

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Ben Rosenfield, City Controller

FROM: *DE* Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: June 2, 2016

SUBJECT: LEGISLATION INTRODUCED - CHARTER AMENDMENT

The Board of Supervisors Rules Committee has received the following legislation, introduced by Supervisor Avalos on May 24, 2016. This matter is being referred to you in accordance with Rules of Order 2.22.3.

File No. 160582 Charter Amendment - City Responsibility for Maintaining Street Trees

Charter Amendment (First Draft) to amend the Charter of the City and County of San Francisco to transfer responsibility for the maintenance of street trees from abutting property owners to the City; and affirming the Planning Department's determination under the California Environmental Quality Act, at an election to be held on November 8, 2016.

Please review and submit your written statement pursuant to the Charter to be included with the legislative file.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Office of the City Controller
Maura Lane, Office of the City Controller

1 [Charter Amendment - City Responsibility for Maintaining Street Trees]

2
3 **Describing and setting forth a proposal to the voters, at an election to be held on**
4 **November 8, 2016, to amend the Charter of the City and County of San Francisco to**
5 **transfer responsibility for the maintenance of street trees from abutting property owners to**
6 **the City; and affirming the Planning Department’s determination under the California**
7 **Environmental Quality Act.**

8
9 Section 1. The Planning Department has determined that the actions contemplated in this
10 proposed Charter Amendment comply with the California Environmental Quality Act (California
11 Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of
12 the Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board
13 affirms this determination.

14
15 Section 2. Findings.

16 (1) A healthy urban forest enhances our quality of life, reduces water, air, and noise
17 pollution, and benefits the climate by removing carbon dioxide from the atmosphere.

18 (2) San Francisco has approximately 105,000 street trees planted in sidewalks or
19 medians. Historically, the Department of Public Works maintained about one-third of the City’s
20 street trees and property owners maintained about two-thirds of the City’s street trees.

21 (3) In 2011, the Department of Public Works adopted a Tree Maintenance Transfer Plan
22 to transfer maintenance responsibility for approximately 24,000 street trees to property owners.

23 (4) The Tree Maintenance Transfer Plan has raised concerns among property owners
24 who face the unanticipated cost and responsibility of maintaining trees that they did not plant.

25 (5) The Tree Maintenance Transfer Plan has also raised concerns that it will lead to the

1 degradation of our urban forest because of neglect and improper maintenance of trees.

2 (6) A comprehensive municipal tree maintenance program that planned a routine
3 maintenance schedule for all street trees would improve the health of the City's urban forest,
4 reduce the City's per-tree maintenance cost by leveraging economies of scale, and reduce the
5 City's potential liability from claims of damage caused by street trees.

6
7 Section 3. The Board of Supervisors hereby submits to the qualified voters of the City
8 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of
9 the City and County by adding Section 16.130, to read as follows:

10 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
11 **Additions** are single-underline italics Times New Roman font.
12 **Deletions** are ~~strike-through italics Times New Roman font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Charter
14 subsections.

14 **SEC. 16.130. STREET TREE MAINTENANCE.**

15 (a) Definitions. For purposes of this Section 16.130:

16 "City" shall mean the City and County of San Francisco.

17 "Maintenance" (and its root "Maintain") shall mean those actions necessary to promote
18 the life, growth, health, or beauty of a Tree. Maintenance includes both routine maintenance
19 and major maintenance. Routine maintenance includes adequate watering to ensure the Tree's
20 growth and sustainability; weed control; removal of Tree-well trash; staking; fertilizing; routine
21 adjustment and timely removal of stakes, ties, Tree guards, and Tree grates; bracing; and
22 Sidewalk repairs related to the Tree's growth or root system. Major maintenance includes
23 structural pruning as necessary to maintain public safety and to sustain the health, safety, and
24 natural growth habit of the Tree; pest and disease-management procedures as needed and in a
25 manner consistent with public health and ecological diversity; and replacement of dead or

1 damaged Trees. Pruning practices shall be in compliance with International Society of
2 Arboriculture Best Management Practices and ANSI Pruning Standards, whichever is more
3 protective of Tree preservation, or any equivalent standard or standards selected by the Director
4 of the Department of Public Works.

5 “Planting” shall mean putting or setting into the ground or into a container to grow, and
6 irrigating until self-sufficient.

7 “Removal” shall mean any intentional or negligent moving, carrying away, elimination,
8 or taking away of part or all of a Tree.

9 “Sidewalk” shall mean the area between the curbing and the abutting private property
10 lot line, whether paved or unpaved, as legislated by the Board of Supervisors and as reflected in
11 the official maps of the Department of Public Works.

12 “Street Tree” shall mean any Tree growing within the public right-of-way, including
13 unimproved public streets and Sidewalks, and any Tree growing on land under the jurisdiction of
14 the Department of Public Works. “Street Tree” does not include any other forms of
15 landscaping.

16 “Tree” shall mean any large perennial plant having a woody trunk(s), branches, and
17 leaves. “Tree” shall also include a palm tree.

