



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Proposed Library Parcel Tax
Measure

DATE: 7/29/2004

BACKGROUND

Item 5.2 (a) on the City Council's August 3 agenda recommends that the City Council submit to the voters at the November election a measure to approve an annual special tax in the form of a parcel tax. Proceeds of the tax would be expended only for library purposes.

The proposed measure's language is set forth in the memorandum to the Council from Jane Light, Library Director. The purpose of this memorandum is to transmit to the City Council the proposed ordinance which would be enacted if the measure is approved by the voters.

ANALYSIS

The proposed measure, if approved, would amend the San José Municipal Code to add a new chapter entitled "San José Library and Reading Protection Ordinance." Under State law, passage of this measure requires two-thirds approval of the voters voting on the measure. In view of the difficulty of condensing all of the Ordinance's provisions into the brief 75 word ballot measure, the entire text of the Ordinance is proposed to be included in the voter handbook for the November election.

A copy of the draft Ordinance is attached to this memorandum. A summary of the Ordinance is set forth below:

Imposition of Tax

Pursuant to the Ordinance, an annual special tax would be imposed on parcels of land in the City of San José for library purposes ("Library Parcel Tax"). The Library Parcel Tax would have a ten year term, expiring on June 30, 2015.

The Library Parcel Tax would generate funding for libraries that is currently provided by the Library Benefit Assessment District, which expires on June 30, 2005. The proposed land use classifications and Library Parcel tax rates imposed on those classifications are consistent with the assessments charged

pursuant to the Assessment District. To determine the assessment for each parcel based on the benefit from library services, the Assessment District methodology takes into account parcel acreage size, number of units, if applicable, and the use of the parcel. Under this methodology, single-family homes are the starting point of the calculation because the Assessment District Report found this land use type to be the most prevalent in San José (approximately 75% of all parcels) and the most benefited. The resulting assessments are: \$25 on single-family parcels, condominiums and townhomes and a proportional amount for multi-family and other types of residential, industrial, commercial, professional, and vacant parcels based on their relative benefit from library services and the parcel size or number of units. These rates are specified in more detail in Exhibit A to the Ordinance.

The rates specified in Exhibit A would be applied in Fiscal Year 05-06. Commencing with Fiscal Year 06-07, the City Council may adjust the Library Parcel Tax rates by the inflation rate in the Bay Area, subject to a three percent cap.

The Ordinance exempts parcels owned by churches and religious organizations and used for religious worship, and parcels owned by governmental entities. These exemptions are consistent with the current Assessment District.

Collection of Tax; Enforcement

The Library Parcel Tax is to be collected by the County in conjunction with the collection of property taxes. Payment of the Library Parcel Tax is subject to the same provisions as apply to the payment of property taxes including late payment penalties and interest. The Director of Finance is the City official charged with overseeing the collection and receipt of the tax proceeds.

Under Title 1 of the City's Municipal Code, failure to timely pay the Library Parcel Tax could be subject to criminal enforcement as a misdemeanor. The penalties under Title 1 include a fine up to \$1000 and imprisonment up to 6 months.

Use of Tax Proceeds

The Library Parcel Tax proceeds are required to be deposited into a special fund and used exclusively for library purposes, including the acquisition of library books and materials and related costs of maintaining library collections; the development and delivery of homework and educational programs; the repair, equipping and staffing of libraries; and the cost of collection and administration of the Library Parcel Tax.

Refunds and Appeals

Taxpayers seeking refunds of overpayments or erroneously collected Library Parcel Tax payments may apply in writing to the Director of Finance for a refund. If the taxpayer is not satisfied with the Director's decision, the Ordinance sets forth a procedure for appealing the Director's decision to the Appeals Hearing Board. If, in the future, the City Council desires to designate another body to hear these appeals, the Ordinance provides that the Council may appoint another body to do so.

Amendments to the Ordinance

Except for adjusting the Library Parcel Tax rate for inflation, the City Council cannot increase the Library Parcel Tax or extend its duration without voter approval. The Ordinance, however, provides that the City Council may amend the Ordinance to make technical changes and clarifications.

