

Berkeleyans for Better Planning

MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO LEVY A PARCEL TAX TO FINANCE STREET AND SIDEWALK REPAIRS AND PEDESTRIAN SAFETY PROJECTS

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

Section 1. Title

This measure shall be known as the Fix the Streets and Sidewalks Initiative.

Section 2. Findings

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

A. Berkeley's public streets and sidewalks are in dire need of repair. The City's *2022 Pavement Management Program Update* (dated March 2023) found that 42.25% of the City's pavement is in Poor to Failed condition and that Berkeley's overall Pavement Condition Index (PCI) is 55. Failure to make timely street repairs requires much more expensive repairs later and creates safety hazards for all users of Berkeley's streets. The PMP Update estimated deferred street maintenance to be \$259.8 million.

B. On July 26, 2022, in Resolution No. 70,456-N.S., the City Council committed to increase annual funding of street maintenance from the General Fund to approximately \$8 million, in addition to the approximately \$7.3 million in annual city, county, and state gas tax funds, for a total of \$15.3 million, and to continue that funding and increase it to account for inflation and maintenance costs once repairs have been made. Under this resolution, the latest five-year paving plan adopted by the City increases the combined funding to \$17.4 million, which will generate \$208.8 million over the 12-year life of this measure.

C. At this funding level, the PMP Update found that the overall PCI will decline by 2 points over the next five years and that the backlog of deferred maintenance will grow by about 25%.

D. Until recently, the City allocated only a small amount of funding to sidewalk repair—just \$32,529 in FY 2020. Existing City policy requires homeowners to pay half the cost of sidewalk repairs. However, all citizens use the sidewalks, and the backlog of unsafe sidewalks is unacceptable. According to a December 26, 2022, *Berkeleyside* article, the City estimates that \$50 million would fully fund sidewalk repair. The Berkeley Path Wanderers Association estimates that all pedestrian paths, which will facilitate evacuation from the hills in the event of wildfire, can be repaired with safety improvements for \$5 million. Thus, \$55 million will eliminate existing pedestrian safety hazards on our sidewalks and paths.

E. A special parcel tax of \$0.13/square foot, conditioned on maintaining the City's General Fund contributions to street maintenance, provides an equitable mechanism to augment General Fund contributions and gas taxes so that all streets, sidewalks, and paths will be safe and in good condition within 12 years.

F. An exemption from the tax for low-income homeowners will help ensure the cost of the measure is not a burden for residents on fixed or limited incomes.

G. Berkeley has an existing 15.8-mile bicycle boulevard network that was designed to provide safe, convenient, and low stress bikeways across most of the city, but it suffers from poor paving and a limited budget for traffic calming. Berkeley's Bicycle Plan envisions increasing that system to 66.3 miles, including 18.4 miles of new physically separated cycle tracks. That plan calls for a planning process to evaluate such improvements and states that such projects will not be implemented until Complete Corridor Studies are completed that include environmental analysis. However, the work program for the Public Works Department in the last two adopted City budgets included updating the Bicycle Plan, including conducting Complete Corridor Studies, but that work has not been completed. Therefore, this measure focuses on safety improvements to the existing bicycle boulevard system, including more than tripling the budget for traffic calming, providing cyclists and users of micro-mobility devices safe, low-traffic transportation corridors.

H. As indicated in Finding A, above, the most recent assessment of the backlog of deferred maintenance for the streets is \$259.8 million, in 2024 dollars. When combined with the \$55 million necessary to repair the sidewalks and paths, this results in a need for \$315 million in total funds to bring the streets, sidewalks, and paths to a safe condition. The City contribution identified in Finding B, \$208 million, will leave a shortfall of at least \$110 million, so there is a need for additional funding through either the City's General Fund or through a revenue measure. A parcel tax of \$0.13/sf on residential and commercial property will generate approximately \$12 million a year. Over a 12-year period, such a fee will generate approximately \$144 million, covering the shortfall and resulting in some additional funds that can be used for further improvements in pedestrian safety, traffic calming, and green infrastructure.

