

1 RESOLUTION NO. 2016-62

2 A RESOLUTION OF THE ALBANY CITY COUNCIL CALLING AND
3 GIVING NOTICE OF A GENERAL ELECTION TO BE HELD NOVEMBER 8,
4 2016 AND REQUESTING THE BOARD OF SUPERVISORS OF ALAMEDA
5 COUNTY TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE
6 GENERAL ELECTION; AUTHORIZING THE CITY CLERK OR HER DULY
7 AUTHORIZED OFFICERS TO CARRY OUT ALL THE NECESSARY
8 PROCEDURES FOR SAID ELECTION FOR THE PURPOSE OF ELECTING
9 THREE PERSONS TO FILL THE OFFICE OF CITY COUNCIL MEMBER AND
10 TWO PERSONS TO FILL THE OFFICE OF MEMBER OF THE BOARD OF
11 EDUCATION, AND ONE PERSON TO FILL THE OFFICE OF CITY
12 TREASURER, AND FOR SUBMITTING TO THE VOTERS AN AMENDMENT
13 TO SECTION 20.28.040 OF THE ALBANY MUNICIPAL CODE REGARDING
14 RESIDENTIAL PARKING REQUIREMENTS; AN ORDINANCE ENACTING A
15 GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED
16 BEVERAGE PRODUCTS; AN ORDINANCE ENACTING A SPECIAL PARCEL
17 TAX TO FUND REPAIRING AND UPGRADING OF PUBLIC SIDEWALKS AND
18 REMOVING OBSTRUCTIONS TO IMPROVE SAFETY AND ACCESSIBILITY;
19 AND AMENDMENTS TO THE ALBANY CITY CHARTER SECTIONS 1.04 -
20 1.10, 2.07, 3.04, 3.05, 3.08, 3.10, 3.13, 3.14, 3.19, 5.02, 6.01, 6.02, 8.01-8.07, 9.01

21 WHEREAS, Section 2.01 of the Albany City Charter provides that the City's
22 General Municipal Election will be held on each even year and shall be consolidated with
23 the Statewide General Election and that the Statewide General Election shall be held in
24 said City on Tuesday, November 8, 2016; and

25 WHEREAS, pursuant to the Charter, it is necessary to elect: Three (3) persons to
26 fill the office of City Council Member; two (2) persons to fill the office of Member of the
27 Board of Education; and one (1) person to fill the office of City Treasurer; and

28 WHEREAS, the City of Albany is a charter city and pursuant to Article XI,
29 Section 7 of the California Constitution and Section 1.03 of the Albany City Charter is
empowered to exercise all powers necessary and appropriate for a municipal corporation
and the general welfare of its inhabitants; and

1 **WHEREAS**, Section 5.01 of the Albany City Charter provides that except as
2 otherwise provided in the Charter or City ordinances, City elections shall be conducted in
3 accordance with the State Elections Code; and
4

5 **WHEREAS**, the City Council desires to submit six ballot measures to the voters
6 of the City of Albany for their approval and adoption at the general election to be held in
7 the City on November 8, 2016; and
8

9 **WHEREAS**, the six ballot measures are as follows:

10 (A) An amendment to Section 20.28.040 of the Albany Municipal Code regarding
11 residential parking requirements.

12 (B) An ordinance enacting a general tax on the distribution of sugar-sweetened
13 beverage products.
14

15 (C) An ordinance enacting a special parcel tax to fund repairing and upgrading of
16 public sidewalks and removing obstructions to improve safety and
17 accessibility.
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19 (D) An amendment to various sections of the Albany City Charter to authorize the
20 City Council to establish procedures for filling a vacancy in an elective office
21 by appointment, permit quarterly meetings of the Police and Fire Pension
22 Board and change eligibility requirements for Board members, authorize the
23 City Council to set fees for copies of public records, make the language within
24 the Charter gender neutral, and make numerous other administrative, technical
25 and clarifying changes.
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(E) An amendment to Section 6.02 of the Albany City Charter to remove term limits for the Albany Unified School District School Board of Education Members.

(F) An amendment to Sections 8.01-8.07 of the Albany City Charter to dissolve the City’s Civil Service Board and to add a definition for the term “classified service”.

WHEREAS, it is desirable that the Alameda County Department of Elections canvas the returns of the consolidated election and that the election be handled in all respects as if it were only one election; and

WHEREAS, November 8, 2016 is the date of the general statewide election; and

WHEREAS, Election Code §§9282-9287 set forth procedures for submittal of arguments supporting or opposing any city ballot measure.

NOW THEREFORE, THE ALBANY CITY COUNCIL DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1 The City’s General Municipal Election is hereby called and ordered to be consolidated with the Statewide General Election to be held in said City of Albany, State of California, on Tuesday, November 8, 2016, in accordance with the provisions of the Albany City Charter and the Elections Code of the State of California, for the purpose of voting upon City ballot measures and electing the following officers of the City for the terms specified:

- a. Three (3) Council Members for the City Council of the City of Albany, each term commencing after the official canvass made by the Registrar of Voters and continuing for four (4) years from the day of his or her induction.

1 b. Two (2) Members of the Board of Education of the City of Albany, each
2 term commencing after the official canvass made by the Registrar of Voters and
3 continuing for four (4) years from the day of his or her induction.
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5 c. One (1) City Treasurer of the City of Albany, the term commencing after
6 the official canvass made by the Registrar of Voters and continuing for four (4) years
7 from the day of his or her induction.
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9 d. A ballot measure to approve an ordinance authorizing an amendment to
10 Section 20.28.040 of the Albany Municipal Code regarding residential parking
11 requirements as set forth in Exhibit A, attached hereto and incorporated by reference as if
12 set forth herein word for word, and which may be lawfully submitted at said election as
13 set forth in this Resolution. The City Council hereby approves the ordinance, the form
14 thereof, and its submission to the voters of the City at the November 8, 2016 election.
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16 e. A ballot measure to approve an ordinance enacting a tax on the
17 distribution of sugar-sweetened beverage products as set forth in Exhibit B, attached
18 hereto and incorporated by reference as if set forth herein word for word, and which may
19 be lawfully submitted at said election as set forth in this Resolution. The City Council
20 hereby approves the ordinance, the form thereof, and its submission to the voters of the
21 City at the November 8, 2016 election.
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23 f. A ballot measure to approve an ordinance enacting a special parcel tax to
24 fund repairing and upgrading of public sidewalks and removing obstructions to improve
25 safety and mobility as set forth in Exhibit C, attached hereto and incorporated by
26 reference as if set forth herein word for word, and which may be lawfully submitted at
27 said election as set forth in this Resolution. The City Council hereby approves the
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1 ordinance, the form thereof, and its submission to the voters of the City at the November
2 8, 2016 election.

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4 g. A ballot measure to approve an amendment to various sections of the
5 Albany City Charter to authorize the City Council to establish procedures for filling a
6 vacancy in an elective office by appointment, permit quarterly meetings of the Police and
7 Fire Pension Board and change eligibility requirements for Board members, authorize the
8 City Council to set fees for copies of official records, make the language within the
9 Charter general neutral, and make numerous other administrative, technical and clarifying
10 changes, as set forth in Exhibit D, attached hereto and incorporated by reference as if set
11 forth herein word for word, and which may be lawfully submitted at said election as set
12 forth in this Resolution. The City Council hereby approves the ordinance, the form
13 thereof, and its submission to the voters of the City at the November 8, 2016 election.
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16 h. A ballot measure to approve an amendment to Section 6.02 of the Albany
17 City Charter to remove term limits for the Albany Unified School District School Board
18 of Education Members as set forth in Exhibit E, attached hereto and incorporated by
19 reference as if set forth herein word for word, and which may be lawfully submitted at
20 said election as set forth in this Resolution. The City Council hereby approves the
21 ordinance, the form thereof, and its submission to the voters of the City at the November
22 8, 2016 election.
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25 i. A ballot measure to approve an amendment to Sections 8.01-8.07 of the
26 Albany City Charter to dissolve the City's Civil Service Board and to add a definition for
27 the term "classified service" as set forth in Exhibit F, attached hereto and incorporated by
28 reference as if set forth herein word for word, and which may be lawfully submitted at
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1 said election as set forth in this Resolution. The City Council hereby approves the
2 ordinance, the form thereof, and its submission to the voters of the City at the November
3 8, 2016 election.
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6 **Section 2** Pursuant to the Albany City Charter and the laws of the State of
7 California , there is called and ordered to be held in the City of Albany, California on
8 November 8, 2016, an election for the purposes of submitting to the voters six ballot
9 measures as set forth in Exhibit A-F, incorporated herein by reference as if set forth
10 herein word for word. Pursuant to the Election Code Section 10400 et seq., the election
11 for this measure shall be consolidated with the statewide general election to be conducted
12 on November 8, 2016.
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15 **Section 3** The questions to be presented to the voters shall be as follows:

16 (A) Shall an ordinance authorizing the Albany City Council to amend the residential
17 parking requirements established by Measure D (enacted by the Albany voters in
18 1978), after following the normal procedures for amending City Zoning
19 Ordinances, be adopted?
20

21 This question requires the approval of a majority of qualified electors casting
22 votes at the election.

23 (B) Shall an ordinance enacting a one cent per ounce general tax, providing
24 approximately \$223,000 annually with no expiration date, on the distribution of
25 sugar-sweetened beverages and sweeteners used to sweeten such drinks, but
26 exempting: (1) sweeteners typically used by consumers and distributed to grocery
27 stores; (2) drinks and sweeteners distributed to small retailers; (3) milk products,
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1 100% juice, baby formula, alcohol, or drinks taken for medical reasons, be
2 adopted?

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4 This question requires the approval of a majority of qualified electors casting
5 votes at the election.

6 (C) To repair and upgrade aging and deteriorating public sidewalks and remove
7 obstructions so that Albany sidewalks are safe and accessible by pedestrians,
8 including people with disabilities that affect mobility, shall the City of Albany
9 enact a special parcel tax (\$38.65 annually for most single-family parcels, other
10 parcel types at specified rates) for 10 years providing approximately \$203,000
11 annually, with annual public reports and all proceeds to be spent in Albany?
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14 This question requires the approval of a 2/3 majority of qualified electors casting
15 votes at the election.

16 (D) Shall the City Charter be amended to authorize the City Council to establish
17 procedures for filling a vacancy in an elective office by appointment, permit
18 quarterly meetings of the Police and Fire Pension Board and change eligibility
19 requirements for Board members, authorize the City Council to set fees for copies
20 of official records, make the language within the Charter general neutral, and
21 make numerous other administrative, technical and clarifying changes?
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23
24 This question requires the approval of a majority of qualified electors casting
25 votes at the election.

26 (E) Shall the Albany City Charter be amended to remove term limits for the Albany
27 Unified School District School Board of Education Members, this provision to
28 take effect on January 1, 2023?
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1 This question requires the approval of a majority of qualified electors casting
2 votes at the election.

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4 (F) Shall the Albany City Charter be amended to dissolve the City's Civil Service
5 Board and to add a definition for the term "classified service"?

