

RESOLUTION 20-018

**BEFORE THE BOARD OF EDUCATION OF THE
BERKELEY UNIFIED SCHOOL DISTRICT**

RESOLUTION OF THE BOARD OF EDUCATION OF THE BERKELEY UNIFIED SCHOOL DISTRICT OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, CALLING AN ELECTION FOR APPROVAL OF AN EDUCATION PARCEL TAX, ESTABLISHING SPECIFICATIONS OF THE ELECTION ORDER, AND REQUESTING CONSOLIDATION WITH OTHER ELECTIONS OCCURRING ON MARCH 3, 2020

RESOLVED by the Board of Education ("Board") of the Berkeley Unified School District ("District"), a school district of the County of Alameda, State of California, that:

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; and

WHEREAS, on November 2, 2010 the voters of the District approved Measure H and authorized a parcel tax in support of Berkeley Public Schools; and

WHEREAS, renewing the commitment to provide funds to repair and maintain existing facilities will make the best use of taxpayer investments in local schools; and

WHEREAS, every dollar raised by this special tax will be used for benefit of the students of Berkeley public schools, and cannot be taken away by the State; and

WHEREAS, California Constitution, Article XIII A, section 4 and Government Code sections 50075 et seq. authorizes the District, upon approval of two thirds of the electorate, to levy qualified special taxes on property in the District for the purpose of providing quality educational programs in the District and other lawful purposes of the District; and

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

WHEREAS, pursuant to the Education Code and Elections Code 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, IT IS DETERMINED AND ORDERED as follows:

Section 1. Recitals. This Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Resolution Constitutes Order of Election. This resolution shall constitute an order of election pursuant to the Education Code to the Alameda County Superintendent of Schools ("County Superintendent") to call an election within the boundaries of the District on March 3, 2020.

Section 3. Date and Purpose of Measure. Pursuant to the California Constitution and Government Code, an election shall be held within the boundaries of the District on

Tuesday, March 3, 2020, for the purpose of voting on a measure ("Measure") which will be presented to voters in substantially the form attached hereto as **Exhibit A**, containing the question of whether the District shall impose a 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 as **Exhibit B**.

Section 4. Collection of the Tax. Pursuant to provisions of the Full Ballot Text, beginning July 1, 2020, if adopted by voters, the special tax shall be collected by the Alameda County Treasurer-Tax Collector ("Tax Collector"), at the same time, in the same manner, and subject to the same penalties as *ad valorem* property taxes collected by the Tax Collector. Unpaid special taxes shall bear interest at the same rate as the rate for unpaid *ad valorem* property taxes until paid.

With respect to all matters within their respective jurisdictions, the District, Tax Collector, appropriate County official, 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. The procedures described the Full Ballot Text, and any additional procedures established by the District shall be the exclusive claims procedure for claimants seeking an exemption, refund, reduction, or re-computation of this Special Tax. Whether any particular claim is to be resolved by the District, City of Berkeley, or County of Alameda shall be determined by the District.

This Resolution shall not affect the collection of the qualified special tax authorized by voters as "Measure H" in November 2012 unless the Measure is adopted, in which case the qualified special tax authorized by Measure H shall be replaced with this Measure on the date the qualified special tax authorized by this Measure is first levied.

Section 5. Authority for Ordering Election. The authority for ordering the election is contained in the Education Code, Elections Code, Government Code, and California Constitution.

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

Section 7. Resolution to County Officials. The Secretary to the Board is hereby directed to cause certified copies of this Resolution and order to be delivered not later than December 4, 2019, to the County Superintendent, the Alameda County Registrar of Voters ("Registrar"), and the Clerk of the Board of Supervisors of Alameda County ("Board of Supervisors").

Section 8. Formal Notice. The County Superintendent 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 in accordance with the applicable law no later than December 4, 2019, or to otherwise cause the notice to be published as permitted by law. The Secretary to the Board, on behalf of and as may be requested by the County Superintendent, is authorized to cause all notices required by law in connection herewith to be published and posted, as the case may be.

