



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: NORA FRIMANN
City Attorney

**SUBJECT: Proposed Parks and Clean
Neighborhoods Parcel Tax Measure**

DATE: July 31, 2024

BACKGROUND

On August 6, 2024, the City Council will be considering whether to submit to the voters at the November 5, 2024 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 parks and clean neighborhood services.

The proposed measure's language is set forth in the memorandum to the Council from Sarah Zarate, Director of Office Administration, Policy and Intergovernmental Relations. 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. A copy of the draft Ordinance is attached to this memorandum.

ANALYSIS

The proposed measure, if approved, would amend the San José Municipal Code to add a new chapter entitled "San José Parks and Clean Neighborhoods Ordinance." Under State law, passage of this measure requires two-thirds approval of the voters voting on the measure. In view of the difficulty condensing all of the Ordinance's provisions into the brief 75 word ballot measure, the following statement will be included in the City Attorney's impartial analysis as authorized under Elections Code Section 9280:

"If you would like to read the full text of the measure, see www.sanjoseca.gov/clerk or call 408-535-1260 and a copy will be sent at no cost to you."

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 Jose for parks and clean neighborhood purposes ("Parks and Clean Neighborhoods Parcel Tax). The Parks and Clean Neighborhoods Parcel Tax would be imposed until repealed by City Council or approval of the voters. The proposed land use classifications are consistent with the Library Parcel Tax under Chapter 4.79. These rates are specified in more detail in Exhibit A to the Ordinance. The rates specified in Exhibit

imposed until repealed by City Council or approval of the voters. The proposed land use classifications are consistent with the Library Parcel Tax under Chapter 4.79. 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 2025-2026. Commencing with Fiscal Year 2026-2027, the City Council may adjust the Parks and Clean Neighborhoods Parcel Tax by the inflation rate in the Bay Area, subject to five 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 exemptions for the Library Parcel Tax.

Collection of Tax; Enforcement

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

Use of Tax Proceeds

The Parks and Clean Neighborhoods Parcel Tax proceeds are required to be deposited into a special fund exclusively for parks and clean neighborhood services use, including to clean, maintain and improve parks, playgrounds, trails, restrooms and recreation facilities; remove homeless encampments in parks, creeks and neighborhoods; remove trash, illegal dumping and graffiti; provide gang prevention and recreation programs; and the collection and administration of the Parks and Clean Neighborhoods Parcel Tax.

Refunds and Appeals

Taxpayers seeking refunds of overpayments or erroneously collected Parks and Clean Neighborhoods 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 Parks and Clean Neighborhood Parcel Tax rate for inflation, the City Council cannot increase the Tax without voter approval. The Ordinance, however, provides that the City Council may amend the Ordinance to make technical changes and clarifications.

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Public Disclosure

The Ordinance requires the City Manager to include in the Annual Report submitted to the City Council pursuant to Charter Section 701(f), commencing with the Annual Report for fiscal year 2025-2026, the total amount of Parks and Clean Neighborhoods Parcel Tax proceeds collected and expended, a description of the expenditures, and any other information that the City Council may request.

NORA FRIMANN

City Attorney

By /s/ Rosa Tsongtaatarii

ROSA TSONGTAATARII

Chief Deputy City Attorney

For questions, please contact Rosa Tsongtaatarii, Chief Deputy City Attorney, at (408) 535-1900.

ATTACHMENT

Draft Ordinance

ORDINANCE NO. _____

SAN JOSE PARKS AND CLEAN NEIGHBORHOODS 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, entitled, and to read as follows:

CHAPTER 4.61

PARKS AND CLEAN NEIGHBORHOODS PARCEL TAX

Part 1

Title and Purpose

4.61.010 Title and Purpose

- A. This Chapter shall be known as the San José Parks and Clean Neighborhoods Ordinance.
- B. The Parks and Clean Neighborhoods 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 parks and clean neighborhood services in the City of San José. The Parks and Clean Neighborhoods 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. This Chapter is not enacted for regulatory purposes.
- C. The intent in adopting this Chapter is to fund Parks and Clean Neighborhoods services.

- 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 provisions of this Chapter shall control.

4.61.020 Deposit and Use of Proceeds

- A. The proceeds of the Parks and Clean Neighborhoods Parcel Tax imposed under this Chapter shall be deposited in a special fund to be known as the San José Parks and Clean Neighborhoods Parcel Tax Fund.
- B. The proceeds of the Parks and Clean Neighborhoods Parcel Tax imposed under this Chapter shall be expended only for Parks and Clean Neighborhoods purposes, including the following:
1. to clean, maintain and improve parks, playgrounds, trails, restrooms and recreation facilities;
 2. remove homeless encampments in parks, creeks and neighborhoods;
 3. remove trash, illegal dumping and graffiti;
 4. provide gang prevention and recreation programs; and
 5. the cost of collection and administration of the Parks and Clean Neighborhoods Parcel Tax.
- C. Interest which accrues from moneys in the Parks and Clean Neighborhoods Parcel Tax Fund shall be credited to this fund.

