

# BNC eNews, Issue 20

October 1, 2016 by [BNC Archivist \(Edit\)](#)

## This is the 20<sup>th</sup> Edition of the Berkeley Neighborhoods Council eNEWS and it's all about the November 2016 Berkeley Election!

Since August 2013 BNC has tried to spread the news about neighborhoods throughout Berkeley. We've now reached our Twentieth Anniversary, and it's election time, so what else could we do in this issue, except to focus on that event! Yes, we realize there are extremely important election issues, from national to state, but this eNEWS will refer *only to Berkeley, and only to ballot measures*.

As important as our local elections always are, this one is a real fork in the road, particularly for those concerned about future land use impacts on our homes, neighborhoods and small businesses. With the office of Mayor and four Council seats (Districts 2, 3, 5 and 6) up for election that's a majority of the City Council. Combined with 4 seats on the Rent Stabilization Board, 2 on the School Board, and 12 measures, most of which are far-reaching, voter's plates are full!

Long ago, BNC decided that while we would not endorse candidates, we would take positions on ballot measures on a case-by-case basis. This year, BNC held two general meetings to discuss Berkeley ballot measures. The discussion was lively and much of the "fine print" in each measure came to light. However, we determined that due to a lack of a broad geographic attendance at those meetings, we did not get enough input to take a position on any of them. Instead, we decided to note the concerns that had been expressed. Our purpose is to help people really understand what is before them, so each can make a more informed decision.

Below you will find each of the 12 ballot measures laid out to the best of our knowledge in the order of their appearance on your ballot. **We are *not* taking a position on any of them.** A description of each measure will be followed by concerns that have been expressed by various people about the measure. Even though this is a long article, we urge you to **read through each one, and consult your Voter Information Handbook which prints the text of each measure in full.** *Most important of all we urge you to vote the entire ballot.*

### Measure T-1, Infrastructure and Facilities Bond

This is a 40-year \$100,000,000 bond measure capped at 6% interest to be used to reconstruct infrastructures and facilities including sidewalks, storm drains, parks, streets, senior and recreation centers and other City facilities. It provides for an annual

“comprehensive” report to the City Council by the City Manager regarding how and where funds have been spent as a part of the budget process.

It also provides that a joint subcommittee of the Public Works Commission and the Parks and Waterfront Commission engage in a “robust public process” and make an annual report regarding projects funded by the bonds. The measure does not specify projects to be considered, nor define the process for how decisions are to be made, except to say the funds should be equitably distributed. One percent of the funds are to be “integrated into improvements” paid for by bond funds.

This measure is considered to be “a start” at addressing the large amount of infrastructure and facilities that need fixing. The cost is approximately \$21 per each \$100,000 of *assessed value*, not market value of property.

**Concerns:** While expressing support for the need to fix parks and other infrastructure, concerns were expressed about this measure lacking specificity as to how and where the money will be spent and what process will be used to make spending decisions. The measure doesn’t provide a list of project priorities or suggest possible areas where funds might be used. A joint subcommittee will make recommendations directly to the Council who then will make decisions based on those recommendations or their own priorities. The concern is that there will be considerable wrangling between neighborhoods and other interest groups lobbying for their particular share and equity might well be diminished in the process. Some called for defeating this measure and submitting a new one with more specifics.

## Measure U-1, Rental Unit Business License Tax — City Sponsored

Currently rental property owners who own 3 or more units on a single parcel pay a business license tax of 1.081% on gross receipts.

This measure would increase the rate to 2.88% for owners of 5 or more rental units with the following **exemptions**: units in buildings owned by non-profit affordable housing agencies, units controlled by agreements that designate them for households with 80% or less of Area Medium Income; rent controlled units occupied by a tenant who resided there prior to June 1, 1999, units occupied by holders of Section 8 or Shelter Plus Care certificates; and all new units for the first 12 years after issuance of a Certificate of Occupancy.

The funds are to be used for the creation of affordable housing. However, the *measure specifically states that the funds will be deposited into the General Fund for use for whatever purpose the Council determines*. Since use of the funds is not specific, the measure needs only a majority vote for passage.

