

ORDINANCE NO. 2018-05

**AN ORDINANCE OF THE CITY OF ALBANY ENACTING A
SPECIAL PARCEL TAX TO FUND THE MAINTENANCE AND
IMPROVEMENT OF CITY PARK AND OPEN SPACE FACILITIES**

WHEREAS, Albany residents have identified regular maintenance of City parks and open space as an important aspect of quality of life and a high priority for investment by the City to ensure that the community has access to a wide variety of recreational opportunities within the City, including both public park and open space areas that also help protect our local environment; and

WHEREAS, a critical component of the City’s maintenance obligations in open space areas includes helping enhance native habitat as well as managing vegetation to help prevent wildfires that could lead to devastating consequences throughout the region; and

WHEREAS, the City of Albany—like all California cities—has faced decreasing revenues to make infrastructure investments and improvements to City parks and open space areas; and

WHEREAS, without a dedicated source of additional funding to invest in the ongoing maintenance and improvement of Albany’s parks and open space, the City would be unable to fully address needed maintenance obligations; and

WHEREAS, in 1996, City voters passed Measure R, and the City subsequently formed a Landscape and Lighting Assessment District (the “LLAD”) consistent with the measure to fund acquisition, improvement and maintenance of open space on Albany Hill, recreational playfields throughout the City, and creek restoration and the City issued \$6.23 million in improvement bonds secured by the LLAD revenues. The LLAD assessment will last be levied in 2018-19, and these

bonds will be fully repaid in September 2019, effectively closing out this available funding source for maintenance of City parks and open space; and

WHEREAS, it is a priority of the City Council as identified in the City Council 2017-2019 Strategic Plan to maximize parks and open space for the benefit of the community at large, including the recent completion of a new park, Peggy Thomsen Pierce Street Park, which will require ongoing maintenance to ensure the park remains enjoyable for all users; and

WHEREAS, the City has conducted a number of planning processes resulting in the development of guiding policies for the maintenance and improvement of the City's public parks and open space as included within the City's General Plan, Climate Action Plan, Parks Recreation and Open Space Master Plan, and Albany Hill Creekside Master Plan; and

WHEREAS, the City has over a mile of natural creek area and has conducted a number of projects to enhance local creeks and adjoining habitat, along with additional projects planned for the future, that require ongoing monitoring and maintenance; and

WHEREAS, the City owns approximately 15 acres of land on Albany Hill that requires ongoing maintenance as an open space public park, and the Albany Hill Creekside Park Master Plan details maintenance activities for Albany Hill to protect, maintain and enhance natural features, native vegetation and wildlife habitats, to protect cultural resources and to improve basic access for the public; and

WHEREAS, the City maintains six public parks including the Dartmouth Tot Lot, Memorial Park, Oceanview Park, Ohlone Greenway, Jewel's Terrace Park, and Peggy Thomsen Pierce Street Park; and these parks include a wide range of facilities to maintain such as ball field and play courts, play structures and equipment, restroom facilities, landscaping and site furnishing such as benches, picnic tables and trash receptacles; and

WHEREAS, there are more than 5,000 city trees in Albany including trees on City owned properties (such as parks and street medians) and street trees that require ongoing maintenance, and the City continues to plant more City trees to help foster a robust urban forest; and

WHEREAS, this ordinance would create a guaranteed source of local funding for the maintenance and improvement of Albany's parks and open space areas that must be spent locally for Albany residents; and

WHEREAS, the City of Albany acknowledges the benefits and value to the public health and welfare of providing a wide variety of recreational opportunities within our urban village; and

WHEREAS, in light of the foregoing benefits and considerations, the City wishes to improve its commitment to City parks and open space areas for the benefit and enjoyment of our entire community; and

WHEREAS, the City wishes to alleviate the impact of the proposed special tax on low-income residents by providing a tax exemption for owner-occupants of single-family and multi-family residences and by providing a tax rebate for renters residing in rental units; and the City finds that provision of rebate payments is a permissible use of the special tax revenues; and

WHEREAS, the proposed special tax to be submitted to the voters will be approved if two-thirds of voters voting on the measure vote in favor of it.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

SECTION 1. This Ordinance is enacted in accordance with the authority granted to cities by Article XI, Section 7, and Article XIII A, Section 4, of the California Constitution and Government Code sections 50075 *et seq.*

SECTION 2. The People of the City of Albany find that all Recitals contained in this Ordinance are true and correct and are incorporated herein by reference.

SECTION 3. Article 4-15 is hereby added to Chapter IV of the Albany Municipal Code, to read as follows:

4- 15 PARKS AND OPEN SPACE SPECIAL PARCEL TAX

4- 15.1 TITLE. This Article shall be known as the “City of Albany Parks and Open Space Facilities Special Parcel Tax.”

4- 15.2 DEFINITIONS.

