

BERKELEY UNIFIED SCHOOL DISTRICT

RESOLUTION 10-49

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
BERKELEY UNIFIED SCHOOL DISTRICT CALLING AN
ELECTION, ESTABLISHING SPECIFICATIONS OF THE
ELECTION ORDER, AND REQUESTING CONSOLIDATION WITH
OTHER ELECTIONS OCCURRING ON NOVEMBER 2, 2010**

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REG. OF VOTERS

WHEREAS, the Berkeley Unified School District ("District") is committed to offering a high-quality educational program to all students in the District, and due to inadequate state funding, increased local revenues are necessary to meet this goal; and

WHEREAS, California Constitution, Article XIII A, section 4 and Government Code section 50075 et seq. authorize the District, upon approval of 2/3rds of the electorate, to levy qualified special taxes on property in the District for the purposes of providing quality educational programs in the District and other lawful purposes of the District; and

WHEREAS, an adequately funded and well-developed public education program provides numerous benefits and advantages to all of the residents of the community; and

WHEREAS, maintaining school buildings, classrooms, playgrounds, roofs and electrical systems, and addressing fire and safety hazards are essential to the provision of a high-quality public education program and to the protection of students and staff;

WHEREAS, in the judgment of this Board, following public hearing and comment, it is advisable to request that the Alameda County Registrar of Voters call an election and submit to the voters of the District the question whether the District shall levy a special tax within the District for the purpose of raising additional revenue for the District; and

WHEREAS, pursuant to Education Code section 5342 and Elections Code sections 10400, 10402 and 10403 such election may be completely or partially consolidated with any other election held on the same day and in the same territory or territory that is in part the same.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Resolution Constitutes Order of Election. This resolution shall constitute an order of election pursuant to Education Code Section 5320 et seq.

Section 2. Date and Purpose of Measure. Pursuant to Section 4 of Article XIII A of the California Constitution and Government Code section 50077, a special election shall be held within the boundaries of the District on November 2, 2010, for the purpose of voting on a measure ("Measure") which will be presented to voters in substantially the form attached hereto and marked Exhibit A, containing the question of whether the District shall impose a special tax ("Special Tax") for the educational purposes stated therein. In addition, the full text of the Measure ("Full Ballot Text") shall appear in the ballot pamphlet in substantially the form attached hereto and marked Exhibit B.

Section 3. Very Low-income Senior Exemption from the Special Tax. An exemption from payment of the Special Tax may be granted annually on any single family residential parcel or multi-family dwelling unit owned and occupied by one or more very low-income senior citizens, upon annual application to the City of Berkeley for such exemption. To be eligible for such exemption, the senior citizen must be 65 years of age or older as of July 1 of any applicable tax year, and must meet the very low-income qualifications of Berkeley Municipal Code Section 7.56.035, which is incorporated by reference herein. In the event of expiration of Municipal Code Section 7.56.035 for any reason, the same qualification criteria shall continue to apply to this exemption.

Section 4. Collection of the Tax. The Special Tax shall be collected by the Alameda County Treasurer-Tax Collector or other designated agency at the same time, in the same manner, and subject to the same penalties as *ad valorem* property taxes collected by the Treasurer-Tax Collector. Unpaid Special Taxes shall bear interest at the same rate as the rate for unpaid *ad valorem* property taxes until paid. The collection of Special Taxes under this Measure, including imposition of penalties, additional fees, and interest upon persons who fail to remit the tax imposed by this Measure, or who fail to remit any delinquent remittance, shall be subject to and governed by the rules, regulations, and procedures authorized by law. Penalties and/or fees imposed and such interest as accrues under the provisions of this Measure shall become a part of the Special Taxes herein to be paid to the District. The collection of the Special Tax shall not decrease the funds available from other sources to the District in any period from the effective date hereof.

The tax shall be levied on the Square Footage of all Improvements, including all Buildings and Structures, on Parcels of taxable real

property in the District, except where the Improvements are otherwise exempt from taxation.

The tax levied shall be at the rate of 6.31 cents per square foot on all Improvements on Residential Parcels, 9.46 cents per square foot on all Improvements on Commercial, Industrial, and Institutional Parcels, and \$20 per parcel on Unimproved Parcels.

The District, through the City of Berkeley, shall provide the Alameda County Treasurer-Tax Collector or other designated agency a report indicating the parcel number and amount of tax for each parcel of taxable real property.

