

FILED

AUG 04 2004

4:45pm

REGISTRAR OF VOTERS  
COUNTY OF SANTA CLARA

By [Signature] ~~A RESOLUTION OF THE~~ COUNCIL OF THE CITY OF SAN  
JOSE ORDERING, ON ITS OWN MOTION, THE  
SUBMISSION TO THE ELECTORS OF THE CITY OF SAN  
JOSE, AT THE GENERAL MUNICIPAL ELECTION TO BE  
HELD ON NOVEMBER 2, 2004, A MEASURE TO IMPOSE  
AN ANNUAL SPECIAL TAX IN THE FORM OF A PARCEL  
TAX FOR LIBRARY PURPOSES

**WHEREAS**, the Council of the City of San José has previously called and ordered a General Municipal Election to be held on November 2, 2004 by the adoption of Resolution No. 72035 on April 6, 2004, for the purpose of electing one person from Council District 10 to the Council of the City of San José for a term commencing on January 1, 2005 and expiring December 31, 2008; and

**WHEREAS**, it is the desire of the Council to submit to the electors of the City of San José, at the General Municipal Election, on its own motion, the proposed measure, as set forth in this Resolution, to impose an annual special tax in the form of a parcel tax for library purposes; and

**WHEREAS**, the proposed measure requires the approval of a two-thirds majority of the electorate voting on the measure;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.** The Council reaffirms the provisions of Resolution 72035, except as expressly specified in this Resolution. Without limiting the generality of the foregoing statement, the Council reaffirms Section 6 of Resolution 72035 in which the Council requested the Board of Supervisors of Santa Clara County ("Board of Supervisors") to consolidate the City's General Municipal Election, to be held on November 2, 2004, with the California State Election, which is to be held in Santa Clara County on the same date.

The election precincts, polling places, voting booths, voting systems and election officers for the above-mentioned General Municipal Election shall be the same as provided for the above-mentioned State General Election in the City of San José.

The Board of Supervisors is hereby authorized to canvass the returns of said General Municipal Election in accordance with §10411 of the Elections Code of the State of California.

**SECTION 2.** Pursuant to the provisions of Section 4 of Article XIII A of the Constitution of the State of California and §10403 of the Elections Code of the State of California,

the Council of the City of San José, on its own motion, does hereby order and direct that the following measure be submitted to the electors of the City of San José, for their approval or rejection, at the General Municipal Election to be held in Santa Clara County on November 2, 2004:

*Resolution begins*

### SAN JOSE LIBRARY AND READING PROTECTION MEASURE

To support neighborhood libraries, including:  
buying needed books and materials;  
preventing severe reductions in hours;  
preventing deep cuts in children's reading programs;

YES	
NO	

shall the City of San José replace the expiring library assessment with an annual parcel tax in the same amount, \$25 for single-family residences and proportional for other properties, adjusted for inflation capped at 3% annually, limited to ten years and subject to independent audits and citizen oversight?

**SECTION 3.** The complete text of the measure set forth in Section 2 above to be submitted to the voters is the proposed ordinance set forth in Exhibit A to this Resolution.

**SECTION 4.** The Council hereby requests the Board of Supervisors to place the measure set forth in Section 2 of this Resolution on the ballot of the consolidated election on November 2, 2004 and to include the complete text of the measure as set forth in Exhibit A to this Resolution in the voter information portion of the sample ballot.

**SECTION 5.** Pursuant to the provisions of California Elections Code §10002, the City Council hereby requests the Board of Supervisors to permit the Registrar of Voters of the County of Santa Clara to render to the City of San José such services as the City Clerk of the City of San José may request, relating to the conduct of the above-mentioned election with respect to the following matters, to wit:

- Coordination of election precincts, polling places, voting booths, voting systems and election officers;
- Printing and mailing of voter pamphlets;
- Preparation of tabulation of result of votes cast.

**SECTION 6.** The City Clerk is hereby directed to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with monies heretofore appropriated to the City Clerk for election purposes.

