400 Declaration of purpose of revision—Severability.

Article I
General Provisions

3.24.010 Findings and purposes of provisions.

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

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

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

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

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

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

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

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

3.24.020 Established—Powers and duties transferred when.

There is established the Landmarks Preservation Commission, hereinafter referred to as the Commission. The Commission shall have and exercise the powers and perform the duties set forth in this section, Sections 3.24.030 through 3.24.080, and elsewhere in this chapter with respect to historical or architectural preservation.

3.24.030 Membership—Appointments—Organization and officers.

A. The Commission shall consist of nine members. Appointments to the Commission shall be made by Council members and vacancies on the Commission shall be filled by Council members in accordance with the provisions of Sections 2.04.030 through 2.04.120, enacted as Ordinance 4780-N.S. by the voters of the City.

1. All members of the Commission shall have a demonstrated interest or competence in, or knowledge of, historic preservation.

2. At least four Commission members shall be appointed from among persons having expertise in the disciplines of history, architecture, architectural history, planning, prehistoric and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, such as American studies, American civilization or cultural geography, to the extent that such persons are available in the community.

B. The Commission shall elect a chairperson from among its members at its first meeting each calendar year, and shall establish rules and regulations for its own organization and procedure, consistent with the requirements of the City of Berkeley Commissioners' Manual.

C. The Director of Planning and Development, or his or her representative, shall serve as Secretary of the Commission, without vote. The Department of Planning and Development shall provide staff assistance to the Commission.

D. The Commission shall meet at least four times per year, as required by the City's Certified Local Government agreement with the State of California. In the event the Commission has more than one regular monthly meeting, the term "regular monthly meeting" shall mean the first such meeting in any given month.

3.24.040 Preservation incentives.

A. The Commission may encourage property owners to enter into Mills Act contracts with the City of Berkeley.

B. The Commission may encourage property owners to take advantage of Federal Historic Preservation tax credits, as well as any other local, state or federal preservation incentives.

C. The Commission may encourage property owners to invoke, and the City to utilize, the State Historic Building Code.

D. The Commission may educate the public and property owners about preservation incentives.

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

The Commission shall:

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

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

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

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

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

1. A landmark, and shall designate a landmark site for each landmark;
2. An historic district constituting a specific designated section of the City, or
3. A structure of merit, and shall designate a structure of merit site for each structure of merit;

B. Review and decide on permit applications for construction, alteration and demolition on landmark sites, in historic districts and on structure of merit sites and on initiated landmark sites, initiated historic districts and initiated structure of merit sites, as more fully set forth in Article III and Section 3.24.350 below.

3.24.070 Powers and duties generally.

The Commission may:

A. Establish and maintain a list of structures, sites and areas it deems worthy of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition;

B. Carry out, assist and collaborate in surveys, studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation, and establish

archives where pictorial evidence of the structures and their architectural plans, if any, may be preserved and maintained;

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

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

E. Disseminate information to the public concerning those structures, sites and areas deemed worthy of preservation, and may encourage and advise property owners and members of the community generally in the protection, enhancement, perpetuation and use of property of historical, architectural, archaeological or aesthetic interest or value;

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

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

3.24.080 Annual report required.

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

Article II
Initiation and Designation

3.24.100 Landmarks, historic districts and structures of merit—Designation—Procedures required—Controls and standards.

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

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

1. For a publicly owned landmark or structure of merit, review of proposed changes in major interior architectural features;

2. For an historic district, such further controls and standards as the Commission deems necessary or desirable, including but not limited to facade, setback, height controls, signs and public improvements.

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

3.24.105 Definitions.

For purposes of this chapter, unless otherwise specified, the following terms shall have the following meanings.

A. “Initiation”: Initiation shall mean any of the actions described in subdivisions A or B of section 3.24.125 by which the City Council, specified City commissions, property owners, residents or the public may commence the process by which the Commission determines whether or not to designate a structure, site or district as a landmark, structure of merit or historic district under this chapter.

B. “Integrity”: Integrity is the authenticity of an historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource’s period of significance.

1. Structures, sites and areas eligible for designation under this chapter must retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance.

2. Historical resources that have been rehabilitated or restored may be evaluated for designation.

3. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must also be judged with reference to the particular criteria under which a resource is proposed for eligibility. Alterations over time to a resource or historic changes in its use may themselves have historical, cultural, or architectural significance. A resource that has lost its historic character or appearance may still have sufficient integrity for designation if it maintains the potential to yield significant scientific or historical information or specific data.

4. The Commission may propose to the Council, for adoption by ordinance, modifications to the manner in which integrity is evaluated in Berkeley.

