RESOLUTION NO. 2016-62

A RESOLUTION OF THE ALBANY CITY COUNCIL CALLING AND GIVING NOTICE OF A GENERAL ELECTION TO BE HELD NOVEMBER 8, 2016 AND REQUESTING THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY TO CONSOLIDATE SAID ELECTION WITH THE STATEWIDE GENERAL ELECTION; AUTHORIZING THE CITY CLERK OR HER DUTY AUTHORIZED OFFICERS TO CARRY OUT ALL THE NECESSARY PROCEDURES FOR SAID ELECTION FOR THE PURPOSE OF ELECTING THREE PERSONS TO FILL THE OFFICE OF CITY COUNCIL MEMBER AND TWO PERSONS TO FILL THE OFFICE OF MEMBER OF THE BOARD OF EDUCATION, AND ONE PERSON TO FILL THE OFFICE OF CITY TREASURER, AND FOR SUBMITTING TO THE VOTERS AN AMENDMENT TO SECTION 20.28.040 OF THE ALBANY MUNICIPAL CODE REGARDING RESIDENTIAL PARKING REQUIREMENTS; AN ORDINANCE ENACTING A GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS; AN ORDINANCE ENACTING A SPECIAL PARCEL TAX TO FUND REPAIRING AND UPGRADING OF PUBLIC SIDEWALKS AND REMOVING OBSTRUCTIONS TO IMPROVE SAFETY AND ACCESSIBILITY; AND AMENDMENTS TO THE ALBANY CITY CHARTER SECTIONS 1.04 - 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

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

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

WHEREAS, the City of Albany is a charter city and pursuant to Article XI, 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
WHEREAS, Section 5.01 of the Albany City Charter provides that except as otherwise provided in the Charter or City ordinances, City elections shall be conducted in accordance with the State Elections Code; and

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

WHEREAS, the six ballot measures are as follows:

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

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

(C) An ordinance enacting a special parcel tax to fund repairing and upgrading of public sidewalks and removing obstructions to improve safety and accessibility.

(D) An amendment to various sections of the Albany City Charter to authorize the City Council to establish procedures for filling a vacancy in an elective office by appointment, permit quarterly meetings of the Police and Fire Pension Board and change eligibility requirements for Board members, authorize the City Council to set fees for copies of public records, make the language within the Charter gender neutral, and make numerous other administrative, technical and clarifying changes.
(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.
b. Two (2) Members of the Board of Education 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.

c. One (1) City Treasurer of the City of Albany, the 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.

d. A ballot measure to approve an ordinance authorizing an amendment to Section 20.28.040 of the Albany Municipal Code regarding residential parking requirements as set forth in Exhibit A, attached hereto and incorporated by reference as if set forth herein word for word, and which may be lawfully submitted at said election as set forth in this Resolution. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election.

e. A ballot measure to approve an ordinance enacting a tax on the distribution of sugar-sweetened beverage products as set forth in Exhibit B, attached hereto and incorporated by reference as if set forth herein word for word, and which may be lawfully submitted at said election as set forth in this Resolution. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election.

f. A ballot measure to approve an ordinance enacting a special parcel tax to fund repairing and upgrading of public sidewalks and removing obstructions to improve safety and mobility as set forth in Exhibit C, attached hereto and incorporated by reference as if set forth herein word for word, and which may be lawfully submitted at said election as set forth in this Resolution. The City Council hereby approves the
ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election.

g. A ballot measure to approve an amendment to various sections of the Albany City Charter to authorize the City Council to establish procedures for filling a vacancy in an elective office by appointment, permit quarterly meetings of the Police and Fire Pension Board and change eligibility requirements for Board members, authorize the City Council to set fees for copies of official records, make the language within the Charter general neutral, and make numerous other administrative, technical and clarifying changes, as set forth in Exhibit D, attached hereto and incorporated by reference as if set forth herein word for word, and which may be lawfully submitted at said election as set forth in this Resolution. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election.

h. A ballot measure to approve 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 as set forth in Exhibit E, attached hereto and incorporated by reference as if set forth herein word for word, and which may be lawfully submitted at said election as set forth in this Resolution. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election.

i. A ballot measure to approve 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” as set forth in Exhibit F, attached hereto and incorporated by reference as if set forth herein word for word, and which may be lawfully submitted at
said election as set forth in this Resolution. The City Council hereby approves the ordinance, the form thereof, and its submission to the voters of the City at the November 8, 2016 election.

Section 2 Pursuant to the Albany City Charter and the laws of the State of California, there is called and ordered to be held in the City of Albany, California on November 8, 2016, an election for the purposes of submitting to the voters six ballot measures as set forth in Exhibit A-F, incorporated herein by reference as if set forth herein word for word. Pursuant to the Election Code Section 10400 et seq., the election for this measure shall be consolidated with the statewide general election to be conducted on November 8, 2016.