Oversight and Reporting

The Ordinance requires the City Council to appoint or designate an oversight committee to review the expenditure of the Library Parcel Tax proceeds. No later than January 1 of each year, the City's Director of Finance must report in writing to the City Council for the preceding fiscal year: (a) the amount of Library Parcel Taxes collected; and (b) the various expenditures of these funds. Additionally, the City's independent auditor is required to annually audit the expenditure of the Library Parcel Tax proceeds.

RICHARD DOYLE
City Attorney

By _____
Danielle Kenealey
Sr. Deputy City Attorney

Attach.
cc: Del Borgsdorf

PROPOSED ORDINANCE

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN JOSE:

Title 4 of the San José Municipal Code is amended to add a new Chapter to be numbered, titled and to read as follows:

CHAPTER 4.79
SAN JOSE LIBRARY AND READING PROTECTION ORDINANCE
(LIBRARY PARCEL TAX)

Part 1
Title and Purpose

4.79.010 Title and Purpose

- A. This Chapter shall be known as the San José Library and Reading Protection Ordinance.

- B. The Library Parcel Tax imposed under this Chapter is a special tax pursuant to Section 4 of Article XIII A of the California Constitution and is solely for the purpose of raising revenue necessary to maintain and enhance Neighborhood Library services in the City of San José. The Library Parcel Tax is not an *ad valorem* tax on real property nor a transaction tax nor a sales tax on the sale of real property.

- C. The intent in adopting this Chapter is to continue funding for Neighborhood Library services provided by the expiring Library Benefit Assessment District. Unless in conflict with the provisions of this Chapter, the mechanics of calculating and imposing the Library Parcel Tax shall be consistent with those employed in imposing assessments through the Library Benefit Assessment District, as implemented.

- D. This Chapter shall be subject to Title 1, "General Provisions," of the San José Municipal Code, as amended, except to the extent that a provision of this Chapter conflicts with a provision set forth in Title 1, in which case the provision of this Chapter shall control.

4.79.020 Deposit and Use of Proceeds

- A. The proceeds of the Library Parcel Tax imposed under this Chapter shall be deposited in a special fund to be known as the San José Library Parcel Tax Fund.
- B. The proceeds of the Library Parcel Tax imposed under this Chapter shall be expended only for Library purposes, including the following:
1. the acquisition of library books and materials and related costs to maintain Library collections at all Libraries;
 2. the development and delivery of homework and educational programs for all age groups to support literacy and lifelong learning;
 3. the repair, equipping and staffing of Libraries; and
 4. the cost of collection and administration of the Library Parcel Tax.

Part 2 Definitions

4.79.200 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

4.79.202 Acre

“Acre” means the land area of an Assessor Parcel as shown on an Assessor Parcel map, or if the land area is not shown on an Assessor Parcel map, the land area shown on the applicable final map or other parcel map recorded with the County of Santa Clara.

4.79.204 Assessor Parcel; Parcel

“Assessor Parcel” or “Parcel” means a unit of real estate with an assigned County of Santa Clara Assessor’s Parcel number as shown on the most current official assessment roll of the County of Santa Clara Assessor.

4.79.206 Commercial Parcel

“Commercial Parcel” means an Assessor Parcel on which is located a facility engaged in a commercial use. Examples of such facilities include: shopping malls, shopping centers, strip malls, commercial business districts, retail stores, department stores, discount stores, supermarkets, restaurants, fast food eateries, theaters, hotels, motels, service stations, car washes, recreational facilities (athletic clubs, country clubs, card rooms, golf courses, fitness centers, etc), social clubs, fraternal order clubs, private community centers, parking facilities associated with commercial uses, stand alone parking facilities, or other establishment engaged in commercial activities.

4.79.208 Condominium/Townhouse Parcel

“Condominium/Townhouse Parcel” means an Assessor Parcel on which a condominium or townhouse Unit has been constructed for residential use.

4.79.210 CPI Index

“CPI Index” means the Consumer Price Index, All Urban Consumers, published by the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco-Oakland-San José area, with all items included.

4.79.212 Fiscal Year

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

4.79.214 Governmental Entity

“Governmental Entity” means an agency or department of the federal government, the State of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State of California.

4.79.216 Industrial Parcel

“Industrial Parcel” means an Assessor Parcel on which is located a facility engaged in industrial or manufacturing uses. Examples of such facilities include: manufacturing plants, food and beverage processing plants, warehouses, storage facilities, wholesale facilities and parking facilities associated with facilities engaged in industrial or manufacturing uses.