The tax base shall be as described in the Berkeley Municipal Code Section 7.56.020 which defines and delimits the parameters of the square footage applications, and which is incorporated by reference herein. Current definitions of the terms "Building," "Commercial," "Industrial," "Institutional," "Improvements," "Dwelling," "Dwelling unit," "Parcel," "Square Footage," "Structure," and "Unimproved Parcel" pursuant to the Berkeley Municipal Code are provided in Section 6 of the Full Ballot Text of the Measure. In the event of the expiration of this Municipal Code or any of the relevant provisions in it for any reason, the same definitions shall continue to apply as the basis for this Special Tax. In the event of the modification of any Berkeley Municipal Code definition or term that applies to this Special Tax, the definition or term as modified shall apply to the basis for this Special Tax.

With respect to all general property tax matters within their respective jurisdictions, the Alameda County Tax Assessor or the City of Berkeley shall make all final determinations of tax exemption or relief for any reason, and that decision shall be final and binding. With respect to matters specific to levy of the Special Tax, a District administrative review panel or the City of Berkeley as the designated agency shall make all necessary final determinations, and that decision shall be final and binding.

Section 5. Authority for Ordering Election. The authority for ordering the election is contained in Section 50075 et seq. of the Government Code and Section 4 of Article XIII A of the California Constitution.

Section 6. Authority for Specifications. The authority for the specification of this election order is contained in Section 5322 of the Education Code.

Section 7. Delivery of Resolution to County Registrar, County Clerk and County Superintendent of Schools. The Clerk of the Board is hereby directed to cause certified copies of this Resolution and Order to be delivered not later than August 4, 2010, to the Alameda County Superintendent of Schools and not later than August 4, 2010, to the Alameda County Registrar of Voters (the "County Registrar"), as the officer conducting the election, and to the Alameda County Clerk of the Board of Supervisors (the "County Clerk").

Section 8. Formal Notice. The Alameda County Superintendent of Schools is hereby requested to prepare and execute a Formal Notice of Parcel Tax Election and consolidation order in substantially the form attached hereto as Exhibit C (the "Formal Notice"), and to call the election by causing the Formal Notice to be posted pursuant to Section 5362 of the Education Code by August 4, 2010, or to otherwise cause the notice to be published as permitted by law. The Clerk of the Board, on behalf of and as may be requested by the Alameda County Superintendent of Schools, is authorized to cause all notices required by law in connection herewith to be published and posted, as the case may be.

Section 9. Full Ballot Text. The Board hereby determines to include within the ballot pamphlet the Full Ballot Text in substantially the form attached hereto as Exhibit B, which is hereby approved and adopted by the Board, and the County Registrar is hereby directed to include the Full Ballot Text in the ballot pamphlet.

Section 10. Conduct of Election. (a) *Request to County Registrar.* Pursuant to Section 5303 of the Education Code, the County Registrar is requested to take all steps to hold the election in accordance with law and these specifications.

(b) *Voter Pamphlet.* The County Registrar is hereby requested to reprint the Measure in its entirety (the Full Ballot Text located in Exhibit B) in the voter information pamphlet to be distributed to voters pursuant to Section 13307 of the Elections Code. In the event the Full Ballot Text of the measure will not be reprinted in the voter information pamphlet in its entirety, the County Registrar is hereby requested to print, immediately below the impartial analysis of the Measure, in no less than 10-point boldface type, a legend substantially as follows:

The above statement is an impartial analysis of Measure _____.
If you desire a copy of the measure, please call the Alameda County Registrar of Voters at [phone number] and a copy will be mailed at no cost to you.

(c) *Consolidation.* The County Registrar and the Alameda County Board of Supervisors are hereby requested to consolidate the election ordered hereby with any and all other elections to be held on November 2, 2010, within the District.

(d) *Canvass of Results.* The Alameda County Board of Supervisors is authorized to canvass the returns of the election pursuant to Section 10411 of the Elections Code.

Section 11. Appropriations Limit. Pursuant to Section 7902.1 of the Government Code or any successor or other applicable provision of law, the Board of Education shall provide in each year for any increase in the District's appropriations limit as shall be necessary to ensure that proceeds of the Special Tax may be received and spent for its authorized purposes.

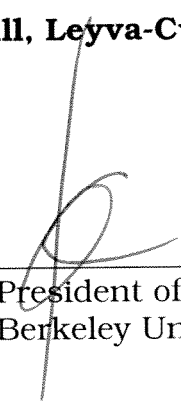
Section 12. Ballot Arguments. The President of this Board and/or her designees are hereby authorized to prepare and file with the County Registrar a ballot argument in favor of the Measure contained in Exhibits A and B hereto, and any ballot argument prepared in connection with the Measure, including a rebuttal argument, each within the time established by the County Registrar, which shall be considered the official ballot arguments of this Board as sponsor of the Measure.

