


BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller

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

DATE: June 24, 2016

SUBJECT: CHARTER AMENDMENT INTRODUCED
November 8, 2016 Election

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 June 23, 2016, Rules Committee meeting. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 160381 Charter Amendment and Business and Tax Regulations Code - City Responsibility and Parcel Tax for Street Trees

Charter Amendment (Third 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 and establish a special fund primarily to pay for such maintenance and the maintenance of trees on San Francisco Unified School District property; to amend the Business and Tax Regulations Code to add a special parcel tax primarily to fund the City's maintenance of street trees and the maintenance of trees on San Francisco Unified School District property; to increase the City's appropriations limit by the amount of the parcel tax for four years from November 8, 2016; 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. 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

New section 2604.
Starts on Page 10, line 7
Amendments prepared for 6/23/2016

SEC. 2604. IMPOSITION; DEPOSIT OF PROCEEDS.

(a) Unless otherwise provided in this Article 26, on July 1 of each Fiscal Year there is hereby imposed an annual special Tax on each Parcel in the City for the purposes described in Section 2611.

(b) Except as provided in subsection (c), the Tax shall be imposed at the following rates:

(1) Parcels with less than 25 feet of Frontage, including Parcels with no Frontage, and all condominiums, shall be subject to an annual Tax of \$29.50 per Parcel.

*(2) Parcels with Frontage of 25 feet or more but less than 150 feet shall be subject to an annual Tax of ~~\$1.42~~ **\$1.47** per linear foot of Frontage.*

(3) Parcels with Frontage of 150 feet or more shall be subject to an annual Tax of \$2 per linear foot of Frontage, up to a maximum of \$5,000 per Parcel per Fiscal Year.

(c) The Tax on each Parcel that meets all three of the following criteria shall be calculated under subsection (b) using only 70% of the Parcel's total Frontage:

(1) The Parcel is in a RH-1(D), RH-1, RH-1(S), or RH-2 District, as defined in Section 209.1 of the Planning Code, as amended from time to time;

(2) The Parcel has Frontage on two adjoining Public Rights-of-Way; and

(3) The Parcel would otherwise be subject to a Tax of less than \$250, calculated under subsection (b) but without regard to this subsection (c).

(d) Commencing with Fiscal Year 2018-2019, the dollar amounts described in subsection (b) of this Section 2604 shall be adjusted annually in accordance with the increase in the appropriate consumer price index, to be determined by the Controller, as of the prior December 31, and such increase shall take effect when: (1) notice of the increase is given by the Controller to the Board of Supervisors in the manner generally used by the Controller for notification of fee or tax changes; and (2) such increase is approved by the Mayor and Board of Supervisors by resolution.

(e) All monies collected pursuant to the Tax shall be deposited to the credit of the Fund. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation.

1 [Charter Amendment and Business and Tax Regulations Code - City Responsibility and Parcel
2 Tax for Street Trees]

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 and establish a special**
6 **fund primarily to pay for such maintenance and the maintenance of trees on San Francisco**
7 **Unified School District property; to amend the Business and Tax Regulations Code to add**
8 **a special parcel tax primarily to fund the City’s maintenance of street trees and the**
9 **maintenance of trees on San Francisco Unified School District property; to increase the**
10 **City’s appropriations limit by the amount of the parcel tax for four years from November**
11 **8, 2016; and to affirm the Planning Department’s determination under the California**
12 **Environmental Quality Act.**

13
14 NOTE: **Unchanged Charter and Code text and uncodified text** are in plain
15 font.
16 **Additions** are *single-underline italics Times New Roman font*.
17 **Deletions** are *strike-through italics Times New Roman font*.
18 **Asterisks (* * * *)** indicate the omission of unchanged Charter or
19 Code subsections.

20 Section 1. The Planning Department has determined that the actions contemplated in this
21 proposed Charter Amendment and initiative ordinance comply with the California
22 Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*). Said
23 determination is on file with the Clerk of the Board of Supervisors in File No. ___ and is
24 incorporated herein by reference. The Board affirms this determination.
25

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

4 **SEC. 16.129. STREET TREE MAINTENANCE.**

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

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

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

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

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

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

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

8 “Tree” shall mean any perennial, woody or fibrous plant species or cultivar, which
9 reaches a height exceeding 10 feet at maturity, and which supports a branched or un-branched
10 leaf canopy.