5. In determining whether a proposed landmark, structure of merit or historic district has sufficient integrity to justify its designation, the Commission shall take into consideration that integrity must be judged with reference to the particular criteria under which a resource is proposed for designation, that not all aspects of integrity will apply to every proposal for designation, and that each type of resource depends on certain aspects of integrity more than others.

C. “Application”: Application (when the first letter is capitalized) means any application for a Permit as defined in Section 23A.08.010.B.12, as well as applications for staff level design review under Chapter 23E.12.

D. “Permit”: Permit means any Permit as defined in Section 23A.08.010.B.12, as well as design review approvals issued by City staff under Chapter 23E.12.

E. “Request for Determination” or “RFD”: A Request for Determination is a written request to the City to determine whether a structure or site shall be initiated and designated under this chapter. A request shall be on a form developed by the Commission and shall include the analysis and level of information similar to that included in a form DPR 523, as promulgated by the California Office of Historic Preservation.

3.24.110 Landmarks and historic districts—Criteria for designation.

A. In order to designate a proposed landmark or historic district, the Commission must find that the proposed landmark or historic district has significant architectural, cultural, educational, historic or archaeological value, as defined below, and that it has integrity.

B. Architectural value:

1 Property that is the first, last, only or most significant architectural property of its type in the region;

2. Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works or the best surviving work in a region of an architect, designer or master builder; or

3. Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.

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

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

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

F. Archaeological value: Sites, with or without structures or other above-ground features, that have archaeological value by virtue of prehistoric or historic occupation or activity, including but not limited to Native American habitation and ceremonial sites; or which have yielded, or have the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

G. 1. Any property that is listed on or has been determined by the appropriate governmental official or body charged by state or federal law with making the determination to be eligible for the National Register of Historic Places or the California Register of Historical Resources shall be presumed to have significant architectural, cultural, educational, historic or archaeological value.

2. Any property that is listed on the State Historic Resources Inventory shall be presumed to have significant architectural, cultural, educational, historic or archaeological value. The “State Historic Resources Inventory” or “SHRI” means the survey of approximately 650 structures and sites in the City of Berkeley that was conducted by the Berkeley Architectural Heritage Association in 1977-79, and is on file at the City of Berkeley Planning and Development Department, as well as any other similar survey that meets generally accepted standards for inventories of historic resources that is conducted after January 1, 2006.

3.24.115 Structures of merit—Criteria for designation.

In order to designate a proposed structure of merit, the Commission must find that it has architectural merit and/or cultural, educational, or historic interest or value, has integrity, and satisfies one or more of the following criteria:

A. It is compatible in size, scale, style, materials or design with a designated landmark structure within its neighborhood, block or street frontage, or is located within a defined group of buildings that includes a landmark;

B. It is an example of good architectural design that contributes to its context;

C. It has historical or cultural significance to the City and/or to the structure’s neighborhood, block, street frontage, or a defined group of buildings within which it is located; or

D. It satisfies any other local criteria of significance that may be adopted by ordinance upon recommendation of the Commission.

3.24.120 Summary of procedures and timelines for initiating and designating historic resources.

A. Proceedings for determining whether to designate structures, sites and areas as landmarks, structures of merit and historic districts under this chapter fall into one of four categories:

1. Initiation, by resolution or petition in cases where an application for a Permit **is not** pending;
2. Initiation by resolution or petition in cases where an application for a Permit **is** pending;
3. Request for Determination ("RFD") in cases where an application for a Permit **is not** pending;
4. RFD in cases where an application for a Permit **is** pending.

B. Each category has its own particular procedures and timelines, and is governed by a separate section of this chapter. The following table illustrates the general process and schedule that will be followed for each category. The column numbers in the table correspond to the numbered paragraphs of the preceding subdivision. This chart is illustrative only, and generally indicates maximum times for proceedings. Actual procedures and timelines are governed by the applicable sections of this chapter (sections 3.24.125 through 3.24.128), and in the event of a conflict, the requirements set forth in the applicable section shall govern.

Timeline	**1 Initiation § 3.24.125**	**2 Initiation & Application § 3.24.126**	**3 RFD § 3.24.127**	**4 RFD & Application § 3.24.128**
At least 21 days before 1st meeting			City receives RFD or completes peer review of report	City receives RFD and Application
1st meeting	LPC receives resolution or petition; **Must** set public hearing on designation	LPC sees "notice" of pending Application; **May** set public hearing on designation	Public hearing to consider whether to initiate	Public hearing to consider whether to initiate
2nd meeting		**May** set public hearing on designation	Cont. public hearing—deadline for action	Cont. public hearing—deadline for action
		May be initiated by petition no later than 21 days after 2nd Commission	May be initiated by petition within 30 days after 2nd Commission meeting; not	May be initiated by petition no later than 21 days after 2nd Commission

		meeting; not permitted thereafter as specified	permitted thereafter as specified	meeting; ; not permitted thereafter as specified
	Public hearing on designation, within 70 days of initiation	Public hearing on designation, within 70 days of initiation	Public hearing on designation, within 70 days of initiation	Public hearing on designation at next meeting for which public notice can be provided
Decision	Decision within 210 days after beginning of public hearing on designation	Decision within 120 days after opening of public hearing on designation	Decision within 60 days after opening of public hearing on designation	Decision within 120 days after opening of public hearing on designation

3.24.125 Process for initiating and designating landmarks, structures of merit and historic districts—No Application pending.