A. “City” means the City of Albany.

B. “Consumer Price Index” or “CPI” means Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-San Jose as published by the U.S. Department of Labor, Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

C. “Condominium/Townhouse” means an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit. A condominium or townhouse unit is a parcel.

D. “Multi-family residential parcel” means all parcels that are improved with more than one residential unit.

E. “Nonresidential parcel” means all parcels that are improved with uses other than residences.

F. “Owner” means the owner or owners of the real property located within the City.

G. “Parcel” means any real property designated by an assessor’s parcel map and parcel number and carried on the secured property tax roll of the County of Alameda.

H. “Parks and Open Space” means any public park or open space owned by the City of Albany including: six public parks referred to as Dartmouth Tot Lot, Memorial Park, Oceanview Park, Ohlone Greenway, Jewel’s Terrace Park, and Peggy Thomsen Pierce Street Park; Albany Hill Open Space Area and Albany waterfront; over one mile of Albany Creeks including Cerrito, Middle and Codornices Creek; City trees and street trees.

I. “Single-family residential parcel” means all parcels which are improved with only one residential unit.

J. “Special tax” means the special tax imposed by this Article.

4-15.3 TAX IMPOSED.

A. An annual special tax in the amounts set forth in Section 4-15.4 is hereby imposed on every parcel of real property within the City. The special tax shall first be levied in fiscal year 2019-20. The annual assessment levied in City Landscape and Lighting Assessment District No. 1996-1 (“LLAD 1996-1”) is anticipated to terminate in fiscal year 2018-19. In the event that the LLAD 1996-1 assessment terminates in a different fiscal year, the special tax shall first be levied in the immediately subsequent fiscal year.

B. The special tax constitutes a debt owed by the owner of each parcel of real property to the City.

C. The special tax shall be levied and collected on each parcel of real property within the City for which the owner receives a separate ad valorem property tax bill, at the same time and manner, and subject to the same penalties and procedures as ad valorem property taxes collected by the County of Alameda except as otherwise set forth in this Article.

D. Real property otherwise wholly exempted from ad valorem tax by state law shall also be exempted from any liability for the special tax.

E. The tax imposed by this Section shall be subject to the exemptions and rebates set forth in this Section.

1. Single-family residential parcels and units on multi-family residential parcels shall be exempt from the special tax if they are owned and occupied by a person or persons whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low-income" for a family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 *et seq.*), for such year. The application process will be in the form of self-certification under penalty of perjury. Owners must apply for the exemption provided for in this Section annually by application to the Finance Director in the manner and at the time set forth by the Finance Director. Such applications shall be on forms provided by the Finance Director and shall provide such information as the Finance Director may require. If the Finance Director determines the need to audit an application, the Finance Director may require additional information, including, but not limited to, federal income tax returns and W-2 forms of owner-occupants eligible for this exemption.

2. Renters who reside in a residential rental unit within the City of Albany whose combined family income, from all sources for the previous calendar year, is at or below the income level qualifying as "very low-income" for a family of such size under Section 8 of the United States Housing Act of 1937 (42 U.S.C.A. Sections 1437 *et seq.*), for such year may apply for a rebate of

the special tax imposed by this section that applies to the rental unit in which they reside. Renters must apply for the rebate provided in this section annually by application to the Finance Director in the manner and at the time set forth by the Finance Director. Such applications shall be on forms provided by the Finance Director and shall provide such information as the Finance Director may require. If the Finance Director determines the need to audit an application, the Finance Director may require additional information, including, but not limited to, federal income tax returns and W-2 forms of renter occupants eligible for this exemption. Only one such rebate shall be allowed annually to a rental unit.

4-15.4 TAX RATES.

A. The rates of the special tax for each parcel type shall be as set forth in the table below.

Parcel Type	Size of Parcel	Rate, per parcel, unit, or acre
Single-family Residential	Not Applicable	\$69.00 per unit
Condominium/Townhouse	Not Applicable	\$51.75 per unit
Multi-family Residential	Not Applicable	\$51.75 per unit
Non-Residential	< 0.25 acre	\$69.00 per parcel
Non-Residential	≥0.25 acre	\$259 per acre

B. To keep the tax on each property in constant first year dollars for each year, the annual tax rates listed in the above table shall be adjusted as set forth in this section to reflect any increase in the Consumer Price Index beyond the first fiscal year the tax is levied. The tax rate per year on each parcel for each year subsequent to the first year shall be an amount determined as follows:

Tax rate for the current year	=	Tax rate for the preceding year	X	Change in Consumer Price Index from April of the immediately preceding year to April of the current year or 1.02, whichever is less
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In no event shall the special tax rate for any type of parcel for any year be less than the amount established for the preceding year.

C. If a parcel consists of both residential and nonresidential real property, the tax rate shall be the rate for nonresidential parcels.