11 (b) City Responsibility to Maintain Street Trees. Beginning on July 1, 2017, and except
12 as otherwise required by supervening law, the City shall be responsible for Maintaining Street
13 Trees, including Street Trees planted both before and after July 1, 2017. The City may not adopt
14 any ordinance making it the duty of owners of lots or portions of lots immediately abutting on,
15 fronting on, or adjacent to any Street Tree to Maintain such Street Tree on or after July 1, 2017.
16 Any such ordinance in existence on July 1, 2017, shall, to the extent it conflicts with this Section
17 16.129, be void.

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

1 responsibility for Sidewalk repairs related to the Tree's growth or root system, which shall be
2 the responsibility of the City.

3 (d) Limitation of Liability. Beginning on July 1, 2017, any local law imposing liability
4 on property owners that do not Maintain Street Trees for injury or property damage shall not
5 apply to the extent that the injury or property damage occurred on or after July 1, 2017, and was
6 proximately caused by the City's failure to Maintain a Street Tree under this Section 16.129, but
7 shall otherwise remain applicable. Nothing in this Section 16.129 shall be construed to impose
8 liability on the City for injury or property damage that occurred as a result of the property
9 owner's responsibility to Maintain a Street Tree prior to July 1, 2017. To the extent that the
10 Maintenance of a Street Tree requires that the City access private property, the City shall
11 attempt in good faith to obtain permission from the owner of the private property. If the owner
12 refuses to grant the City permission to access the private property for the purpose of
13 Maintaining the Street Tree, the City shall have no liability for any damages related to the
14 Maintenance of that Street Tree, and the property owner shall be subject to liability for such
15 damages.

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

19 (f) Creating the Street Tree Maintenance Fund; Annual City Contributions. There shall
20 be a Street Tree Maintenance Fund (the "Fund"). Each fiscal year, beginning in fiscal
21 year 2017-2018, the City shall contribute \$8 million to the Fund. The Fund shall also include
22 any other monies appropriated or allocated to the Fund, including, but not limited to, the
23 proceeds of any parcel tax required to be deposited into the Fund, and any penalties, interest,
24 and fees associated with the imposition of such a parcel tax. Beginning in fiscal year 2018-2019,
25 the Controller shall adjust the amount of the City's annual \$8 million contribution to the Fund

1 under this subsection (f) by the percentage increase or decrease in aggregate City discretionary
2 revenues, as determined by the Controller, based on calculations consistent from year to year.
3 In determining aggregate City discretionary revenues, the Controller shall only include revenues
4 received by the City that are unrestricted and may be used at the option of the Mayor and the
5 Board of Supervisors for any lawful City purpose. The method used by the Controller to
6 determine discretionary revenues shall be the same as the method used by the Controller to
7 determine the Library and Children's Fund Baseline calculations, as provided in Charter
8 Section 16.108(h). The change in aggregate discretionary revenues will be adjusted following
9 the end of the fiscal year when final revenues are known. The Controller is authorized to
10 increase or reduce budgetary appropriations as required under this subsection (f) to reflect
11 changes in aggregate discretionary revenues following the end of the fiscal year when final
12 revenues are known. The Controller shall set aside and maintain the above amounts, together
13 with any interest earned thereon, in the Fund, which shall be subject to appropriation. Any
14 amount unspent or uncommitted at the end of the fiscal year shall be deemed to have been
15 devoted exclusively to a specified purpose within the meaning of Charter Section 9.113(a), shall
16 be carried forward to the next fiscal year, and, subject to the budgetary and fiscal limitations of
17 this Charter, shall be appropriated then or thereafter for the purposes set forth in this Section
18 16.129.

19 (g) Beginning in fiscal year 2018-2019, the City may suspend growth in the City's
20 \$8 million contribution to the Fund under subsection (f) of this Section 16.129 if the City's
21 projected budget deficit for the upcoming fiscal year at the time of the Joint Report or Update to
22 the five-year financial plan as prepared jointly by the Controller, the Mayor's Budget Director,
23 and the Board of Supervisors' Budget Analyst exceeds \$200 million adjusted annually by
24 changes in aggregate discretionary revenues as defined in subsection (f) of this Section 16.129.

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

3 (1) Maintenance and Removal of Street Trees.

4 (2) Necessary costs of administering the Fund, including costs associated with
5 the administration of any parcel tax required to be deposited into the Fund.

6 (3) Refunds of any overpayments of any parcel tax required to be deposited into
7 the Fund, and any penalties, interest, and fees associated with such overpayments.