Section 9. Conduct of Election.

- (a) *Request to Registrar.* Pursuant to State law, the Registrar is requested to take all steps to hold the election on March 3, 2020, in accordance with law

and these specifications. The election may be consolidated with another election as specified below, if such consolidation is feasible and appropriate.

- (b) *Voter Pamphlet.* The Registrar is hereby requested to reprint the Full Ballot Text in substantially the form attached hereto as **Exhibit B** in the voter information pamphlet to be distributed to voters pursuant to the Elections Code. In the event the Full Ballot Text will not be reprinted in the voter information pamphlet in its entirety, the 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 510-267-8683 and a copy will be mailed at no cost to you."

- (c) *Consolidation.* The County Superintendent and the Board of Supervisors are hereby requested to consolidate the election ordered hereby with any and all other elections as may be held on the same day in the same territory or in territory that is in part the same.
- (d) *Canvass and Declaration of Results.* The Board of Supervisors is authorized to canvass the returns of the election and declare the result pursuant to the Elections Code.
- (e) *Cost of Election.* The District will reimburse the Registrar and the County for costs associated with the election as required by law.

Section 10. Appropriations Limit. The Board shall provide in each year for an increase in the District's appropriations limit as shall be necessary to ensure that the proceeds of the special tax may be spent for its authorized purposes.

Section 11. Ballot Arguments. The Board President and/or their designees are hereby authorized to prepare and file with the Registrar any ballot argument prepared in connection with the election, including a rebuttal argument, each within the time established by the Registrar, which shall be considered the official ballot arguments of the Board as sponsor of the Measure and to take all necessary action to prevent inclusion of false and/or misleading information in ballot materials related to the Measure.

Section 12. Official Actions. The District Superintendent, Board President, or their respective 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, and to this Resolution to comply with requirements of law and election officials or which are, in the judgment of the Superintendent and/or Board President, or their respective designees, in the best interests of the District.

Section 13. Effective Date. This Resolution shall take effect from and after its adoption.

The foregoing resolution was introduced by _____,
who moved its adoption, seconded by _____, and adopted on
November 20, 2019 by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

WHEREUPON, the President declared the foregoing resolution adopted, and

SO ORDERED.

Board President

EXHIBIT A

Summary of Measure

The Measure shall be summarized in the following form, and the County of Alameda Registrar of Voters is requested to cause this summary of the Measure to appear on the ballot:

**Berkeley Public Schools
Facilities Safety and Maintenance Act of 2020**

To provide essential maintenance of buildings, classrooms, grounds, roofs, electrical, mechanical/plumbing systems, and address fire/safety hazards, shall Berkeley Unified School District adopt a measure to continue its existing special tax at 9.1¢/square foot on improvements, and \$20/parcel on unimproved parcels, for 10 years, with cost-of-living adjustments, low-income exemptions, independent citizen and auditor oversight, generating approximately \$7,330,841 annually in local funds for Berkeley public schools that cannot be taken away by the State?

EXHIBIT B

FULL BALLOT TEXT

Measure ____

[letter designation to be assigned by Alameda County]

Berkeley Public Schools Facilities Safety and Maintenance Act of 2020

To provide essential maintenance of buildings, classrooms, grounds, roofs, electrical, mechanical/plumbing systems, and address fire/safety hazards, shall Berkeley Unified School District adopt a measure to continue its existing special tax at 9.1¢/square foot on improvements, and \$20/parcel on unimproved parcels, for 10 years, with cost-of-living adjustments, low-income exemptions, independent citizen and auditor oversight, generating approximately \$7,330,841 annually in local funds for Berkeley public schools that cannot be taken away by the State?

1. Title and Purpose

This measure shall be known as the "Berkeley Public Schools Facilities Safety and Maintenance Act of 2020" ("Measure"). The revenues raised by the Measure are to be used to improve safety and essential building maintenance and grounds operations of all Berkeley Unified School District ("District") facilities.

