FULL TEXT OF MEASURE TO BE SUBMITTED TO THE VOTERS AUTHORIZING THE CITY OF BERKELEY TO ISSUE GENERAL OBLIGATION BONDS TO FINANCE THE ACQUISITION OR IMPROVEMENT OF REAL PROPERTY FOR PUBLIC INFRASTRUCTURE AND FACILITIES

Be it ordained by the people of the City of Berkeley as follows:

Section 1. Findings.

WHEREAS, the City has undertaken a comprehensive review of its infrastructure and facilities needs, and as documented in the City's Adopted Capital Improvement Program for Fiscal Years 2025-2029, identified over $1.5 billion in infrastructure and facilities needs, with the proposed Capital Improvement Program for Fiscal Years 2027-2031 identifying over $2.1 billion in infrastructure and facilities needs (such Programs as updated from time to time and Capital Improvement Programs for subsequent time periods are referred to herein as the Capital Improvement Programs"); and

WHEREAS, the City's Vision 2050 Framework is a comprehensive plan to build, upgrade, and repair Berkeley's infrastructure and facilities to be more sustainable, safe, and resilient and to meet the needs of future generations, including addressing climate and environmental challenges; and

WHEREAS, existing funds and funding sources are inadequate for these infrastructure and facilities needs; and

WHEREAS, the City faces a projected $31 million General Fund deficit in the 2027 fiscal year and $29 million deficit in the 2028 fiscal year; and

WHEREAS, the City is authorized to issue general obligation bonds to finance municipal improvements pursuant to certain provisions of the California Government Code, including Article 1, commencing with Section 43600, of Chapter 4 of Division 4 of Title 4 or Article 4.5, commencing with Section 53506, of Chapter 3 of Part 1 of Division 2 of Title 5 (each, the "Bond Law"); and

WHEREAS, under the Bond Law and Chapter 7.64, the City intends to issue general obligation bonds ("Bonds") to finance the acquisition or improvement of real property for public infrastructure and facilities ("Improvements"), as further described in Section 2 below; and

WHEREAS, the issuance of the Bonds to finance the infrastructure and facilities needs documented in the City's Capital Improvement Programs and the City's Vision 2050 Framework is part of the City's comprehensive approach to identifying and addressing the City's infrastructure and facilities needs, and the Improvements are related as a result of such approach; and

WHEREAS, the Improvements will include all-electric new construction and the replacement of existing natural gas infrastructure with electric systems, in alignment with the City's All-Electric Standards for Municipal Projects, except in limited circumstances in which City Council grants an exception; and

WHEREAS, the Improvements may include any public art integrated into the Improvements consistent with Berkeley Municipal Code Chapter 6.13; and

WHEREAS, the City may have the opportunity to leverage Federal, State, regional and County of Alameda ("County") funds allocated for these needs if it issues the Bonds to address these needs; and

WHEREAS, fiscal accountability protections including public disclosure of all spending and regular audits help ensure funds will be spent as promised; and

WHEREAS, funding from the Bonds should be guided by the City's non-exhaustive list of proposed projects identified through the public input process carried out by the City in 2026 for the purpose of identifying potential projects to be funded by bond revenues, provided that projects not identified in that process shall also be eligible provided they consist of the acquisition or improvement of real property for public infrastructure and facilities; and

WHEREAS, by law, all funds must remain under local control in the City and cannot be taken away by the State or the County or used for other purposes; and

WHEREAS, the City Council recognizes the importance of ensuring adequate maintenance funding from existing sources for Improvements financed by the Bonds and not supplanting existing City infrastructure funding with proceeds of the Bonds; and

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse certain of the proposed expenditures referenced herein; and

WHEREAS, proceeds from the sale of the Bonds will be used to finance the Improvements, and all expenditures will be subject to regular audits by the City Auditor; and

WHEREAS, the City Council's authority to grant exceptions to the all-electric construction and electrification requirements is a discretionary act, and neither the granting nor the denial of any such exception shall give rise to any claim or cause of action in any court.