4.61.030 Parks and Clean Neighborhoods Parcel Tax Capital Fund Established;
Source and Use of Moneys

- A. There is hereby created and established the "Parks and Clean Neighborhoods Parcel Tax Capital Fund."
- B. There shall be deposited into this fund moneys transferred from the Parks and Clean Neighborhoods Parcel Tax Fund or from any other funds which may be expended on the capital purposes set forth in Section 4.61.020. Moneys deposited into this fund from the Parks and Clean Neighborhoods Parcel Tax Fund may be transferred back into the Parks and Clean Neighborhoods Parcel Tax Fund.
- C. Interest which accrues from moneys in the Parks and Clean Neighborhoods Parcel Tax Capital Fund shall be credited to this fund.

Part 2
Definitions

4.61.200 Definitions

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

4.61.202 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.

4.61.204 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.

4.61.206 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, standalone parking facilities, or other establishment engaged in commercial activities.

4.61.208 Condominium/Townhouse Parcel

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

4.61.210 CPI Index

"CPI Index" means the Consumer Price Index - All Urban Consumers for All Items (with base period of 1982-1984 = 100), for the San Francisco-Oakland-Hayward Area published by the U.S. Department of Labor, Bureau of Labor Statistics and such replacement index as determined pursuant to provisions of this Chapter.

4.61.212 Director

"Director" means the Director of Finance.

4.61.214 Fiscal Year

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

4.61.216 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.

4.61.218 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.

4.61.220 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 Parks and Clean Neighborhoods Parcel Tax rates.

4.61.222 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."

4.61.224 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.

4.61.226 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.

4.61.228 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.

4.61.230 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.

4.61.232 Single-Family Parcel

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

4.61.234 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.

4.61.236 Vacant Parcel

"Vacant Parcel" means an Assessor Parcel which is unimproved.

Part 3

Imposition and Collection of Tax

4.61.300 Imposition of Parks and Clean Neighborhoods 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 4.61.310. The special tax imposed by this Section shall be referred to as the Parks and Clean Neighborhoods Parcel Tax.

4.61.310 Parks and Clean Neighborhoods Parcel Tax Rates

The Parks and Clean Neighborhoods Parcel Tax shall be imposed in accordance with the rates set forth in Exhibit A to this Chapter, subject to annual adjustment pursuant to Section 4.61.330. The rates specified in Exhibit A are the rates in effect for Fiscal Year 2025-26.

4.61.320 Operative Date and Term

This Chapter shall be effective only if approved by two-thirds of the voters voting thereon and shall have an operative date of July 1, 2025 for a duration until repealed by the City Council or approval of the voters.

4.61.330 Annual Adjustment of Parks and Clean Neighborhoods Parcel Tax Rates

- A. The City Council may, by resolution of the City Council, annually increase the Parks and Clean Neighborhoods 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 Parks and Clean Neighborhoods Parcel Tax rates, the Base Period for Fiscal Year 2025-26, shall be the period commencing on December 31, 2023 to December 31, 2024. The base period for each subsequent adjustment period thereafter shall be December to December, unless otherwise determined by the Director.
- C. The increase in the Parks and Clean Neighborhoods 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 five percent (5%).

- D. In the event the CPI Index is no longer published, the City Council shall use as 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, County of Santa Clara or the San Francisco Bay Area, as applicable.

4.61.340 Collection of Parks and Clean Neighborhoods Parcel Tax

- A. Unless otherwise directed by the City Council, the Parks and Clean Neighborhoods 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 Parks and Clean Neighborhoods 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 Parks and Clean Neighborhoods Parcel Tax.
- B. The Director is charged with the responsibility of overseeing the collection and receipt of the proceeds of the Parks and Clean Neighborhoods Parcel Tax.
- C. In the event that the Director erroneously fails to have placed on the Santa Clara County tax roll, in whole or part, the payment of the Parks and Clean Neighborhoods Parcel Tax, the Director shall invoice the owner of the Parcel for the amount of the erroneously omitted Parks and Clean Neighborhoods Parcel Tax.

4.61.350 Tax Deemed Debt to City

- A. The amount of any Parks and Clean Neighborhoods 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 Parks and Clean Neighborhoods 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 Parks and Clean Neighborhoods Parcel Tax or interest or penalties owed.
- B. In any such action to recover the delinquent payment of the Parks and Clean Neighborhoods Parcel Tax, interest or penalties, the City shall also be entitled to recover its administrative costs and attorneys' fees.

4.61.360 Regulations

The Director may take such action and make such rules and regulations, not inconsistent with the Chapter, as the Director may deem reasonably necessary or desirable to administer this Chapter.