4.79.218 Land Use Classification

“Land Use Classification” means each of the land use classifications defined in this Chapter and referred to in Exhibit A of this Chapter for purposes of setting the Library Parcel Tax rates.

4.79.220 Multi-Family Residential Parcel

“Multi-Family Residential Parcel” means an Assessor Parcel on which two (2) or more residential Units, whether detached or attached, have been constructed or on which is located one or more mobile homes. This Land Use Classification excludes “Other Residential Parcels.”

4.79.222 Neighborhood Library; Library

“Neighborhood Library” or “Library” means any of the City of San José libraries including the Dr. Martin Luther King Jr. Library.

4.79.224 Other Residential Parcel

“Other Residential Parcel” means an Assessor Parcel on which two (2) or more residential Units, whether detached or attached, are located for purposes of any of the following: farm labor camp dwellings in an urban location, fraternity, sorority, boarding, or rooming houses, summer cabins, or camps and campgrounds.

4.79.226 Person

“Person,” unless it otherwise appears from the context as used, means and includes any natural person, firm, association, organization, partnership, business trust, company, or corporation.

4.79.228 Professional Parcel

“Professional Parcel” means an Assessor Parcel on which is located a facility engaged in professional uses. Examples of such facilities include: banks, office buildings, medical offices and clinics, hospitals, including skilled nursing facilities and

convalescent hospital facilities, Research and Development Facilities or any parking facilities associated with these uses.

4.79.230 Research and Development Facility

“Research and Development Facility” means an establishment or facility engaged in industrial or scientific research, product design, development and testing, and limited manufacturing necessary for the production of prototypes.

4.79.232 Single-Family Parcel

“Single-Family Parcel” means an Assessor Parcel on which only one (1) single-family Unit has been constructed.

4.79.234 Unit

“Unit” means a structure constructed primarily for human habitation, which may be an individual detached residential unit, an individual attached residential unit within a duplex, triplex, fourplex, townhome, or condominium structure, an individual apartment unit, or a mobile home or other dwelling unit.

4.79.236 Vacant Parcel

“Vacant Parcel” means an Assessor Parcel which is unimproved.

Part 3
Imposition and Collection of Tax

4.79.300 Imposition of Library Parcel Tax

Subject to the exemptions specified in Part 6 of this Chapter, there is hereby imposed an annual special tax on Parcels in the City of San José at the rates specified in Section 4.79.310. The special tax imposed by this Section shall be referred to as the Library Parcel Tax.

4.79.310 Library Parcel Tax Rates

The Library Parcel Tax shall be imposed in accordance with the rates set forth in Exhibit A to this Chapter.

4.79.320 Term of Library Parcel Tax

The Library Parcel Tax shall take effect on July 1, 2005 for Fiscal Year 2005-06 and shall continue in effect for each Fiscal Year thereafter until June 30, 2015.

4.79.330 Annual Adjustment of Library Parcel Tax Rates

- A. Commencing with Fiscal Year 2006-07, the City Council may, by resolution of the City Council, increase the Library Parcel Tax rates if the City Council finds that the cost of living in the City of San José as shown on the CPI Index has increased over the preceding Base Period, as described in Subsection B.
- B. For purposes of calculating any increase to the Library Parcel Tax rates, the Base Period for Fiscal Year 2006-07, shall be the period commencing on July 1, 2005 and ending on March 31, 2006. For each Fiscal Year following Fiscal Year

2006-07, the Base Period shall be the period from April 1 through and including March 31, commencing with April 1, 2006 through and including March 31, 2007.