Owners can seek a 1-year hardship exemption due to “exceptional circumstances” approved by the City Manager. *The measure allows the City Council to reduce or terminate the tax rate increases without seeking further voter approval.* The measure specifically prohibits passing the tax increase onto tenants.

The existing Housing Advisory Commission is required to make recommendations to the Council regarding increasing affordable housing in Berkeley and protecting Berkeley residents from homelessness. It does not require that the Council adopt them. It does require the City to post their recommendations, consider them, and inform the Commission of the extent they were implemented.

Ballot measure language was challenged in court by proponents of Measure DD below. After the court challenge, the language that appears on the ballot is that Measure U-1 will raise \$2.98 to \$3.45 million annually, with administrative and collection costs of as much as \$350,000 annually.

**Concerns:** While acknowledging that the large increases in rents that have occurred (said to amount to more than \$82 million) should be taxed, questions were raised as to why new “luxury housing” such as that proposed at 2211 Harold Way should be exempt from paying the tax for the next 12 years. The 12-year exemption doesn’t just apply to brand new housing, it applies to units already built. Example: if applicable units received their Certificate of Occupancy 12 years ago, they would begin paying the tax immediately; if the Certificate of Occupancy was received 10 years ago in 2006, the new tax would start 2 years from now. A proponent of the measure stated that this exemption from the tax was proposed by Council Member Capitelli who wanted the exemption period to be 20 years, but who eventually agreed to 12 years. The basis for including the exemption was that the tax would discourage construction of large new buildings.

## Measure DD, Rental Unit Business License Tax — Initiative

This measure was put on the ballot by gathering signatures of registered voters. It would raise the existing Business License Tax on gross receipts from 1.081% to 1.5% starting at 3 units on a single parcel. Like Measure U-1, DD also specifically says that *the funds will be deposited into the General Fund to be used for whatever purpose the Council determines*, and the increase cannot be passed onto the tenants.

DD creates a new 9-member Citizens Advisory and Oversight Panel on Safe Affordable Housing and Homelessness Prevention to make non-binding recommendations to the City Council regarding the extent that the City should fund programs to increase affordable housing and protect residents from homelessness. Each member of the Panel will be appointed by a Council Member. However, there is no requirement that Panel members be Berkeley residents — they are required only to “live or work”

here. This Panel is required to make an annual report on whatever they think is appropriate and the City must publish that report.

After the court challenge, the language that appears on the ballot is that Measure DD will raise \$1.4 million annually, with administrative costs of \$175,000, and Panel costs of \$150,000 the first year and \$75,000 to \$90,000 annually thereafter.

**Concerns:** Three concerns were expressed:

1. Starting the tax increase at 3 or more units means that the properties with the small number of units would be paying more so that the larger owners would be paying less.
2. Establishing a Panel that would include non-Berkeley residents could result in out of state developers being appointed and;
3. The City Attorney's Analysis states that the tax increase mandated by this measure would apply to 5 or more rental units while the measure itself states it would start at 3 or more units.?

#### Measure V-1, Gann Appropriation Limit

This measure authorizes the City for fiscal years 2017 — 2020 to continue to spend the proceeds of already approved taxes. These taxes have annual built in inflators and there is a legal requirement to obtain voter approval every 4 years. If this is not done, these tax increases would have to be approved each time by the voters.

**Concerns:** None expressed. However, The North East Berkeley Association (NEBA) Newsletter points out that these inflators range between low (such as the Consumer Price Index-CPI) to high (about twice that much- such as the California Personal Growth Index). Usually tax measures give the Council the authority to choose which inflator to use.

#### Measure W-1, Citizens Redistricting Commission

Consideration of new Council District boundaries is required after each 10-year census. This is a Charter Amendment which moves the authority to adjust Council District boundaries from the Council and gives that authority to a new body, a Citizens Redistricting Commission (CRC) that is independent of the Council. Meetings of the CRC would be subject to Brown Act provisions regarding open noticed meetings and their decisions would be subject to Voter Referendum.