A. Proceedings for determining whether to designate structures or properties as landmarks or structures of merit when no Application is pending may be initiated as follows:

1. Resolution of the Commission;
2. Resolution of the City Council;
3. Resolution of the Planning Commission;
4. Resolution of the Civic Arts Commission;
5. Written petition of the owners of the property to be designated or their authorized agents; or
6. Written petition of at least 25 residents of the City.

B. Proceedings for determining whether to designate historic districts may be initiated only by resolution of the Commission, the City Council, the Planning Commission or the Civic Arts Commission or by written petition subscribed by or on behalf of a majority of the property owners or residents of the proposed district.

C. A petition for initiation under paragraph A.5 or A.6 shall be filed with the Secretary upon a form prescribed by the Commission, and shall contain or be accompanied by all data required therewith by the Commission.

D. The Commission shall commence a public hearing to consider any designation proposal under this section within 70 days of the adoption of the resolution or the filing of the petition, and shall take final action on the proposed designation within 210 days after the public hearing is opened.

E. Failure to act within any of the timelines set forth in this section shall constitute a decision to take no action to initiate or designate, unless the Commission expressly determines to terminate designation proceedings without prejudice.

F. If the Commission disapproves a proposed designation, no subsequent application that is the same or substantially the same may be submitted or considered for two years from the effective date of the disapproval.

3.24.126 Process for initiating and designating landmarks, structures of merit and historic districts—Application pending.

A. Upon receiving an Application, the City shall place notice of that application at the first regular meeting that occurs no sooner than 21 days after the Application is submitted. That notice may be in the form of a list of pending development projects.

B. At that meeting, the Commission may:

1. initiate any property so listed;

2. set it for public hearing at its next regular meeting to consider initiation, in which case public notice shall be provided as set forth in section 3.24.140;

3. continue the matter; or

4. take no action.

C. At its second meeting, the Commission may initiate the property or take no action.

D. A property that is the subject of an Application may be initiated under Section 3.24.125.A or B at any time within 21 days the second Commission meeting, but not thereafter, until the expiration of the period set forth in subdivision G.

E. If the property is initiated, the Commission shall commence a public hearing to consider designation of the property within 70 days of the adoption of the resolution to initiate or the filing of the petition, and shall take final action on the proposed designation within 120 days after the opening of the public hearing.

F. Failure to act within any of the applicable timelines set forth in this section shall constitute a decision to take no action to initiate or designate.

G. If a property that is the subject of an Application is not initiated or designated within the time limitations set forth in this section, this chapter, except for section 3.24.220, shall be inapplicable to that property unless and until the earliest of any of the following occurs:

1. the Application is withdrawn or denied;

2. the Permit, if issued, expires, is cancelled or revoked, or for any other reason ceases to have effect; or

3. the expiration of 2 years from the date the Permit was issued.

3.24.127 Process for considering Requests for Determination—No Application pending.

A. A property owner or authorized agent thereof may request the Commission to determine whether or not a structure or property merits initiation by submitting to the City a Request for Determination (“RFD”). In such cases, where no Application is pending, the following procedures shall apply.

B. A RFD shall not be accepted unless it is accompanied by proof that the applicant has posted a conspicuous notice on the property the RFD refers to, in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer. Upon receiving such a request, the City shall contract with an independent consultant from a list of qualified consultants approved by the Commission to complete the historic assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own report in a form substantially similar to that approved by the Commission, which shall then be subject to peer review by the City's consultant at the applicant's expense.

C. The Commission shall consider a complete RFD under this section at a public hearing at the first regular meeting that occurs no less than 21 days after it is completed. Notice of the public hearing shall be provided as set forth in section 3.24.140.

1. If the Commission does not initiate the property at the first regular meeting at which it is considered, the Commission may continue the matter to its next regular meeting. At its second meeting, the Commission may initiate the property or take no action.

2. If the Commission does not initiate the property at its second meeting, the property may be initiated under Section 3.24.125.A or B within 30 days after the date of that meeting, but not thereafter, until the expiration of the period set forth in subdivision E.

3. If the property is initiated, the Commission shall commence a public hearing to consider designation of the property within 70 days of the adoption of the resolution to initiate or the filing of the petition, and shall take final action on the proposed designation within 60 days after the opening of the public hearing.