8 (4) Making grants totaling up to \$500,000 annually to the San Francisco Unified
9 School District exclusively to fund Maintenance and Removal of Trees on School District
10 property.

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

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

22
23 Section 3. The Board of Supervisors hereby submits to the qualified voters of the City
24 and County, at an election to be held on November 8, 2016, a proposal to amend the Business
25

1 and Tax Regulations Code of the City and County by adding Article 26, Sections 2601 through
2 2612, to read as follows:

3 **ARTICLE 26: TREE MAINTENANCE PARCEL TAX ORDINANCE**

4
5 **SEC. 2601. SHORT TITLE.**

6 *This Article 26 shall be known as the "Tree Maintenance Parcel Tax Ordinance."*

7
8 **SEC. 2602. DEFINITIONS.**

9 *For purposes of this Article 26, the following definitions apply:*

10 *"Assessor" means the Assessor-Recorder of the City and County of San Francisco, or his*
11 *or her designee.*

12 *"City" means the City and County of San Francisco.*

13 *"Controller" means the Controller of the City and County of San Francisco, or his or her*
14 *designee.*

15 *"Fiscal Year" means the period starting July 1 and ending on the following June 30.*

16 *"Frontage" means the number of linear feet of a Parcel that is adjacent or tangent to a*
17 *Public Right of Way, as shown on the maps maintained by the Department of Public Works,*
18 *rounded to the nearest foot. The Director of the Department of Public Works shall provide the*
19 *Frontage of each Parcel subject to the Tax to the Tax Collector.*

20 *"Fund" means the Street Tree Maintenance Fund described in Charter Section 16.129.*

21 *"Maintenance" (and its root "Maintain") shall mean those actions necessary to promote*
22 *the life, growth, health, or beauty of a Tree. Maintenance includes both routine maintenance*
23 *and major maintenance. Routine maintenance includes adequate watering to ensure the Tree's*
24 *growth and sustainability; weed control; removal of Tree-well trash; staking; fertilizing; routine*
25 *adjustment and timely removal of stakes, ties, Tree guards, and Tree grates; bracing; and*

1 Sidewalk repairs related to the Tree's growth or root system. Major maintenance includes
2 structural pruning as necessary to maintain public safety and to sustain the health, safety, and
3 natural growth habit of the Tree; pest and disease-management procedures as needed and in a
4 manner consistent with public health and ecological diversity; and replacement of dead or
5 damaged Trees. Pruning practices shall be in compliance with International Society of
6 Arboriculture Best Management Practices and ANSI Pruning Standards, whichever is more
7 protective of Tree preservation, or any equivalent standard or standards selected by the Director
8 of the Department of Public Works.

9 "Parcel" has the meaning set forth in Section 2603.

10 "Person" means any individual, firm, company, partnership, limited liability partnership,
11 joint venture, association, proprietorship, social club, fraternal organization, joint stock
12 company, domestic or foreign corporation, limited liability company, estate, trust, business trust,
13 receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or other
14 group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or
15 otherwise.

16 "Planting" means putting or setting into the ground or into a container to grow and
17 irrigating until self-sufficient.

18 "Public Right of Way" means the dedicated public alleys, boulevards, courts, lanes,
19 roads, sidewalks, spaces, streets, and ways within the City, which are under the permitting
20 jurisdiction of the Department of Public Works.

21 "Removal" means any intentional or negligent moving, carrying away, elimination, or
22 taking away of part or all of a Tree.

23 "Sidewalk" means the area between the curbing and the abutting private property lot
24 line, whether paved or unpaved, as legislated by the Board of Supervisors and as reflected in the
25 official maps of the Department of Public Works.

1 “Street Tree” means any Tree growing within the Public Right of Way, including
2 unimproved public streets and Sidewalks, and any Tree growing on land under the jurisdiction of
3 the Department of Public Works. “Street Tree” does not include any other forms of
4 landscaping.

5 “Tax” means the Tree Maintenance Parcel Tax imposed by this Article 26.

6 “Tax Collector” means the Tax Collector of the City and County of San Francisco, or his
7 or her designee.

8 “Tree” means any perennial, woody or fibrous plant species or cultivar, which reaches a
9 height exceeding 10 feet at maturity, and which supports a branched or un-branched leaf
10 canopy.