- C. The increase in the Library Parcel Tax rate shall not exceed the increase in the CPI Index for the applicable Base Period, but in no event shall the increase exceed three percent (3%).
- D. In the event the CPI Index is no longer published, the City Council shall use as a its reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

4.79.340 Collection of Library Parcel Tax

- A. Unless otherwise directed by the City Council, the Library Parcel Tax shall be collected by the County of Santa Clara in two (2) approximately equal installments in the same manner and on the same applicable dates as established by applicable law for the collection of *ad valorem* property taxes by the County of Santa Clara for the City of San José. The collection of the Library Parcel Tax by the County of Santa Clara shall be subject to the regulations and procedures governing the collection of *ad valorem* property taxes by the County of Santa Clara, including without limitation, the imposition of penalties, additional fees, interest on the failure to remit or the delinquent remittance of the Library Parcel Tax.
- B. The Director of Finance is charged with the responsibility of overseeing the collection and receipt of the proceeds of the Library Parcel Tax.
- C. In the event that the Director of Finance erroneously fails to have placed on the Santa Clara County tax roll, in whole or part, the payment of the Library Parcel

Tax, the Director of Finance shall invoice the owner of the Parcel for the amount of the erroneously omitted Library Parcel Tax.

4.79.350 Tax Deemed Debt to City

- A. The amount of any Library Parcel Tax, interest, or penalties imposed under this Chapter shall be deemed a debt to the City. Any Person who fails to timely pay the Library Parcel Tax shall be liable to an action brought in the name of the City in any court of competent jurisdiction for the amount of the Library Parcel Tax or interest or penalties owed.
- B. In any such action to recover the delinquent payment of the Library Parcel Tax, interest or penalties, the City shall also be entitled to recover its administrative costs and attorneys' fees.

4.79.360 Regulations

The City Council is authorized to promulgate such regulations as it deems necessary in order to implement the provisions of this Chapter.

**Part 4
Refunds and Appeals**

4.79.400 Refunds

- A. The Director of Finance may refund, without interest, any Library Parcel Tax, penalty or interest which has been overpaid or erroneously collected, provided that all of the following conditions are met:
 - 1. A written claim for the refund, made upon a form provided by the Director of Finance, stating under penalty of perjury the specific grounds upon

which the claim for refund is founded, is filed with the Director of Finance within three (3) years of the date of payment; and

2. The Director of Finance is satisfied on the basis of written records submitted by the claimant that the claimant is entitled to the refund under the provisions of this Section. The Director of Finance, the City Auditor or the City Attorney, or the authorized representative of any of them, shall have the right to examine and audit the records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's records after request by the City to do so.
- B. Any decision of the Director of Finance made under this Section shall be subject to appeal to the Appeals Hearing Board or to such other body as designated by the City Council for hearing such appeals.

4.79.410 Appeals

- A. Any Person dissatisfied with any decision of the Director of Finance under the authority of this Chapter may appeal in writing to the Appeals Hearing Board of the City of San José within sixty (60) days of the date of mailing of the Director of Finance's decision. The appeal shall be addressed to the current address for the Appeals Hearing Board maintained by the City Clerk. Reference to the Appeals Hearing Board in this Section shall also include any successor body appointed by the City Council pursuant to Section 4.79.400.
- B. The Appeals Hearing Board shall have the authority to promulgate rules and to prescribe forms for the conduct of appeals made under this Chapter.
- C. The Appeals Hearing Board may affirm, modify or reverse the decision of the Director of Finance based on the preponderance of evidence presented at the hearing on the appeal.

- D. The Appeals Hearing Board shall issue its decision in writing, addressed to both the Director of Finance and, to the appellant, at the appellant's address as stated in the appeal, or in cases where no address is listed in the appellant's appeal, to the address listed on the most current official County of Santa Clara assessment roll. The Appeals Hearing Board's decisions and hearing procedures in matters relating to this Chapter shall be in accordance with the requirements set forth in Title 1 of this Code, and any amendments to such Title. The decision of the Appeals Hearing Board shall be final.

Part 5

Oversight and Reporting

4.79.500 Oversight Committee

The City Council shall designate or appoint a body to review the expenditure of the proceeds of the Library Parcel Tax.

4.79.510 Annual Audit

The Director of Finance shall cause the City's independent auditor to perform an annual audit of the expenditure of the proceeds of the Library Parcel Tax.

4.79.520 Annual Report

No later than January 1 of each year, the Director of Finance shall provide to the City Council a written report which sets forth for the preceding fiscal year, the total amount of Library Parcel Tax proceeds collected and expended and a description of the expenditures.

Part 6
Exemptions

4.79.600 Exemptions from Library Parcel Tax

- A. Any Parcel owned by a church or religious organization and used for religious worship shall be exempt from the Library Parcel Tax.
- B. Any Parcel owned by a Governmental Entity shall be exempt from the Library Parcel Tax.