2. Allocation of Funds

A. Available Revenues: For purposes of this Measure, "Available Revenues" shall mean the amount of money resulting from the levy of the special tax authorized by this Measure after deduction of authorized charges for services provided by the County of Alameda and the City of Berkeley for the preparation and collection of the tax, legal and audit fees.

B. Expenditures: 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. Available Revenues may also support all operating costs attendant to providing the programs specified in the Measure. Such operating costs shall be paid from the proceeds of this Measure at the District's Indirect Cost Rate authorized by the California Department of Education.

3. Amount and Basis of Tax

Tax Rate: This Measure shall authorize the District to levy a special tax beginning July 1, 2020, and continuing for a period of ten (10) years ("Special Tax") on Parcels of Taxable Real property in the District. The Special Tax shall be levied at the rate of 9.1 cents (\$0.0910) per square foot on the Square Footage all Improvements and \$20 per parcel on all Unimproved Parcels ("Rate"). This Special Tax is estimated to raise \$7.3 million in local funding for District programs based on the amount of the tax for the 2020-21 tax year. The amount of annual local funding raised by this Special Tax will vary from year-to-year due to a number of factors,

including annual cost-of-living increases, changes in the number of parcels subject to the levy, and the costs to administer the Special Tax. If this Measure is approved by voters, the qualified special tax authorized by voters as "Measure H" in November 2010 shall be replaced with this Measure on the date the qualified special tax authorized by this Measure is first levied.

B. Cost Of Living Adjustment: Beginning with the 2021-22 tax year (the second year of assessment of the Special Tax), and each year thereafter, at the Direction of the Board, the Rate may be increased from the Rate levied in the prior tax year by a cost-of-living adjustment equal to the annual average percentage change in the Bay Area Consumer Price Index - All Urban Consumers, San Francisco-Oakland-San Jose area over the prior twelve months, as of December 1 of the prior fiscal year, as published by the U.S. Bureau of Labor Statistics. If, in any given year, that index is not available, then the Rate may be adjusted based on the changes in the Consumer Price Index - All Urban Consumers (CPI-U).

C. Definitions Applicable to Levy of the Special Tax: For purposes of this Measure and the levy of the Special Tax, the following definitions shall apply:

i. **Building:** 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 or property of any kind. The word "Building" includes the word "Structure."

ii. **Improvements:** 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.

iii. **Parcel of Taxable Real Property:** "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 ("County 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.

iv. **Square Footage:** 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 iii below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

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

b. 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.

c. 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.

v. Structure: 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.

vi. Unimproved Parcel: "Unimproved Parcel" is defined as a Parcel of Taxable Real Property that does not contain Improvements.

vii. Modifications: In the event of the modification of any Berkeley Municipal Code definition or term that applies to this Measure, the definition or term as modified shall apply for the purposes of this Measure. In the event of the expiration, repeal, or invalidation of this Berkeley Municipal Code for any reason, the definitions existing at the time of the adoption of this Measure shall continue to apply for purposes of this Measure.

4. Exemptions

Pursuant to any procedures adopted by the District, upon application, an exemption from payment of the Special Tax may be granted on any single-family residential parcel owned and occupied by an individual who qualifies under one or more of the following conditions:

A. Very Low-Income Senior Citizen Exemption: Persons who will attain 65 years of age prior to July 1 of the tax year, occupying said parcel as his or her principal residence and meeting 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 that exist at the time of adoption of this Measure shall continue to apply to this exemption.

B. SSI Exemption: Persons receiving Supplemental Security Income for a disability, regardless of age, and occupying said parcel as his or her the principal residence; or,

C. SSDI Exemption: Persons receiving Social Security Disability Insurance benefits, regardless of age, whose yearly income does not exceed 250 percent of the tax year's federal poverty guidelines issued by the United States Department of Health and Human Services and occupying said parcel as his or her principal residence.