18 (b) City Responsibility to Maintain Street Trees. Beginning on July 1, 2017, and except
19 as otherwise required by supervening law, the City shall be responsible for Maintaining Street
20 Trees, including Street Trees planted both before and after July 1, 2017. The City may not adopt
21 any ordinance making it the duty of owners of lots or portions of lots immediately abutting on,
22 fronting on, or adjacent to any Street Tree to Maintain such Street Tree on or after July 1, 2017.
23 Any such ordinance in existence on July 1, 2017, shall, to the extent it conflicts with this
24 Section 16.130, be void.

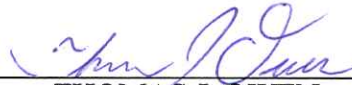
1 (c) Limitations of Transfer of Responsibility. Nothing in this Section 16.130 shall:
2 (1) affect the rights or responsibilities of the City or property owners with respect to the
3 Removal, establishment, or relocation of a Street Tree; (2) prevent the City from entering into
4 voluntary agreements with third parties for them to assume responsibility for Street Tree
5 Maintenance or continuing to abide by any such prior agreement; (3) prevent the City from
6 imposing any legally permitted penalties or fees on persons who injure, damage, or destroy
7 Trees; or (4) relieve abutting property owners from their responsibility for the care and
8 Maintenance of the Sidewalk and Sidewalk areas adjacent to any Street Tree, other than the
9 responsibility for Sidewalk repairs related to the Tree's growth or root system, which shall be
10 the responsibility of the City.

11 (d) Limitation of Liability. Beginning on July 1, 2017, any City law imposing liability on
12 property owners that do not Maintain Street Trees for injury or property damage shall not apply
13 to the extent that the injury or property damage occurred on or after July 1, 2017, and was
14 proximately caused by the City's failure to Maintain a Street Tree under this Section 16.130, but
15 shall otherwise remain applicable. Nothing in this Section 16.130 shall be construed to impose
16 liability on the City for injury or property damage that occurred as a result of the property
17 owner's responsibility to Maintain a Street Tree prior to July 1, 2017. To the extent that the
18 Maintenance of a Street Tree requires that the City access private property, the City shall
19 attempt in good faith to obtain permission from the owner of the private property. If the owner
20 refuses to grant the City permission to access the private property for the purpose of
21 Maintaining the Street Tree, the City shall have no liability for any damages related to the
22 Maintenance of that Street Tree, and the property owner shall be subject to liability for such
23 damages.

1 (e) No later than April 1, 2017, the Department of Public Works shall submit to the
2 Board of Supervisors recommended amendments to Public Works Code Article 16, including but
3 not limited to Section 805, to conform to this Section 16.130.

4 (f) It is the policy of the City that, should this Section 16.130 be repealed or amended to
5 transfer responsibility for Maintaining some or all Street Trees to abutting property owners, the
6 City shall, before effectuating such a transfer, perform all necessary Major Maintenance on the
7 Street Trees as to which the transfer of responsibility will apply.

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11
12 By: 
13 THOMAS J. OWEN
 Deputy City Attorney

14
15 n:\legana\as2015\1600272\01108072.docx

LEGISLATIVE DIGEST
(First Draft - 05/24/2016)

[Charter Amendment - City Responsibility for Maintaining Street Trees]

Describing and setting forth a proposal to the voters, at an election to be held on November 8, 2016, to amend the Charter of the City and County of San Francisco to transfer responsibility for the maintenance of street trees from abutting property owners to the City; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

The City's Public Works Code generally makes it the duty of property owners whose properties abut on, front on, or are adjacent to a tree located along a City street ("a street tree") to maintain that tree. These property owners are also responsible for the care and maintenance of the sidewalk and sidewalk areas adjacent to the trees.

The Code further provides that if someone suffers an injury or property damage as a result of the abutting property owner's failure to maintain a street tree or sidewalk as required, the injured person may sue the property owner, and the property owner must re-pay the City for any damages the City must pay when someone sues the City for an injury to a person or property cause by the property owner's failure to maintain a street tree or sidewalk.

Amendments to Current Law

The proposal is a Charter amendment that would transfer from abutting property owners to the City the responsibility for maintaining street trees, including repair of any sidewalk damage caused by the tree's growth or root system. The proposal would not: (1) affect the rights or responsibilities of the City or property owners with respect to the removal, establishment, or relocation of street trees; (2) prevent the City from entering into or continuing to abide by voluntary agreements with third parties for them maintain street trees; (3) prevent the City from imposing penalties or fees on persons who injure, damage, or destroy trees; or (4) relieve abutting property owners of their responsibility for the care and maintenance of the sidewalk areas adjacent to any street tree where the damage is not caused by the tree's growth or root system.

Under the proposal, abutting property owners would no longer be liable for injury or property damage to the extent that the injury or property damage was caused by the City's failure to maintain a street tree under the new law. However, the City would not be responsible for any injury or damages related to the maintenance of a street tree if the injury or damages occurred as a result of the abutting property owner's failure to maintain the street tree prior to July 1, 2017, or if the maintenance of such tree would require that the City access private property, and the private property owner refused to grant the City such access.