D. The assessment roll data of the Alameda County Tax Assessor as of January 1 of each year and City records shall be used to determine the actual use of each parcel of real property for purposes of determining the amount of the special tax for each parcel.

E. For parcels divided by Tax Rate Area lines, the amount of the special tax for the portion of the parcel within Alameda County shall be calculated at the same rates as set forth above. For properties wholly within Alameda County and divided by Tax Rate Area lines into multiple parcels, the property shall be taxed as a single parcel at the rates set forth above.

F. For non-residential parcels 0.25 acres or larger, the tax shall be calculated by multiplying the then-applicable rate by the actual acreage of the parcel. By way of example only, and without limiting the general applicability of the foregoing, if a non-residential parcel were 4.25 acres and the then applicable tax rate were \$259, then the tax for the parcel would be \$1,100.75.

4-15.5 COLLECTION OF TAX. The special tax shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes collected by the County of Alameda. The City Council may provide for other alternative methods of collection of the special tax by resolution.

4-15.6. COLLECTION OF UNPAID TAX. The amount of the special tax, any penalty, and any interest imposed under the provisions of this Article shall be deemed a debt to the City.

Any person owing money under the provisions of this Article shall be personally liable to an action brought in the name of the City, at its option, for the recovery for such amount.

4-15.7 USE OF TAX REVENUE.

A. Revenue from the special tax, including penalties and interest thereon, shall be used for park and open space maintenance and improvements, including but not limited to maintenance of park and open space trails, including maintenance to prevent wildfires and to restore native plants; park facilities such as ball fields and play courts, play structures and equipment, restroom facilities, landscaping and site furnishing such as benches, picnic tables and trash receptacles and general maintenance of the facilities for repair/replacement of damaged and worn-out equipment and furnishings; adding new amenities such as site furnishings and play field areas; restoration and maintenance of creek and habitat areas; maintenance and enhancement of the City's urban forest including planting, pruning and management of City street trees.

B. At the City Council's discretion, revenue from the special tax, including penalties and interest thereon, may also be used to pay for the costs of holding an election to seek voter approval of this Article, for the costs of administering the special tax, and for the costs of defending the special tax and this Article, including attorneys' fees and related costs.

C. Revenue from the special tax, including penalties and interest thereon, may also be used to pay for rebates to qualifying low-income renters as provided in Section 14-15.3(E)(2) of this Ordinance.

4-15.8 ACCOUNTABILITY. In accordance with the requirements of California Government Code Sections 50075.1 and 50075.3, the following accountability measures, among others, shall apply to the special tax:

A. A separate, special account, referred to as the Parks and Open Space Special Tax Fund, shall be created, into which the proceeds of the special tax, including penalties and interest earned on such proceeds, must be deposited.

B. The specific purposes of the special tax are for the funding of maintenance and improvement of City park and open space facilities; for related election, administration, and legal fees; and for rebates to low-income renters, as set forth in Section 4-15.7. The proceeds of the special tax shall be applied only to those specific purposes.

C. The Finance Director shall annually prepare and submit to the City Council a report regarding the special tax funds collected and expended, as well as any other information required by Government Code sections 50075.1 and 50075.3.

4-15.9 ADMINISTRATION OF TAX. The City Council may establish rules and regulations that it determines are necessary and desirable for administration and implementation of this Article.

4-15.10 AMENDMENTS. This Article may only be amended by a vote of the people if the amendment would result in the special tax being imposed, extended, or increased in a manner not authorized by this Article as originally approved by the voters, or if the amendment would substantially alter the purpose of the special tax. The City Council may enact other amendments, including but not limited to amendments necessary to implement or administer the special tax.

4-15.11 TERMINATION OF TAX. The authority to levy the special tax shall remain in effect unless a later ordinance terminating said tax is adopted and approved by the voters.

SECTION 4. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Albany is hereby increased by the aggregate sum authorized to be levied by this special tax for fiscal year 2018/19 and each year thereafter.

SECTION 5. The findings for this Ordinance in compliance with the California Environmental Quality Act (“CEQA”) are the same as those set forth in City Council Resolution No. 2018-98 calling for an election on this Ordinance. The CEQA findings set forth in Resolution No. 2018-98 are incorporated herein by reference.

SECTION 6. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 7. This Ordinance relates to the levying and collection of a City special tax and shall take effect immediately.

Ordinance No. 2018-05 was submitted to the People of the City of Albany at the November 6, 2018 general municipal election. It was approved by the following vote of the People:

YES: 6,489

NO: 1,849

Ordinance No. 2018-05 was thereby adopted by the voters at the November 6, 2018 election and took effect upon adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on December 10, 2018, by the following vote:

AYES: Council Members Barnes, Maass, Pilch, Vice Mayor Nason, Mayor McQuaid

NOES: None

ABSENT: None

ABSTAIN: None

I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly and regularly adopted by the People of the City of Albany, California.



Anne Hsu, City Clerk