11
12 **SEC. 2603. PARCEL.**

13 (a) “Parcel” means a unit of real estate in the City with an Assessor’s parcel number as
14 shown on the most current official assessment roll of the Assessor on July 1 of the Fiscal Year
15 for which the Tax is imposed. However, both of the following conditions shall apply:

16 (1) A Parcel created by a subdivision map approved in accordance with the
17 Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California
18 Government Code) shall be deemed to be a single assessment unit and shall not be deemed, on
19 the basis of multiple Assessor’s parcel numbers assigned by the Assessor, to constitute multiple
20 assessment units.

21 (2) A Parcel that has not been subdivided in accordance with the Subdivision
22 Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government
23 Code) may be deemed to constitute a separate assessment unit only to the extent that the Parcel
24 has been previously described and conveyed in one or more deeds separating it from all
25 adjoining property.

1 (b) If the Parcel identified pursuant to subsection (a)(1) or (a)(2) is not consistent with
2 the property's identification by Assessor's parcel number, it shall be the responsibility of the
3 Parcel owner to provide the Tax Collector with written notice of the correct Assessor's parcel
4 number of taxable Parcels pursuant to this Section 2603 90 days after the date of the initial tax
5 bill containing the Tax.

6
7 **SEC. 2604. IMPOSITION; DEPOSIT OF PROCEEDS.**

8 (a) Unless otherwise provided in this Article 26, on July 1 of each Fiscal Year there is
9 hereby imposed an annual special Tax on each Parcel in the City for the purposes described in
10 Section 2611.

11 (b) Except as provided in subsection (c), the Tax shall be imposed at the following rates:

12 (1) Parcels with less than 25 feet of Frontage, including Parcels with no
13 Frontage, and all condominiums, shall be subject to an annual Tax of \$29.50 per Parcel.

14 (2) Parcels with Frontage of 25 feet or more but less than 150 feet shall be
15 subject to an annual Tax of \$1.47 per linear foot of Frontage.

16 (3) Parcels with Frontage of 150 feet or more shall be subject to an annual Tax
17 of \$2 per linear foot of Frontage, up to a maximum of \$5,000 per Parcel per Fiscal Year.

18 (c) The annual Tax on each Parcel that meets all three of the following criteria shall be
19 calculated under subsection (b) using only 70% of the Parcel's total Frontage:

20 (1) The Parcel is in an RH-1(D), RH-1, RH-1(S), or RH-2 District, as defined in
21 Section 209.1 of the Planning Code, as amended from time to time;

22 (2) The Parcel has Frontage on two adjoining Public Right-of-Ways; and

23 (3) The Parcel would otherwise be subject to an annual Tax of less than \$250,
24 calculated under subsection (b) without regard to this subsection (c).

1 This subsection (c) shall not apply to Parcels subject to the Tax under subsection (b)(1).

2 (d) Commencing with Fiscal Year 2018-2019, the dollar amounts described in
3 subsections (b) and (c) of this Section 2604 shall be adjusted annually in accordance with the
4 increase in the appropriate consumer price index, to be determined by the Controller, as of the
5 prior December 31, and such increase shall take effect when: (1) notice of the increase is given
6 by the Controller to the Board of Supervisors in the manner generally used by the Controller for
7 notification of fee or tax changes; and (2) such increase is approved by the Mayor and Board of
8 Supervisors by resolution.

9 (e) All monies collected pursuant to the Tax shall be deposited to the credit of the Fund.
10 The Fund shall be maintained separate and apart from all other City funds and shall be subject
11 to appropriation.

12
13 **SEC. 2605. EXEMPTIONS.**

14 (a) The following Parcels shall be exempt from the Tax:

15 (1) All Parcels on which no ad valorem property tax is levied for the Fiscal Year;
16 and

17 (2) All Parcels in which an individual who is 65 years of age or older as of July 1
18 of the Fiscal Year owns a beneficial interest, where such beneficial owner occupies the Parcel as
19 his or her principal residence.

20 (b) To claim an exemption from the Tax under subsection (a)(2) of this Section 2605, the
21 owner must submit an application to the Tax Collector. The application shall be accompanied
22 by such evidence as the Tax Collector deems necessary to determine eligibility for the exemption.
23 The Tax Collector shall prepare forms for this purpose. Exemptions granted under subsection
24 (a)(2) shall be automatically renewed in subsequent Fiscal Years absent a change in relevant

1 facts. Homeowners receiving an exemption under subsection (a)(2) must notify the Tax
2 Collector if they no longer qualify for the exemption.