6 This question requires the approval of a majority of qualified electors casting
7 votes at the election.
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10 **Section 4** Pursuant to the requirements of Elections Code §10403, the Board
11 of Supervisors of the County of Alameda is hereby requested to consent and agree to the
12 consolidation of said election with the statewide election. The City of Albany
13 acknowledges that the consolidated election will be held and conducted in accordance
14 with Elections Code §10418.
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16 **Section 5** The City Clerk is hereby directed to submit a certified copy of the
17 ballot measures to the City Attorney, who shall prepare an impartial analysis for each of
18 the measures in accordance with Election Code §9280. The analysis shall be submitted
19 by the City Clerk to the Registrar of Voters, or other appropriate election official of
20 Alameda County for printing by August 12, 2016. The analysis shall not exceed 500
21 words in length and shall otherwise comply in all substantial respects with the applicable
22 provisions of the Election Code of the State of California.
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25 **Section 6** Arguments for and against the ballot measures may be filed in
26 accordance with this resolution and applicable provisions of the law. Direct arguments
27 for and against these measures shall be submitted to the City Clerk's office by no later
28 than 12:00 p.m. on Friday, August 19, 2016. Rebuttal arguments shall be submitted to
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1 the City Clerk's office by no later than 12:00 p.m. on Friday, August 26, 2012. Any
2 direct argument shall not exceed 300 words in length and shall not be signed by more
3 than five persons. Any rebuttal shall not exceed 250 words in length and shall not be
4 signed by more than five persons; those persons may be different persons who sign the
5 direct arguments.
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7 **Section 7** A subcommittee, or subcommittees, comprised of up to two
8 Council Members per subcommittee, as established by motion of the City Council, is
9 hereby authorized to prepare and file written arguments in favor or against the ballot
10 measures not to exceed 300 words, on behalf of the Albany City Council. At the
11 subcommittee's discretion, the arguments may also be signed by bona fide organizations
12 or by individual voters. A subcommittee comprised of up to two Council Members is
13 also hereby authorized to prepare and file a written rebuttal to an argument not to exceed
14 250 words, on behalf of the Albany City Council. At the subcommittee's discretion, the
15 rebuttal may also be signed by bona fide organizations or by individual voters.
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18 **Section 8** Pursuant to Election Code §9285, when the City Clerk has selected
19 the arguments for and against the measures (Alameda County will issue the appropriate
20 Measure letter at a later time), which shall be printed and distributed to the voters, the
21 City Clerk shall send copies of the arguments in favor of the measures, to the authors of
22 the arguments against the measures, and copies of the arguments against the measures to
23 the authors of the arguments in favor of the measures.
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26 **Section 9** The City Clerk is hereby directed to cause notice of the measures to
27 be published in a newspaper of general circulation, or any other newspaper designated as
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1 an official newspaper of the City of Albany in accordance with Elections Code §12111
2 and Government Code §6061.

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4 **Section 10** That pursuant to the Elections Code of the State of California, the
5 Board of Supervisors of the County of Alameda is hereby requested to consolidate the
6 General Election to be held at said County on November 8, 2016, with the Regular
7 General Municipal Election so that the election precincts, polling places and voting
8 booths shall in every case, be the same, and so there may be one set of election offices
9 and officers at each said election precinct, and one form of ballot, and provide for
10 expenses thereof, all as provided in said Elections Code of the State of California.
11

12 **Section 11** That in all particulars not recited in this Resolution, said election
13 shall be held and conducted as provided by law for holding Municipal Elections in the
14 City of Albany.
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16 **Section 12** That the Regular General Municipal Election, to be held in the City
17 of Albany, shall be canvassed by the Registrar of Voters of the County of Alameda, State
18 of California.
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20 **Section 13** That the City of Albany shall pay to the Board of Supervisors of
21 Alameda County its pro rata share of the expenses of said election as jointly determined
22 by the City of Albany and the Board of Supervisors of Alameda County in accordance
23 with said provisions of said Elections Code of the State of California.
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25 **Section 13** That the City Clerk of the City of Albany is hereby authorized
26 instructed and directed to provide the Alameda County Registrar of Voters with all
27 pertinent information and material as required.
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1 **Section 15** That the City Clerk of the City of Albany is hereby authorized and
2 directed to file a copy of this Resolution immediately upon its adoption with the
3 appropriate County agencies. With the concurrence of the City Attorney, the City Clerk
4 is hereby authorized to make such minor, technical and clarifying changes to this
5 Resolution and/or the Exhibits hereto as may be deemed necessary and appropriate.
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7 **Section 16** The City Council of the City of Albany shall meet at its usual
8 meeting place to review the certified statement of results of the election within 28 days of
9 the election and shall thereafter declare the results.
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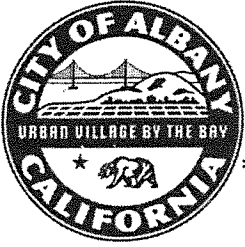
11 **Section 17** The Alameda County Registrar of Voters is hereby requested to
12 include the ballot measures, with the ballot question, referred to herein and set forth in
13 Exhibit “A” through Exhibit “F” in the voter pamphlet, and to number and designate the
14 ballot measures as appropriate.
15

16 **Section 18** The Voter Pamphlet shall include the ballot questions’ wording to
17 the voters, the questions as presented before the text, and the exact wording of the
18 proposed Albany Municipal Code sections or present Albany Municipal Code or Albany
19 City Charter sections with language to be deleted shown in ~~strikeout~~ type and the
20 language to be added to be shown in underlined, *italicized*, or otherwise **highlighted** in
21 the Exhibits “A” through “F” attached hereto.
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1 The undersigned hereby certifies that the foregoing is a full, true, and complete
2 copy of the Resolution duly passed and adopted by the City Council of the City of Albany
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4 at a regular meeting thereof on the 18th day of July, 2016 by the following vote:
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Peter Maass, Mayor

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City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

RESOLUTION NO. 2016-62

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

the 18th day of July, 2016, by the following votes:

AYES: Council Members McQuaid, Nason, Pilch and Mayor Maass

NOES: none

ABSENT: Council Member Barnes

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

19th day of July, 2016.

Eileen Harrington
DEPUTY CITY CLERK

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EXHIBIT "A"

**AMENDMENT TO SECTION 20.28.040 OF THE ALBANY MUNICIPAL CODE
REGARDING RESIDENTIAL PARKING REQUIREMENTS**

Shall an ordinance authorizing the Albany City Council to amend the residential parking requirements established by Measure D (enacted by the Albany voters in 1978), after following the normal procedures for amending City Zoning Ordinances, be adopted?	YES _____
	NO _____

**ORDINANCE NO. 2016-01
AN ORDINANCE OF THE CITY OF ALBANY AMENDING THE ZONING
ORDINANCE TO AUTHORIZE THE CITY COUNCIL TO MODIFY THE
PARKING REQUIREMENTS ESTABLISHED BY MEASURE D, ADOPTED IN
1978, AFTER FOLLOWING THE NORMAL PROCEDURES FOR ADOPTION
OF ZONING ORDINANCES**

WHEREAS, at the November 7, 1978 general election, the Albany voters approved an initiative measure which is commonly referred to as "Measure D"; and

WHEREAS, among other things, Measure D required that two parking spaces must be provided for each dwelling unit in all residential districts; and

WHEREAS, this parking requirement has been codified as part of Section 20.28.040 of the Albany Municipal Code; and

WHEREAS, with certain limited exceptions, implementation of Measure D has mandated that the City require that new residential units – regardless of size, number of bedrooms, or housing type – must provide two off-street parking spaces; and

1 **WHEREAS**, several City planning documents (including the 1992 General Plan,
2 2010 Climate Action Plan, 2015-2023 Housing Element, and 2035 General Plan) have
3 stated that the Measure D parking standards should be re-evaluated because these
4 standards limit the development potential of parcels which are zoned for higher density
5 residential uses and also limit the ability of property owners to add secondary dwelling
6 units on parcels containing single-family residences by restricting the City’s discretion to
7 reduce parking requirements for newly constructed secondary dwelling units; and

8 **WHEREAS**, currently Measure D can only be amended by an ordinance adopted by
9 the Albany voters; and

10 **WHEREAS**, on the basis of the foregoing, the City Council has determined that the
11 best option available to the City is to bring forward a ballot measure authorizing the City
12 Council to amend the requirements of Measure D from time to time, after following
13 normal ordinance amendment procedures; and

14 **WHEREAS**, the proposed measure, if approved by a majority of the Albany voters,
15 would allow greater flexibility for the City Council to respond to changing conditions and
16 promote the community goals as expressed in adopted planning documents for
17 encouraging additional housing development and promoting environmental sustainability.

18 **NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN**
19 **AS FOLLOWS:**

20 **Section 1.** Albany Municipal Code Section 20.28.040 is hereby amended, to add a
21 new subdivision D., to read as follows:

22 **20.28.040 Exceptions to Parking Space Requirements.**

1 D. City Council Authorized to Modify Measure D Parking Requirements.

2 After following the normal procedures for amending City Zoning Ordinances,
3 including compliance with the California Environmental Quality Act and conducting duly
4 noticed public hearings before the Planning and Zoning Commission and City Council,
5 the City Council may amend the residential parking requirements established by Measure
6 D (enacted by the Albany voters on November 7, 1978). Such amendments may include,
7 but are not limited to, modifications to the number of parking spaces required per
8 dwelling unit for residential uses in residential districts, as well as the provisions of
9 Measure D which allow the Planning Commission to reduce these residential parking
10 requirements by Conditional Use Permit upon making specified findings. This provision
11 is not intended to limit in any way the authority and discretion which the City Council
12 currently possesses to adopt Zoning Ordinance amendments.

13 **Section 2.** SEVERABILITY. If any provision of this Ordinance or the application
14 thereof to any person or circumstance is held invalid, the remainder of the Ordinance and
15 the application of such provision to other persons or circumstances shall not be affected
16 thereby.

17 **Section 3.** RECITALS. The People of the City of Albany find that all Recitals
18 contained in this Ordinance are true and correct and are incorporated herein by reference.

19 **Section 4.** CEQA FINDINGS. The adoption of this resolution is exempt from the
20 California Environmental Quality Act ("CEQA") because it can be seen with certainty
21 that there is no possibility that the adoption of the proposed ordinance will have a
22 significant effect on the environment. (CEQA Guidelines Section 15061(b)(3).) If
23 approved by the voters, the proposed ordinance would authorize the City Council to make
future changes in the parking space requirements established by Measure D. However,

1 any such changes would have to be preceded by compliance with CEQA. The proposed
2 ordinance, by itself, would not effect any changes in applicable land use regulation.

3 **Section 5.** EFFECTIVE DATE. If it receives approval from a simple majority of the
4 Albany voters, this ordinance shall take effect immediately upon adoption of a City
5 Council resolution declaring the results of the November 8, 2016 general election.

6
7 Ordinance No. 2016-01 was submitted to the People of the City of Albany at the
8 November 8, 2016 general municipal election. It was approved by the following vote of
9 the People:

10 YES:

11 NO:

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13 Ordinance No. 2016-01 was thereby adopted by the voters at the November 8, 2016
14 election and took effect upon adoption of a resolution declaring the results of the election
15 at a regular meeting of the City Council held on _____, 2016, by the following
16 vote:

17 AYES:

18 NOES:

19 ABSENT:

20 **I HEREBY CERTIFY** that the foregoing is a true and correct copy of an ordinance duly
21 and regularly adopted by the People of the City of Albany, California.