I. Green infrastructure addresses stormwater runoff pollution through street design features such as cool pavement, bioswales, and trees. Berkeley is required to develop and implement a Green Infrastructure Plan by existing regulations, and voters enacted a Clean Stormwater Fee in 1991 to pay for clean runoff. That fee is the appropriate funding mechanism to meet the minimum legal requirements. However, Berkeley voters have long supported additional Green Infrastructure in their support for Measures M and T1, which provided funds for road pavement and infrastructure. Therefore, this measure includes additional funding so that Berkeley can do more than the bare minimum.

J. As of 2025, a new California "daylighting" law will prohibit parking or stopping a vehicle along a curb at least 20 feet from a marked crosswalk, to make roadways safer for pedestrians, cyclists, and drivers. The law applies to the side of the road of the vehicle's approach to the crosswalk. Since the largest cause of collisions with pedestrians is the failure of drivers to yield at crosswalks, improving lines of sight so that pedestrians can be more readily seen will complement the effectiveness of this measure in improving pedestrian safety.

K. Berkeley adopted a 2020 Pedestrian Plan that identified the street segments that are most hazardous to pedestrians, and a table of projects (Table 10, page 65) that would address the highest priority safety conditions. However, the cost estimates for those projects vary widely—from \$18 to \$61 million—and many of those street segments like San Pablo, will be funded by other sources. Berkeley has been making progress in implementing that list, but neither updated cost estimates nor analysis of completed projects has been reported on either the Pedestrian Plan or Vision Zero website. This measure includes up to \$20 million for pedestrian safety, as well as funds for repairing sidewalks. This funding, with matching funding from Alameda County Transportation Authority should be sufficient to implement the highest priority pedestrian projects that are not being funded by other sources.

L. The U.S. Census American Community Survey for 2019 showed that Berkeley’s commute mode for bicycles is only 6.2%, less than the 8.5% share when the Bicycle Plan was developed. Similarly, datausa.io reports Census Bureau data showing that 5.9% of Berkeleyans commuted by bicycles in 2021. The Council allocated \$24.8 million, 65% of the five-year paving budget (60% of street mileage), to bikeways for FY 2023-FY 2027 (2022 Resolution No. 70,204-N.S.) On November 28, 2023, the Council allocated \$29.7 million, approximately 34% of the five-year paving budget (50% of street mileage), to bikeways for FY 2024-FY 2028. Allocating limited funds to relatively expensive bicycle infrastructure projects reduces funding available for street rehabilitation, which improves safety for all street users, especially bicyclists and pedestrians.

M. The Berkeley Complete Streets Policy requires annual programmatic evaluations of how well the streets and transportation network of the City of Berkeley are serving each category of users by collecting baseline data, collecting follow-up data on a regular basis, and developing and updating appropriate performance metrics. The City’s 2019 Vision Zero Action Plan, which seeks to eliminate traffic deaths and severe injuries through Complete Streets projects and other measures, states that Vision Zero “will be accountable, transparent, and data-driven” and that “annual monitoring, reporting, and evaluation [will be performed] through an equity lens.” The most recent, June 28, 2022, Vision Zero Annual Report did not, however, include project evaluations.

Section 3. Code Amendment

A new Chapter 7.11 is hereby added to the Berkeley Municipal Code as follows:

Chapter 7.11

Fix the Streets and Sidewalks Tax.

7.11.010 Special Tax - Purpose

A. A special tax for the purpose of funding street and sidewalk repair, repaving, and reconstruction is hereby authorized to be imposed on all improvements in the City of Berkeley as more fully set forth in this Chapter. The intent of this measure is to augment current City funding for paving and sidewalk repair for a temporary period and allow long-deferred repairs to be made so that the overall condition of the roads will be made acceptable within 12 years and maintenance costs will be reduced. To accomplish that purpose, these funds are primarily intended to repair the existing infrastructure and not to develop new infrastructure. This measure is also intended to ensure that existing city, county, and state road funding is devoted to repair of the existing roads rather than to new infrastructure.