To qualify for membership on the CRC residents must have voted in the last two Berkeley elections, must not be a City employee or contractor, must resign from any board or commission he/she might be on and can't serve in such a capacity while on the CRC, must disclose all contributions to Mayor or Council within previous 4 years, and is

prohibited from serving as a paid staff member of the Mayor or Council or as a member of another board or commission for 2 years following tenure on the CRC. Application is made to the City Clerk who will randomly draw one appointee and one alternate from each Council District. The 8 randomly selected appointees will then appoint 5 more appointees for a total of 13 members.

City Council District requirements that Districts must be compact and equal and that in drawing District boundaries “communities of interest” must be considered remain the same. However, the provision to protect sitting Council Members would be removed. If a District is drawn that puts the current sitting Council Member outside of his/her District, that member will serve out their elected term.

**Concerns:** None expressed. General agreement that this is a good government measure designed to avoid the chaos and gerrymandering that followed the last Council redistricting process.

### Measure X-1, Public Campaign Financing

This is a Charter Amendment that allocates \$500,000 from the General Fund and places it in a Fair Elections Fund (FEF). This amount is not to exceed \$2 Million in any 4-year election cycle, and it can be increased according to the CPI. The Council by a 2/3s vote can declare a “fiscal emergency” and suspend or reduce funding for this program.

Candidates for Mayor or Council who will only accept contributions of \$50 or less from Berkeley residents will receive a matching grant from the FEF of 6 times the amount of each contribution, up to \$120,000 per participating candidate for Mayor and up to \$40,000 per each participating candidate for City Council. Candidates would have to have at least 30 contributions between \$10 to \$50 before receiving public money. After receiving public funds, candidates are restricted from receiving additional contributions to a maximum of \$50. The City could pay up to \$250,000 for administrative and enforcement costs from the FEF in any 4-year period. Candidates are required to have individual receipts from each contributor.

Candidates can use the public funds for any direct campaign purpose, but not for legal costs regarding enforcement of this measure, or for indirect purposes such as contributions or loans to other candidates, or for assets purchased for the campaign that have a useful life after the campaign with a value of more than \$500. If the provisions of the measure are violated, the candidate must pay 2 times the public funds unlawfully accepted and he/she is prohibited from participating in the program for 4 years.

**Concerns:** Everyone liked the concept of public financing, but three unanswered concerns were expressed:

1. What program(s) in the City Budget will be cut by \$500,000 to fund this program;
2. What good will it do if the City Council simply responds by saying the City is out of money and suspends the ordinance; and;
3. It increases the importance of campaign literature distributed by candidate “uncontrolled” campaign committees or PACs that have no restrictions on the amounts given by individuals or by sources such as corporations and special interest groups.

### Measure Y-1, Youth Voting

This is a Charter Amendment that would allow 16 and 17 year olds to vote for School Board Directors provided no City funds could be used for any related expense, it is technologically possible to do, would not prevent consolidation with county elections, and would not result in increased election costs to the City.

**Concerns:** None. Generally considered as opening a pathway for increasing interest of young people in the electoral process. Approval would not eliminate the appointment by the Board of 2 non-voting student members. Question was raised as to when this could be implemented.

### Measure Z-1, Low Income Housing Authorization

Empowers the City Council to “develop, construct or acquire” an additional 500 units of low-rent housing in Berkeley for low income persons. The argument in favor of this measure states that in 2,000 the voters approved 500 units and that since then “roughly 421” such units have been created.

**Concerns:** None. The need for this approval is based on California Constitution Article 34 Public Housing Project Law, Section 1 which states that no low rent housing project can be developed, constructed or acquired until a majority of the qualified electors in which the project is proposed approves. We presume that while this law refers to “projects” this measure is a pre-approval necessary to avoid individual elections on specific projects.