**SECTION 7.** Pursuant to California Elections Code §§9282 and 9285, the City Council hereby approves the submittal of direct arguments for and against ballot measures, but determines that rebuttal arguments shall not be allowed.

**SECTION 8.** Pursuant to §13116 of the Elections Code of the State of California, the City Clerk of the City of San José and the Registrar of Voters of Santa Clara County are hereby authorized to mutually agree to use, and to use, a letter designation for the City ballot measures qualifying for a place on the ballot that will not conflict with other measures on the ballot or confuse the voters.

**SECTION 9.** Section 13 of Resolution 72035 is superseded by this Section 9. Pursuant to §12111 of the Elections Code of the State of California and to §6061 of the Government Code of the State of California, the City Clerk is hereby ordered to cause a synopsis of the proposed measure to be published in the San Jose Mercury News, a newspaper of general circulation within the City of San José, to cause copies of proposed measure to be printed in convenient pamphlet form and in type of not less than 10-point; to cause copies of that pamphlet to be mailed to each of the qualified electors of the City of San José; and to do all other things required by law to submit the specified measure above to the electors of the City of San José at the November 2, 2004 election.

**SECTION 10.** The City Clerk shall comply with provisions of Federal, State, and Local law with regard to the conduct of the election.

ADOPTED this 3rd day of August, 2004, by the following vote:

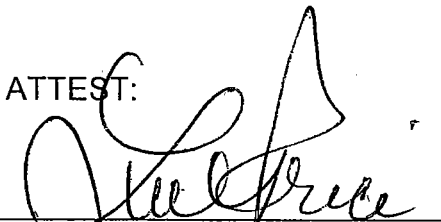
AYES: CAMPOS, CHIRCO, CORTESE, DANDO, GREGORY,  
LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CHAVEZ

DISQUALIFIED: NONE

ATTEST:

  
LEE PRICE, CMC  
City Clerk



RON GONZALES  
Mayor


**The foregoing instrument is  
a correct copy of the original  
on file in this office.**

**Attest:**

**LEE PRICE**

**City Clerk**

**City Clerk of the City of San José  
County of Santa Clara, State of California**

**By , Deputy**

**EXHIBIT A**  
**PROPOSED ORDINANCE**

*text begins*  
*no* 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**

<b>Land Use Classification</b>	<b>Tax Rate</b>
<b>Single-Family Parcels</b>	\$25.00/Parcel
<b>Condominium/Townhome Parcels</b>	\$25.00/Parcel
 <b>Other Residential Parcels</b>	
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
 <b>Multi-Family Residential</b>	
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
 <b>Commercial Parcels</b>	
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
 <b>Professional Parcels</b>	
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
 <b>Industrial Parcels</b>	
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

**EXHIBIT A**  
**LIBRARY PARCEL TAX RATES**

**Land Use Classification**

Greater than 1.0 acre to 5.0 acres  
Greater than 5.0 acres to 10 acres  
Greater than 10 acres  
Minimum Tax per Parcel

**Tax Rate**

\$31.25 + \$18.75/Acre Greater than 1.0 Acres  
\$106.25 + \$12.50/Acre Greater than 5.0 Acres  
\$168.75 + \$3.12/Acre Greater than 10.0 Acres  
\$6.25/Parcel

**Vacant Parcels**

Less than or equal to 0.5 acres  
Greater than 0.5 acres to 1.0 acre  
Greater than 1.0 acre to 5.0 acres  
Greater than 5.0 acres to 10 acres  
Greater than 10 acres  
Minimum Tax per Parcel

\$9.36/Acre  
\$4.68 + \$6.25/Acre Greater than 0.50 Acres  
\$7.80 + \$4.68/Acre Greater than 1.0 Acres  
\$26.52 + \$3.12/Acre Greater than 5.0 Acres  
\$42.12 + \$0.78/Acre Greater than 10.0 Acres  
\$6.25/Parcel