Section 2. Object and Purpose of Bonds.

This measure (the “Measure”) authorizes the issuance of the Bonds, the object and purpose of which is to finance, by the City of Berkeley or a third party, as applicable, the acquisition or improvement of real property for the Improvements. The Improvements include, but are not limited to:

- Emergency (including Fire Department) response facilities;
- City’s parks and recreation facilities and infrastructure;
- Accessibility improvements in the City;
- Seismic and climate resiliency upgrades;
- All-electric new construction and the replacement of existing natural gas infrastructure with electric infrastructure, except when an exception is approved by City Council in alignment with the City’s All-Electric Standards for Municipal Projects;
- Facility modernization and reliability improvements; and
- Construction of or improvements to other City infrastructure, including renovation, replacement, or reconstruction for public benefit.

The City Council's authority to grant exceptions to the all-electric construction and electrification requirements is a discretionary act, and neither the granting nor the denial of any such exception shall give rise to any claim or cause of action in any court.

The Improvements (as defined above) will be completed as needed, and each is assumed to include its share of costs, including planning, program management and construction costs. The final cost of each Improvement will be determined as real property is purchased, plans are finalized, construction bids are awarded, or projects are completed. In addition, certain acquisition or improvement funds are expected from non-bond sources, including funds which have not yet been secured. Therefore, the City Council cannot guarantee that the Bonds will provide sufficient funds to allow completion of all needed Improvements.

Proceeds of the Bonds may be used to reimburse the City for expenditures on the Improvements that are paid before the date of execution, delivery or issuance of the Bonds.

Section 3. Estimated Cost of Improvements.

The estimated cost of the Improvements to be funded by the Bonds is $300,000,000.

The estimated cost of the Improvements includes legal and other fees, the cost of printing the Bonds and other costs and expenses (including auditing costs), in each case incidental to or connected with the authorization, issuance or sale of the Bonds. The cost of the Improvements includes planning, program management and construction costs.

Section 4. Principal Amount of Bonds.

The aggregate principal amount of Bonds to be issued shall not exceed $300,000,000.

Section 5. Maximum Interest Rate.

The maximum rate of interest to be paid on the Bonds shall not exceed the maximum interest rate permitted by law at the time the Bonds are issued.

Section 6. Accountability Requirements.

The following accountability measures apply to the issuance of Bonds pursuant to this Measure:

A. The specific purpose of the Bonds is to finance the acquisition or improvement of real property for the Improvements; and

B. The proceeds from the sale of the Bonds will be used only for the purposes specified in this Measure, and not for any other purpose; and

C. The proceeds of the Bonds will be deposited into an account to be created and held by the City; and

D. The proceeds from the sale of the Bonds may be used to reimburse the City for amounts advanced from the general fund or other funds or accounts for Improvements, when such purchases are made prior to the availability of Bond proceeds; and

E. As part of the process to adopt a budget, the City Manager shall provide to the City Council a comprehensive annual report of funds received from any bonded indebtedness authorized by this Measure, funds expended, and the status of the Improvements.

F. The following commissions or their successors shall provide oversight by reporting to the City Council on an annual basis regarding projects funded by the Bonds and Bond expenditures, whether those Bond expenditures are consistent with the purposes of the Bonds, and recommendations on projects proposed to be funded by the bond and bond expenditures:

1. The Parks, Recreation, and Waterfront Commission shall provide oversight on Infrastructure Improvements related to properties and facilities identified in Municipal Code Section 3.26.040.A, including all parks, recreation, and waterfront improvements.

2. The Transportation and Infrastructure Commission shall provide oversight on the Infrastructure Improvements related to transportation and other public infrastructure.

G. All expenditures will be subject to an audit by the City Auditor at least once every three years to confirm that Bond expenditures are consistent with the intent of this Measure.

Section 7. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this measure, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this measure, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this measure and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.