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23 Nicole Almaguer, City Clerk

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EXHIBIT "B"

AN ORDINANCE ENACTING A TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS

Shall an ordinance enacting a one cent per ounce general tax, providing approximately \$223,000 annually with no expiration date, on the distribution of sugar-sweetened beverages and sweeteners used to sweeten such drinks, but exempting: (1) sweeteners typically used by consumers and distributed to grocery stores; (2) drinks and sweeteners distributed to small retailers; (3) milk products, 100% juice, baby formula, alcohol, or drinks taken for medical reasons, be adopted?	YES _____
	NO _____

ORDINANCE NO. 2016-02

AN ORDINANCE OF THE CITY OF ALBANY ENACTING A GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS

WHEREAS, diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children as well as low income communities and communities of color have been and continue to be disproportionately affected; and

WHEREAS, although there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay; and

WHEREAS, sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar; and

WHEREAS, before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which

1 became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had
2 become the norm; and

3 **WHEREAS**, at the same time, hundreds of millions of dollars have been spent in
4 an ongoing massive marketing campaign, which particularly targets children and people
5 of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18.
6 African American and Latino children are also aggressively targeted with advertisements
7 to promote sugar-laden drinks; and

8 **WHEREAS**, the resulting impact on consumption should not be surprising. The
9 average American now drinks nearly 50 gallons of sugary drinks a year. The problem is
10 especially acute with children in California. From 1989 to 2008, the percentage of
11 children consuming sugary drinks increased from 79% to 91% and the percentage of total
12 calories obtained from sugary drinks increased by 60% in children ages 6 to 11; and

13 **WHEREAS**, this level of consumption has had tragic impacts on community
14 health. Type 2 Diabetes – previously only seen among adults – is now increasing among
15 children. If the current obesity trends are not reversed, it is predicted that one in three
16 children and *nearly one-half* of Latino and African American children born in the year
17 2000 will develop type 2 diabetes in their lifetimes; and

18 **WHEREAS**, childhood obesity has more than doubled in children and tripled in
19 adolescents in the past 30 years; in 2010, more than one-third of children and adolescents
20 were overweight or obese; and

21 **WHEREAS**, there are also economic costs. In 2006, for instance, overweight and
22 obesity-related costs in California were estimated at almost \$21 billion; and

23 **WHEREAS**, tooth decay, while not as life threatening as diabetes or obesity, still
has a meaningful impact, especially on children. In fact, tooth decay is the most common
childhood disease, experienced by over 70% of California's 3rd graders. Children who
frequently or excessively consume beverages high in sugar are at increased risk for dental
cavities. Dental problems are a major cause of missed school days and poor school
performance as well as pain, infection, and tooth loss in California; and

WHEREAS, based on the findings set forth above, the purpose of this Ordinance
is to diminish the human and economic costs of diseases associated with the consumption
of sugary drinks by discouraging their distribution and consumption in Albany through a
tax. Specifically, the purpose of this ordinance is to tax the distribution of sugary drinks
and the products used to make them; and

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WHEREAS, this Ordinance is not intended for the purpose of regulation; and

WHEREAS, this Ordinance does not authorize the conduct of any business or activity in the city, but merely provides for the taxation of distribution of specified products as it occurs; and

WHEREAS, this Ordinance imposes a general tax on the distribution of sugar-sweetened beverages such as high-calorie, low-nutrition products, like soda, energy drinks, and heavily presweetened tea, as well as the added caloric sweeteners used to produce these sugar-sweetened beverages, such as the premade syrup used to make fountain drinks. Certain drinks containing sugar are exempted, including infant formula, milk products, and natural fruit and vegetable juice; and

WHEREAS, this Ordinance provides for a small business exemption for Retailers who transport sugar-sweetened beverage products into the City themselves and then sell those products directly to consumers; and

WHEREAS, this general tax will provide revenue to be available for the general governmental needs of the people of Albany.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Article 4-13 is hereby added to Chapter XIII of the Albany Municipal Code, to read as follows:

4-13 SUGAR-SWEETENED BEVERAGE PRODUCT DISTRIBUTION TAX

4-13.1 Excise tax.

- a. In addition to any other taxes imposed by the City, the City hereby levies a tax of one cent (\$0.01) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City.
- b. For the purposes of this Chapter, the volume, in ounces, of a Sugar-sweetened beverage product shall be calculated as follows:

1 1. For a Sugar-sweetened beverage, the volume, in fluid ounces, of Sugar-
2 sweetened beverages distributed to any person in the course of business in
3 the City.

4 2. For Added caloric sweeteners, the largest volume, in fluid ounces, of
5 Sugar-sweetened beverages that could be produced from the Added caloric
6 sweeteners. In accordance with rules and regulations promulgated by the
7 City pursuant to Section 4-13.5, the largest volume, in fluid ounces, that
8 would typically be produced from the Added caloric sweeteners shall be
9 determined based on the manufacturer's instructions or, if the Distributor
10 uses the Added caloric sweeteners to produce a Sugar-sweetened beverage,
11 the regular practice of the Distributor.

12 c. The tax shall be paid upon the first nonexempt Distribution of a Sugar-sweetened
13 beverage product in the City. To the extent that there is a chain of Distribution within
14 Albany involving more than one Distributor, the tax shall be levied on the first
15 Distributor subject to the jurisdiction of the City. To the extent the tax is not paid as set
16 forth above for any reason, it shall be payable on subsequent Distributions and by
17 subsequent Distributors; provided, that the Distribution of Sugar-sweetened beverage
18 products may not be taxed more than once in the chain of commerce.

19 **4-13.2 Exemptions.**

20 The tax imposed by this Chapter shall not apply:

21 a. To any Distributor that is not subject to taxation by the City under the laws of the
22 United States or the State of California;

23 b. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less
24 than \$100,000 in annual gross receipts, as defined in Section 4-13.4, in the most recent
25 year;

26 c. To any Distribution of Natural or common sweeteners; or

27 d. To any Distribution of Added caloric sweeteners to a Food and Beverage Sales Retail
28 Store, as defined in Albany Municipal Code Section 20.16.030DD, if the Food and

1 Beverage Sales Retail Store then offers the Added caloric sweetener for sale for later use
2 by customers of that store.

3 The City Council, without a vote of the people, may, either permanently or temporarily,
4 increase the dollar amount of the threshold for the small-business exemption in
5 Subsection b.

6 **4-13.3 Definitions.**

7 a. "Added caloric sweetener" means any substance or combination of substances that
8 meets all of the following four criteria:

- 9 1. Is suitable for human consumption;
- 10 2. Adds calories to the diet if consumed;
- 11 3. Is perceived as sweet when consumed; and
- 12 4. Is used for making, mixing, or compounding Sugar-sweetened
13 beverages by combining the substance or substances with one or more other
14 ingredients including, without limitation, water, ice, powder, coffee, tea,
15 fruit juice, vegetable juice, or carbonation or other gas.

16 An Added caloric sweetener may take any form, including but not limited to a liquid,
17 syrup, and powder, whether or not frozen. "Added caloric sweetener" includes, without
18 limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does
19 not include a substance that exclusively contains natural, concentrated, or reconstituted
20 fruit or vegetable juice or any combination thereof.

21 b. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing
22 with Section 32001) of the California Revenue and Taxation Code, as that Part may be
23 amended from time to time.

c. "Beverage for medical use" means a beverage suitable for human consumption and
manufactured for use as an oral nutritional therapy for persons who cannot absorb or
metabolize dietary nutrients from food or beverages, or for use as an oral rehydration
electrolyte solution for infants and children formulated to prevent or treat dehydration due

1 to illness. "Beverage for medical use" shall also mean a "medical food" as defined in
2 Section 109971 of the California Health and Safety Code, as that definition may be
3 amended from time to time. "Beverage for medical use" shall not include drinks
4 commonly referred to as "sports drinks" or any other common names that are derivations
5 thereof.

6 d. "Business Entity" means any Person except for a natural person.

7 e. "City" means the City of Albany, California.

8 f. "City Manager" means the City Manager of the City of Albany or his or her designee.

9 g. "Consumer" means a natural person who purchases a Sugar-sweetened beverage
10 product in the City for a purpose other than resale in the ordinary course of business.

11 h. "Distribution" or "Distribute" means the transfer of title or possession (1) from one
12 Business entity to another for consideration or (2) within a single Business entity, such as
13 by a wholesale or warehousing unit to a retail outlet or between two or more employees
14 or contractors. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.

15 i. "Distributor" means any Person who Distributes Sugar-sweetened beverage products
16 in the City.

17 j. "Gross receipts" is defined in Section 4-13.4.

18 k. "Milk" means natural liquid milk, regardless of animal source or butterfat content,
19 natural milk concentrate, whether or not reconstituted, regardless of animal source or
20 butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless
21 of animal source or butterfat content, and plant-based milk substitutes, that are marketed
22 as milk, such as soy milk and almond milk.

23 l. "Natural or common sweetener" means granulated white sugar, brown sugar, honey,
molasses, xylem sap of maple trees, or agave nectar.

m. "Person" means an individual, trust, firm, joint stock company, business concern,
business trust, government, receiver, trustee, syndicate, social club, fraternal organization,
estate, corporation, including, but not limited to, a limited liability company, and
association or any other group or combination acting as a unit.

1 n. "Retailer" means any Person who serves Sugar-sweetened beverage products to a
2 Consumer.

3 o. "Simple syrup" means a mixture of water and one or more Natural or common
4 sweeteners without any additional ingredients.

5 p. "Sugar-sweetened beverage" means any beverage intended for human consumption to
6 which one or more Added caloric sweeteners has been added and that contains at least 2
7 calories per fluid ounce.

8 1. "Sugar-sweetened beverage" includes, but is not limited to all drinks
9 and beverages commonly referred to as "soda," "pop," "cola," "soft drinks,"
10 "sports drinks," "energy drinks," "sweetened ice teas," or any other common
11 names that are derivations thereof.

12 2. "Sugar-sweetened beverage" shall not include any of the following:

13 a. Any beverage in which milk is the primary ingredient, i.e., the
14 ingredient constituting a greater volume of the product than any other;

15 b. Any beverage for medical use;

16 c. Any liquid sold for use for weight reduction as a meal replacement;

17 d. Any product commonly referred to as "infant formula" or "baby
18 formula"; or

19 e. Any alcoholic beverage.

20 q. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Added
21 caloric sweetener.

22 **4-13.4 Definition of Gross Receipts.**

23 "Gross receipts" means the gross receipts of the preceding fiscal year of the Distributor or
part thereof, and is defined as follows: the total amount actually received or receivable
from all sales; the total amount of compensation actually received or receivable for the
performance of any act or service, of whatever nature it may be, for which a charge is

1 made or credit allowed, whether or not such act or service is done as a part of or in
2 connection with the sale of materials, goods, wares or merchandise; and gains realized
3 from trading in stocks or bonds; interest discounts, rents, royalties, fees, commissions,
4 dividends or other emoluments, however designated. Included in "gross receipts" are all
5 receipts, cash, credits and property of any kind or nature, without any deduction therefrom
6 on account of the cost of the property sold, the cost of materials used, labor or service
7 costs, interest paid or payable, or losses or other expenses whatsoever, except that the
8 following are excluded therefrom:

- 9 a. Cash discounts allowed and taken on sales;
- 10 b. Credit allowed on property accepted as part of the purchase price and which property
11 may later be sold, at which time the sales price shall be included as "gross receipts";
- 12 c. Any tax required by law to be included in or added to the purchase price and
13 collected from the consumer or purchaser;
- 14 c. Such part of the sale price of property returned by purchasers upon rescission of a
15 contract of sale as is refunded either in cash or by credit;
- 16 e. Receipts of refundable deposits, except that such deposits when forfeited and taken
17 into income of the business shall not be excluded when in excess of one dollar;
- 18 f. Amounts collected for others where the business is acting as an agent or trustee and to
19 the extent that such amounts are paid to those for whom collected. These agents or
20 trustees must provide the Finance Department with the names and the addresses of the
21 others and the amounts paid to them. This exclusion shall not apply to any fees,
22 percentages, or other payments retained by the agent or trustees;
- 23 g. Cash value of sales, trades or transactions between departments or units of the same
business;
- h. Transaction between a partnership and its partners;
- i. Receipts from services or sales in transactions between affiliated corporations. An
"affiliated corporation" is a corporation:

- 1 1. The voting and nonvoting stock of which is owned at least eighty percent by
2 such other corporation with which such transaction is had,
- 3 2. Which owns at least eighty percent of the voting and nonvoting stock of such
4 other corporation, or
- 5 3. At least eighty percent of the voting and nonvoting stock of which is owned by
6 a common parent corporation which also has such ownership of the corporation
7 with which such transaction is had;

8 j. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures,
9 machinery or other equipment used by the licensee in the regular course of the licensee's
10 business.

11 **4-13.5 Duties, responsibilities and authority of the City Manager.**

- 12 a. It shall be the duty of the City Manager to collect and receive all taxes imposed by
13 this Chapter, and to keep an accurate record thereof.
- 14 b. The City Manager is hereby charged with the enforcement of this Chapter, except as
15 otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations
16 relating to the administration and enforcement of this Chapter, including provisions for
17 the reexamination and correction of returns and payments, and for reporting. Such rules
18 and regulations may include, but are not limited to, the following:

- 19 1. The determination of the frequency with which a Distributor must
20 calculate the tax. This determination shall not constitute an increase of the
21 tax.
- 22 2. The determination of the frequency with which a Distributor must pay
23 the tax. This determination shall not constitute an increase of the tax.
3. The determination of whether and how a Distributor must register with
the City.

