

ORDINANCE NO. 6373-N.S.

ADOPTING A SPECIAL TAX TO FUND MAINTENANCE OF PARKS, CITY TREES AND LANDSCAPING IN THE CITY OF BERKELEY

BE IT ORDAINED by the People of the City of Berkeley as follows:

SECTION 1. DECLARATION OF FINDINGS AND PURPOSE.

The People of the City of Berkeley find as follows:

A. The continued maintenance of the City's parks, playgrounds, playground equipment, playing courts, lighting and other recreational facilities is essential to the continued health and well-being of the residents of the City of Berkeley, especially children.

B. The continued maintenance of trees, shrubs, grass, benches, restrooms, existing statuary, fountains, and other ornamental structures and facilities in the City is necessary to maintain the current high quality of life for Berkeley residents.

C. The City's continued ability to acquire land for park, recreational, or open-space purposes is essential to the continued health and well-being of its residents.

D. State Proposition 218, which was adopted by the voters of California in November 1996, eliminates the City's ability to fund acquisition and maintenance of parks and open space through its existing Landscape and Park Maintenance Assessment District No. 1982-2. Unless some alternative means of financing the acquisition and maintenance of such land is approved by the voters, such acquisition and maintenance will suffer, resulting in serious adverse impacts to Berkeley residents.

E. The purpose of this special tax is to provide an alternative mechanism for funding the acquisition and maintenance of such land, in an amount not exceeding the amount of Landscape and Park Maintenance Assessment District No. 1982-2.

SECTION 2. SPECIAL TAX.

A. The tax adopted under this Chapter is solely for the purpose of raising income and revenue which is necessary to provide for the direct cost of acquisition and maintenance of improvements in the City of Berkeley.

B. Section 4 of Article XIII A of the California Constitution (Proposition 13) allows two-thirds of the qualified electors of the City to impose a special tax within the City, provided the special tax is not an ad valorem tax on real property or a transaction tax or a sales tax on the sale of real property within the City. The tax imposed by this Ordinance is a special tax which is authorized for elector approval by Section 4 of Article XIII A of the California Constitution.

SECTION 3. TAX ADOPTED -- TAX RATE -- TERM -- INDEX.

A. There is hereby adopted a special tax on the square footage of all improvements in the City of Berkeley, as defined herein

B. The tax rate for the Fiscal Year 1997-98 shall be \$0.0724 per square foot of taxable improvements.

C. The tax imposed by this Chapter shall be operative on July 1, 1997.

D. The tax shall be increased or decreased annually in May, according to the cost of living in the immediate San Francisco Bay Area.

E. For purposes of this Section only the following terms shall be defined as set forth below:

1. "Building" shall mean any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."
2. "Commercial," "Industrial" and "Institutional" shall refer to all buildings and improvements within the City that are not classified by this Chapter as dwelling units.
3. "Dwelling" shall mean a building or portion of a building designed for human occupancy.
4. "Dwelling unit" shall mean a building or portion of a building designed for or occupied exclusively by one family.
5. "Family" shall mean one or more persons related by blood, marriage or adoption, and, in addition, any domestic servants or gratuitous guests thereof who are living together in a single dwelling unit and maintaining a common household. Family shall also mean all unrelated persons who live together in a single dwelling unit and maintain a common household.
6. "Improvements" shall mean all buildings or structures erected or affixed to the land.

7. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph c. below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:
 - a. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.
 - b. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.
 - c. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.
8. "Structure" shall mean anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.
9. "Parcel" shall mean a unit of real estate in one ownership as shown on the most current official assessment role of the Alameda County Assessor.

SECTION 4. EXEMPTION FOR VERY-LOW INCOME HOMEOWNERS.

The tax imposed by this Chapter shall not apply to any property owner by any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute "very low-income," as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this Section shall be required to demonstrate his or her entitlement thereto annually by submitting an application and supporting documentation to the City Manager or his or her designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or his or her designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, Federal income tax returns and W-2 forms.

SECTION 5. DEFINITIONS.