### Measure AA, Rent Board Ordinance

Noting that “no-fault” evictions have increased threefold, AA amends the current Berkeley Rent Stabilization Ordinance to prohibit owner move-in evictions of families with children during the academic year and increases the amount of relocation assistance required for owner move-in evictions from \$4,500 to \$15,000 with an additional \$5,000 if the existing tenant is low-income, elderly, disabled, a family with minor children and a tenancy that began prior to 1999. Rent Board Examiners would determine when the higher amount of \$20,000 applies. Minor children are defined as under 18 years, elderly as 60 years or older. The amendments also make changes to how Security Deposits are calculated and exempts rooms occupied by active members

of fraternities and sororities and units that received certificates of occupancy after June 30, 1980 that are exempt from rent control. The amendments contain a specific list of general exemptions.

**Concerns:** Between reading the City Attorney’s Impartial Analysis and the full text of the proposed ordinance, it is very confusing to determine what size properties will be affected; whether it would apply beginning with duplexes or properties of five units.

The City Attorney states that Section 13.76.130.9.k.(i) of the proposed ordinance will protect seniors and disabled tenants who have occupied their units for 5 or more years if their landlord owns 3 or more total residential units in Berkeley. However, this section in the ordinance doesn’t refer to seniors or disabled tenants, it refers to a definition of the term “custodial relationship.” Section 13.76.130.9.l refers to seniors and disabled without reference to other units owned by the landlord.

It also includes tenants who have resided on the property for 5 years or more and the landlord has 5 or more residential units in Berkeley. Furthermore, Section 13.76.130.9.n(1) states that the section that refers to seniors and disabled (Section 13.76.130.9.l) shall NOT apply where a person is the owner of 3 or fewer residential units. ??????

Another concern expressed was that approval of this ordinance might have the unintended consequence of increasing reluctance to rent to families with minor children.

Measure BB and Measure CC regarding Minimum Wage

| Measure BB                     | Measure CC  |
|--------------------------------|---|
| <b>How Placed on Ballot:</b>   |   |
| City Council                   | Signatures of registered voters   |
| <b>Minimum Wage Increases:</b> |   |
| 10/1/2017 \$13.25/hour         | 10/1/2017 \$15.00   |
| 10/1/2018 \$14.05/hour         |   |
| 10/1/2019 \$15.00/hour         | January 2019 increased by prior year CPI plus 3% until reaches Berkeley Living Wage Standard, currently \$16.81 |

January 2020 increased by prior year CPI

**Exemptions:**

Employees up to 25 years of age in non-profit or governmental job training programs, and up to 21 years of age in for-profit job training programs.

Minimum wage for employees up to 25 years of age in job training programs would be \$12.00/hr October 2017 and increased \$1.50 per hour in 2019 until reaches minimum wages for others.

**Health Benefits:**

Employers who pay health benefits can reduce minimum wage by \$1.50/hr

**Hopitality Workers:**

Service charges made to customers would be distributed to employees performing those services without deduction to their wages.

Same

**Sick Leave:**

After 90 days of employment, one hour for every 30 worked

Same

Capped at 48 hours/year and rolled over subject to cap.

Capped at 48 hours/year for businesses with less than 10 employees. Capped at 72 hours/year for others. Carry over is subject to cap.

**Non-wage Benefits:**

Employers are prohibited from reducing non-wage benefits such as vacations, pension, or by increasing charges to employees.

**Enforcement:**

The current provision for administrative enforcement before the City Council would be eliminated. Available enforcement would be by private action

As currently allowed.

or City could sue employers for injunctive relief and damages.

After the deadline had passed for withdrawing measures from the ballot, the City Council passed another ordinance, not shown here, that provides for a minimum wage of \$15/hour on October 1, 2018, 72 hours of sick leave and a “flexible youth job-training program for non-profits.” *Supporters of both BB and CC are now requesting a “NO” vote on both measures in favor of this other ordinance.*

**Concerns:** The City ordinance approved by the Council *after Measure BB was placed on the ballot* is certainly better in terms of the minimum wage and workers’ benefits than those provided in the City’s Measure BB. However, it was too late to remove Measure BB from the ballot. Measure CC would have appeared on the ballot regardless because it was placed there by the voters. In deciding whether to reject both Measure BB and CC, or to approve one of them, voters need to consider that a City ordinance can be changed at any time by a yes vote of 5 members of the City Council. A measure passed by the voters cannot be changed except by a vote of the people.

