

FULL TEXT OF MEASURE CC

RESOLUTION NO. 2004-7-157

July 20, 2004

APPROVAL OF RESOLUTION IMPOSING A 15-YEAR PARCEL TAX IN ZONE 1 FOR PUBLIC SAFETY AND ENVIRONMENTAL MAINTENANCE SUBJECT TO VOTER APPROVAL

BE IT RESOLVED by the Board of Directors of the East Bay Regional Park District, Oakland, California, as follows:

Section 1. Findings.

- A. The East Bay Regional Park District ("District") includes all of Alameda County and all of Contra Costa County. The District operates 65 regional parks on more than 96,000 acres of parkland and over 1,100 miles of trails.
- B. In 1988, more than two-thirds of the local voters approved a \$225 million bond initiative, Measure AA, that made it possible for the District to purchase select properties and initiate specific programs that are aimed at enhancing the quality of life for residents throughout both Alameda and Contra Costa Counties. Through a combination of careful planning and attracting matching funds from both the public and private sectors, the District has been able to:
 - Acquire 30,000 acres of new parklands, expanding the Regional Park District from 66,000 acres in 1988 to 96,000 acres today.
 - Expand the District from 48 to 65 parks, and double the size of a dozen existing parks.
 - Add more than 100 miles of new trails for walking, riding, and biking.
- C. The District's revenue for operations and maintenance comes entirely from property taxes, assessments, user fees, interest, and rental/lease revenues. The District does not have the authority to impose a sales tax, nor does the District receive sufficient revenue from the State to undertake necessary operations and maintenance.
- D. The boundary of the area referred to as "Zone 1" encompasses the cities of Alameda, Oakland, Piedmont, Albany, Richmond, San Pablo, El Sobrante, Kensington, Berkeley, Emeryville and El Cerrito. If approved by the voters of Zone 1, monies will be used to fund projects in the following areas/parks: Alameda Point, Anthony Chabot, Crown Beach, Eastshore State Park, Huckleberry, Kennedy Grove, Lake Chabot, Martin Luther King, Jr. Shoreline, Miller/Knox, Pt. Isabel, Pt. Pinole, Redwood, Roberts, Temescal, Tilden, Tilden Nature Area, Wildcat Canyon, Leona, Brooks Island, Claremont Canyon, Sibley, and Alvarado, and such new parks or properties that may be purchased and/or annexed to parks within this zone.
- E. The Board of Directors ("Board") of the District does hereby determine that the cost to provide maintenance and operations of the District's parks and trails located within Zone 1 exceeds the amount of funds and revenues generated from all other sources of income available for such purpose. The Board does further determine that the imposition of a Public Safety and Environmental Maintenance tax on occupants of residential real property within Zone 1, for a 15-year period, as more fully set forth below, is necessary to maintain safe and usable parks and trails for recreational uses of residents within the District, to open new parks and trails for recreational use, to provide resource projects, and to enhance public access and safety.
- F. The imposition of a Public Safety and Environmental Maintenance tax in Zone 1 will allow the District to provide essential services to occupants of residential real property within Zone 1 of the District for the next fifteen years, such as critically needed maintenance of the District's infrastructure; resource projects, and public safety and access projects.
- G. The Board also recognizes that occupants of both residential and non-residential property use the parks and trails. However, the Board has determined that the use of the parks and trails by occupants of residential properties within Zone 1 greatly outweighs the use of parks and trails by occupants of non-residential properties. The most recent Association of Bay Area Government data indicates that 66.6% of residents of Alameda and Contra Costa Counties work in one of the two counties. It would be unfair to tax such persons twice; accordingly, the tax will be on the occupants of residential properties in Zone 1 only, and not on occupants of non-residential properties.
- H. The tax on occupants of multiple family units is approximately 69% of the tax on occupants of single-family units for two reasons: (1) multiple family units in Alameda County and Contra Costa County have lower occupant densities than single-family units (2.86 persons/unit single family; 2.22 persons/unit multiple family); and (2) surveys conducted by the District indicate that actual usage by residents of single-family units is three times higher than similar use by residents of multiple-family units. The District therefore finds it is appropriate to tax multiple family units in Zone 1 at approximately 69% of the tax on a single family unit, reflecting the lower occupant densities of multiple family units and the survey data showing the parks and trails are used more by single family unit occupants than by multiple family occupants.
- I. The tax rates established in this resolution are intended to be proportional to and based on estimates of typical use of and benefit from such facilities by occupants of different residential parcels within the Zone. The rates are not tailored to individual use both because such tailoring is not administratively feasible and because the District must make parks and trails available to all occupants of property equally.
- J. One or more of the District's parks and/or trails is within ten (10) miles of virtually all occupants of residential properties within Zone 1.
- K. Each occupant of property derives value from the availability of parks and trails within Zone 1. The value of such facilities is in their availability to all residents,