Section 3 The questions to be presented to the voters shall be as follows:

(A) 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?

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

(B) 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?

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

(C) 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?

This question requires the approval of a 2/3 majority of qualified electors casting votes at the election.

(D) Shall the City Charter be amended to authorize the City Council to establish procedures for filling a vacancy in an elective office by appointment, permit quarterly meetings of the Police and Fire Pension Board and change eligibility requirements for Board members, authorize the City Council to set fees for copies of official records, make the language within the Charter general neutral, and make numerous other administrative, technical and clarifying changes?

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

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

(F) 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”?

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

Section 4 Pursuant to the requirements of Elections Code §10403, the Board of Supervisors of the County of Alameda is hereby requested to consent and agree to the consolidation of said election with the statewide election. The City of Albany acknowledges that the consolidated election will be held and conducted in accordance with Elections Code §10418.

Section 5 The City Clerk is hereby directed to submit a certified copy of the ballot measures to the City Attorney, who shall prepare an impartial analysis for each of the measures in accordance with Election Code §9280. The analysis shall be submitted by the City Clerk to the Registrar of Voters, or other appropriate election official of Alameda County for printing by August 12, 2016. The analysis shall not exceed 500 words in length and shall otherwise comply in all substantial respects with the applicable provisions of the Election Code of the State of California.

Section 6 Arguments for and against the ballot measures may be filed in accordance with this resolution and applicable provisions of the law. Direct arguments for and against these measures shall be submitted to the City Clerk’s office by no later than 12:00 p.m. on Friday, August 19, 2016. Rebuttal arguments shall be submitted to
the City Clerk’s office by no later than 12:00 p.m. on Friday, August 26, 2012. Any
direct argument shall not exceed 300 words in length and shall not be signed by more
than five persons. Any rebuttal shall not exceed 250 words in length and shall not be
signed by more than five persons; those persons may be different persons who sign the
direct arguments.

Section 7 A subcommittee, or subcommittees, comprised of up to two
Council Members per subcommittee, as established by motion of the City Council, is
hereby authorized to prepare and file written arguments in favor or against the ballot
measures not to exceed 300 words, on behalf of the Albany City Council. At the
subcommittee’s discretion, the arguments may also be signed by bona fide organizations
or by individual voters. A subcommittee comprised of up to two Council Members is
also hereby authorized to prepare and file a written rebuttal to an argument not to exceed
250 words, on behalf of the Albany City Council. At the subcommittee’s discretion, the
rebuttal may also be signed by bona fide organizations or by individual voters.

Section 8 Pursuant to Election Code §9285, when the City Clerk has selected
the arguments for and against the measures (Alameda County will issue the appropriate
Measure letter at a later time), which shall be printed and distributed to the voters, the
City Clerk shall send copies of the arguments in favor of the measures, to the authors of
the arguments against the measures, and copies of the arguments against the measures to
the authors of the arguments in favor of the measures.

Section 9 The City Clerk is hereby directed to cause notice of the measures to
be published in a newspaper of general circulation, or any other newspaper designated as
an official newspaper of the City of Albany in accordance with Elections Code §12111 and Government Code §6061.

Section 10 That pursuant to the Elections Code of the State of California, the Board of Supervisors of the County of Alameda is hereby requested to consolidate the General Election to be held at said County on November 8, 2015, with the Regular General Municipal Election so that the election precincts, polling places and voting booths shall in every case, be the same, and so there may be one set of election offices and officers at each said election precinct, and one form of ballot, and provide for expenses thereof, all as provided in said Elections Code of the State of California.

Section 11 That in all particulars not recited in this Resolution, said election shall be held and conducted as provided by law for holding Municipal Elections in the City of Albany.

Section 12 That the Regular General Municipal Election, to be held in the City of Albany, shall be canvassed by the Registrar of Voters of the County of Alameda, State of California.

Section 13 That the City of Albany shall pay to the Board of Supervisors of Alameda County its pro rata share of the expenses of said election as jointly determined by the City of Albany and the Board of Supervisors of Alameda County in accordance with said provisions of said Elections Code of the State of California.

Section 13 That the City Clerk of the City of Albany is hereby authorized instructed and directed to provide the Alameda County Registrar of Voters with all pertinent information and material as required.
Section 15    That the City Clerk of the City of Albany is hereby authorized and
directed to file a copy of this Resolution immediately upon its adoption with the
appropriate County agencies. With the concurrence of the City Attorney, the City Clerk
is hereby authorized to make such minor, technical and clarifying changes to this
Resolution and/or the Exhibits hereto as may be deemed necessary and appropriate.

Section 16    The City Council of the City of Albany shall meet at its usual
meeting place to review the certified statement of results of the election within 28 days of
the election and shall thereafter declare the results.