3
4 **SEC. 2606. TERM.**

5 The Tax shall take effect on July 1, 2017 for Fiscal Year 2017-2018, and shall continue in
6 effect for each Fiscal Year thereafter until June 30, 2037, after which date it shall expire by
7 operation of law. Notwithstanding the preceding sentence, this Tax shall expire and have no
8 force or effect in the event that, and as of the date that, Charter Section 16.129 is repealed or is
9 amended to transfer the Maintenance of Street Trees to property owners.

10
11 **SEC. 2607. COLLECTION.**

12 (a) The Tax shall be collected by the City in two approximately equal installments in the
13 same manner and on the same dates as established by law for the collection of ad valorem
14 property taxes. The collection of the Tax shall be subject to the regulations and procedures
15 governing the collection of ad valorem property taxes by the City, including, without limitation,
16 the imposition of penalties, fees, and interest on the failure to remit or the delinquent remittance
17 of the Tax.

18 (b) The Tax Collector is charged with the responsibility of overseeing the collection and
19 receipt of the proceeds of the Tax.

20
21 **SEC. 2608. TAX DEEMED DEBT TO CITY.**

22 (a) The amount of any Tax, interest, or penalties imposed under this Article 26 shall be
23 deemed a debt to the City. Any Person who fails to timely pay the Tax shall be liable to an
24 action brought in the name of the City in any court of competent jurisdiction for the amount of
25 the Tax, interest, and penalties owed.

1 (b) In any such action to recover the delinquent payment of the Tax, interest, and
2 penalties, the City shall also be entitled to recover its administrative costs and attorneys' fees.

3 (c) The provisions of this Section 2608 shall not be deemed a limitation upon the right of
4 the City to bring any other action or take any other measures, whether criminal, legal, or
5 equitable, based upon the failure to pay the Tax, penalty, and interest imposed by this Article 26
6 or the failure to comply with any of the provisions of this Article.

7
8 **SEC. 2609. REGULATIONS.**

9 The Tax Collector is authorized to promulgate rules and regulations to implement this
10 Article 26.

11
12 **SEC. 2610. REFUNDS.**

13 (a) Claims for Refund; Limitations. Except as otherwise provided in subsections (e), (f),
14 and (g) of this Section 2610, the Controller shall refund or cause to be refunded the amount of
15 any Tax, interest, or penalty imposed with respect to the Tax that has been overpaid or paid
16 more than once, or has been erroneously or illegally collected or received by the City, provided
17 the Person that paid such amount files a claim in writing with the Controller within the later of
18 one year of: (1) payment of such amount; (2) the date the Tax was due; or (3) the date on which
19 such amount requested on a request for refund timely filed under subsection (f) of this Section
20 2610 was denied under that subsection (f).

21 (b) Claims for Refund; Contents. Any claim filed under subsections (a)-(e) of this
22 Section 2610 must state: (1) the specific amount claimed to have been overpaid or paid more
23 than once, or erroneously or illegally collected or received by the City; (2) the Fiscal Year of the
24 Tax at issue; (3) the date the Tax was paid; (4) the grounds upon which the claim is founded,
25 with specificity sufficient to enable the responsible City officials to understand and evaluate the

1 claim; and (5) the date on which the amount requested on a request for refund timely filed under
2 subsection (f) of this Section 2610 was denied under that subsection (f), if the Person filing the
3 claim filed such a request for refund.

4 (c) Claims for Refund; Applicable Law. Claims for refund shall be made according to
5 California Government Code, Title 1, Division 3.6, Part 3. For purposes of subsections (a)-(e)
6 of this Section 2610, a claim shall be deemed to accrue on the later of: (1) the date the Tax was
7 due; (2) the date the Tax was paid; or (3) the date the refund requested on a request for refund
8 timely filed pursuant to subsection (f) of this Section 2610 was denied under that subsection (f).
9 The Controller shall furnish a form to be used for claims.