1 4. The determination of whether and how a Distributor who receives, in
2 the City, Sugar-sweetened beverage products from another Distributor must
report to the City the name of that Distributor.

3 5. The determination of whether and how a Distributor who receives, in
4 the City, Sugar-sweetened beverage products from another distributor must
5 report to the City the volume of Sugar-sweetened beverage products
received from that Distributor.

6 6. The determination of what other documentation is required to be created
7 or maintained by a Distributor.

8 c. The City Manager shall annually verify that the taxes owed under this Chapter have
9 been properly applied, exempted, collected, and remitted.

10 **4-13.6 Collection.**

11 a. The amount of any tax, penalty, and interest imposed under the provisions of this
12 Chapter shall be deemed a debt to the City. Any Distributor owing money under the
13 provisions of this Chapter shall be liable in an action brought in the name of the City for
the recovery of such amount.

14 b. In order to aid in the City's collection of taxes due under this Chapter, any Retailer
15 that receives Sugar-sweetened beverage products from a Distributor shall, in accordance
16 with rules and regulations promulgated by the City Manager pursuant to Section 4-13.5,
either:

17 1. report to the City all such transactions, the volume in ounces of Sugar-
18 sweetened beverage products received in each transaction, and the identity
19 and contact information of the Distributor from whom the Sugar-sweetened
beverage products were received; or

20 2. collect the tax that would be payable as a result of the transaction by the
21 Distributor from whom the Sugar-sweetened beverage product was received
22 and remit it to the City; or

1 3. provide to the City evidence that the Distributor from whom the Sugar-
2 sweetened beverage products were received has registered as a Distributor
3 with the City and that registration is current.

4 c. The City Council is authorized to have the taxes imposed by this Chapter collected by
5 the County of Alameda or the California Board of Equalization in conjunction with the
6 collection of other taxes for the City. If the City Council exercises this authorization, the
7 duties and responsibilities of the City Manager shall be given, as appropriate, to the
8 County of Alameda or the California Board of Equalization, which may delegate such
9 duties and responsibilities as necessary and as authorized by law.

10 **4-13.7 Refunds.**

11 Whenever any tax under this Chapter has been overpaid or has been erroneously or
12 illegally collected or received by the City, it may be refunded only as provided Albany
13 Municipal Code Section 2-28.1, as that Section now reads or may hereafter be amended
14 by ordinance adopted by the City Council. A vote of the people shall not be required to
15 amend the City's claim procedures. Compliance with the City's claim procedures shall be
16 a prerequisite to any suit or other legal proceeding seeking a refund or any payment of
17 money or damages.

18 **4-13.8 Enforcement.**

19 Except as otherwise provided by this Chapter or by rule or regulation promulgated by the
20 City Manager, the tax imposed by this Chapter shall be administered in the same manner
21 as taxes imposed pursuant to Albany Municipal Code Chapter 5-2 and, without
22 limitation, shall be subject to the same delinquency penalties, appeals processes and other
23 enforcement provisions set forth in Albany Municipal Code Chapter 5-2.

4-13.9 Not a sales and use tax.

 The tax imposed by this Chapter is a tax upon the privilege of conducting business,
 specifically, Distributing Sugar sweetened beverage products within the City of Albany. It
 is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened
 beverage products.

1 **4-13.10 Annual Study Session for Public Input on Tax Expenditures.**

2 The City Council shall conduct an annual special study session, in conjunction with the
3 City's budget process, for the purpose of receiving input and recommendations regarding
4 the expenditure of proceeds from the tax created by this Chapter. Prior to the special
5 study session, the City Council shall solicit recommendations from the City's Parks and
6 Recreation Commission, Social and Economic Justice Commission, and Traffic and
7 Safety Commission, as well as a designated representative of the Albany Unified School
8 District, regarding the use of tax proceeds. Additionally, the City shall solicit
9 recommendations from individuals with specialized expertise in areas such as public
10 health issues and programs relating to diabetes, obesity and sugary drink consumption;
11 and any other individuals or organizations as deemed appropriate by the City Council.

9 **4-13.11 Annual Audit.**

10 By no later than December 31st of each year after the operative date, the City's
11 independent auditors shall complete a report reviewing the collection, management and
12 expenditure of revenue from the tax levied by this Article.

12 Section 2. The People of the City of Albany find that all Recitals contained in this
13 Ordinance are true and correct and are incorporated herein by reference.

14 Section 3. Pursuant to California Constitution article XIII B, the appropriation limit for
15 the City of Albany is hereby increased by the aggregate sum authorized to be levied by
16 this general tax for fiscal year 2016-17 and each fiscal year thereafter.

16 Section 4. If any provision of this Ordinance or the application thereof to any person or
17 circumstance is held invalid, the remainder of the Ordinance and the application of such
18 provision to other persons or circumstances shall not be affected thereby.

19 Section 5. This Ordinance relates to the levying and collection of the City Sugar-
20 sweetened Beverage Product Distribution Tax and shall take effect immediately.

21 Ordinance No. 2016-02 was submitted to the People of the City of Albany at the
22 November 8, 2016 general municipal election. It was approved by the following vote of
23 the People:

YES:

1 NO:

2
3 Ordinance No. 2016-02 was thereby adopted by the voters at the November 8, 2012
4 election and took effect upon adoption of a resolution declaring the results of the election
5 at a regular meeting of the City Council held on _____, 2016 by the
6 following vote:

7 AYES:

8 NOES:

9 ABSENT:

10 I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance
11 duly and regularly adopted by the People of the City of Albany, California.

12 _____
13 Nicole Almaguer, City Clerk

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EXHIBIT “C”

**AN ORDINANCE ENACTING A SPECIAL PARCEL TAX TO FUND
REPAIRING AND UPGRADING OF PUBLIC SIDEWALKS AND REMOVING
OBSTRUCTIONS TO IMPROVE SAFETY AND ACCESSIBILITY**

To repair and upgrade aging and deteriorating public sidewalks and remove obstructions so that Albany sidewalks are safe and accessible by pedestrians, including people with disabilities that affect mobility, shall the City of Albany enact a special parcel tax (\$38.65 annually for most single-family parcels, other parcel types at specified rates) for 10 years providing approximately \$203,000 annually, with annual public reports and all proceeds to be spent in Albany?	YES _____
	NO _____

ORDINANCE NO. 2016-03

**AN ORDINANCE OF THE CITY OF ALBANY ENACTING A
SPECIAL PARCEL TAX TO FUND
REPAIRING AND UPGRADING PUBLIC SIDEWALKS AND REMOVING
OBSTRUCTIONS TO IMPROVE SAFETY AND ACCESSIBILITY**

WHEREAS, Albany residents have identified safe, passable sidewalks as an important aspect of quality of life and a high priority for investment by the City to ensure that pedestrians, including individuals with disabilities that affect mobility, are able to move safely through the City without using cars; and

WHEREAS, the City of Albany—like all California cities—has faced decreasing revenues to make essential infrastructure investments, resulting in deferred maintenance to many public facilities, including sidewalks; and

1 **WHEREAS**, without a dedicated source of additional funding to invest in deferred
2 maintenance to Albany’s public sidewalks, the City would be unable to address in a
3 timely way needed repairs and upgrades to its sidewalks or to remove obstructions to
4 improve safety and accessibility; and

5 **WHEREAS**, delaying maintenance and repairs to Albany’s sidewalks increases the
6 replacement costs in the long-run, and the City is committed to repairing our deteriorating
7 sidewalks before the costs become more expensive in the future; and

8 **WHEREAS**, with a dedicated source of funding to address needed sidewalk repairs
9 and upgrades, the City would be able to accelerate urgent work to improve the safety and
10 quality of Albany’s sidewalks, avoiding the steeper costs of deferring the work later.
11 Repairing and upgrading Albany’s sidewalks and removing mobility obstacles will
12 improve opportunities for residents and visitors to safely use alternative modes of transit
to get around the City to play, work, and shop; and

13 **WHEREAS**, this ordinance would create a guaranteed source of local funding for
14 Albany’s public sidewalks that must be spent locally for Albany residents; and

15
16 **WHEREAS**, the City of Albany acknowledges the benefits and value to the public
17 health and welfare of reducing vehicle miles traveled within the community by improving
18 pedestrian facilities; and

19 **WHEREAS**, in 2010, the City approved a Climate Action Plan, which included a
20 vision for an interconnected transportation system and land use pattern that shifts travel
21 from autos to walking, biking, and public transit; and
22
23

1 **WHEREAS**, Climate Action Plan Measure TL 1.3: call for implement of
2 improvements to encourage walking in the community by eliminating obstacles such as
3 deteriorated sidewalks; and

4 **WHEREAS**, in 2012, the City approved an Active Transportation Plan that includes
5 a detailed strategy to encourage pedestrian travel throughout the City. A key part of this
6 strategy is improving the safety and convenience of pedestrian facilities; and

7 **WHEREAS**, in April 2016, the City adopted an updated General Plan that includes a
8 variety of policies that will lead to improvements to sidewalks; and

9 **WHEREAS**, General Plan Policy T-2.10 calls for the City to establish reliable and
10 sustained funding sources to ensure maintenance of transportation facilities including
11 sidewalks; and

12 **WHEREAS**, General Plan Policy T-3.6: calls for priority walking corridors to be
13 identified and targeted for sidewalk improvements including maintenance; and

14 **WHEREAS**, in light of the foregoing benefits and considerations, the City wishes to
15 improve its commitment to pedestrian sidewalks; and

16 **WHEREAS**, the proposed special tax to be submitted to the voters is authorized by
17 Article XIII A of the California Constitution and Section 50075 of the California
18 Government. It will be approved if two-thirds of voters voting on the measure vote in
19 favor of it.

20
21 **NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO**
22 **ORDAIN AS FOLLOWS:**
23

1 Section 1. Article 4-14 is hereby added to Chapter IV of the Albany Municipal
2 Code, to read as follows:

3 4-14 SAFE AND ACCESSIBLE SIDEWALKS SPECIAL PARCEL TAX
4

5 4-14.1 TITLE. This Article shall be known as the “City of Albany Safe and
6 Accessible Sidewalks Special Parcel Tax.”

7 4-14.2 DEFINITIONS.
8

9 A. “City” means the City of Albany.

10 B. “Consumer Price Index” or “CPI” means Consumer Price Index for All Urban
11 Consumers (CPI-U) for San Francisco-Oakland-San Jose as published by the U.S.
12 Department of Labor, Bureau of Labor Statistics. If the Consumer Price Index is
13 discontinued or revised, such other government index or computation with which it is
14 replaced shall be used in order to obtain substantially the same result as would be
15 obtained if the Consumer Price Index had not been discontinued or revised.

16 C. “Condominium/Townhouse” means an undivided interest in common in a
17 portion of real property coupled with a separate interest in space called a unit. A
18 condominium or townhouse unit is a parcel.

19 D. “Multi-family residential parcel” means all parcels that are improved with more
20 than one residential unit.

21 E. “Nonresidential parcel” means all parcels that are improved with uses other than
22 residences.
23

1 F. "Owner" means the owner or owners of the real property located within the
2 City.

3 G. "Parcel" means any real property designated by an assessor's parcel map and
4 parcel number and carried on the secured property tax roll of the County of Alameda .