Section 17    The Alameda County Registrar of Voters is hereby requested to
include the ballot measures, with the ballot question, referred to herein and set forth in
Exhibit “A” through Exhibit “F” in the voter pamphlet, and to number and designate the
ballot measures as appropriate.

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

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

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

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

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

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

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

20.28.040 Exceptions to Parking Space Requirements.
D. City Council Authorized to Modify Measure D Parking Requirements.

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

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

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

Section 4. CEQA FINDINGS. The adoption of this resolution is exempt from the California Environmental Quality Act ("CEQA") because it can be seen with certainty that there is no possibility that the adoption of the proposed ordinance will have a significant effect on the environment. (CEQA Guidelines Section 15061(b)(3).) If 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,
any such changes would have to be preceded by compliance with CEQA. The proposed ordinance, by itself, would not effect any changes in applicable land use regulation.

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

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

YES:

NO:

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

AYES:
NOES:
ABSENT:

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

____________________
Nicole Almaguer, City Clerk
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?

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

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

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

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

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

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

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

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

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

4-13.2 Exemptions.

The tax imposed by this Chapter shall not apply:

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

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

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

d. To any Distribution of Added caloric sweeteners to a Food and Beverage Sales Retail Store, as defined in Albany Municipal Code Section 20.16.030DD, if the Food and
Beverage Sales Retail Store then offers the Added caloric sweetener for sale for later use by customers of that store.

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

4-13.3 Definitions.

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

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

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

b. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code, as that Part may be 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
to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section 109971 of the California Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   b. Any beverage for medical use;

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

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

   e. Any alcoholic beverage.

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

### 4-13.4 Definition of Gross Receipts.

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

a. Cash discounts allowed and taken on sales;

b. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";

c. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

d. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;

e. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

f. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees;

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. The voting and nonvoting stock of which is owned at least eighty percent by such other corporation with which such transaction is had,

2. Which owns at least eighty percent of the voting and nonvoting stock of such other corporation, or

3. At least eighty percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;

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

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

a. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.

b. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:

1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.

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

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

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

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

4-13.6 Collection.

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

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

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

2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or
3. provide to the City evidence that the Distributor from whom the Sugar-
sweetened beverage products were received has registered as a Distributor
with the City and that registration is current.

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

4-13.7 Refunds.
Whenever any tax under this Chapter has been overpaid or has been erroneously or
illegally collected or received by the City, it may be refunded only as provided Albany
Municipal Code Section 2-28.1, as that Section now reads or may hereafter be amended
by ordinance adopted by the City Council. A vote of the people shall not be required to
amend the City's claim procedures. Compliance with the City's claim procedures shall be
a prerequisite to any suit or other legal proceeding seeking a refund or any payment of
money or damages.

4-13.8 Enforcement.
Except as otherwise provided by this Chapter or by rule or regulation promulgated by the
City Manager, the tax imposed by this Chapter shall be administered in the same manner
as taxes imposed pursuant to Albany Municipal Code Chapter 5-2 and, without
limitation, shall be subject to the same delinquency penalties, appeals processes and other

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

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

4-13.11 **Annual Audit.**

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

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

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

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

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

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

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

AYES:

NOES:

ABSENT:

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

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

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

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

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

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

WHEREAS, in 2010, the City approved a Climate Action Plan, which included a vision for an interconnected transportation system and land use pattern that shifts travel from autos to walking, biking, and public transit; and
WHEREAS, Climate Action Plan Measure TL 1.3: call for implement of improvements to encourage walking in the community by eliminating obstacles such as deteriorated sidewalks; and

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

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

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

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

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

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

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:
Section 1. Article 4-14 is hereby added to Chapter IV of the Albany Municipal Code, to read as follows:

4-14 SAFE AND ACCESSIBLE SIDEWALKS SPECIAL PARCEL TAX

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

4-14.2 DEFINITIONS.

A. “City” means the City of Albany.

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

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

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

E. “Nonresidential parcel” means all parcels that are improved with uses other than residences.
F. “Owner” means the owner or owners of the real property located within the City.

G. “Parcel” means any real property designated by an assessor’s parcel map and parcel number and carried on the secured property tax roll of the County of Alameda.

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

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

I. “Single-family residential parcel” means all parcels which are improved with only one residential unit.

J. “Special tax” means the special tax imposed by this Article.

4-14.3 TAX IMPOSED.
A. An annual special tax in the amounts set forth in Section 4-14.4 is hereby imposed on every parcel of real property within the City.

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

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

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

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

   1. Single-family residential parcels and units on multi-family residential parcels shall be exempt from the special tax if they are owned and occupied by a person or persons whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low-income" for a family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 et seq.), for such year. The application process will be in the form of self-certification under penalty of perjury. Owners must apply for the exemption provided for in this Section annually by application to the Finance Director in the manner and at the 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
Director may require additional information, including, but not limited to, federal income tax returns and W-2 forms of owner-occupants eligible for this exemption.