10 (d) Claims for Refund; Actions by the City. The Controller shall enter the claim in the
11 register, and shall forthwith forward the claim to the City Attorney. The City Attorney is
12 designated to take such actions on claims as authorized by California Government Code, Title 1,
13 Division 3.6, Part 3, Chapter 2, except that the City Attorney's authority with regard to rejecting
14 or allowing claims shall be as provided in this Section 2610. The City Attorney may reject the
15 claim, and shall notify the claimant of such rejection. Allowance or compromise and settlement
16 of claims under this Section 2610 in excess of \$25,000 shall require the written approval of the
17 City Attorney and approval of the Board of Supervisors by resolution. The City Attorney may
18 allow or compromise and settle such claims if the amount is \$25,000 or less. No claim may be
19 paid until the Controller certifies that monies are available from the proper funds or
20 appropriations to pay the claim as allowed or as compromised and settled. If the City approves
21 the claim, the City may refund the excess amount collected or paid, or may credit such amount
22 toward any amount due and payable to the City from the Person from whom it was collected or
23 by whom it was paid, and the balance may be refunded to such Person, or the Person's
24 administrator or executor.

1 (e) Claims for Refund; Waiver of Written Filing Requirement. The City Attorney, in his
2 or her discretion and upon good cause shown, prior to the expiration of the one-year limitations
3 period, may waive the requirement set forth in subsection (a) of this Section 2610 that a Person
4 file a written claim for refund in any case in which the Tax Collector and City Attorney
5 determine on the basis of the evidence that:

6 (1) an amount of Tax, interest, or penalty has been overpaid or paid more than
7 once, or has been erroneously or illegally collected or received by the City; and

8 (2) all other conditions precedent to the payment of a refund to the Person have
9 been satisfied.

10 (f) Requests for Refund; Refunds Permissible Without a Claim. The Tax Collector may
11 authorize the Controller to refund Tax, interest, or penalty payments, without a refund claim
12 having been filed and without review by the City Attorney, if the Tax Collector determines that
13 the amount paid exceeds the Tax, penalties, and interest due. The Person that made the
14 overpayment may request such a refund from the Tax Collector on a request for refund form that
15 is issued by the Tax Collector and that is filed with the Tax Collector within the later of one year
16 of the payment of such amount or the date the Tax was due. A refund requested on a request for
17 refund form under this subsection (f) shall automatically be deemed denied for purposes of
18 subsections (a), (b), and (c) of this Section 2610 if the Tax Collector does not grant or deny the
19 refund request within one year of the date it was filed. Any action by the Tax Collector after a
20 refund request under this subsection (f) has been deemed denied shall not constitute a denial and
21 shall have no effect on the statute of limitations for filing a claim for refund under subsections
22 (a)-(e) of this Section 2610.

23 (g) Refunds On Parcels Not Subject to Ad Valorem Property Taxes. To the extent that,
24 for a given Fiscal Year, ad valorem property taxes are refunded to a taxpayer as a result of a
25 final determination that a Parcel is exempt from ad valorem property taxes for that Fiscal Year,

1 any Taxes paid for that Fiscal Year shall also be refunded to the taxpayer without the need for a
2 refund claim or refund request form having been filed and without review by the City Attorney.

3
4 **SEC. 2611. EXPENDITURE OF PROCEEDS.**

5 (a) Subject to the budgetary and fiscal provisions of the City Charter, monies in the
6 Fund shall be appropriated to be used exclusively for the following purposes:

7 (1) Maintenance and Removal of Street Trees.

8 (2) Necessary costs of administering the Fund, including costs associated with
9 the administration of the Tax.

10 (3) Refunds of any overpayments of the Tax, and any penalties, interest, and fees
11 associated with such overpayments.

12 (4) Making grants totaling up to \$500,000 annually to the San Francisco Unified
13 School District exclusively to fund Maintenance and Removal of Trees on School District
14 property.

15 (b) Monies in the Fund shall not be used for Planting new Street Trees or for grants to
16 the San Francisco Unified School District for the Planting of new Trees on School District
17 property, but may be used to pay the costs of Maintaining and Removing Street Trees that were
18 planted before or after July 1, 2017, and to make grants to the School District to Maintain and
19 Remove Trees that were planted before or after July 1, 2017.