For purposes of this Ordinance, except Section 3, the following terms shall be defined as set forth below:

- A. "Improvement" means one or any combination of the following:
1. The installation or planting of landscaping.
 2. The installation or construction of statuary, fountains, and other ornamental structures and facilities.
 3. The installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks, or paving, or water, irrigation, drainage, or electrical facilities.
 4. The installation of park or recreational improvements, including, but not limited to, all of the following:
 - a. Land preparation, such as grading, leveling, cutting and filling, sod, landscaping, irrigation systems, sidewalks, and drainage.
 - b. Lights, playground equipment, play courts, and public restrooms.
 5. The maintenance or servicing, or both, of any of the foregoing.
 6. The acquisition of land for park, recreational, or open-space purposes.
 7. The acquisition of any existing improvement otherwise authorized pursuant to this Section.
- B. "Incidental expenses" include all of the following:
1. The costs of preparing plans, specifications, estimates and diagrams for improvements, including compensation to engineers and architects.
 2. The costs of printing, advertising and giving published, posted and mailed notices.
 3. Compensation payable to the County for collection of tax.
 4. Any other expenses incidental to the construction, installation, or maintenance and servicing of the improvements.
- C. "Landscaping" means trees, shrubs, grass, or other ornamental vegetation.
- D. "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including:
1. Repair, removal, or replacement of all or any part of any improvement.
 2. Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
 3. The removal of trimmings, rubbish, debris, and other solid waste.

4. The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

E. "Service" or "servicing" means the furnishing of water for the irrigation of any landscaping, the operation of any fountains, or the maintenance of any other park improvements.

SECTION 6. DUTIES OF THE DIRECTOR OF FINANCE.

It shall be the duty of the Director of Finance to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof. The Director of Finance is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the re-examination and correction of returns and payments. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

SECTION 7. INTEREST AND PENALTIES.

The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda in conjunction with the County's collection of property tax revenues for the City of Berkeley. In the event that the County of Alameda collects the taxes imposed by this Chapter, the imposition of penalties, additional fees and interest upon persons who fail to remit any tax imposed by this Chapter, or who fail to remit any delinquent remittance under this Chapter, shall be subject to and governed by the rules, regulations and procedures utilized by the County of Alameda in its collection of property taxes for the City of Berkeley, and in its collection of this additional tax for the City of Berkeley.

Every penalty imposed and such interest as accrues under the provisions of this Chapter shall become a part of the tax herein required to be paid.

SECTION 8. REFUNDS.

Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this Chapter, it may be refunded as provided in Chapter 7.20 of the Berkeley Municipal Code.

SECTION 9. COLLECTION.

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

SECTION 10. SAVINGS CLAUSE.

The provisions of this Chapter shall not apply to any person, association, corporation or to any property as to whom or which it is beyond the power of the City Council to impose the tax herein provided. If any sentence, clause, section or part of this Chapter, or any tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this Chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this Chapter. It is hereby declared to be the intention of the City Council of the City of Berkeley that this Chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 11. VIOLATION -- PENALTY.

Any person who fails to perform any duty or obligation imposed by this Chapter shall be guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code. The penalties provided in this Section are in addition to the several remedies provided in this Chapter.

SECTION 12. INCREASE APPROPRIATIONS LIMIT.

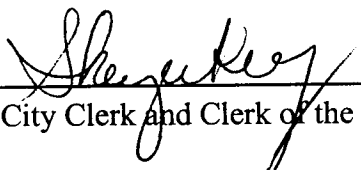
Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four Fiscal Years from 1997-8 through 2000-01.

This Ordinance was approved by the electors of the City of Berkeley at the Special Municipal Election held in the City of Berkeley on May 6, 1997.

In effect: May 23, 1997

This is to certify that the foregoing is a true and correct copy of Ordinance No. 6373-N.S., and the same was adopted by a vote of the electorate of the City of Berkeley on May 6, 1997 and confirmed by the City Council on May 13, 1997.

ATTEST:



City Clerk and Clerk of the Council