2. Renters who reside in a rental unit within the City of Albany whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low-income" for a family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 et seq.), for such year may apply for a rebate of the special tax imposed by this Section that applies to the rental unit in which they reside. Renters must apply for the exemption provided for in this Section annually by application to the Finance Director in the manner and at the 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 Director may require additional information, including, but not limited to, federal income tax returns and W-2 forms of renter occupants eligible for this exemption. Only one such rebate shall be allowed annually to a rental unit.

4-14.4 TAX RATES.

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

<table>
<thead>
<tr>
<th>Parcel Type</th>
<th>Size of Parcel (square feet)</th>
<th>Rate, per parcel or unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family Residential</td>
<td>0-2,500</td>
<td>$27.60 per parcel</td>
</tr>
<tr>
<td></td>
<td>2,501-5,000</td>
<td>$38.65 per parcel</td>
</tr>
<tr>
<td></td>
<td>Over 5,000</td>
<td>$49.69 per parcel</td>
</tr>
<tr>
<td>Condominium/Townhouse</td>
<td>Not Applicable</td>
<td>$15.46 per unit</td>
</tr>
<tr>
<td>Multi-family Residential</td>
<td>Not Applicable</td>
<td>$15.46 per unit</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Nonresidential 0-5,000</td>
<td></td>
<td>$49.69 per parcel</td>
</tr>
<tr>
<td>5,001 – 10,000</td>
<td></td>
<td>$71.88 per parcel</td>
</tr>
<tr>
<td>10,001 – 20,000</td>
<td></td>
<td>$77.29 per parcel</td>
</tr>
<tr>
<td>20,001 AND ABOVE</td>
<td></td>
<td>$88.50 per parcel</td>
</tr>
</tbody>
</table>

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

\[
\text{Tax rate} = \text{Tax rate for the preceding year} \times \frac{\text{Change in Consumer Price Index from April of the immediately preceding year to April of the current year or 1.02, whichever is less}}{\text{Change in Consumer Price Index from April of the immediately preceding year to April of the current year or 1.02, whichever is less}}
\]

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

C. If a parcel consists of both residential and nonresidential real property, the tax rate shall be the rate for nonresidential parcels.
D. The assessment roll data of the Alameda County Tax Assessor as of January 1 of each year and City records shall be used to determine the actual use of each parcel of real property for purposes of determining the amount of the special tax for each parcel.

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

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

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

4-14.7 USE OF TAX REVENUE.

A. Revenue from the special tax, including penalties and interest thereon, shall be used for sidewalk maintenance and obstruction removal, including but not limited to repairing and upgrading public sidewalks and removing obstructions to improve safety and accessibility, consistent with the Sidewalk Repair Policy adopted by the City Council.
The currently approved Sidewalk Repair Policy is attached as Exhibit A. The City Council may amend the Sidewalk Repair Policy from time to time in its discretion, which changes shall be incorporated into this Article. In no case, however, shall changes to Sidewalk Repair Policy authorize the use of special tax revenue for projects unrelated to repairing and upgrading public sidewalks and removing obstructions from public sidewalks to improve safety and accessibility or for other purposes authorized in this Article.

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

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

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

B. The specific purposes of the special tax are for the funding of public sidewalk maintenance and obstruction removal projects and for related election, administration, and legal fees as set forth in Section 4-14.7. The proceeds of the special tax shall be applied only to those specific purposes.
C. The Finance Director shall annually prepare and submit to the City Council a report regarding the special tax funds collected and expended, as well as any other information required by Government Code sections 50075.1 and 50075.3.

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

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

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

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

Section 3. Pursuant to California Constitution Article XIIIB, the appropriation limit for the City of Albany is hereby increased by the aggregate sum authorized to be levied by this special tax for fiscal year 2016/17 and each year thereafter.
Section 4. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The special tax authorized by this Ordinance is a special tax that can only be used to fund the projects, facilities, and services described in the Ordinance but does not approve any of the described projects or services. As such, under CEQA Guidelines section 15378(b)(4), the special tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project or service that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project or service. Therefore, pursuant to CEQA Guidelines Section 15060, review of the Ordinance under CEQA is not required. Prior to commencement of any project or service funded by the special tax, any necessary environmental review required by CEQA shall be completed. The City shall perform CEQA analysis for the project prior to approving the project or service, if the project or service requires analysis under CEQA.

Section 5. If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this ordinance, and such holding shall not affect the validity and enforceability of all 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
jurisdiction, it shall not nullify the remainder of this Ordinance but shall be confined to the article, section, subsection, subdivision, clause, sentence or word so held invalid or unconstitutional.

