

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Ben Rosenfield, City Controller

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

DATE: July 26, 2016

SUBJECT: CHARTER AMENDMENT INTRODUCED  
November 8, 2016 Election

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The Board of Supervisors' Rules Committee has received the following Charter Amendment for the November 8, 2016, Election, introduced by Supervisor Wiener on April 19, 2016, and amended at the July 26, 2016, Board of Supervisors meeting. This matter is being referred to you in accordance with Rules of Order 2.22.4.

**File No. 160381 Charter Amendment - City Responsibility for Maintaining Street Trees**

Charter Amendment (Fourth Draft) to amend the Charter of the City and County of San Francisco to transfer responsibility for the maintenance of street trees to the City, establish the Street Tree Maintenance Fund primarily to pay for such maintenance and the maintenance of trees on San Francisco Unified School District property, and require an annual contribution by the City to the Fund of \$19 million, adjusted annually for changes in aggregate discretionary City revenues; and to affirm the Planning Department's determination under the California Environmental Quality Act.

Please review and prepare a financial analysis of the proposed measure prior to the first Rules Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7702 or email: [derek.evans@sfbgov.org](mailto:derek.evans@sfbgov.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, Deputy City Controller  
Peg Stevenson, City Performance Director  
Natasha Mihal, Controller's Office

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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 to the City, establish the Street**  
6 **Tree Maintenance Fund primarily to pay for such maintenance and the maintenance of**  
7 **trees on San Francisco Unified School District property, and require an annual**  
8 **contribution by the City to the Fund of \$19 million, adjusted annually for changes in**  
9 **aggregate discretionary City revenues; and to affirm the Planning Department's**  
10 **determination under the California Environmental Quality Act.**

11  
12 Section 1. The Planning Department has determined that the actions contemplated in this  
13 proposed Charter Amendment comply with the California Environmental Quality Act (California  
14 Public Resources Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of  
15 the Board of Supervisors in File No. 160381 and is incorporated herein by reference. The Board  
16 affirms this determination.

17  
18 Section 2. The Board of Supervisors hereby submits to the qualified voters of the City  
19 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of  
20 the City and County by adding Section 16.129, to read as follows:

21  
22 NOTE: **Unchanged Charter text and uncodified text** are in plain font.  
23 **Additions** are *single-underline italics Times New Roman font*.  
24 **Deletions** are ~~*strike-through italics Times New Roman font*~~.  
25 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Charter subsections.

1 **SEC. 16.129. STREET TREE MAINTENANCE.**

2 (a) Definitions. For purposes of this Section 16.129:

3 “City” shall mean the City and County of San Francisco.

4 “Maintenance” (and its root “Maintain”) shall mean those actions necessary to promote  
5 the life, growth, health, or beauty of a Tree. Maintenance includes both routine maintenance  
6 and major maintenance. Routine maintenance includes adequate watering to ensure the Tree’s  
7 growth and sustainability; weed control; removal of Tree-well trash; staking; fertilizing; routine  
8 adjustment and timely removal of stakes, ties, Tree guards, and Tree grates; bracing; and  
9 Sidewalk repairs related to the Tree’s growth or root system. Major maintenance includes  
10 structural pruning as necessary to maintain public safety and to sustain the health, safety, and  
11 natural growth habit of the Tree; pest and disease-management procedures as needed and in a  
12 manner consistent with public health and ecological diversity; and replacement of dead or  
13 damaged Trees. Pruning practices shall be in compliance with International Society of  
14 Arboriculture Best Management Practices and ANSI Pruning Standards, whichever is more  
15 protective of Tree preservation, or any equivalent standard or standards selected by the Director  
16 of the Department of Public Works.

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

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

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

24 “Street Tree” shall mean any Tree growing within the public right-of-way, including  
25 unimproved public streets and Sidewalks, and any Tree growing on land under the jurisdiction of

1 the Department of Public Works. "Street Tree" does not include any other forms of  
2 landscaping.

3 "Tree" shall mean any perennial, woody or fibrous plant species or cultivar, which  
4 reaches a height exceeding 10 feet at maturity, and which supports a branched or un-branched  
5 leaf canopy.

6 (b) City Responsibility to Maintain Street Trees. Beginning on July 1, 2017, and except  
7 as otherwise required by supervening law, the City shall be responsible for Maintaining Street  
8 Trees, including Street Trees planted both before and after July 1, 2017. The City may not adopt  
9 any ordinance making it the duty of owners of lots or portions of lots immediately abutting on,  
10 fronting on, or adjacent to any Street Tree to Maintain such Street Tree on or after July 1, 2017.  
11 Any such ordinance in existence on July 1, 2017, shall, to the extent it conflicts with this Section  
12 16.129, be void.