B. The Council may impose the tax authorized by this Chapter up to the rate, and subject to the inflation adjustments, set forth in Section 7.11.030.

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

D. All funds received from the tax are subject to review, allocation, and approval by the City Council.

E. The proceeds of the tax imposed by this Chapter shall be placed in a special fund to be used only for the purposes of enhancing streets and sidewalks, including pedestrian paths, by funding the following types of projects:

1. Street and sidewalk repair, repaving, and reconstruction, including streets in the waterfront.
2. Street and sidewalk safety.

F. ALLOCATION AND FUNDING PRIORITIES

1. At least 36% of the funds, or approximately \$52 million, shall be allocated to street repair, repaving, and reconstruction. In developing annual and five-year paving projects, the City shall prioritize streets in failed condition (PCI under 25), beginning with bicycle boulevards and historically under-served neighborhoods in that category, moving next to streets in poor condition (PCI 49-25), beginning with bicycle boulevards and historically under-served neighborhoods in that category, and so on.
2. 35% of the funds, or about \$51 million, shall be allocated to sidewalk and pathway repair, repaving, and reconstruction.
3. Up to 13.5% of the funds, or about \$20 million, shall be allocated to the highest priority pedestrian safety projects;
4. Up to 7% of the funds, or about \$10 million, shall be allocated to traffic calming measures on bicycle boulevards.
5. Up to 7% of the funds, or about \$10 million, shall be allocated to green infrastructure and environmental enhancements such as natural vegetation and cool pavements. Since tire particles in street runoff are highly toxic to fish, all projects should include green infrastructure implementing the city's stormwater permit.

Note: these estimates of total dollars allocated are in 2024 dollars and shall be adjusted for inflation each year.

G. Proceeds of the tax may be used to pay or reimburse the City for actual, verifiable costs of City staff when they are performing work on, or necessary and incidental to, such projects.

H. Proceeds of the tax may not be used for repair, repaving, or reconstruction work on any street segment with a PCI above 70.

I. The goal of this tax is to raise Berkeley's overall PCI above 70 (rated as "Good" by the MTC), to repave every street with a PCI below 70, and to eliminate the backlog of damaged sidewalks before December 31st, 2036.

J. Current estimates are that this funding, combined with City, county, and state funding, should be sufficient to bring all streets up to a PCI of 70 in 12 years.

7.11.020 DURATION AND RENEWAL

This measure shall remain in place for 12 years from the effective date, unless extended by the voters, provided, however, that:

This measure shall only remain in place if the City continues to fund street maintenance and repair through the ESTABLISHING A FISCAL POLICY FOR A STREET MAINTENANCE ALLOCATION FROM THE GENERAL FUND ordinance, Resolution No. 70,456-N.S., adopted on July 26, 2022. If the adopted General Fund eliminates this contribution to fund street maintenance and repair,

this measure shall terminate. If the adopted General Fund reduces this contribution, this measure shall be reduced by the same proportion.

7.11.030 Tax Authorized - Tax Rate - Adjustments for Inflation

A. The City Council is hereby authorized to impose a special tax as follows:

1. For all dwelling units, the tax may be imposed at the rate of up to \$0.13 per square foot of improvements.
2. For all other property, including parking structures, the tax may be imposed at the rate of up to \$0.13 per square foot of improvements.