Section 13. Official Actions. The District Superintendent, President of the Board, or their designees are hereby authorized to execute any other document and to perform all acts necessary to place the Measure on the ballot including making alterations to the Measure and Full Ballot Text stated in Exhibits A and B hereto to comply with requirements of law and election officials or which are, in the judgment of the District Superintendent, in the best interests of the District.

Section 14. Effective Date. This resolution shall take effect from and after its adoption.

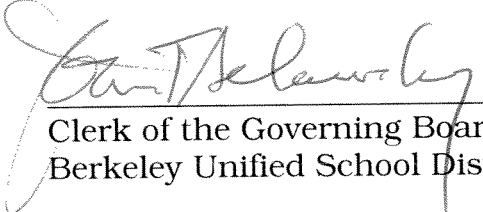
ADOPTED, SIGNED and APPROVED by the Board of Education of the Berkeley Unified School District on the 9th day of June, 2010, by the following vote:

AYES: **Directors Hemphill, Leyva-Cutler, Issel, Riddle and Selawsky**
NOES: **none**
ABSTAIN: **none**
ABSENT: **none**



President of the Governing Board of the Berkeley Unified School District

Attested to:



Clerk of the Governing Board of the Berkeley Unified School District

EXHIBIT A

ABBREVIATED TEXT OF MEASURE

BERKELEY PUBLIC SCHOOLS

FACILITIES SAFETY AND MAINTENANCE ACT OF 2010

To provide essential maintenance of schools and grounds, shall Berkeley Unified School District continue its existing special tax of 6.31¢/square foot on residential buildings and 9.46¢/square foot on commercial buildings, and \$20 on unimproved parcels with annual cost-of-living adjustments for 10 years? Revenues maintain school buildings, classrooms, playgrounds, roofs, electrical systems, and address fire and safety hazards. The state cannot take the funds. An independent committee oversees funds.

EXHIBIT B

FULL BALLOT TEXT OF MEASURE

The following is the full ballot text of the Measure to be presented to the voters in the ballot pamphlet:

BERKELEY PUBLIC SCHOOLS

FACILITIES SAFETY AND MAINTENANCE ACT OF 2010

BALLOT SUMMARY

To provide essential maintenance of schools and grounds, shall Berkeley Unified School District continue its existing special tax of 6.31¢/square foot on residential buildings and 9.46¢/square foot on commercial buildings, and \$20 on unimproved parcels with annual cost-of-living adjustments for 10 years? Revenues maintain school buildings, classrooms, playgrounds, roofs, electrical systems, and address fire and safety hazards. The state cannot take the funds. An independent committee oversees funds.

1. TITLE AND PURPOSE

The revenues raised by this Measure, the "Berkeley Schools Facilities Safety and Maintenance Act of 2010", will improve safety and essential building maintenance and grounds operations of all Berkeley Unified School District ("District") facilities.

2. DEFINITION OF PURPOSE

Available Revenues raised by this special tax shall be used exclusively to provide grounds operations and essential maintenance of District buildings and grounds, thereby protecting the health, safety and security of children and staff and creating an environment that supports student and staff success.

The monies shall be deposited into a restricted account and shall be expended according to a plan developed annually by District staff and adopted by the Board of Education of the District (the "Board").

All terms used herein and not otherwise defined herein shall be defined by reference to Berkeley Municipal Code Section 7.56.020, as effective on the date of adoption of this Act.

3. THE TAX LEVY

- A. Tax Base
 - i. The special tax shall be levied on the Square Footage of all Improvements, including all Buildings and Structures, on Parcels of taxable real property in the Berkeley Unified School District, except where the Improvements are otherwise exempt from taxation.

The tax levied shall be at the rate of 6.31 cents/square foot on all Improvements on Residential Parcels, 9.46 cents/square foot on all Improvements on Commercial, Industrial, and Institutional Parcels and \$20/parcel on Unimproved Parcels.