13 (c) Limitations of Transfer of Responsibility. Nothing in this Section 16.129 shall:  
14 (1) affect the rights or responsibilities of the City or property owners with respect to the  
15 Removal, establishment, or relocation of a Street Tree; (2) prevent the City from entering into  
16 voluntary agreements with third parties for them to assume responsibility for Street Tree  
17 Maintenance or continuing to abide by any such prior agreement; (3) prevent the City from  
18 imposing any legally permitted penalties or fees on persons who injure, damage, or destroy  
19 Trees; or (4) relieve abutting property owners from their responsibility for the care and  
20 Maintenance of the Sidewalk and Sidewalk areas adjacent to any Street Tree, other than the  
21 responsibility for Sidewalk repairs related to the Tree's growth or root system, which shall be  
22 the responsibility of the City.

23 (d) Limitation of Liability. Beginning on July 1, 2017, any local law imposing liability  
24 on property owners that do not Maintain Street Trees for injury or property damage shall not  
25 apply to the extent that the injury or property damage occurred on or after July 1, 2017, and was

1 proximately caused by the City's failure to Maintain a Street Tree under this Section 16.129, but  
2 shall otherwise remain applicable. Nothing in this Section 16.129 shall be construed to impose  
3 liability on the City for injury or property damage that occurred as a result of the property  
4 owner's responsibility to Maintain a Street Tree prior to July 1, 2017. To the extent that the  
5 Maintenance of a Street Tree requires that the City access private property, the City shall  
6 attempt in good faith to obtain permission from the owner of the private property. If the owner  
7 refuses to grant the City permission to access the private property for the purpose of  
8 Maintaining the Street Tree, the City shall have no liability for any damages related to the  
9 Maintenance of that Street Tree, and the property owner shall be subject to liability for such  
10 damages.

11 (e) No later than April 1, 2017, the Department of Public Works shall submit to the  
12 Board of Supervisors recommended amendments to Public Works Code Article 16, including but  
13 not limited to Section 805, to conform to this Section 16.129.

14 (f) Creating the Street Tree Maintenance Fund; Annual City Contributions. There shall  
15 be a Street Tree Maintenance Fund (the "Fund"). Each fiscal year, beginning in fiscal  
16 year 2017-2018, the City shall contribute \$19 million to the Fund. The Fund shall also include  
17 any other monies appropriated or allocated to the Fund. Beginning in fiscal year 2018-2019,  
18 the Controller shall adjust the amount of the City's annual \$19 million contribution to the Fund  
19 under this subsection (f) by the percentage increase or decrease in aggregate City discretionary  
20 revenues, as determined by the Controller, based on calculations consistent from year to year.  
21 In determining aggregate City discretionary revenues, the Controller shall only include revenues  
22 received by the City that are unrestricted and may be used at the option of the Mayor and the  
23 Board of Supervisors for any lawful City purpose. The method used by the Controller to  
24 determine discretionary revenues shall be the same as the method used by the Controller to  
25 determine the Library and Children's Fund Baseline calculations, as provided in Charter

1 Section 16.108(h). The change in aggregate discretionary revenues will be adjusted following  
2 the end of the fiscal year when final revenues are known. The Controller is authorized to  
3 increase or reduce budgetary appropriations as required under this subsection (f) to reflect  
4 changes in aggregate discretionary revenues following the end of the fiscal year when final  
5 revenues are known. The Controller shall set aside and maintain the above amounts, together  
6 with any interest earned thereon, in the Fund, which shall be subject to appropriation. Any  
7 amount unspent or uncommitted at the end of the fiscal year shall be deemed to have been  
8 devoted exclusively to a specified purpose within the meaning of Charter Section 9.113(a), shall  
9 be carried forward to the next fiscal year, and, subject to the budgetary and fiscal limitations of  
10 this Charter, shall be appropriated then or thereafter for the purposes set forth in this Section  
11 16.129.

12 (g) Beginning in fiscal year 2018-2019, the City may suspend growth in the City's  
13 \$19 million contribution to the Fund under subsection (f) of this Section 16.129 if the City's  
14 projected budget deficit for the upcoming fiscal year at the time of the Joint Report or Update to  
15 the five-year financial plan as prepared jointly by the Controller, the Mayor's Budget Director,  
16 and the Board of Supervisors' Budget Analyst exceeds \$200 million adjusted annually by  
17 changes in aggregate discretionary revenues as defined in subsection (f) of this Section 16.129.

18 (h) Administration and Use of the Fund. The Department of Public Works shall  
19 administer the Fund. Monies in the Fund shall only be used for the following purposes:

20 (1) Maintenance and Removal of Street Trees;

21 (2) Necessary costs of administering the Fund; and


22 (3) Making grants totaling up to \$500,000 annually to the San Francisco Unified  
23 School District exclusively to fund Maintenance and Removal of Trees on School District  
24 property.