D. Any of the timelines specified in this section may be extended at the request of the applicant. Failure to act within any of the timelines set forth in this section, as they may be extended, shall constitute a decision to take no action to initiate or designate.

E. If a property that is the subject of a RFD is not initiated or designated within the time limitations set forth in this section, this chapter, with the exception of section 3.24.220 shall be inapplicable to that property unless and until the earliest of any of the following occurs:

1. the expiration of 2 years from the date of any final decision under this section not to initiate or designate the property; or

2. if an Application is submitted within that period, (i) the Application is withdrawn or denied or (ii) the Permit, if issued, expires, is cancelled or revoked, or for any other reason ceases to have effect.

3.24.128 Process for considering Requests for Determination—Application pending.

A. In cases where a property owner or authorized agent thereof submits a RFD and files an Application, the RFD shall be deemed part of the Application for purposes of the Permit Streamlining Act (Gov. Code §65920 *et seq.*).

B. The Commission shall consider the RFD at a public hearing at the first regular meeting that occurs no sooner than 21 days after it is completed. Notice of the public hearing shall be provided as set forth in section 3.24.140. At that meeting, the Commission may:

1. initiate any property so listed;

2. set it for public hearing at its next regular meeting to consider initiation, in which case public notice shall be provided as set forth in section 3.24.140;

3. continue the matter; or

4. take no action.

C. At its second meeting, the Commission may initiate the property or take no action.

D. A property that is the subject of a RFD and an Application may be initiated under Section 3.24.125.A or B at any time within 21 days after the second Commission meeting, but not thereafter, until the expiration of the period set forth in subdivision G.

E. If the Commission determines to hold a public hearing to consider designating the property, or if a public hearing is otherwise required as a result of initiation under section 3.24.125.A, the matter shall be set for hearing at the next regular Commission meeting for which notice can be provided, shall take final action on the proposed designation within 120 days after the opening of the public hearing.

F. Failure to act within any of the applicable timelines set forth in this section shall constitute a decision to take no action to initiate or designate.

G. If a property that is the subject of an Application is not initiated or designated within the time limitations set forth in this section, this chapter, except for section 3.24.220, shall be inapplicable to that property unless and until the earliest of any of the following occurs:

1. the Application is withdrawn or denied;
2. the Permit, if issued, expires, is cancelled or revoked, or for any other reason ceases to have effect; or
3. the expiration of 2 years from the date the Permit was issued.

3.24.130 Reserved.

3.24.140 Notice of public hearings—Hearing procedure.

A. Notice of public hearings under this article shall be given by posting thereof on or adjacent to the property involved not less than 14 days prior to the date of the hearing.

B. In addition to the posting of notice, a notice of the hearing shall be mailed not less than 14 days prior to the date of such hearing to the property owners as shown on the last equalized assessment roll, of all property, and to each residential or other unit, within 300 feet of the property referred to in the initiation; provided, however, that the failure of any such property owner or resident or unit to receive such notice shall not affect the validity of the proceedings.

C. Notice shall be given to the neighborhood group(s) that are on file with the Zoning Officer and whose regular geographic area of interest includes the area of the proposed designation and to organizations and individuals who request such notification.

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

E. Any primary evidence upon which an applicant or property owner intends to rely shall be submitted to the Secretary no later than noon on the day prior to the day that Commission agenda packets are distributed for the meeting at which the Commission acts.

F. A record of pertinent information presented at the hearing shall be made and maintained as a permanent record.

3.24.150 Reserved.

3.24.160 Designation proposal—Notice of decision required.

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

B. In addition, the Commission shall promptly notify all persons entitled to notice under section 3.24.140 of any decision to take no action to initiate or designate under sections 3.24.125 through 3.24.128, in the manner set forth in section 3.24.140.

3.24.170 Reserved.

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

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

3.24.190 List of designated and initiated resources—referral of applications to Commission.

The Department of Planning and Development shall maintain a current record of designated landmarks, historic districts and structures of merit, as well as a record of those having been initiated and undergoing consideration. Upon receipt of any application for a permit to carry out any construction, exterior alteration or demolition, or any interior alteration subject to control pursuant to Section 3.24.200, on any initiated or designated landmark site, structure of merit site or historic district, the Department shall, except as otherwise provided in Sections 3.24.280 and 3.24.350, promptly forward such permit application to the Commission for review.

Article III

Regulatory Authority and Environmental Review

3.24.200 Construction, alteration or demolition—Approval required.

A. No person shall carry out any construction, alteration or demolition for which a City permit is required on an initiated or designated landmark site or structure of merit site or in an initiated or designated historic district, without approval by the Commission as set forth in Section 3.24.240, except as set forth in subsection B of this section or in Section 3.24.280, 3.24.300 or 3.24.350.