- ii. The tax base shall be as described in the Berkeley Municipal Code Section 7.56.020 which defines and delimits the parameters of the square footage applications, and which is incorporated by reference herein. Current definitions of the terms “Buildings,” “Improvements,” “Parcels,” “Square Footage,” and “Unimproved Parcels” pursuant to the Berkeley Municipal Code are provided in Section 5 of this Measure. In the event of the expiration of this Municipal Code for any reason, the same definitions shall continue to apply as the basis for this special tax. In the event of the modification of any Berkeley Municipal Code definition or term that applies to this special tax, the definition or term as modified shall apply to the basis for this special tax after the effective date of the modification.
- iii. An exemption from the special tax may be granted annually on any single family residential Parcel or multi-family dwelling unit owned and occupied by one or more very low-income senior citizens, upon annual application to the City of Berkeley for this exemption. To be eligible for this exemption, the senior citizen must be 65 years of age or older as of July 1 of any applicable tax year, and must meet the very low-income qualifications of Berkeley Municipal Code Section 7.56.035, which is incorporated by reference herein. In the event of expiration of Municipal Code Section 7.56.035 for any reason, the same qualification criteria shall continue to apply to this exemption.
- iv. With respect to all general property tax matters within their respective jurisdictions, the Alameda County Assessor or the City of Berkeley shall make all final determinations of tax exemption or relief for any reason, and that decision shall be final and binding. With respect to matters specific to the levy of the special tax, a District administrative review panel or the City of Berkeley, as the designated agency, shall make all necessary final determinations, and that decision shall be final and binding.

B. Term

The term of this Measure shall be from the date of voter approval to ten years following the year of the initial tax levy. The Measure shall be operative immediately upon passage. The tax shall be levied beginning in the 2013-2014 tax year and shall continue each year thereafter for ten years. Any proceeds from this special tax not spent during those fiscal years may be spent on all authorized purposes until exhausted.

C. Cost-of-Living Adjustment

Each year, commencing with the 2013-14 tax year, the first year of assessment, and thereafter, the rates imposed by this special tax may be increased by a cost-of-living adjustment equal to the annual percentage increase of the State of California statutory inflation adjustment as defined in Education Code Section 42238.1(b) which is incorporated by reference herein.

Any increase in funds raised by this Measure due to the cost-of-living adjustments set forth in this Section shall be allocated to the Measure's purposes in accordance with Section 2 of this Measure.

D. Constitutional Spending Limit

Pursuant to Article XIII B of the California Constitution and applicable laws, the appropriations limit of the District shall be increased periodically by the amount collected by the levy of this special tax.

E. Savings Clause

The provisions of this Measure shall not apply to any person, association, or corporation or to any property as to whom or which it is beyond the power of the District to impose the tax herein provided. The Board of Education hereby declares, and the voters by approving this measure concur, that every sentence, clause, section, and part of this Measure has independent value and the Board of Education and the voters would have adopted each provision hereof regardless of every other provision hereof. If any sentence, clause, section, or part of this Measure 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, or part of this Measure and shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or other parts of this Measure. It is hereby declared to be the intention of the Board of Education and of the electorate that this Measure would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof, not been included.

4. ACCOUNTABILITY PROVISIONS

A. Separate Account

Proceeds of this special tax shall be deposited into an account which shall be kept separate and apart from other accounts in the District and shall be applied only to the purposes specified in Section 2.

B. Participation in Planning and Oversight of Special Tax Funds

i. Annual Plan

An expenditure plan (the "Annual Plan") shall be developed annually by District staff with input from the Facilities Safety and Maintenance Oversight Committee. The Annual Plan will recommend expenditures of the tax proceeds that are consistent with the intent of the Measure. The assumptions associated with the recommended expenditures shall be included in the Annual Plan. The Plan shall be presented for Board action

each year in conjunction with the District's annual budget adoption process. To facilitate public discussion, the recommended Annual Plan shall be distributed to the Facilities Safety and Maintenance Oversight Committee and made available for public review two weeks prior to Board action.

ii. Oversight

The implementation of the Measure will be overseen by the Facilities Safety and Maintenance Oversight Committee, which was constituted by Board action on March 5, 2003, in part to "provide enhanced accountability to the community by ensuring that the monies are spent in accordance with the (Berkeley Schools Facilities Safety and Maintenance Act of 2000) measure." The Committee is further charged with providing "input into the long term Strategic Plan for the maintenance and security of the District's facilities and the Annual Plan for expenditures on maintenance and safety." The Measure shall be subject to indirect support rates to pay for District business and personnel functions as calculated by the District and approved by the California Department of Education. The Measure shall not be subject to direct support rate charges.

Expenditures shall be for maintenance and grounds operations. District staff plans to inform the Committee before authorizing individual planned expenditures greater than \$25,000, except in the case of an emergency.

iii. Public Comment Process

Members of the public may comment on the plans, reports and conditions of the Measure during the public comment period of any Facilities Safety and Maintenance Oversight Committee meeting and any Board Meeting.

C. Financial Oversight

The District shall make available to the Facilities Safety and Maintenance Oversight Committee and the general public updated revenue and expenditure reports of the proceeds of this special tax at least four times annually: before adoption of the District's annual budget, concurrently with the State-required interim reports, and with the end of the fiscal year report on the Measure.