1 Monies in the Fund shall not be used for Planting new Street Trees, or for grants to the  
2 San Francisco Unified School District for the Planting of new Trees on School District property,  
3 but may be used to pay the costs of Maintaining and Removing Street Trees that were planted  
4 before or after July 1, 2017, and to make grants to the School District to Maintain and Remove  
5 Trees that were planted before or after July 1, 2017.

6 (i) Annual Reports. Commencing with a report filed no later than January 1, 2019,  
7 covering the fiscal year ending June 30, 2018, the Department of Public Works shall file  
8 annually with the Board of Supervisors, by January 1 of each year, a report containing the  
9 amount of monies collected in and expended from the Fund during the prior fiscal year, and such  
10 other information as the Director of the Department of Public Works, in the Director's sole  
11 discretion, shall deem relevant to the operation of this Section 16.129.

12 (j) Early Termination. At any time before January 1, 2017, the Mayor, after consulting  
13 with his or her Budget Director and the Controller, and after taking into account the City's  
14 projected revenues and expenditures in the City's financial plans, may terminate implementation  
15 of this Section 16.129 by issuing a written notice to the Board of Supervisors and the Controller.  
16 The termination shall be irrevocable and apply to this entire Section. Upon the Mayor's  
17 submittal of the notice to the Controller and the Board of Supervisors, this Section 16.129 shall,  
18 by operation of law, become inoperative, and the City Attorney shall cause this Section to be  
19 removed from the Charter.

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:   
24 Scott M. Reiber  
25 Deputy City Attorney

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**LEGISLATIVE DIGEST**

*(Amended at Board - 7/26/16 - Fourth Draft)*

[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 to the City, establish the Street Tree Maintenance Fund primarily to pay for such maintenance and the maintenance of trees on San Francisco Unified School District property, and require an annual contribution by the City to the Fund of \$19 million, adjusted annually for changes in aggregate discretionary City revenues; and to affirm the Planning Department's determination under the California Environmental Quality Act.**

Existing Law

Section 805 of Article 16 of the Public Works Code currently makes it the duty of certain property owners whose properties abut on, front on, or are adjacent to a street tree to maintain that tree. These abutting property owners are also responsible for the care and maintenance of the sidewalk and sidewalk areas adjacent to the street trees.

Section 805 further provides that if a person 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 has a cause of action against the abutting property owner, and the abutting property owner must indemnify the City for any damages the City is required to pay as a result of any claim that results from an injury to a person or property as a result of the failure of the abutting property owner to maintain a street tree or sidewalk.

Amendments to Current Law

Effective July 1, 2017, this ordinance would add a provision to the City's charter to transfer to the City the responsibility for the maintenance of street trees, including any sidewalk damage caused by the tree's growth or root system. The charter provision 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 voluntary agreements with third parties for them to assume responsibility for street tree maintenance or continuing to abide by any such prior agreement; (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, other than the transfer to the City of the responsibility for sidewalk repairs related to the tree's growth or root system.

Under the proposed charter provision, 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 responsibility to maintain the street tree prior to July 1, 2017, or if the maintenance of such tree required that the City access private property, and the private property owner refused to grant access to the tree after the City's good faith effort to obtain permission to access the tree.

To fund the City's maintenance of the street trees and the removal of any street trees, this ordinance would add a provision to the City's charter to create a general fund set-aside of \$19 million per year, adjusted annually by the percentage increase or decrease in the City's discretionary revenues.

In addition to funding the City's maintenance of street trees and removal of any street trees, the \$19 million general fund set-aside could also be used to make grants totaling up to \$500,000 annually to the San Francisco Unified School District exclusively to fund the maintenance and removal of trees on School District property. The \$19 million general fund set-aside could not be used to plant new trees.

Up until January 1, 2017, the Mayor would have the one-time authority to terminate the set-aside immediately, based on his or her review of the City's financial condition.

#### Background Information

This legislative digest reflects amendments made in committee on June 8, 2016. The amendments added a \$5,000 cap on a parcel tax that was originally included in the ordinance and made other, non-substantive changes.

This legislative digest also reflects amendments made in committee on June 23, 2016. The amendments increased the tax rate for parcels with frontage of at least 25 feet but less than 150 feet from \$1.42 per linear foot of frontage to \$1.47 per linear foot of frontage. They also added a special tax calculation for parcels on corner lots in RH-1(D), RH-1, RH-1(S) and RH-2 Districts that would otherwise be subject to an annual tax of less than \$250, and made other, non-substantive changes.

This legislative digest also reflects amendments made at the Board of Supervisors on July 26, 2016. The amendments deleted the proposed parcel tax, increased the general fund set-aside from \$8 million to \$19 million, made other changes related to these revisions, and authorized the Mayor to terminate the set-aside before January 1, 2017, based on his or her review of the City's financial condition..

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