5. Claims / Exemption Procedures

With respect to all matters within their respective jurisdictions, the District, County Tax Collector, appropriate County official, 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. The procedures described herein, and any additional procedures established by the District shall be the exclusive claims procedure for

claimants seeking an exemption, refund, reduction, or re-computation of this Special Tax. Whether any particular claim is to be resolved by the District, City of Berkeley, or County of Alameda shall be determined by the District.

6. Appropriations Limit

Pursuant to California Constitution Article XIII B and applicable laws, the appropriations limit for the District will be adjusted periodically by the aggregate sum collected by levy of this Special Tax.

7. Accountability Protections

A. Specific Purposes: The proceeds of this Special Tax shall be applied only to the specific purposes identified in the Measure. The proceeds of this Special Tax shall be deposited into a fund, which shall be kept separate and apart from other funds of the District. Any proceeds from this Special Tax may be spent on all authorized purposes until exhausted.

B. Participation in Planning and Oversight of Special Tax Funds

i. Facilities Safety and Maintenance Oversight Committee: The Board shall create a Facilities Safety and Maintenance Oversight Committee ("Committee") or empower an existing committee to serve as the Committee. The implementation of the Measure will be overseen by the Committee. 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. District staff plans to inform the Committee before authorizing individual planned expenditures of Measure proceeds greater than \$25,000, except in the case of an emergency.

ii. Annual Plan: An expenditure plan (the "Annual Plan") shall be developed annually by District staff with input from the 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 Annual 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 Committee and made available for public review two weeks prior to Board action.

iii. Public Comment: Pursuant to law, members of the public may comment on the plans, reports and conditions of the Measure during the public comment period of any Committee meeting and any Board Meeting.

C. Financial Oversight: The District shall make available to the 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 two State-required interim reports, and with the annual report on the Measure ("Annual Report"). The Annual Report shall display the revenues generated by the Measure and the expenditures of the revenues as of the closing of the fiscal year, and shall include a report on the status of projects funded by the revenues. This report shall be organized to display how the expenditures correspond to each of the purposes of 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 that the funds raised by this Measure have been spent for purposes specified in the Measure and 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. Subsequent to issuance of this report ("Auditor's Report"), the District's Audit Committee, as established by the Board, shall review the Auditor's Report.

8. Protection of Funding

Current law forbids any decrease in State or federal funding to the District resulting from the levy of this Special Tax. However, if any such funding is reduced or affected because of the adoption of this local funding measure, then the Board may reduce the amount of the Special Tax levied as necessary in order to restore such State or federal funding and/or maximize the District's fiscal position for the benefit of the educational program. As a result, whether directly or indirectly, no funding from this measure may be taken away by the State or federal governments.

9. Savings Clause

The Board 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 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 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.

EXHIBIT C

**FORMAL NOTICE OF SPECIAL TAX ELECTION
[For Use by County Superintendent]**

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 March 3, 2020, for the purpose of submitting to the qualified electors of the District this Measure summarized as follows:

To provide essential maintenance of buildings, classrooms, grounds, roofs, electrical, mechanical/plumbing systems, and address fire/safety hazards, shall Berkeley Unified School District adopt a measure to continue its existing special tax at 9.1¢/square foot on improvements, and \$20/parcel on unimproved parcels, for 10 years, with cost-of-living adjustments, low-income exemptions, independent citizen and auditor oversight, generating approximately \$7,330,841 annually in local funds for Berkeley public schools that cannot be taken away by the State?

By execution of this formal Notice of Election the Alameda County Superintendent of Schools 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 Alameda County Superintendent of Schools, by this Notice of Election, has called the election pursuant to a Resolution and Order of the Governing Board of the Berkeley Unified School District adopted November 20, 2019, in accordance with the provisions of Education Code Sections 5302, 5325 and 5361.

IN WITNESS WHEREOF, I have hereunto set my hand this day, _____,
2019.

Karen Monroe
Alameda County Superintendent of Schools
Hayward, California