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

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

YES:

NO:

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

AYES:

NOES:

ABSENT:

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

Nicole Almaguer, City Clerk
ORDINANCE 2016-03 – EXHIBIT A

SIDEWALK REPAIR POLICY
APPROVED BY ALBANY CITY COUNCIL JUNE 20, 2016

Purpose
The purpose of the Sidewalk Repair Policy is to improve continuous sidewalk passability in public right of way by repairing sidewalk damage and removing vegetation obstructions.

Legal Responsibility
Under Section 5610 of the California Streets and Highways Code and per Albany Municipal Code Section 14-1.5b, property owners and persons in possession of property are required to maintain adjacent public sidewalks in a safe condition. The existence of this program does not abrogate the responsibility of the property owners to maintain their frontage improvements in a safe manner. As part of the administration of the Sidewalk Program, city staff are to use City newsletter, web page, and outreach events to provide information to property owners regarding their responsibilities for sidewalks.

Repair Program:
The City of Albany will annually determine priority areas for repair. The City will manage and pay the entire project cost of priority sidewalk repairs. Upon completion of the repair, the City will issue a certificate of compliance that returns responsibility for all future maintenance and repair to the property owner pursuant to existing State law. The Traffic & Safety Commission will annually propose prioritization of projects to the City Council as well as review sidewalk repair criteria. As part of the scope of work for a sidewalk repair project, expenditure of funds associated with the following is authorized:

a) relocation of shallow utility lines located within area of sidewalk repair;
b) grinding of stumps of removed trees;
c) replacement of soil or mulch in landscape strips as necessary to avoid a hazardous condition;
d) repair of private driveway if necessary to maintain functionality of the existing driveway;
e) Funding for expedited repairs in locations with occupants that have special access needs (e.g., limited mobility, special events, etc.); and
f) Extending the length of sidewalk to be repaired beyond the area of immediate hazard in order that the repaired sidewalk can tie into an existing sidewalk in relatively good condition.

Public Notice for Repair Program
A public notice will be mailed to all property owners adjacent to proposed areas of work 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 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 solicit requests for information regarding occupants that may have special access needs that will affect the timing of construction.

Point of Permit Program:
The City of Albany will require that specified construction projects above $100,000 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 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.

Point of Sale Program:
The City of Albany will require that specified real property transfers will trigger a 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 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 maintenance and repair.

Streetscape Improvement Projects:
For sidewalks that are in locations with fully funded streetscape-related Capital 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.

Refinements to Street Tree Program:
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 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
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. 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 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.
EXHIBIT “D”

VARIOUS MODIFICATIONS TO THE ALBANY CITY CHARTER

Shall the Albany City Charter be amended to authorize the City Council to establish procedures for filling a vacancy in an elective office by appointment, permit quarterly meetings of the Police and Fire Pension Board and change eligibility requirements for Board members, authorize the City Council to set fees for copies of official records, make the language within the Charter gender neutral, and make numerous other administrative, technical and clarifying changes?

YES _________
NO _________

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

SECTION 1.04. GENDER.

Whenever used in this Charter, the masculine gender includes the feminine and neuter. (Added, ratified, April 13, 1976)

SECTION 1.05. MUNICIPAL AFFAIRS.

Without limiting in any manner the foregoing powers expressed in Section 1.03, and any authority which is enjoyed by a Charter city in the State of California, each of the powers, rights, and responsibilities described in this Charter is hereby declared to be a municipal affair, the performance of which is unique to the benefit and welfare of the citizens of the City of Albany. The electorate of the City of Albany is sincerely committed to the belief that local government has the closest affinity to the people governed, and firm in the conviction that the economic and physical independence of our local government will promote the health, safety, and welfare of all the citizens of this City of Albany. (Added, ratified, November 8, 1994)
SECTION 1.061.05. 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 1.071.06. 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 1.081.07. 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 1.091.08. 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)
SECTION 1.09. 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
responsible to the Council for the efficient implementation of its policy and effective administration of all the affairs of the City government which the office controls. Any action, determination or omission of the Administrative Officer City Manager or staff shall be subject to review by the Council, but no individual Councilmember or the Mayor shall overrule, change or modify any such action, determination or omission except by affirmative vote of at least three (3) members of said Council at a duly constituted session.

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

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

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

SECTION 3.08. CITY TREASURER.

There shall be a City Treasurer. It shall be his the City Treasurer’s duty to receive and safely keep all monies and securities belonging to the City coming into his hands. He The City Treasurer shall pay out the same only in the manner prescribed by ordinance of the Council. (Amended, ratified August 7, 1952)
SECTION 3.10.  CITY ATTORNEY.

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

SECTION 3.13.  CHIEF OF POLICE.