5 H. "Sidewalk maintenance and obstruction removal" means repairing and
6 upgrading public sidewalks and removing obstructions to improve safety and
7 accessibility, and includes but is not limited to the following:

- 8
- 9 1. Relocation of shallow utility lines located within area of sidewalk repair;
- 10 2. Grinding of stumps of removed trees;
- 11 3. Replacement of soil or mulch in landscape strips as necessary to avoid a
12 hazardous condition;
- 13 4. Repair of private driveways if necessary to maintain functionality of the
14 existing driveway;
- 15 5. Funding for expedited repairs in locations with occupants that have special
16 access needs (e.g., limited mobility, special events, etc.); and
- 17 6. Extending the length of a sidewalk to be repaired beyond the area of
18 immediate hazard in order that the repaired sidewalk can tie into an
19 existing sidewalk in relatively good condition.
- 20 7. Lighting repairs and improvements to enhance pedestrian safety.

21 I. "Single-family residential parcel" means all parcels which are improved with
22 only one residential unit.

23 J. "Special tax" means the special tax imposed by this Article.

4-14.3 TAX IMPOSED.

1
2 A. An annual special tax in the amounts set forth in Section 4-14.4 is hereby
3 imposed on every parcel of real property within the City.

4 B. The special tax constitutes a debt owed by the owner of each parcel of real
5 property to the City.

6 C. The special tax shall be levied and collected on each parcel of real property
7 within the City for which the owner receives a separate ad valorem property tax bill, at
8 the same time and manner, and subject to the same penalties and procedures as ad
9 valorem property taxes collected by the County of Alameda except as otherwise set forth
10 in this Article.

11 D. Real property otherwise wholly exempted from ad valorem tax by state law shall
12 also be exempted from any liability for the special tax.

13 E. The tax imposed by this Section shall be subject to the exemptions set forth in
14 this Section.

15 1. Single-family residential parcels and units on multi-family residential
16 parcels shall be exempt from the special tax if they are owned and occupied by a person
17 or persons whose combined family income, from all sources for the previous calendar
18 year, is at or below the income level qualifying as "very low-income" for a family of such
19 size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections
20 1437 *et seq.*), for such year. The application process will be in the form of self-
21 certification under penalty of perjury. Owners must apply for the exemption provided for
22 in this Section annually by application to the Finance Director in the manner and at the
23 time set forth by the Finance Director. Such applications shall be on forms provided by
the Finance Director and shall provide such information as the Finance Director may
require. If the Finance Director determines the need to audit an application, the Finance

1 Director may require additional information, including, but not limited to, federal income
2 tax returns and W-2 forms of owner-occupants eligible for this exemption.

3 2. Renters who reside in a rental unit within the City of Albany whose
4 combined family income, from all sources for the previous calendar year, is at or below
5 the income level qualifying as "very low-income" for a family of such size under Section
6 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 *et seq.*), for such
7 year may apply for a rebate of the special tax imposed by this Section that applies to the
8 rental unit in which they reside. Renters must apply for the exemption provided for in
9 this Section annually by application to the Finance Director in the manner and at the time
10 set forth by the Finance Director. Such applications shall be on forms provided by the
11 Finance Director and shall provide such information as the Finance Director may require.
12 If the Finance Director determines the need to audit an application, the Finance Director
13 may require additional information, including, but not limited to, federal income tax
14 returns and W-2 forms of renter occupants eligible for this exemption. Only one such
15 rebate shall be allowed annually to a rental unit.

13 4-14.4 TAX RATES.

14
15 A. The rates of the special tax for each parcel type shall be as set forth in the table
16 below.

17 Parcel Type	Size of Parcel (square feet)	Rate, per parcel or unit
18 Single-family Residential	0-2,500	\$27.60 per parcel
	19 2,501-5,000	\$38.65 per parcel
	20 Over 5,000	\$49.69 per parcel
21 Condominium/Townhouse	Not Applicable	22 \$15.46 per unit

1	Multi-family Residential	Not Applicable	\$15.46 per unit
2	Nonresidential	0-5,000	\$49.69 per parcel
3		5,001 – 10,000	\$71.88 per parcel
4		10,001 – 20,000	\$77.29 per parcel
5		20,001 AND ABOVE	\$88.50 per parcel
6			

7
8
9 B. The tax rate schedule in the table above shall apply beginning January 1, 2017
10 and ending December 31, 2017. To keep the tax on each property in constant first year
11 dollars for each year subsequent to 2017, the tax per year shall be adjusted as set forth in
12 this section to reflect any increase in the Consumer Price Index beyond the first fiscal
13 year the tax is levied. The tax rate per year on each parcel for each year subsequent to the
14 first year shall be an amount determined as follows:

$$\begin{array}{l}
 \text{Tax rate} = \text{Tax rate for} \times \text{Change in Consumer Price Index} \\
 \text{for the preceding} \quad \text{from April of the immediately} \\
 \text{current year} \quad \quad \quad \text{preceding year to April of the current} \\
 \text{year} \quad \quad \quad \quad \quad \quad \text{year or 1.02, whichever is less}
 \end{array}$$

17
18 In no event shall the special tax rate for any type of parcel for any year be less than the
19 amount established for the preceding year.

20
21 C. If a parcel consists of both residential and nonresidential real property, the tax
22 rate shall be the rate for nonresidential parcels.
23

1 D. The assessment roll data of the Alameda County Tax Assessor as of January 1
2 of each year and City records shall be used to determine the actual use of each parcel of
3 real property for purposes of determining the amount of the special tax for each parcel.

4 E. For parcels divided by Tax Rate Area lines, the amount of the special tax for the
5 portion of the parcel within Alameda County shall be calculated at the same rates as set
6 forth above. For properties wholly within Alameda County and divided by Tax Rate Area
7 lines into multiple parcels, the property shall be taxed as a single parcel at the rates set
8 forth above.

9 4-14.5 COLLECTION OF TAX. The special tax shall be collected in the same
10 manner as ordinary ad valorem taxes are collected and shall have the same lien priority
11 and be subject to the same penalties and the same procedure and sale in cases of
12 delinquency as provided for ad valorem taxes collected by the County of Alameda. The
13 City Council may provide for other alternative methods of collection of the special tax by
14 resolution.

15 4-14.6. COLLECTION OF UNPAID TAX. The amount of the special tax, any
16 penalty, and any interest imposed under the provisions of this Article shall be deemed a
17 debt to the City. Any person owing money under the provisions of this Article shall be
18 personally liable to an action brought in the name of the City, at its option, for the
19 recovery for such amount.

20 4-14.7 USE OF TAX REVENUE.

21 A. Revenue from the special tax, including penalties and interest thereon, shall be
22 used for sidewalk maintenance and obstruction removal, including but not limited to
23 repairing and upgrading public sidewalks and removing obstructions to improve safety
and accessibility, consistent with the Sidewalk Repair Policy adopted by the City Council.

1 The currently approved Sidewalk Repair Policy is attached as Exhibit A. The City
2 Council may amend the Sidewalk Repair Policy from time to time in its discretion, which
3 changes shall be incorporated into this Article. In no case, however, shall changes to
4 Sidewalk Repair Policy authorize the use of special tax revenue for projects unrelated to
5 repairing and upgrading public sidewalks and removing obstructions from public
6 sidewalks to improve safety and accessibility or for other purposes authorized in this
7 Article.

8 B. At the City Council's discretion, revenue from the special tax, including
9 penalties and interest thereon, may also be used to pay for the costs of holding an election
10 to seek voter approval of this Article, for the costs of administering the special tax, and
11 for the costs of defending the special tax and this Article, including attorneys' fees and
12 related costs.

13 4-14.8 ACCOUNTABILITY. In accordance with the requirements of
14 California Government Code Sections 50075.1 and 50075.3, the following accountability
15 measures, among others, shall apply to the special tax:

16 A. A separate, special account, referred to as the Safe and Passable Sidewalk
17 Special Tax Fund, shall be created, into which the proceeds of the special tax, including
18 penalties and interest earned on such proceeds, must be deposited.

19 B. The specific purposes of the special tax are for the funding of public sidewalk
20 maintenance and obstruction removal projects and for related election, administration,
21 and legal fees as set forth in Section 4-14.7. The proceeds of the special tax shall be
22 applied only to those specific purposes.
23

1 C. The Finance Director shall annually prepare and submit to the City Council a
2 report regarding the special tax funds collected and expended, as well as any other
3 information required by Government Code sections 50075.1 and 50075.3.

4 4-14.9 ADMINISTRATION OF TAX. The City Council may establish rules
5 and regulations that it determines are necessary and desirable for administration and
6 implementation of this Article.

7 4-14.10 AMENDMENTS. This Article may only be amended by a vote of the
8 people if the amendment would result in the special tax being imposed, extended, or
9 increased in a manner not authorized by this Article as originally approved by the voters,
10 or if the amendment would substantially alter the purpose of the special tax. The City
11 Council may enact other amendments, including but not limited to amendments necessary
12 to implement or administer the special tax.

13 4-14.10 EXPIRATION OF TAX. The authority to levy the special tax shall
14 remain in effect until December 31, 2026, and as of that date is repealed unless a later
15 ordinance is adopted and approved by the voters that either deletes or extends that date.
16 Special taxes imposed in 2026 shall remain due and owing until paid, even after the
17 authority to impose the special tax has expired.

18 Section 2. The People of the City of Albany find that all Recitals contained in this
19 Ordinance are true and correct and are incorporated herein by reference.

20 Section 3. Pursuant to California Constitution Article XIII B, the appropriation limit
21 for the City of Albany is hereby increased by the aggregate sum authorized to be levied by
22 this special tax for fiscal year 2016/17 and each year thereafter.
23

1 Section 4. This Ordinance is exempt from the California Environmental Quality
2 Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000
3 et seq., “CEQA Guidelines”). The special tax authorized by this Ordinance is a special
4 tax that can only be used to fund the projects, facilities, and services described in the
5 Ordinance but does not approve any of the described projects or services. As such, under
6 CEQA Guidelines section 15378(b)(4), the special tax is not a project within the meaning
7 of CEQA because it creates a government funding mechanism that does not involve any
8 commitment to any specific project or service that may result in a potentially significant
9 physical impact on the environment. If revenue from the tax were used for a purpose that
10 would have such effect, the City would undertake the required CEQA review for that
11 particular project or service. Therefore, pursuant to CEQA Guidelines Section 15060,
12 review of the Ordinance under CEQA is not required. Prior to commencement of any
13 project or service funded by the special tax , any necessary environmental review required
14 by CEQA shall be completed. The City shall perform CEQA analysis for the project prior
15 to approving the project or service, if the project or service requires analysis under
16 CEQA.

17 Section 5. If any provision of this Ordinance is held by any court or by any Federal
18 or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or
19 State law, rule or regulation now or hereafter in effect, or is held by such court or agency
20 to be modified in any way in order to conform to the requirements of any such law, rule
21 or regulation, such provision shall be considered a separate, distinct, and independent part
22 of this ordinance, and such holding shall not affect the validity and enforceability of all
23 other provisions hereof. In the event that such law, rule or regulation is subsequently
repealed, rescinded, amended or otherwise changed, so that the provision thereof which
had previously been held invalid or modified is no longer in conflict with such law, rule
or regulation, said provision shall thereupon return to full force and effect and shall
thereafter be binding. If any section, subsection, phrase, clause, sentence, or word in this
Ordinance shall for any reason be held invalid or unconstitutional by a court of competent

1 jurisdiction, it shall not nullify the remainder of this Ordinance but shall be confined to
2 the article, section, subsection, subdivision, clause, sentence or word so held invalid or
3 unconstitutional.

4 Section 6. This Ordinance shall be considered adopted on the date that the City
5 Council declares the results of the election at which it was voted upon and shall be
6 effective immediately because it is an ordinance relating to taxes.

7 Ordinance No. 2016-03 was submitted to the People of the City of Albany at the
8 November 8, 2016 general municipal election. It was approved by the following vote of
9 the People:

10 YES:

11
12 NO:

13 Ordinance No. 2016-03 was thereby adopted by the voters at the November 8, 2016
14 election and took effect upon adoption of a resolution declaring the results of the election
15 at a regular meeting of the City Council held on _____, 2016, by the following
16 vote:

17 AYES:

18 NOES:

19 ABSENT:

20 I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly
21 and regularly adopted by the People of the City of Albany, California.
22

23 _____
Nicole Almaguer, City Clerk

- 1 e) Funding for expedited repairs in locations with occupants that have special access
needs (e.g., limited mobility, special events, etc.); and
- 2 f) Extending the length of sidewalk to be repaired beyond the area of immediate
3 hazard in order that the repaired sidewalk can tie into an existing sidewalk in
relatively good condition.