B. Annually in May, the City Council may increase the previous year's base rate by up to the greater of the cost of living in the immediate San Francisco Bay Area or per capita personal income growth in the state, as verified by official United States Bureau of Labor Statistics data, or other construction index as recommended by the City Manager. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

7.11.040 Reporting, Oversight, Public Input, and Accountability

- A. The intent of this measure is to assure that careful monitoring of outcomes informs decision-making on funding the repair and possible upgrades of our streets, sidewalks, and bicycle network, including new infrastructure. In particular, the evaluation provisions of the Berkeley Complete Streets Policy shall be followed each year before decisions are made allocating any transportation funds. For compliance, the City is expected to:
 - a. Develop a baseline of use by vehicles, pedestrians, bicycles and micro-mobility devices;
 - b. Develop and use metrics to assess the impacts of improvements; and
 - c. Perform an annual programmatic evaluation of recent expenditures and the net impact on mobility in the city.
- B. This initiative shall create an Independent Oversight Commission (per Ordinance No. 7,699-N.S., the Citizens Redistricting Commission, adding Berkeley Municipal Code Chapter 2.10) per a new Chapter 7.6 in the City Charter. The Berkeley City Council shall use Municipal Code 2.10, the Citizens Redistricting Commission, the Independent Redistricting Commission document and the Bylaws of the Berkeley Independent Redistricting Commission to create the commission. (ref: City Charter Section V - Chapter 7.6)
- C. The Public Works Department shall prepare an annual report of performance metrics and accomplishments that reflects all street funding. To promote effective communication, the report shall include a dashboard with metrics for the streets paved, cost per mile, changes to the PCI, the condition of all streets as measured by the PCI, progress on green infrastructure, cool pavement technologies and tree planting, including identifying other funding sources, reduction of the backlog of damaged sidewalks and paths, and a schedule that estimates when streets with a PCI below 50 will be repaired.

- D. Increased public input for developing the five-year paving program shall be assured by holding at least three workshops annually in different areas of the city to augment the regular meetings of the Transportation and Infrastructure Commission meetings.
- E. All expenditures, and verification of progress towards the goal of an overall PCI of 70, and a PCI of at least 70 for every street, shall be accomplished by independent financial audit by the City Auditor, at least once every three years, to confirm that the tax expenditures and reports are accurate and consistent with the intent of this chapter.

7.11.050 Definitions

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

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

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

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

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.
2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.
3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the public, and which are not designed or used as sales, display storage, service, or production areas.

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

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

F. "Repair, repaving, and reconstruction" shall refer to a suite of interventions designed to restore and upgrade the physical integrity and functionality of streets, sidewalks, and pedestrian paths, including all ordinary and necessary expenses and features as required by applicable law.

7.11.060 Exemptions.

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

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

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

D. "Parcel of Taxable Real Property" is defined as any unit of real property in the District that receives a separate tax bill for ad valorem property taxes from the Alameda County Treasurer-Tax Collector. All property that is otherwise exempt from or upon which no ad valorem property taxes are levied in any year shall also be exempt from this Special Tax in such year.

7.11.070 Duties and Authority of the City Manager.

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

7.11.080 Collection with Property Tax - Penalties and Interest.

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

7.11.090 Collection.

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

7.11.100 Refunds.

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

7.11.110 Savings clause - Severability.

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

7.11.120 Violation- Penalty.

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

7.11.130 Conflicting measures.

Intent. If any alternative street repair or broad infrastructure measure also qualifies for the 2024 ballot, it is the intent of the voters that, pursuant to California Elections Code Section 9221, that measure will be determined to be a conflicting measure. In that event, if the Fix the Streets and Sidewalks Initiative receives more affirmative votes, that initiative shall control and the conflicting measure shall have no effect.

Section 4. Increase appropriations limit.

Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the twelve fiscal years from 2025 through 2036.

Section 5. Effective date.

The tax imposed by this Chapter shall be operative on January 1, 2025.

Section 6. California Environmental Quality Act Requirements.

This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(3) and 15378(b)(4).

Section 7. Special Tax; Majority Vote Requirement. This Ordinance imposes a special tax for restricted purposes and is being placed on the ballot via signature petition. It shall be effective only if approved by a majority of the voters voting thereon.