B. Approval under subsection A of this section is not required for alterations in the interior of a structure, except in the case of specific publicly owned structures where review of interior changes is imposed pursuant to Section 3.24.100.

C. Upon receipt of an application for a permit to carry out any work for which Section 3.24.200 requires Commission review, including applications for permits that would otherwise be ministerial, the City shall promptly notify the applicant in writing that the application is subject to discretionary review by the Commission under this chapter.

3.24.210 Ordinary maintenance and repairs.

A. Ordinary maintenance and repairs that are consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties may be approved as set forth in this section.

B. An application for ordinary maintenance and repairs shall include plans and specifications showing the proposed appearance, color and texture of materials and the proposed architectural design of the structure. If the application, together with its supporting plans and specifications, does not provide a sufficient basis for review, the Planning Director or the Commission shall inform the applicant of the additional data required, and the applicant shall supply said data.

C. The Planning Director shall refer the application to the Commission where it shall be placed on the next regular agenda. The Commission may approve the application, set the matter for public hearing at its next meeting, or take no action, which shall be equivalent to approval.

D. If the application is set for public hearing, it shall be treated as an application for a permit to alter a designated site or structure under sections 3.24.230 through 3.24.250.

E. For the purpose of this chapter, "ordinary maintenance and repairs" means any work the sole purpose and effect of which is to correct deterioration, decay or damage. The Commission shall establish a list of project types that would be considered consistent with this section.

F. For the purposes of this section, the term "application" refers solely to requests to conduct ordinary maintenance and repairs, and not to "Application" as defined in section 3.24.105.

3.24.220 Environmental review.

A. Notwithstanding anything to the contrary in Resolution No. 55,422–N.S., the Commission may, no later than 30 days after an Application is complete, recommend to

the Zoning Adjustments Board or any other responsible City entity or officer the appropriate level of environmental review of said Application. The Zoning Adjustments Board or other City entity or officer to which the Commission's recommendation is addressed must accept the Commission's recommendation or make written findings supporting its determination to not accept the Commission's recommendation. Nothing in this subsection requires such findings if the Zoning Adjustments Board or other City entity or officer elects to conduct a higher level of environmental review than recommended by the Commission.

B. Notwithstanding anything to the contrary in this section or in Resolution No. 55,422–N.S., in cases where no City agency or officer other than the Commission has discretionary regulatory authority over an application for a project, the Commission shall have the initial authority to determine the level of environmental review.

C. All environmental documents involving structures, sites or districts initiated or designated under this chapter, listed on or determined by the appropriate governmental official or body charged by state or federal law with making the determination to be eligible for the National Register of Historic Places or the California Register of Historical Resources, or listed on the State Historic Resources Inventory, shall be provided to the Commission promptly upon completion, as part of the normal circulation of such documents for public review.

D. In cases where no City agency or officer other than the Commission has discretionary regulatory authority over an application for a development project, the Commission shall determine the adequacy of the environmental document that is prepared on the application, and shall determine whether to adopt or certify that environmental document.

E. In all cases other than those described in subdivision D of this section, the following provisions apply:

1. The Commission may provide written comments on the adequacy of the environmental document to any City entity or officer charged with adopting or certifying that document, within 30 days of the date the environmental document is issued for review, or within such longer general review period as may be set for the particular document.

2. The City entity or officer to whom the Commission's comments are directed shall either accept and implement the Commission's comments under the foregoing paragraph or provide written findings explaining its reasons for declining to do so.

3.24.230 Permit application—Public hearing notice requirements.

A. Except in the case of permits approved pursuant to Section 3.24.210, the Commission shall hold a public hearing on every permit application.

B. Notice of the public hearing shall be given in the manner set forth in section 3.24.140.

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

3.24.240 Permit application—Decision—Time limitations—Review standards and criteria.

A. After adoption or certification of the applicable environmental document, the

Commission shall approve, conditionally approve, or deny the permit application.

B. Compliance with Permit Streamlining Act. The Commission shall make its decision in compliance with the deadlines established by the Permit Streamlining Act and any other applicable state law, subject to the requirement that it take its final action on an application requiring review by the Zoning Adjustments Board prior to the last regular meeting at which the Zoning Adjustments Board may act consistent with the Permit Streamlining Act or other applicable state law. To this end the provisions of this chapter shall be construed harmoniously with, and in a manner that implements, the Permit Streamlining Act.

C. In reviewing the application, the Commission shall consider the architectural style, appearance, arrangement, height, design, texture, materials, color and appurtenances and such other facts as may be relevant. The Commission shall also determine whether the proposed work is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

D. Criteria for landmarks. In order to approve or conditionally approve an application for construction, alteration or demolition on an initiated or designated landmark or landmark site, the Commission must find that the proposed work will not adversely affect:

1. The exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features; or

2. The special character or special historical, architectural, archaeological or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.