There shall be a Chief of Police. The qualifications for the Chief of Police shall be established, by ordinance, by the City Council, which qualifications shall be established within ninety (90) days from ratification. He The Chief of Police shall be the head of the Police Department of the City, and shall have all the powers that are now or may hereafter be conferred upon sheriffs and other peace officers by the laws of the State. It shall be his the duty of the Police Chief duty to preserve the public peace, and to suppress riots, tumults and disturbances. His The Police Chief’s orders shall be promptly executed by the police officials, or watchmen of the City, and every citizen shall lend him the Chief of Police aid when requested for the arrest of offenders, the maintenance of public order, or the protection of life and property.
The Chief of Police shall execute and return all process issued to him by legal authority. He shall perform the duties of a regular police officer and have authority, and it is hereby made his duty, to arrest persons violating any law of the State or ordinance of this City. Those arrested for violating City ordinances may, before or after trial, be confined in the County Jail of Alameda County or in the City Prison of the City of Albany. He shall have such other powers and duties appertaining to his office as may be prescribed by the Council or rules of the Police Department. (Amended, ratified, January 26, 1935; July 21, 1972)

SECTION 3.14. CHIEF OF THE FIRE DEPARTMENT.

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

SECTION 3.19. OFFICIAL RECORDS.

All books and records of every office and department shall be open to the inspection of any citizen during business hours, subject to the proper rules and regulations for the efficient conduct of the business of such department or office, provided, the records of the police department shall not be subject to such inspection except by permission of the proper police authorities.
Copies or extracts, duly certified from said books and records open for inspection, shall be given by the officer having the same in custody to any person demanding the same and paying or tendering ten cents ($0.10) per page, except in instances where the Council prescribes a lower charge, for such copies or extracts, and the additional sum of twenty-five cents ($0.25) for certifying fees for copies or certifications as established by Resolution of the City Council, in amounts consistent with the requirements of State law.

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

SECTION 5.02. VACANCIES.

A vacancy in any elective office, other than that of an elective member of the Board of Education, from whatever cause arising, shall be filled by appointment by the Council; such appointee to hold office until the next feasible general municipal election, when a successor shall be chosen by the electors for the unexpired term; provided, that if the Council fails to agree or for any other reason does not fill such vacancy within thirty (30) sixty (60) days after the same occurs, then such vacancy shall be filled by the Mayor; provided, however, that if for any reason the seats of a majority of the Council shall become vacant, then the City Clerk shall call a special election at once to fill the vacancies for the unexpired terms, and the same shall be conducted substantially in the manner provided for general municipal elections.
If any officer of the City shall remove from the City or absent **himself, themselves** therefrom for more than sixty days consecutively without the permission of the Council, or shall fail to qualify, or shall resign, **his, their** office shall thereupon become vacant.

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

**SECTION 6.01. BOARD OF EDUCATION.**

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

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

If any member of the Board of Education shall remove from the City or absent **himself, themselves** therefrom for more than sixty (60) days consecutively without permission of the Board of Education, or shall fail to qualify, **his, their** office shall thereupon become vacant. (Amended, ratified, August 7, 1952; February 18, 1969; July 2, 1970; April 13, 1976)
SECTION 9.01. PENSIONS FOR MEMBERS OF POLICE AND FIRE DEPARTMENTS.

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

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

In the event that Pension Plan Members are unable to sit on the Board for either Police or Fire, the Pension Plan Members shall recommend active Members of the Classified Service of the respective Department to serve as replacements upon appointment by the City Council. Classified Service representatives may have three active employee alternates to enable attendance at the meetings. Alternates for the Police and Fire
Departments regular members are to be appointed by the Mayor upon recommendation of the Pension Plan members.

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

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

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Percentage of Amount of Said Average Yearly Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>50.00</td>
</tr>
<tr>
<td>26</td>
<td>53.33</td>
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<tr>
<td>27</td>
<td>56.67</td>
</tr>
<tr>
<td>28</td>
<td>60.00</td>
</tr>
<tr>
<td>29</td>
<td>63.33</td>
</tr>
</tbody>
</table>

Notwithstanding any provision of this Chapter, the retirement allowance payable to any person who becomes a member on or after January 1, 1990, shall in no event exceed the limitation imposed by Section 415(b) of the Internal Revenue Code of 1986 as applied (other than paragraph (2)(G) without regard to paragraph (2)(F) and as adjusted by Section 45-15(d)(1)(A) and (B). Section 415(b), 415(D)(1)(A) and (B) are hereby incorporated by reference. It is the intent of this paragraph to further provide that any member who joined this plan prior to January 1, 1990, be exempted from any limitations which have been enacted in the Internal Revenue Code as part of the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. (Amended, ratified, February 4, 1971; April 10, 1990)
(d) PHYSICAL DISABILITY: RESTORATION. Whenever any person while serving as a member of the Fire or Police Department of the City of Albany shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his their duty as such member of the Police or Fire Department, said Board may, if it deems it to be for the good of said Police or Fire Department, retire such person from said department, and order and direct that he they shall be paid from said fund, during his their lifetime, a yearly pension equal to one-half (1/2) of the amount of salary attached to the rank which he they may have held on such Police or Fire Department at the date of such retirement; provided, that when such disability shall cease, such pension shall cease, and such person shall be restored to active service at the same rank at which he was they retired. Upon the death of such person then on disability pension, the widow surviving spouse and/or children of the deceased member of the Police or Fire Department shall receive the same benefits from the Fire or Police Relief or Pension Fund as provided in paragraph (q) of Section 9.01 of the Charter of the City of Albany. (Ratified, March 7, 1961)