4 **Public Notice for Repair Program**

5 A public notice will be mailed to all property owners adjacent to proposed areas of work
6 ten days before the Traffic and Safety Commission’s review of the proposed scope of
work. The notice will advise property owners that street trees may be subject to removal
7 and that property owners are required to cut back other vegetation in the area of work.
The notice will also advise owners that work may be underway for up to two weeks, and
8 solicit requests for information regarding occupants that may have special access needs
that will affect the timing of construction.

9 **Point of Permit Program:**

10 The City of Albany will require that specified construction projects above \$100,000
11 valuation will trigger a requirement that the property owner repair the sidewalk to City
specifications. The City will conduct a no-cost inspection upon application. The property
12 owner will be responsible for all repair costs of the scope of projected project would
otherwise trigger sidewalk repairs, such as sewer lateral upgrades, cross-sidewalk drains,
new driveway or curb-cuts, etc.

13 **Point of Sale Program:**

14 The City of Albany will require that specified real property transfers will trigger a
15 requirement that the property owner upgrade damaged sidewalk (the program will
function similar to the existing sewer lateral program). The City will conduct a no-cost
16 inspection upon application. If no repairs are necessary, a certificate of compliance will
be issued that discloses that the property owner has future responsibility for all
17 maintenance and repair.

18 **Streetscape Improvement Projects:**

19 For sidewalks that that are in locations with fully funded streetscape-related Capital
20 Improvement Projects, the need for repair will be evaluated on a case by case basis. The
requirement for property owner repair will be deferred or an interim safety and
accessibility solution may be acceptable.

21 **Refinements to Street Tree Program:**

22 The City will evaluate situations where street trees are causing structural damage to
sidewalks. A range of options will be considered including root pruning, enlarging tree
23 wells, realignment or ramping of sidewalks around or over roots, or alternative paving
materials that extend the functional life of the sidewalk. If a street tree that is causing

1 damage is known to cause uplift relative to other tree species, the tree shall be removed as
part of the repair project and replaced with a species not expected to damage sidewalks.
2 City staff shall have authority to remove any tree without public notice if during
construction, roots are found in locations that indicate that a new sidewalk will be
3 damaged in the relative near future and removal of the root is determined by the City
Arborist to substantially weaken the health of the tree.

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1 **EXHIBIT "D"**

2 **VARIOUS MODIFICATIONS TO THE ALBANY CITY CHARTER**

3 Shall the Albany City Charter be amended to authorize the City Council to 4 establish procedures for filling a vacancy in an elective office by 5 appointment, permit quarterly meetings of the Police and Fire Pension 6 Board and change eligibility requirements for Board members, authorize 7 the City Council to set fees for copies of official records, make the 8 language within the Charter gender neutral, and make numerous other 9 administrative, technical and clarifying changes?	YES _____
	NO _____

8 The people of the City of Albany modify the City Charter to read as follows:

9 ~~SECTION 1.04. GENDER.~~

10 ~~Whenever used in this Charter, the masculine gender includes the feminine and neuter.~~

11 ~~(Added, ratified, April 13, 1976)~~

12
13 ~~SECTION 1.05~~1.04. MUNICIPAL AFFAIRS.

14 Without limiting in any manner the foregoing powers expressed in Section
15 1.03, and any authority which is enjoyed by a Charter city in the State of California, each
16 of the powers, rights, and responsibilities described in this Charter is hereby declared to
17 be a municipal affair, the performance of which is unique to the benefit and welfare of the
18 citizens of the City of Albany. The electorate of the City of Albany is sincerely
19 committed to the belief that local government has the closest affinity to the people
20 governed, and firm in the conviction that the economic and physical independence of our
21 local government will promote the health, safety, and welfare of all the citizens of this
22 City of Albany. (Added, ratified, November 8, 1994)

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SECTION ~~1.06~~1.05. PUBLIC FINANCING.

The City of Albany shall have the power to establish standards, procedures, rules, or regulations related to any public financing, including but not limited to the formation of assessment districts, benefit districts, maintenance and sewer agreements. (Added, ratified, November 8, 1994)

SECTION ~~1.07~~1.06. ENTERPRISES.

The City of Albany shall have the power to engage in any enterprise deemed necessary to produce revenues for the general fund or any other fund established by the City Council to promote a public purpose. (Added, ratified, November 8, 1994)

SECTION ~~1.08~~1.07. REVENUE REDUCTIONS PROHIBITED.

Any revenues raised and collected by the City of Albany shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government. (Added, ratified, November 8, 1994)

SECTION ~~1.09~~1.08. MANDATES LIMITED.

No person, whether elected or appointed, acting on behalf of the City of Albany, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority and such functions are approved by the appropriate administrative or legislative authorization with the City of Albany. (Added, ratified, November 8, 1994)

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SECTION ~~1.101.09~~. CONSTRUCTION AND INTERPRETATION.

The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of Albany of its powers to govern with respect to any matter which is a municipal affair. (Added, ratified, November 8, 1994)

SECTION 2.07. MAYOR.

The Mayor shall be the executive head of the City. In case of riot, insurrection or extraordinary emergency, ~~he~~ the Mayor shall assume general control of the City government and all of its branches, and be responsible for the suppression of disorders and the restoration of normal conditions. In the name and on behalf of the City, ~~he~~ the Mayor shall sign all contracts, deeds, bonds and other legal instruments in which the City is a party. ~~He~~ The Mayor shall represent the City in all ceremonial functions of a social or patriotic character where it is desirable or appropriate to have the City represented officially thereat.

SECTION 3.04. OATH OF OFFICE.

Every officer shall take the constitutional oath of office and subscribe thereto before entering upon the performance of ~~his~~ their official duties.

SECTION 3.05. ~~ADMINISTRATIVE OFFICER~~ CITY MANAGER.

The ~~Administrative Officer~~ City Manager shall be the administrative head of the government of the City. As such, the ~~Administrative Officer~~ City Manager shall be

1 responsible to the Council for the efficient implementation of its policy and effective
2 administration of all the affairs of the City government which the office controls. Any
3 action, determination or omission of the ~~Administrative Officer~~ City Manager or staff
4 shall be subject to review by the Council, but no individual Councilmember or the Mayor
5 shall overrule, change or modify any such action, determination or omission except by
6 affirmative vote of at least three (3) members of said Council at a duly constituted
7 session.

8 The ~~Administrative Officer~~ City Manager shall advise and make
9 recommendations to the Council concerning any conditions or governmental situations
10 which need Council direction or policy determination.

11 The ~~Administrative Officer~~ City Manager will insure that the Council as a whole
12 or as individuals are permitted timely and complete freedom of access to requested
13 information.

14 The ~~Administrative Officer~~ City Manager shall be chosen on the basis of
15 executive and administrative qualifications, as defined by ordinance. (Added, ratified,
16 April 21, 1981)

17
18 SECTION 3.08. CITY TREASURER.

19 There shall be a City Treasurer. It shall be ~~his~~ the City Treasurer's duty to
20 receive and safely keep all monies and securities belonging to the City coming into ~~his~~
21 their hands. ~~He~~ The City Treasurer shall pay out the same only in the manner prescribed
22 by ordinance of the Council. (Amended, ratified August 7, 1952)

1 SECTION 3.10. CITY ATTORNEY.

2 There shall be a City Attorney. The qualifications for the City Attorney shall be
3 established by the City Council, which qualifications shall be established within ninety
4 (90) days from ratification. The City Attorney shall be the legal advisor of the Council,
5 and all other City officials on matters appertaining to their official duties. ~~He~~ The City
6 Attorney shall draft all ordinances, resolutions, contracts or other legal documents or
7 proceedings required by the Council, or other officials, except as may be otherwise
8 provided, and shall perform such other legal services from time to time as the Council
9 may require. ~~He~~ The City Attorney shall attend all meetings of the Council unless
10 excused therefrom by the Council or the Mayor. (Amended, ratified, April 21, 1981)

11
12 SECTION 3.13. CHIEF OF POLICE.

13 There shall be a Chief of Police. The qualifications for the Chief of Police shall
14 be established, by ordinance, by the City Council, which qualifications shall be
15 established within ninety (90) days from ratification. ~~He~~ The Chief of Police shall be the
16 head of the Police Department of the City, and shall have all the powers that are now or
17 may hereafter be conferred upon sheriffs and other peace officers by the laws of the State.
18 It shall be ~~his~~ the duty of the Police Chief ~~duty~~ to preserve the public peace, and to
19 suppress riots, tumults and disturbances. ~~His~~ The Police Chief's orders shall be promptly
20 executed by ~~the police officials, or watchmen of the City,~~ and every citizen shall lend ~~him~~
21 the Chief of Police aid when requested for the arrest of offenders, the maintenance of
22 public order, or the protection of life and property.

1 ~~He~~ The Chief of Police shall execute and return all process issued to ~~him~~ by legal
2 authority. ~~He~~ The Chief of Police shall perform the duties of a regular ~~patrolman~~ police
3 officer and have authority, and it is hereby made ~~his~~ the Police Chief's duty, to arrest
4 persons violating any law of the State or ordinance of this City. Those arrested for
5 violating City ordinances may, before or after trial, be confined in the County Jail of
6 Alameda County or in the City Prison of the City of Albany. ~~He~~ The Chief of Police shall
7 have such other powers and duties appertaining to ~~his~~ the office as may be prescribed by
8 the Council or rules of the Police Department. (Amended, ratified, January 26, 1935; July
9 21, 1972)

10
11 SECTION 3.14. CHIEF OF THE FIRE DEPARTMENT.

12 There shall be a Fire Chief appointed by the Council. ~~He~~ The Fire Chief shall
13 be head of the Fire Department of the City, and shall have charge of and supervision over
14 all matters relating to the prevention and extinction of fires, and of all measures necessary
15 to guard and protect all property impaired thereby. (Amended, ratified, January 26, 1935)

16
17 SECTION 3.19. OFFICIAL RECORDS.

18 All books and records of every office and department shall be open to the
19 inspection of any citizen during business hours, subject to the proper rules and regulations
20 for the efficient conduct of the business of such department or office, provided, the
21 records of the police department shall not be subject to such inspection except by
22 permission of the proper police authorities.
23

1 Copies or extracts, duly certified from said books and records open for
2 inspection, shall be given by the officer having the same in custody to any person
3 demanding the same and paying or tendering ~~ten cents (\$.10) per page, except in~~
4 ~~instances where the Council prescribes a lower charge, for such copies or extracts, and~~
5 ~~the additional sum of twenty five cents (\$.25) for certifying~~ fees for copies or
6 certifications as established by Resolution of the City Council, in amounts consistent with
7 the requirements of State law.

8 All officers and Boards shall deliver to their successors all papers, books,
9 documents, records, archives and other properties pertaining to their respective offices or
10 departments, in this possession or under their control. (Amended, April 19, 1977)

11
12 SECTION 5.02. VACANCIES.

13 A vacancy in any elective office, other than that of an elective member of the
14 Board of Education, from whatever cause arising, shall be filled by appointment by the
15 Council; such appointee to hold office until the next feasible general municipal election,
16 when a successor shall be chosen by the electors for the unexpired term; provided, that if
17 the Council fails to agree or for any other reason does not fill such vacancy within ~~thirty~~
18 ~~(30)~~ sixty (60) days after the same occurs, then such vacancy shall be filled by the Mayor;
19 provided, however, that if for any reason the seats of a majority of the Council shall
20 become vacant, then the City Clerk shall call a special election at once to fill the
21 vacancies for the unexpired terms, and the same shall be conducted substantially in the
22 manner provided for general municipal elections.
23

1 If any officer of the City shall remove from the City or absent ~~himself~~ themselves
2 therefrom for more than sixty days consecutively without the permission of the Council,
3 or shall fail to qualify, or shall resign, ~~his~~ their office shall thereupon become vacant.