E. Criteria for districts. In order to approve or conditionally approve an application for construction, exterior alteration or demolition in an initiated or designated historic district, the Commission must find that the proposed work will conform to any further standards as may be embodied in the designation of the historic district and will not adversely affect:

1. The relationship and compatibility between the subject property and its neighboring structures and surroundings, including facade, setback and height;

2. The special character or special historical, architectural, archaeological or aesthetic interest or value of the district; or

3. The exterior architectural features of the subject property itself, if it is a contributor to the district.

F. Criteria for structures of merit. In order to approve or conditionally approve an application for demolition of or construction on or exterior alteration of a structure of merit or structure of merit site, the Commission must find that the proposed work will not significantly impair:

1. the particular features that should be preserved to the extent they have been stated in the notice of decision designating the structure of merit;

2. the structure of merit's compatibility with the neighborhood, block or street frontage, or defined group of buildings that include a landmark as stated in the notice of decision designating the structure of merit;

3. the structure of merit's architectural design or the manner in which that architectural design relates to its context; or

4. the structure of merit's significance to the City and/or to the structure's neighborhood, block, street frontage, or the defined group of buildings within which it is located.

G. Alternative bases for approval. Notwithstanding anything in this section to the contrary, the Commission may approve or conditionally approve construction, alteration or demolition on an initiated or designated landmark or landmark site, structure of merit or structure of merit site or in an initiated or designated historic district if it makes any of the following findings. Such findings shall be in writing and specify the facts relied upon in making such findings.

1. It has been clearly demonstrated that the designated structure is in such condition that it is not feasible to preserve or restore it and put it to use, and that such change is not due to owner neglect;

2. Failure to approve or conditionally approve the application would leave the owner with no reasonable economic use of the property considered as a whole; or

3. The special historical, architectural, archaeological or aesthetic interest or value of the particular property has been severely reduced due to physical change on it occurring since the property was designated, that in light of said reduction the public interest in keeping the property in its present state is significantly outweighed by the proposed project's public benefits, and that such change is not due to owner neglect.

H. Additional basis for denial. The Commission may deny any application for demolition, construction or alteration for which the environmental document was adopted or certified by another City agency or officer, if it makes a written finding that the environmental document is inadequate with respect to resources subject to protection under this chapter, and that finding includes a written statement of the reasons therefore. The Commission may deny an application under this subsection only if it has previously raised those asserted inadequacies in comments to the City agency or officer that adopted or certified the environmental document, prior to the date of adoption or certification, provided that the Commission has been supplied with the environmental document as required by section 3.24.220.C.

3.24.250 Notice of decision.

The Secretary shall promptly provide written notice of the Commission's decision to the owners or, where appropriate, authorized agents and residents of the property. The Secretary shall also mail notice of the decision to organizations and individuals who request such notification. A copy of the notice of decision shall be filed with the City Clerk, and the City Clerk shall present said copy to the City Council at its next regular meeting consistent with the Council's rules.

3.24.260 Reserved.

3.24.270 Reserved.

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

A. This chapter shall not prevent any construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature or part thereof, if:

1. Such condition has been declared unsafe or dangerous and an imminent danger to public health or safety by the Planning and Development Department or the Fire Department; and

2. The proposed measures have been declared necessary, by such department or departments, to correct the unsafe or dangerous condition.

B. Only such work as is reasonably necessary to correct the unsafe or dangerous condition specified pursuant to subsection A.1. may be performed pursuant to this section.

C. In the event any structure or other feature is damaged by fire or other calamity or by act of God, or by the public enemy, to such an extent that in the opinion of the aforesaid department or departments it cannot reasonably be repaired or restored, it may be removed in conformity with normal permit procedures and applicable laws.

D. This section is intended to be, and shall be construed and applied in a manner that is, consistent with and at least as protective as Public Resources Code Section 5028.

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

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

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

C. For purpose of this section, “a landmark, a structure in an historic district, or a structure of merit” includes the landscape features and amenities of the designated landmark, district or structure of merit that have been specifically included as a part of the designation.

Article IV
Appeals

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

A. The City Council may, upon its own motion, set any decision of the Commission for hearing and review, except as set forth in subsection I of this section.

B. In addition, except as set forth in subsection I of this section, any determination of the Commission under this Chapter may be appealed to the City Council by:

1. Resolution of the Planning Commission;
2. Resolution of the Civic Arts Commission; or
3. Any person or entity aggrieved by a decision of the Commission.

C. 1. An appeal by an aggrieved person or entity shall be taken by filing a written notice of appeal with the City Clerk within 14 days after the mailing of the notice of the decision of the Commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based.