D. Independent Auditor's Report and Audit Committee

Each year, an independent auditor retained by the District shall review District records to determine that funds generated by this Measure have been allocated and expended in compliance with the provisions of this Measure, including:

- i. that the funds raised by this Measure have been allocated to the purposes specified in Section 2;
- ii. that the funds raised by this Measure have been spent for purposes specified; and,
- iii. that other provisions of this Measure have been satisfied.

The audit shall be conducted in accordance with generally accepted accounting principles, the Standards and Procedures for Audits of California K- 12 Local Educational Agencies, and this Measure and shall be a part of the District's annual audit.

Subsequent to issuance of the Auditor's Report, the District's Audit Committee, as established by the Board of Education, shall review the Auditor's Report.

E. Civil Remedies Available at Law

The above provisions are in addition to civil remedies available at law for assuring compliance with the terms of this Measure.

5. DEFINITIONS

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

A. "Available Revenues" shall mean the amount of money provided by this Measure after deduction of authorized collection charges by the county or city for collection of the tax.

B. In accordance with Berkeley Municipal Code Section 7.56.020, subdivision A, which is incorporated by reference herein, "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."

C. In accordance with Berkeley Municipal Code section 7.56.020, subdivision B, which is incorporated by reference herein, "Commercial," "Industrial" and "Institutional" shall refer to all buildings and improvements within the District that are not classified by that chapter as dwelling units.

D. In accordance with Berkeley Municipal Code section 7.56.020, subdivision C, which is incorporated by reference herein, "Dwelling" shall mean a building or portion of a building designed for human occupancy.

E. In accordance with Berkeley Municipal Code section 7.56.020, subdivision D, which is incorporated by reference herein, "Dwelling unit" shall mean a building or portion of a building designed for or occupied exclusively by one family.

F. In accordance with Berkeley Municipal Code section 7.56.020, subdivision F, which is incorporated by reference herein, "Improvements" mean all buildings or structures erected or affixed to the land.

G. "Operational costs" are all costs of operating relevant District programs to accomplish the Measure's purposes and include but are not limited to personnel, materials, equipment, services, technology, and administrative costs. Administrative costs incurred in implementing this Measure shall be paid from the proceeds of this Measure at the District's Indirect Cost Rate authorized by the California Department of Education.

H. In accordance with Berkeley Municipal Code Section 7.56.020, subdivision I, which is incorporated by reference herein, "Parcel" means a unit of real estate in one ownership as shown on the most current official assessment role of the Alameda County Assessor.

I. "Residential Parcel" means a taxable Parcel that is not an Unimproved Parcel and that is not a Commercial, Industrial or Institutional Parcel.

J. In accordance with Berkeley Municipal Code Section 7.56.020, subdivision 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 paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

- i. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto;
- ii. 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; and,
- iii. 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 designated or used as sales, display, storage, service or production areas.

K. In accordance with Berkeley Municipal Code Section 7.56.020, subdivision H, which is incorporated by reference herein, "Structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

L. "Unimproved Parcel" means a taxable Parcel that does not contain Buildings or other Improvements.

EXHIBIT C

FORMAL NOTICE OF PARCEL TAX ELECTION

NOTICE IS HEREBY GIVEN to the qualified electors of the Berkeley Unified School District of Alameda County, California, that in accordance with the provisions of the Education Code and the Government Code of the State of California, an election will be held on November 2, 2010, for the purpose of submitting to the qualified electors of the District the Measure summarized as follows:

BERKELEY PUBLIC SCHOOLS


FACILITIES SAFETY AND MAINTENANCE ACT OF 2010

To provide essential maintenance of schools and grounds, shall Berkeley Unified School District continue its existing special tax of 6.31¢/square foot on residential buildings and 9.46¢/square foot on commercial buildings, and \$20 on unimproved parcels with annual cost-of-living adjustments for 10 years? Revenues maintain school buildings, classrooms, playgrounds, roofs, electrical systems, and address fire and safety hazards. The state cannot take the funds. An independent committee oversees funds.

By execution of this Formal Notice of Parcel Tax Election the County Superintendent of Schools of Alameda County orders consolidation of the election with such other elections as may be held on the same day in the same territory or in territory that is in part the same.

The County Superintendent of Schools of Alameda County, by this Formal Notice of Parcel Tax Election, has called the election pursuant to a Resolution and Order of the Board of Education of the Berkeley Unified School District adopted June 9, 2010, in accordance with the provisions of Education Code Sections 5302, 5325 and 5361.

IN WITNESS WHEREOF, I have hereunto set my hand this day, August 4th, 2010.



Sheila Jordan
County Superintendent of Schools
Alameda County, California