4 The Council shall by ordinance establish procedures for filling a vacancy by
5 appointment.

6 SECTION 6.01. BOARD OF EDUCATION.

7
8 (f) Any vacancy of the Board shall be filled by the vote of a majority of the Board until
9 the next general city election for Municipal Officers, when a member shall be elected to
10 fill the unexpired term.

11
12 In the event that three (3) or more such vacancies exist at one time, sufficient vacancies
13 shall be filled by the appointment by the County Superintendent of Schools to make a
14 majority of such Board to act and fill the remaining vacancies. Each such appointed
15 member shall hold office until the next general City Election for Municipal Officers,
16 when a member shall be elected to fill the unexpired term.

17
18 If any member of the Board of Education shall remove from the City or absent ~~himself~~
19 themselves therefrom for more than sixty (60) days consecutively without permission of
20 the Board of Education, or shall fail to qualify, ~~his~~ their office shall thereupon become
21 vacant. (Amended, ratified, August 7, 1952; February 18, 1969; July 2, 1970; April 13,
22 1976)

1 SECTION 9.01. PENSIONS FOR MEMBERS OF POLICE AND FIRE
DEPARTMENTS.

2 (a) TRUSTEES WHO SHALL CONSTITUTE BOARD OF TRUSTEES OF
3 POLICE AND FIRE RELIEF OR PENSION FUND. The Mayor of the City of Albany,
4 the City Treasurer, the City Clerk, and one (1) Pension Plan member, ~~active or retired,~~
5 each from the Police and Fire Departments, appointed by the Mayor upon the
6 recommendation of the Pension Plan members from their respective service, hereby
7 constitute the Board of Trustees of the Police and Fire Relief or Pension Fund of the
8 Police and Fire Departments of the City of Albany, County of Alameda, State of
9 California, which Board shall be known as the "Board of Police and Fire Pension Fund
10 Commissioners."

11 In the event that the regular members of the Board are unable to attend a meeting,
12 alternates shall be permitted to attend and to vote on matters as if they were regular
13 members. The City Council shall appoint another member of the Council to serve as an
14 alternate for the Mayor. The City Council shall appoint alternates for the City Clerk or the
15 City Treasurer, after recommendations from the City Clerk and the City Treasurer are
16 submitted to the Council. Department heads or deputies from departments other than the
17 Police or Fire Department may be appointed. All alternates may serve for a period of up
18 to one (1) year, unless again appointed.

19 In the event that Pension Plan Members are unable to sit on the Board for either Police
20 or Fire, the Pension Plan Members shall recommend active Members of the Classified
21 Service of the respective Department to serve as replacements upon appointment by the
22 City Council. Classified Service representatives may have three active employee
23 alternates to enable attendance at the meetings. ~~Alternates for the Police and Fire~~

1 ~~Departments regular members are to be appointed by the Mayor upon recommendation of~~
2 ~~the Pension Plan members.~~

3 ~~If no Pension Plan members are able to sit on the Board as a regular member or~~
4 ~~alternate, a member from the active Civil Service Employees of the Police and Fire~~
5 ~~Departments shall be appointed by the Mayor upon the recommendation of the Pension~~
6 ~~Plan members to sit on the Board as that respective department's representative. (Ratified,~~
7 ~~January 7, 1955; Amended, ratified, April 10, 1984; Amended, ratified, April 14, 1992;~~
8 ~~Amended, ratified, June 2, 1998)~~

9 (c) PENSIONS, TO WHOM AND AMOUNTS. Whenever any person at the taking
10 effect of this act, or thereafter, shall have been duly elected, appointed or selected, and
11 sworn, and have served for thirty (30) years, or more, in the aggregate as a member, in
12 any capacity or any rank, whatever, of the regularly constituted Fire or Police Department
13 of the said City of Albany, County of Alameda, State of California, said Board shall,
14 upon the application of such person, order and direct that such person be retired from
15 further service in such Police or Fire Department, shall cease, and such person so retired
16 shall thereafter, during ~~his~~ their lifetime, be paid from such fund a yearly pension equal to
17 two-thirds (2/3) of the amount of the average yearly salary attached to the rank which ~~he~~
18 they may have held in said Police or Fire Department for the period of three (3) years
19 preceding the date of such retirement; provided, however, that any person, after becoming
20 fifty (50) years of age, who comes within the purview of this Section, and who has served
21 for the consecutive number of years set forth below, shall upon ~~his~~ their application be
22 retired from further service upon a yearly pension equal to the percentage of the amount

1 of said average yearly salary, which said percentage is set forth opposite the years served,
2 as follows:

3
4 Years of Service Percentage of Amount of Said
5 Average Yearly Salary

6

7 25	50.00
8 26	53.33
9 27	56.67
10 28	60.00
11 29	63.33

12

13 Notwithstanding any provision of this Chapter, the retirement allowance payable to any
14 person who becomes a member on or after January 1, 1990, shall in no event exceed the
15 limitation imposed by Section 415(b) of the Internal Revenue Code of 1986 as applied
16 (other than paragraph (2)(G) without regard to paragraph (2)(F) and as adjusted by
17 Section 45-15(d)(1)(A) and (B). Section 415(b), 415(D)(1)(A) and (B) are hereby
18 incorporated by reference. It is the intent of this paragraph to further provide that any
19 member who joined this plan prior to January 1, 1990, be exempted from any limitations
20 which have been enacted in the Internal Revenue Code as part of the Tax Reform Act of
21 1986 and the Technical and Miscellaneous Revenue Act of 1988. (Amended, ratified,
22 February 4, 1971; April 10, 1990)

23

1 (d) PHYSICAL DISABILITY: RESTORATION. Whenever any person while serving
2 as a member of the Fire or Police Department of the City of Albany shall become
3 physically disabled by reason of any bodily injury received in the immediate or direct
4 performance or discharge of ~~his~~ their duty as such member of the Police or Fire
5 Department, said Board may, if it deems it to be for the good of said Police or Fire
6 Department, retire such person from said department, and order and direct that ~~he~~ they
7 shall be paid from said fund, during ~~his~~ their lifetime, a yearly pension equal to one-half
8 (1/2) of the amount of salary attached to the rank which ~~he~~ they may have held on such
9 Police or Fire Department at the date of such retirement; provided, that when such
10 disability shall cease, such pension shall cease, and such person shall be restored to active
11 service at the same rank at which ~~he was~~ they retired. Upon the death of such person then
12 on disability pension, the ~~widow~~ surviving spouse and/or children of the deceased
13 member of the Police or Fire Department shall receive the same benefits from the Fire or
14 Police Relief or Pension Fund as provided in paragraph (q) of Section 9.01 of the Charter
15 of the City of Albany. (Ratified, March 7, 1961)

16 (dd) NON-SERVICE DISABILITY. Whenever any person, at the taking effect of this
17 section, while serving as a member of the Fire or Police Department of the City of
18 Albany, prior to eligibility for service retirement, shall become disabled by reasons not
19 connected with the immediate or direct performance or discharge of ~~his~~ their duty as such
20 member of the Fire or Police Department, if said disability renders ~~him~~ them incapable of
21 performing ~~his~~ their duties in ~~his~~ their respective Department, said Board may, if it deems
22 it to be for the good of said Fire or Police Department, retire such person from said
23 Department and order and direct that ~~he~~ they shall be paid from said Fund, during ~~his~~

1 their lifetime, a yearly allowance equal to one and one-half percent (1.5%) of said
2 member's final compensation multiplied by ~~his~~ their years of service, but in no event shall
3 said allowance exceed one-third (1/3) of ~~his~~ their final compensation; provided, further, if
4 the member has completed at least ten (10) years of service at the time of said disability,
5 possible future service up to age sixty (60) may be used, but in no event shall said
6 allowance exceed one-third (1/3) of final compensation; provided that when such
7 disability shall cease, such allowance shall cease, and such person shall be restored to
8 active service at the same rank at which ~~he was~~ they retired. Upon the death of such
9 person then receiving non-service disability allowance, the ~~widow~~ surviving spouse
10 and/or children of the deceased member of the Fire or Police Department shall receive the
11 same benefits from the Fire and Police Relief or Pension Fund as provided in paragraph
12 (q) of Section 9.01 of the Charter of the City of Albany.

13 Final compensation as used in this subsection is defined as 'the highest average annual
14 compensation, excluding overtime, earnable by said member during any period of three
15 (3) consecutive years during ~~his~~ their membership in the system'. (Ratified, February 4,
16 1971)

17 (f) PENSION TO FAMILY. Whenever any member of the Fire or Police
18 Departments of such City of Albany, at the taking effect of this act, or thereafter, shall
19 lose ~~his~~ their life while in the performance of ~~his~~ their duty, leaving a ~~widow~~ surviving
20 spouse, or child or children under the age of eighteen (18) years, then upon satisfactory
21 proof of such facts made to it, such Board shall order and direct that yearly pension, equal
22 to one-half (1/2) of the salary attached to the rank which such member held in said Fire or
23 Police Department at the time of ~~his~~ their death, shall be paid to such ~~widow~~ surviving

1 spouse during her their life, or if no ~~widow~~ surviving spouse, then to child or children,
2 until they shall be eighteen (18) years of age; provided, if such ~~widow~~ surviving spouse or
3 child or children shall marry, then such person so marrying shall thereafter receive no
4 further pension from such fund. (Amended, ratified, February 4, 1971)

5 (g) STIPULATED SUM TO FAMILY. Whenever any person while serving as a
6 member of the Police or Fire Departments of the City of Albany shall die from natural
7 causes, unrelated to ~~his~~ their service as a member of said Police or Fire Departments, then
8 ~~his widow~~ their surviving spouse or children, or if there be no ~~widow~~ surviving spouse or
9 children, then ~~his~~ their parents or parent, or if there be no ~~widow~~ surviving spouse or
10 children, or parents or parent, then the brothers and sisters of said member, or the
11 survivor of them, shall receive a sum equal to the total amount of the payments made by
12 said person into said fund together with interest on said sums at the rate of three and one-
13 half percent (3 1/2%) per annum computed from the date said sums were paid into said
14 fund by said member, within ninety (90) days from the date of the death of said member.