2. An appeal by the Planning Commission or Civic Arts Commission shall be taken by a resolution that sets forth the basis of the appeal at the first meeting of the appealing Commission after the mailing of the notice of decision of the Landmarks Preservation Commission.

3. An action by the City Council on its own motion to set any decision of the Commission for hearing and review shall be taken at the first Council meeting more than 10 days after the mailing of the notice of decision of the Landmarks Preservation Commission, provided that the deadline for Council action shall be extended as set forth in Section 1.04.070.

4. The City Clerk shall immediately forward one copy of any appeal notice or resolution to the Secretary of the Commission and one copy to the owner, or authorized agent thereof, of the property involved, if the appellant is not the property owner or authorized agent.

D. If a ground of the appeal is that the Commission's action constituted a taking of the subject property or any part thereof under the California or United States Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the appeal, or it shall be waived. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and the appellant shall be deemed to have waived any claim to sworn testimony and cross-examination. This requirement shall apply to appeals on the ground that the Commission's decision or any condition imposed by the Commission denied the appellant any reasonable use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constituted a taking of property for public use without just compensation. When the Council grants a hearing in such appeals, it may require that testimony be under oath and subject to cross-examination by the appellant and the City Manager or his or her designee.

E. The City Clerk shall provide the Council with the written appeal or appeals and shall schedule the matter before the Council. The Secretary of the Commission shall forward the documents constituting the record on the matter to the Council. These shall include a copy of the Notice of Decision, indicating the Commission's vote, and the findings and the conditions, if any, approved by the Commission; the public hearing notice; any and all reports made by the Secretary to the Commission; correspondence and letters received by the Commission; and the application, or initiation resolution or petition, and attachments.

F. The Council shall review the action of the Commission and may take one of the following three actions:

1. If the Council determines that the facts ascertainable from the record prepared by the Secretary of the Commission do not warrant further hearing, the Council shall affirm the decision of the Commission and dismiss the appeal.

2. If the Council determines that the facts ascertainable from the record prepared by the Secretary of the Commission warrant further hearing, the Council shall set the matter for a public hearing. In such cases, the public hearing shall commence no later than 60 days from the date when the vote for a hearing is taken, unless, upon the request of the appellant, the Council establishes a later date for the hearing, except that appeals resulting from early review under BMC Section 23B.24.030 shall be set for the earliest feasible Council meeting.

3. If the Council determines that the facts ascertainable from the record prepared by the Secretary of the Commission warrant reconsideration of the application by the Commission or if the applicant has submitted revisions to the application, the Council shall remand the matter to the Commission for reconsideration, in which case it shall specify whether or not the Commission shall hold a new public hearing, and shall identify those issues which the Commission is directed to reconsider.

4. If none of the three actions described above has been taken by the Council within 30 days from the date the appeal first appears on the Council agenda, then the decision of the Commission shall be deemed affirmed and the appeal shall be deemed denied.

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

H. In the event the Council grants a hearing, the City shall give notice of the time and place of said hearing in the same manner as is provided for giving notice of the time and place for hearing before the Commission as set forth in Section 3.24.230. The City Council may make decisions or determinations and may impose such conditions as the facts warrant and its decision or determination shall be final. Any hearing may be continued from time to time. If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Commission shall be deemed affirmed and the appeal deemed denied.

I. Notwithstanding anything to the contrary in this section, decisions whether or not to initiate designation proceedings are not subject to appeal or review by the Council.

J. Whenever a decision of the Commission is inconsistent with a decision of the Zoning Adjustments Board with respect to the same project, the inconsistent decisions shall operate as a denial of that project. In such cases, if the applicant files an appeal as set forth in this section, the Council shall set the matter for hearing at the earliest feasible date after the later of the Commission's action or the Zoning Adjustments Board’s action. No fee may be charged for appeals under this subsection.

Article V
Miscellaneous Provisions

3.24.310 Advice and guidance.

The Commission may render advice and guidance with respect to any proposed work that does not require a City permit but may affect structures, sites or areas of historical, architectural, archaeological or aesthetic interest or value. Examples of the work referred to are: painting and repainting of exterior surfaces, fencing, landscaping and installation of lighting fixtures. In rendering such advice and guidance, the Commission shall be guided by the purposes and standards of this chapter and by the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

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

A. The Commission shall take appropriate steps to notify all public agencies which own property in the City about the existence and character of designated landmarks, historic districts and structures of merit, and the Commission shall cause a current record of such landmarks, districts and structures of merit to be maintained in each public agency. In the case of any publicly owned property on a landmark site or

structure of merit site, or in an historic district, which is not subject to the permit review procedures of the City, the agency owning the property shall seek the advice of the Commission prior to approval or authorization of any construction, alteration or demolition thereon, including the placement of street furniture, lighting and landscaping; and the Commission in consultation with the Design Review Committee of the Zoning Adjustments Board, in appropriate cases, shall render a report to the owner as expeditiously as possible, based on the purposes and standards of this chapter. If Commission review of a public project involving construction, alteration or demolition on a landmark site, in an historic district or on a structure of merit site is required under any other law or under the Charter, the Commission shall render the report referred to in this section to such public agency without specific request therefore.