20
21 **SEC. 2612. AMENDMENT OF ARTICLE.**

22 The Board of Supervisors may amend or repeal this Article 26 without a vote of the
23 People of the City and County of San Francisco except as limited by Article XIII C of the
24 California Constitution. Notwithstanding the preceding sentence, the Board of Supervisors may
25 not amend or repeal, without a vote of the People, the provision in Section 2606 causing the Tax

1 to expire and have no force or effect in the event that, and as of the date that, Charter Section
2 16.129 is repealed or amended to transfer the Maintenance of Street Trees to property owners.
3


4 Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article
5 XIII B and applicable laws, for four years from November 8, 2016, the appropriations limit for
6 the City shall be increased by the aggregate sum collected by the levy of the parcel tax imposed
7 by the Tree Maintenance Parcel Tax Ordinance, contained in Section 3 of this measure.
8

9 Section 5. The Tree Maintenance Parcel Tax Ordinance, contained in Section 3 of this
10 measure, is submitted to the qualified electors of the City pursuant to Article XIII A, Section 4 of
11 the California Constitution, and must pass by a two-thirds vote of the qualified electors in the
12 City. If this measure, including both the proposed Charter amendment in Section 2 and the
13 initiative ordinance in Section 3, does not pass by a two-thirds vote of the qualified electors of
14 the City, the entire measure shall be void and shall have no effect.
15

16 Section 6. Severability. Unless specifically noted otherwise, if any section, subsection,
17 sentence, clause, phrase, or word of this measure, or any application thereof to any person or
18 circumstance, is held to be invalid or unconstitutional by a decision of a court of competent
19 jurisdiction, such decision shall not affect the validity of the remaining portions or applications
20 of the measure. The People of the City and County of San Francisco hereby declare that they
21 would have passed this measure and each and every section, subsection, sentence, clause, phrase,
22 and word not declared invalid or unconstitutional without regard to whether any other portion of
23 this measure or application thereof would be subsequently declared invalid or unconstitutional.
24
25

1 Section 7. No Conflict with Federal or State Law. Nothing in this measure shall be
2 interpreted or applied so as to create any requirement, power, or duty in conflict with any federal
3 or state law.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7
8 By: 
9 Scott M. Reiber
Deputy City Attorney

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FILE NO.

LEGISLATIVE DIGEST

[Charter Amendment and Business and Tax Regulations Code - City Responsibility and Parcel Tax for 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 and establish a special fund primarily to pay for such maintenance and the maintenance of trees on San Francisco Unified School District property; and to amend the Business and Tax Regulations Code to add a special parcel tax primarily to fund the City's maintenance of street trees and the maintenance of trees on San Francisco Unified School District property; and to increase the City's appropriations limit by the amount of the parcel tax for four years from November 8, 2016; 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.

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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 \$8 million per year, adjusted annually by the percentage increase or decrease in the City's discretionary revenues.

Also to fund the City's maintenance of the street trees and the removal of any street trees, this ordinance would impose a parcel tax on each parcel in the City based on the number of linear feet of the parcel that is adjacent or tangent to a public right-of-way ("frontage"). The parcel tax would take effect on July 1, 2017, and would continue in effect through June 30, 2037, unless the charter provision transferring responsibility for the maintenance of street trees is repealed or is amended to transfer the maintenance of street trees to property owners, in which case the parcel tax would automatically expire. Except as provided below, the parcel tax would be imposed at the following rates, adjusted annually in accordance with the consumer price index:

Frontage	Rate
Parcels with Less Than 25 Feet of Frontage, Including Parcels With No Frontage, and All Condominiums	\$29.50 per Parcel
Parcels with Frontage of 25 Feet or More But Less Than 150 Feet	\$1.47 per Linear Foot
Parcels with Frontage of 150 Feet or More	\$2 per Linear Foot, up to a maximum of \$5,000 per parcel per fiscal year

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 based on the chart above would instead be subject to a tax calculated using the chart above but using only 70% of the parcel's frontage. However, this rule does not apply to parcels with less than 25 feet of frontage.

Parcels on which no ad valorem property tax is levied for the fiscal year would be exempt from the tax. Additionally, parcels in which an individual who is 65 years of age or older owns a

FILE NO.

beneficial interest and occupies the parcel as her or her principal residence would be exempt from the tax, as long as the property owner timely files the appropriate exemption application and documentation with the Tax Collector. The parcel tax would be collected by the Tax Collector on the City's property tax bills.

In addition to funding the City's maintenance of street trees and removal of any street trees, the \$8 million general fund set-aside and parcel tax 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. Neither the \$8 million general fund set-aside nor the parcel tax could be used to plant new trees.

Finally, this ordinance would increase the City's annual appropriations limit under Article XIII B of the California Constitution by the aggregate sum collected by the levy of the parcel tax.

Background Information

This legislative digest reflects amendments made in committee on June 8, 2016. The amendments added a \$5,000 cap on the parcel tax 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 the 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.

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