(dd) NON-SERVICE DISABILITY. Whenever any person, at the taking effect of this section, while serving as a member of the Fire or Police Department of the City of Albany, prior to eligibility for service retirement, shall become disabled by reasons not connected with the immediate or direct performance or discharge of his their duty as such member of the Fire or Police Department, if said disability renders him them incapable of performing his their duties in his their respective Department, said Board may, if it deems it to be for the good of said Fire or Police Department, retire such person from said Department and order and direct that he they shall be paid from said Fund, during his
their lifetime, a yearly allowance equal to one and one-half percent (1.5%) of said member's final compensation multiplied by his their years of service, but in no event shall said allowance exceed one-third (1/3) of his their final compensation; provided, further, if the member has completed at least ten (10) years of service at the time of said disability, possible future service up to age sixty (60) may be used, but in no event shall said allowance exceed one-third (1/3) of final compensation; provided that when such disability shall cease, such allowance shall cease, and such person shall be restored to active service at the same rank at which he was they retired. Upon the death of such person then receiving non-service disability allowance, the widow surviving spouse and/or children of the deceased member of the Fire or Police Department shall receive the same benefits from the Fire and Police Relief or Pension Fund as provided in paragraph (q) of Section 9.01 of the Charter of the City of Albany.

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

(f) PENSION TO FAMILY. Whenever any member of the Fire or Police Departments of such City of Albany, at the taking effect of this act, or thereafter, shall lose his their life while in the performance of his their duty, leaving a widow surviving spouse, or child or children under the age of eighteen (18) years, then upon satisfactory proof of such facts made to it, such Board shall order and direct that yearly pension, equal to one-half (1/2) of the salary attached to the rank which such member held in said Fire or Police Department at the time of his their death, shall be paid to such widow surviving
spouse during her their life, or if no widow surviving spouse, then to child or children, until they shall be eighteen (18) years of age; provided, if such widow surviving spouse or child or children shall marry, then such person so marrying shall thereafter receive no further pension from such fund. (Amended, ratified, February 4, 1971)

(g) STIPULATED SUM TO FAMILY. Whenever any person while serving as a member of the Police or Fire Departments of the City of Albany shall die from natural causes, unrelated to his their service as a member of said Police or Fire Departments, then his widow their surviving spouse or children, or if there be no widow surviving spouse or children, then his their parents or parent, or if there be no widow surviving spouse or children, or parents or parent, then the brothers and sisters of said member, or the survivor of them, shall receive a sum equal to the total amount of the payments made by said person into said fund together with interest on said sums at the rate of three and one-half percent (3 1/2%) per annum computed from the date said sums were paid into said fund by said member, within ninety (90) days from the date of the death of said member. (Amended, ratified, January 7, 1955; February 4, 1971)

(i) FORFEITURE OF PENSION. Refund of contributions. When any person who shall have received any benefit from said fund shall fail to report for examination for duty as required by said Board under this act, in respect to said examination or duty, then such Board shall order that such pension allowance as may have been granted to such person shall immediately cease, and such person shall receive no further pension, allowance or benefit under this act. Excepting, nevertheless, that any member of the Police or Fire Department, who, for any reason whatever ceases to be a member of the Police or Fire
Department, and who at the time of said cessation is not otherwise entitled to financial benefits under this law, shall be entitled to, and shall be paid within ninety (90) days after such cessation of being a member, all sums of money retained from and out of his or her salary, as provided by subsection (1) of this law, together with three and one-half percent (3\(\frac{1}{2}\)%) per annum interest on such sums, computed from the first day of July of each year. Provided further, that any member of the Police or Fire Department who shall have ceased to be a member and shall have been paid any sum or sums of money as in this section provided, shall be reinstated and again become a member of the Police or Fire Department, said such sum or sums of money as shall have been so paid, together with interest at the rate of three and one-half percent (3\(\frac{1}{2}\)%) per annum from the date of said payment as aforesaid shall be first deducted from any and all benefits thereafter received by them under this law. (Amended, ratified, March 7, 1961; April 13, 1976)