## Measure E-1, Berkeley Public Schools Educational Excellence Act of 2016

This is a parcel tax measure that requires a 67% vote by the electorate to pass because it is specific.

It would replace the existing Berkeley Schools parcel tax known as BSEP and increase it from .28 cents per square foot to .37 cents for a period of 8 years with annual CPI adjustments based upon the Bay Area CPI. E-1 continues the existing exemption for very-low income seniors (65 years and over).

The funds would be used as follows: 66% for such programs as small class size, professional development, and classroom support; 27% for school libraries, music, visual and performing arts, school site programs and instructional technology; and 7% for counseling and behavioral programs, healthy family engagement, and student achievement strategies. A Planning and Oversight Committee composed of parents, guardians, staff, students, community members representing all school sites and designated programs is required to make advisory recommendations to the School Board. Each school site is required to have a specific school site plan. Also required is an annual report from an independent auditor retained by the School District, and regular progress reports issued by the School Board.

Since BNC knows little about school financing, we are providing the following information presented by the Committee supporting this measure: “the increase in square foot amount rate is due to a 2013 California court case (*Borikas v. Alameda USD*) that ruled that school taxes (though not city taxes) must have a “uniform” rate. Currently Berkeley commercial properties pay almost 0.43 cents per square foot and residential almost 0.29 cents. To equalize the rates without a loss of revenue to the

schools requires increasing residential rates around 12% for 0.035 cents per square foot. In 2014, the State legislature approved AB 1469, to better fund the CalSTRS teacher pension program (and CalPERS for other employees). This meant a substantial increase in what the District must contribute for each teacher, from 8.25% to 19.1% of salary. Regardless of one's view about public sector pensions, this increase is mandated by the State, and increases District costs by about 11% for about a 0.032 cents increase per square foot."

The Committee continues: "The remaining increase (about 0.017 cents per square foot) is due to catching up with overall costs (e.g. wages, health costs) in the past 10 years since Measure A was approved. In the last 3 years of Measure A, it has been necessary to cut back some of the programs, and the general fund has also had to draw on reserves to shore up paying for essential elements such as middle school counselors and literacy programs. No new programs are added in the 2016 measure. The rate was increased only in order to maintain the current BSEP essential which are integral to school quality, including class size reduction, school libraries, music programs, counseling, tutoring, and teacher training."

The Committee concludes by stating: "Residential rates will increase by about \$80 per 1,000 square foot per year. These rates are income tax deductible so the net increase is substantially less. (A 2,000 square foot property would increase by \$160 or roughly \$120 or less after taxes.) It should also be noted that the Berkeley per square foot approach yields lower rates for the average homeowner compared to neighboring Albany, where every homeowner and commercial property pays \$869 per parcel irrespective of size for their public schools."

**Concerns:** Generally, people recognized with appreciation the pre-work done by the District in putting together this proposal — saying how the money would be spent and how spending would be monitored. There was also general approval regarding the programs that would be funded.

However, there was concern that the size of the increase is 30% and that people do not know how to determine what that means to them individually. If this concerns you, we suggest that you use the following formula to determine that number for yourself:

- On the right side of your current tax bill, find the column "Fixed Charges and/or Special Assessments"
- In that box find the line item titled, "Schl Ed Progs/BSEP"
- Divide the "Schl Ed Progs/BSEP" number by 0.28. The answer will provide you with the number of square feet that is used to calculate the parcel tax on your property.
- Multiply the number of square feet by 0.37. This will give you the new tax under this proposal.

Additionally the question was raised as to why the large increase in the number of buildings with high rents hasn't resulted in increased school income in an amount that is sufficient to cover at least the proposed increase in this tax.

***No matter how you vote, Berkeley Neighborhoods Council urges you to vote the entire ballot on November 8, 2016.***

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