Part 4 Refunds and Appeals

4.61.400 Refunds

- A. The Director may refund, without interest, any Parks and Clean Neighborhoods 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, stating under penalty of perjury the specific grounds upon which the claim

for refund is founded, is filed with the Director within one year of the date of payment; and

2. The Director 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, 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 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.

4.61.410 Appeals

- A. Any person dissatisfied with any decision of the Director 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'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 4.61.400.
- 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 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 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

Annual Report

4.61.500 Annual Report of the City Manager

The City Manager shall include in the Annual Report submitted to the City Council pursuant to Charter Section 701(f), commencing with the Annual Report for fiscal year 2025-2026, the total amount of Parks and Clean Neighborhoods Parcel Tax proceeds collected and expended, a description of the expenditures, and any other information that the City Council may request.

Part 6

Exemptions

4.61.600 Exemptions from Parks and Clean Neighborhoods Parcel Tax

- A. Any Parcel owned by a church or religious organization and used for religious worship shall be exempt from the Parks and Clean Neighborhoods Parcel Tax.

- B. Any parcel owned by a Governmental Entity shall be exempt from the Parks and Clean Neighborhoods Parcel Tax.

Part 7
Miscellaneous

4.61.700 Amendment or Repeal

- A. This Chapter may not be amended by the City Council to increase the Parks and Clean Neighborhoods Parcel Tax.
- B. The City Council may repeal the Parks and Clean Neighborhoods Parcel Tax without the applicable voter approval.
- C. 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.

4.61.710 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 Parks and Clean Neighborhoods 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
PARKS AND CLEAN NEIGHBORHOODS PARCEL TAX RATES IN EFFECT FOR
FISCAL YEAR 2025-26*¹

Land Use Classification	Tax Rate Adjusted as of July 1, 2025
Single Family Parcels	\$0.01 per parcel square foot with a maximum of \$250.00/Parcel.
Condominium/Townhome Parcels	\$53.23/Parcel
Other Residential Parcels (Fraternity, Sorority, Boarding, Rooming House, Farm Labor Camp)	
Up to 20 Units	\$35.48/Unit
21 to 50 Units	\$709.60 + \$23.65/Unit Greater than 20 Units
51 to 100 Units	\$1,419.20 + \$11.83/Unit Greater than 50 Units
Over 100 Units	\$2,010.53 + \$4.73/Unit Greater than 100 Units
Multi-Family Residential	
Up to 20 Units	\$47.31/Unit
21 to 50 Units	\$946.20 + \$31.54/Unit Greater than 20 Units
51 to 100 Units	\$1,892.40 + \$15.77/Unit Greater than 50 Units
Over 100 Units	\$2,680.90 + \$6.31/Unit Greater than 100 Units
Commercial Parcels	
Less than or equal to 0.5 acres	\$435.60 /Acre

¹ * Subject to annual CPI adjustment of up to 5% per Section 4.61.330.

Greater than 0.5 acres to 1.0 acre	\$217.80 + \$290.40/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$363.00 + \$217.80/Acre Greater than 1.00 Acres
Greater than 5.0 acres to 10 acres	\$943.80 + \$145.20/Acre Greater than 5.00 Acres
Greater than 10 acres	\$1,669.80 + \$36.30/Acre Greater than 10.00 Acres
Minimum Tax per Parcel	\$35.48/Parcel

Professional Parcels

Less than or equal to 0.5 acres	\$871.20/Acre
Greater than 0.5 acres to 1.0 acre	\$435.60 + \$580.80/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$726.00 + \$435.60/Acre Greater than 1.00 Acres
Greater than 5.0 acres to 10 acres	\$1,887.60 + \$290.40/Acre Greater than 5.00 Acres
Greater than 10 acres	\$3,339.60 + \$72.60/Acre Greater than 10.00 Acres
Minimum Tax per Parcel	\$70.96/Parcel

Industrial Parcels

Less than or equal to 0.5 acres	\$217.80/Acre
Greater than 0.5 acres to 1.0 acre	\$108.90 + \$145.20/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$181.50 + \$108.90/Acre Greater than 1.00 Acres
Greater than 5.0 acres to 10 acres	\$471.90 + \$72.60/Acre Greater than 5.00 Acres
Greater than 10 acres	\$834.90 + \$18.15/Acre Greater than 10.00 Acres
Minimum Tax per Parcel	\$17.74/Parcel

Vacant Parcels

Less than or equal to 0.5 acres	\$108.90/Acre
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Greater than 0.5 acres to 1.0 acre	\$54.45 + \$72.60/Acre Greater than 0.50 Acres
Greater than 1.0 acre to 5.0 acres	\$90.75 + \$54.45/Acre Greater than 1.00 Acres
Greater than 5.0 acres to 10 acres	\$235.95 + \$36.30/Acre Greater than 5.00 Acres
Greater than 10 acres	\$417.45 + \$9.08/Acre Greater than 10.00 Acres
Minimum Tax per Parcel	\$8.87/Parcel