Part 7
Miscellaneous

4.79.700 Amendment

- A. This Chapter may not be amended by the City Council to increase the Library Parcel Tax, or to extend the duration of the Library Parcel Tax without the applicable voter approval.
- B. Subject to the provisions of Subsection A, the City Council may amend this Chapter without voter approval to clarify its provisions or to make technical corrections, including conforming the collection provisions of this Chapter with applicable State law.

4.79.710 Severability

- A. The provisions of this Chapter shall not apply to any Person, or to any property as to whom or which it is beyond the power of the City of San José to impose the Library Parcel Tax.

- B. If any provision, sentence, clause, section or part of this Chapter is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such provision, sentence, clause, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Chapter. It is hereby declared to be the intention of the people of the City of San José, that this Chapter would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.

**EXHIBIT A
LIBRARY PARCEL TAX RATES***

<u>Land Use Classification</u>	<u>Tax Rate</u>
Single-Family Parcels	\$25.00/Parcel
Condominium/Townhome Parcels	\$25.00/Parcel
Other Residential Parcels	
Up to 20 Units	\$9.37/Unit
21 to 50 Units	\$184.40 + \$6.25/Unit Greater than 20 Units
51 to 100 Units	\$374.90 + \$3.12/Unit Greater than 50 Units
Over 100 Units	\$530.90 + \$1.25/Unit Greater than 100 Units
Multi-Family Residential	
Up to 20 Units	\$12.56/Unit
21 to 50 Units	\$251.20 + \$8.37/Unit Greater than 20 Units
51 to 100 Units	\$502.30 + \$4.18/Unit Greater than 50 Units
Over 100 Units	\$711.30 + \$1.67/Unit Greater than 100 Units
Commercial Parcels	
Less than or equal to 0.5 acres	\$75.00/Acre
Greater than 0.5 acres to 1.0 acre	\$37.50 + \$50.00/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$62.50 + \$37.50/Acre Greater than 1.0 Acres
Greater than 5.0 acres to 10 acres	\$212.50 + \$25.00/Acre Greater than 5.0 Acres
Greater than 10 acres	\$337.50 + \$6.25/Acre Greater than 10.0 Acres
Minimum Tax per Parcel	\$12.50/Parcel
Professional Parcels	
Less than or equal to 0.5 acres	\$112.50/Acre
Greater than 0.5 acres to 1.0 acre	\$56.25 + \$75.00/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$93.75 + \$56.25/Acre Greater than 1.0 Acres
Greater than 5.0 acres to 10 acres	\$318.75 + \$37.50/Acre Greater than 5.0 Acres
Greater than 10 acres	\$506.25 + \$9.37/Acre Greater than 10.0 Acres
Minimum Tax per Parcel	\$18.75/Parcel

**EXHIBIT A
LIBRARY PARCEL TAX RATES***

<u>Land Use Classification</u>	<u>Tax Rate</u>
Industrial Parcels	
Less than or equal to 0.5 acres	\$37.50/Acre
Greater than 0.5 acres to 1.0 acre	\$18.75 + \$25.00/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$31.25 + \$18.75/Acre Greater than 1.0 Acres
Greater than 5.0 acres to 10 acres	\$106.25 + \$12.50/Acre Greater than 5.0 Acres
Greater than 10 acres	\$168.75 + \$3.12/Acre Greater than 10.0 Acres
Minimum Tax per Parcel	\$6.25/Parcel
Vacant Parcels	
Less than or equal to 0.5 acres	\$9.36/Acre
Greater than 0.5 acres to 1.0 acre	\$4.68 + \$6.25/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$7.80 + \$4.68/Acre Greater than 1.0 Acres
Greater than 5.0 acres to 10 acres	\$26.52 + \$3.12/Acre Greater than 5.0 Acres
Greater than 10 acres	\$42.12 + \$0.78/Acre Greater than 10.0 Acres
Minimum Tax per Parcel	\$6.25/Parcel

*The tax rate schedule attached to the staff's memorandum has been corrected as shown in this schedule. The rates for commercial, industrial, professional and vacant parcels increase when the parcel size is greater than 1.0 and 5.0 acres and not at 1.01 and 5.01 acres.