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

3.24.330 Other procedures authorized.

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

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

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

A. Except as set forth herein, the City Council may establish fees for applications, petitions and permits required by this Ordinance.

1. There shall be no fee for initiation of designation of a landmark, an historic district, structure of merit or structure of neighborhood interest if such initiation is by the Commission or by resolution of the City Council, the Planning Commission or the Civic Arts Commission.

2. For each petition for designation of a landmark, structure of merit or structure of neighborhood interest, the fee shall not exceed $50.00.

3. For each petition for designation of an historic district, the fee shall not exceed $100.00.

B. Project applicants who are qualified non-profits, and other applicants with projects valued at less than $350,000.00, may apply to the City Manager for a fee waiver if it can be demonstrated that the payment of the fee would pose a hardship.

3.24.350 Applicability of provisions.

The provisions of Article III of this chapter, except for Section 3.24.220, shall be inapplicable to the construction, alteration or demolition of any structure or other feature on an initiated landmark site, historic district or structure of merit site, where a permit for

the performance of such work was issued prior to the day that a petition has been filed or a resolution adopted to initiate the designation of the said landmark site, historic district or structure of merit site, and where such permit has not expired or been cancelled or revoked, provided that the work is started and diligently prosecuted to completion in accordance with the Building Code.

3.24.360 Enforcement—Exemption for financial hardship when.

Any owner, lessee or other person in actual charge of a landmark, a structure in an historic district, or a structure of merit, upon presentation of clear and convincing evidence demonstrating to the satisfaction of the Commission that compliance with these regulations would work immediate and substantial hardship on such owner, lessee or other person shall be exempt from the provisions of Sections 3.24.380 and 3.24.390.

3.24.370 Enforcement—Authority.

It shall be the responsibility of the Department of Planning and Development to administer and enforce the provisions of this chapter.

3.24.380 Enforcement—Methods authorized.

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

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

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

3.24.390 Violation—Penalty.

Any violation of any provisions of this chapter shall be deemed a misdemeanor but may be cited and prosecuted, in the discretion of the enforcing officer, as an infraction, and shall be punishable as set forth in Chapter 1.20 of this code.

3.24.400 Declaration of purpose of revision—Severability.

A. This chapter as reenacted in 2006, is the culmination of approximately six years of intense work by the City Council, various city boards and commissions, the public and staff. This work included innumerable public hearings, discussions and workshops by the Landmarks Preservation Commission and subcommittees thereof over the course of approximately four years, all of which were attended by members of the public and City staff, as well as several Planning Commission and Council meetings and public hearings.

B. This extensive public process addressed a number of important, inextricably linked issues, including:

1. adopting a new requirement that structures and sites must have “integrity” to be designated under the LPO;

2. granting the Landmarks Preservation Commission new authority over demolitions;

3. amending the findings required in order to allow alterations and demolition of designated structures and sites;

4. establishing deadlines applicable to the designation and permitting processes;

5. creating alternative means of meeting the deadlines imposed by the Permit Streamlining Act, such as the "request for determination" process; and

6. clarifying responsibility for environmental review.

C. As a result of the extensive public process, this chapter as reenacted in 2006 includes numerous provisions intended to address the legitimate concerns and aspirations of all stakeholders. Each of the important and controversial issues listed in this section is a critical element of the overall policy decision to reenact this chapter.

D. Subject to the preceding statement of the Council's intent in adopting this chapter as revised in 2006, it is the Council's intent that the validity and operative effect of the revised chapter as a whole be maintained and protected. To this end, the Council declares that, except as set for in subdivisions A-C of this section, if any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The Council hereby declares that, except as set for in subdivisions A-C of this section, it would have passed this chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. In enacting this ordinance, the Council intends to revise the existing Landmarks Preservation Ordinance in a manner consistent with the requirements for a Certified Local Government. It is the Council's intention that if the State Office of Historic Preservation advises the City that this ordinance is not consistent with those requirements, the Council will promptly make such revisions as may be necessary to maintain its compliance with the requirements applicable to Certified Local Governments.

Section 3. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 5, 2006, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Wozniak and Mayor Bates.

Noes: Councilmembers Olds, Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on December 12, 2006, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Wozniak and Mayor Bates.

Noes: Councilmembers Olds and Worthington.

Absent: Councilmember Spring.

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Tom Bates, Mayor

ATTEST: ______________________________
Pamyla Means, City Clerk