(j) MEETINGS AND DUTIES OF BOARD. The Board herein provided for shall hold monthly quarterly meetings on one of the last five business days of each month for which pension payments have accrued as set by Resolution of the Board; and upon the call of its Chairperson, the specific day of the week to be set by Board resolution at its annual reorganization meeting. Additional meetings may be called by its Chairperson. It shall issue warrants signed by two voting members present at the meeting when the warrants were approved to persons entitled thereto of the amount of money ordered paid to such person from such fund by said Board, which warrant shall state for what purpose said payment is to be made; On the months Board meetings are held, said warrants shall be signed by two voting members present at the meetings when the warrants are
approved. On months where the Board does not meet, warrants shall be signed by two members who would normally be voting members at the meeting the warrants were to be paid. Said Board shall approve and ratify said pension payments at its quarterly meeting; it shall keep a record of all its proceedings, which records shall be public records. The Chairperson shall, at each monthly meeting, send to the Auditor of the City of Albany a list of all persons entitled to payments of the funds herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the President and Secretary of such Board, and attested under oath. The Auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose, which shall be known as "The Police and Fire Relief Pension Fund Book."

Payment of the amount named therein shall then be made out of the Police and Fire Relief and Pension Fund, and need not be approved by the Council prior to payment. However, the said list shall be entered by the Auditor and transmitted to the City Council for approval and ratification at the next meeting after the delivery of the pension checks at the next City Council meeting following the Board’s quarterly meeting. A majority of all of the members of said Board herein provided for shall constitute a quorum and have power to transact any and all business. (Amended, ratified, January 7, 1955; May 29, 1968; April 10, 1990)

(1) MONEYS TO BE PAID INTO POLICE AND FIRE RELIEF AND PENSION FUND. The City Council of the City of Albany shall, for the purpose of said Police and Fire Relief and Pension Fund hereinbefore mentioned, direct the payment into said fund as follows:
"A sum equal to nine percent (9%) out of and from the total amount of the monthly payroll of all of the members of both of said Departments for the current month, shall be retained by the City Treasurer, and shall be paid into said Police and Fire Relief and Pension Fund by the City; in addition thereto, the City shall contribute an equal amount to said fund monthly. The City may make such other contributions to the said fund when actuarial studies reveal the necessity thereof. Said monies shall may, in the discretion of the said Police and Fire Pension Trustees, be invested at not less than three and one-half percent (3\(^1/2\)% per annum, if such rate of interest is obtainable. (Amended, ratified, January 13, 1949; June 15, 1966; August 16, 1967; February 4, 1971)

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

Upon the death of a service retired pensioner, the widow or widower surviving spouse, if any, shall be entitled to no part of his or her service retired pension unless he or she was married to the pensioner before his service retirement.

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

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

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

PROPOSED MODIFICATIONS TO SECTION 6.02 OF THE ALBANY CITY CHARTER

Shall the Albany City Charter be amended to remove term limits for the Albany Unified School District School Board of Education Members, this provision to take effect on January 1, 2023?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
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<tbody>
<tr>
<td>_______</td>
<td>_______</td>
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</table>

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

SECTION 6.02. LIMITATION OF TERMS

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

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

<table>
<thead>
<tr>
<th>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”?</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES _______</td>
</tr>
<tr>
<td>NO _________</td>
</tr>
</tbody>
</table>

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

SECTION 8.02. ORGANIZATION.

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

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

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

SECTION 8.03. POWERS AND DUTIES.

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

(b) The Civil Service Board shall hold written, oral, and any such other examinations as may be appropriate for applicants for employment, promotion, re-employment, reinstatement, or transfer, and shall maintain records and certified lists as appropriate. If any open examination is held, the Board shall give reasonable preference to existing City employees within the same department, provisions of Section 8.04(a) of this Chapter notwithstanding.
(c) There shall be a Hearing Board. The Hearing Board shall hear disputes related to
members of the Classified Service, the exact nature and severity of such disputes to be
defined by ordinance. Members of the Civil Service Board have the authority to serve as
members of the Hearing Board. (Added, ratified, November 2, 1982)

SECTION 8.04 8.02. DISCRIMINATION PROHIBITED.

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

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

SECTION 8.05 8.03. EFFECT ON EMPLOYEES IN POLICE AND FIRE
DEPARTMENTS AND OTHER DEPARTMENTS.

(a) Classified Service shall be defined as all sworn public safety personnel
except for the Chief of Police and Fire Chief. All members, who are part of the Classified
Service prior to the adoption of Chapter VIII, Sections 8.01 et seq., shall be considered as
members with their present status of the Classified Service under the system as now
adopted. Employees, not part of the previous Classified Service, shall have no change in
status until rules, regulations, ordinances or procedures have been passed which may
include additional employees. All future employees hired to positions which are part of
the Classified Service at this time shall so remain part of the Classified Service.
(b) The City Council is empowered to define other positions to be included in the Civil Service System and to expand the system to include additional members by ordinance. (Added, ratified November 2, 1982)

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

SECTION 8.07. SEVERABILITY.

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