15 (Amended, ratified, January 7, 1955; February 4, 1971)

16
17 (i) FORFEITURE OF PENSION. Refund of contributions. When any person who
18 shall have received any benefit from said fund shall fail to report for examination for duty
19 as required by said Board under this act, in respect to said examination or duty, then such
20 Board shall order that such pension allowance as may have been granted to such person
21 shall immediately cease, and such person shall receive no further pension, allowance or
22 benefit under this act. Excepting, nevertheless, that any member of the Police or Fire
23 Department, who, for any reason whatever ceases to be a member of the Police or Fire

1 Department, and who at the time of said cessation is not otherwise entitled to financial
2 benefits under this law, shall be entitled to, and shall be paid within ninety (90) days after
3 such cessation of being a member, all sums of money retained from and out of his or her
4 salary, as provided by subsection (1) of this law, together with three and one-half percent
5 ($3\frac{1}{2}$ %) per annum interest on such sums, computed from the first day of July of each
6 year. Provided further, that any member of the Police or Fire Department who shall have
7 ceased to be a member and shall have been paid any sum or sums of money as in this
8 section provided, shall be reinstated and again become a member of the Police or Fire
9 Department, said such sum or sums of money as shall have been so paid, together with
10 interest at the rate of three and one-half percent ($3\frac{1}{2}$ %) per annum from the date of said
11 payment as aforesaid shall be first deducted from any and all benefits thereafter ~~by him~~
12 received by them under this law. (Amended, ratified, March 7, 1961; April 13, 1976)

13
14 (j) MEETINGS AND DUTIES OF BOARD. The Board herein provided for shall
15 hold ~~monthly~~ quarterly meetings ~~on one of the last five business days of each month for~~
16 ~~which pension payments have accrued~~ as set by Resolution of the Board; and upon the
17 call of its Chairperson, the specific day of the week to be set by Board resolution at its
18 annual reorganization meeting. Additional meetings may be called by its Chairperson. ~~It~~
19 ~~shall issue warrants signed by two voting members present at the meeting when the~~
20 ~~warrants were approved to persons entitled thereto of the amount of money ordered paid~~
21 ~~to such person from such fund by said Board, which warrant shall state for what purpose~~
22 ~~said payment is to be made~~; On the months Board meetings are held, said warrants shall
23 be signed by two voting members present at the meetings when the warrants are

1 approved. On months where the Board does not meet, warrants shall be signed by two
2 members who would normally be voting members at the meeting the warrants were to be
3 paid. Said Board shall approve and ratify said pension payments at its quarterly meeting;
4 it shall keep a record of all its proceedings, which records shall be public records, ~~;-~~ The
5 Chairperson ~~it~~ shall, ~~at each monthly meeting,~~ send to the Auditor of the City of Albany a
6 list of all persons entitled to payments of the funds herein provided for, stating the
7 amount of such payments and for what granted, which list shall be ~~certified~~ certified to
8 and signed by the ~~President~~ Chairperson and Secretary of such Board, and attested under
9 oath. The Auditor shall thereupon enter a copy of said list upon a book to be kept for that
10 purpose, which shall be known as "The Police and Fire Relief Pension Fund Book."
11 Payment of the amount named therein shall then be made out of the Police and Fire Relief
12 and Pension Fund, and need not be approved by the Council prior to payment. However,
13 the said list shall be entered by the Auditor and transmitted to the City Council for
14 approval and ratification ~~at the next meeting after the delivery of the pension checks at~~
15 the next City Council meeting following the Board's quarterly meeting. A majority of all
16 of the members of said Board herein provided for shall constitute a quorum and have
17 power to transact any and all business. (Amended, ratified, January 7, 1955; May 29,
18 1968; April 10, 1990)

19
20 (l) MONEYS TO BE PAID INTO POLICE AND FIRE RELIEF AND PENSION
21 FUND. The City Council of the City of Albany shall, for the purpose of said Police and
22 Fire Relief and Pension Fund hereinbefore mentioned, direct ~~the payment into said fund~~
23 as follows:

1 ~~"A sum equal to nine percent (9%) out of and from the total amount of the monthly~~
2 ~~payroll of all of the members of both of said Departments for the current month, shall be~~
3 ~~retained by the City Treasurer, and shall be paid into said Police and Fire Relief and~~
4 ~~Pension Fund by the City; in addition thereto, the City shall contribute an equal amount to~~
5 ~~said fund monthly. The City may make such other~~ contributions to the said fund when
6 actuarial studies reveal the necessity thereof. Said monies ~~shall~~ may, in the discretion of
7 the said Police and Fire Pension Trustees, be invested at not less than three and one-half
8 percent (3¹/₂%) per annum, if such rate of interest is obtainable. (Amended, ratified,
9 January 13, 1949; June 15, 1966; August 16, 1967; February 4, 1971)

10
11 (q) SERVICE RETIREMENT PENSIONER'S BENEFITS TO ~~WIDOW~~
12 SURVIVING SPOUSE AND CHILDREN. Whenever any member of the Police or Fire
13 Department of the City of Albany, shall, after receiving the service retirement pension
14 that has been ordered and directed by the Board of Police and Fire Pension Fund
15 Commissioners, die from any cause whatsoever, leaving a ~~widow or widower~~ surviving
16 spouse who was married to the pensioner at least five (5) years before ~~his~~ their retirement,
17 or unmarried children under eighteen (18) years of age, then said survivor shall be
18 entitled to and upon satisfactory proof, the Board shall order and direct that a pension
19 equal to one-half (1/2) of the amount paid to the pensioner each month before ~~his~~ their
20 death shall be paid to the ~~widow or widower~~ surviving spouse each month during ~~his or~~
21 ~~her~~ their life, or if there should be no ~~widow or widower~~ surviving spouse, then to ~~his or~~
22 ~~her~~ their unmarried children until they are eighteen (18) years of age, provided, that if
23

1 such ~~widow or widower~~ surviving spouse or child or children shall marry, then such
2 persons so marrying shall thereafter receive no further pension from such funds.

3 Upon the death of a service retired pensioner, the ~~widow or widower~~ surviving spouse,
4 if any, shall be entitled to no part of ~~his or her~~ their service retired pension unless ~~he or~~
5 ~~she was~~ they were married to the pensioner before ~~his~~ the pensioner's service retirement.

6 Upon the death of any service retired pensioner, the ~~widow or widower~~ surviving
7 spouse, if any, who was married less than five (5) years prior to the pensioner's retirement
8 shall then be entitled to and upon satisfactory proof, the Board shall order and direct that
9 a pension equal to one-sixth (1/6) of the amount paid each month to the pensioner before
10 ~~his or her~~ their death, shall be paid to the ~~widow or widower~~ surviving spouse each month
11 during ~~his or her~~ their life; provided that if such ~~widow or widower~~ surviving spouse shall
12 marry, then such person so marrying shall receive no further pension from such fund.

13 The term "~~widow or widower~~ surviving spouse" as used in this Section shall not mean
14 or include the ~~wife or husband~~ spouse of any member who is without cause living
15 separate or apart from said pensioner at the time of the death of said pensioner, or who is
16 divorced from said pensioner.

17 In the event of refusal by a ~~widow or widower~~ surviving spouse receiving a pension
18 hereunder to reasonably provide for a dependent child or children of a deceased or retired
19 member of the Fire or Police Department, the Pension Board, upon satisfactory proof
20 thereof, shall have power to divide the pension as it may deem proper. (Ratified, January
21 10, 1957)

1 **EXHIBIT “E”**

2 **PROPOSED MODIFICATIONS TO SECTION 6.02 OF THE ALBANY CITY**
3 **CHARTER**

4 Shall the Albany City Charter be amended to remove term limits for the 5 Albany Unified School District School Board of Education Members, this 6 provision to take effect on January 1, 2023?	7 YES _____
	8 NO _____

9 The people of the City of Albany modify Section 6.02 of the City Charter to read
10 as follows:

11 **SECTION 6.02. LIMITATION OF TERMS**

12 Any person who shall have been elected to two (2) successive terms as a member
13 of the Board of Education shall be ineligible to serve again in that office until an
14 intervening period of two (2) years has elapsed. Election to an unexpired term pursuant to
15 Section 6.01 (f) of this Charter shall constitute election to a term as a member of the
16 Board. This section shall not operate to create a vacancy or vacancies on the Board as
17 constituted on the effective date of this section. This Section shall be of no further force
18 or effect as of January 1, 2023. (Added, ratified, April 15, 1975)

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EXHIBIT “F”

PROPOSED MODIFICATIONS TO SECTIONS 8.01 – 8.07 OF THE ALBANY CITY CHARTER

Shall the Albany City Charter be amended to dissolve the City’s Civil Service Board and to add a definition for the term “classified service”?	YES _____
	NO _____

The people of the City of Albany modify Sections 8.01 – 8.07 of the City Charter to read as follows:

SECTION 8.01. MUNICIPAL CIVIL SERVICE.

(a) There shall be a Municipal Civil Service, hereinafter referred to as the Classified Service. Membership in the Classified Service is defined in Section 8.053(a) of this Chapter. ~~There shall be a Civil Service Board, hereinafter referred to as the Board, to administer the Classified Service.~~

(b) The City Council is authorized to pass ordinances pertaining to the Civil Service System. ~~Ordinance provisions affecting the Classified Service shall require a four-fifths (4/5) vote of the City Council, and shall include not less than one (1) public hearing on the subject matter of the ordinance.~~

(c) ~~There shall be a Board consisting of five (5) members who serve without compensation. Each member of the City Council shall have the right to make one (1) appointment.~~

1 ~~—(d) No officer, employee, or member of another Board, Commission, or City Council~~
2 ~~shall be eligible for appointment to the Civil Service Board. (Amended, ratified, January~~
3 ~~26, 1935; February 1, 1945; April 15, 1975; November 2, 1982; June 2, 1998)~~

4
5 ~~SECTION 8.02. ORGANIZATION.~~

6 ~~—(a) The Civil Service Board shall choose one (1) member to serve as Chairperson.~~

7 ~~—(b) The City Council shall provide a person to serve as a secretary and administrative~~
8 ~~assistant to the Civil Service Board.~~

9 ~~—(c) Procedures for organization of the Board, any employees thereof, and duties not~~
10 ~~hereinafter specified, may be established by resolution. (Added, ratified, November 2,~~
11 ~~1982)~~

12
13 ~~SECTION 8.03. POWERS AND DUTIES.~~

14 ~~—(a) The Board shall formulate rules and regulations governing the selection,~~
15 ~~promotion, reinstatement, re-employment, transfer, of all persons who are in the~~
16 ~~Classified Service in accordance with any ordinance adopted and/or amended by the City~~
17 ~~Council.~~

18 ~~—(b) The Civil Service Board shall hold written, oral, and any such other examinations~~
19 ~~as may be appropriate for applicants for employment, promotion, re-employment,~~
20 ~~reinstatement, or transfer, and shall maintain records and certified lists as appropriate. If~~
21 ~~any open examination is held, the Board shall give reasonable preference to existing City~~
22 ~~employees within the same department, provisions of Section 8.04(a) of this Chapter~~
23 ~~notwithstanding.~~

1 ~~—(c) There shall be a Hearing Board. The Hearing Board shall hear disputes related to~~
2 ~~members of the Classified Service, the exact nature and severity of such disputes to be~~
3 ~~defined by ordinance. Members of the Civil Service Board have the authority to serve as~~
4 ~~members of the Hearing Board. (Added, ratified, November 2, 1982)~~

5
6 SECTION ~~8.04~~ 8.02. DISCRIMINATION PROHIBITED.

7 (a) All appointments, promotions, or other personnel decisions affecting the
8 status of an employee shall be based upon selection of the best qualified individual.

9 (b) No person in the Classified Service, or seeking admission thereto, shall be
10 appointed, promoted, demoted, or discharged, or in any way favored or discriminated
11 against because of political opinions, or affiliations or because of religious belief. (Added,
12 ratified November 2, 1982)

13
14 SECTION ~~8.05~~ 8.03. EFFECT ON EMPLOYEES IN POLICE AND FIRE
15 DEPARTMENTS AND OTHER DEPARTMENTS.

16 (a) Classified Service shall be defined as all sworn public safety personnel
17 except for the Chief of Police and Fire Chief. All members, who are part of the Classified
18 Service prior to the adoption of Chapter VIII, Sections 8.01 et seq., shall be considered as
19 members with their present status of the Classified Service under the system as now
20 adopted. Employees, not part of the previous Classified Service, shall have no change in
21 status until rules, regulations, ordinances or procedures have been passed which may
22 include additional employees. All future employees hired to positions which are part of
23 the Classified Service at this time shall so remain part of the Classified Service.

1 (b) The City Council is empowered to define other positions to be included in
2 the Civil Service System and to expand the system to include additional members by
3 ordinance. (Added, ratified November 2, 1982)

4
5 ~~SECTION 8.06. The cost of conducting examinations and other duties of the Civil~~
6 ~~Service Board shall be charged against the general fund of the City. These costs shall be~~
7 ~~certified by the Civil Service Board and, when so certified, shall be paid by the City~~
8 ~~Council in the same manner as other charges against the City. (Added, ratified November~~
9 ~~2, 1982)~~

10
11 SECTION ~~8.07~~ 8.04. SEVERABILITY.

12 If any section, subsection, clause, or phrase of this law is for any reason held to be
13 unconstitutional, such decision shall not affect the validity of the remaining sections,
14 subsections, clauses or phrases of this law. (Added, ratified November 2, 1982)