and it would be unfair to charge their costs only to those persons who actually use the services. Even if such facilities are not presently used by an occupant, they may be used in the future and, in any event, their availability benefits each occupant. The District's parks and trails in Zone 1 enhance the health, safety, and welfare of all occupants of property in Zone 1 and improve their quality of life both directly and indirectly. The recreational opportunities which the parks and trails make available to occupants of property within Zone 1 are vitally important to the health, safety, and welfare of the occupants.

- L. Parcels which are unimproved contain no occupants who may avail themselves of park and trail facilities. Accordingly, the Board has determined that owners of unimproved parcels are not subject to the tax.
- M. Parcels which are improved but vacant contain no occupants who may avail themselves of park and trail facilities. Accordingly, the Board has determined that owners of vacant improved parcels may receive a refund of the tax if they can prove that the parcel was vacant for more than six months during the year in which the tax was imposed.
- N. Approximately 46% of the residential units in Zone 1 are owner-occupied. Because this percentage is so high, the overall tax impact is not significantly different if the tax is imposed on occupants as opposed to owners, but the owner is required to collect it. However, nothing in this resolution is intended to preclude owners from recovering the tax from the occupant. Whether the occupant is charged depends on the occupancy agreement and the requirements of any local rent control board.
- O. It is not feasible for the District to collect the tax from the non-owner occupants on whom it is imposed because the records available to the District do not include the names of non-owner occupants. Therefore, the only practical way to collect a tax imposed on occupants is to collect it from the owners of the occupied properties. If the District contracts with the Counties for collection of the tax on the regular tax bill, as a convenience for property owners who would be required to submit the tax on behalf of property occupants, the Counties would be authorized to use all methods for enforcing collection pursuant to Government Code Section 50077, including placing a lien on the property.
- P. The tax imposed by this resolution is an excise tax on the privilege of using and the use of property for residential purposes which generates the need for park and trail facilities. It is not a tax on real property, nor is it any other kind of tax on property or the ownership of property. It is not a transaction or sales tax on the sale of real property. Finally, because the tax proceeds are deposited in a special account and the account is restricted for operations and maintenance of park and trail facilities, the tax is a special tax.

Section 2. Definitions.

As used herein, the following definitions shall apply:

- A. "Multi-family residential parcel" shall mean all parcels which are improved with more than one residential unit.
- B. "Park and trail facilities" shall mean the parks located within Zone 1, i.e., Alameda Point, Anthony Chabot, Crown Beach, Eastshore State Park, Huckleberry, Kennedy Grove, Lake Chabot, Martin Luther King, Jr. Shoreline, Miller/Knox, Pt. Isabel, Pt. Pinole, Redwood, Roberts, Temescal, Tilden, Tilden Nature Area, Wildcat Canyon, Leona, Brooks Island, Claremont Canyon, Sibley, and Alvarado and such new parks or properties that may be purchased and/or annexed to parks within this zone.
- C. "Occupant" shall mean the person or persons who rent, lease, reside in, or otherwise occupy the real property to which park and trail facilities are available.
- D. "Operations and maintenance" shall mean all expenses, both direct and indirect, for personnel, services, equipment, and contracts incurred by the District, including salaries, benefits, and overhead, required to operate and maintain the District's parks and trails.
- E. "Owner" shall mean the owner or owners of the real property to which park and trail facilities within Zone 1 are available as shown on Alameda County's and Contra Costa County's most recent assessment rolls.
- F. "Single-family residential parcel" shall mean all parcels which are improved with only one residential unit.
- G. "Year" shall mean the period from July 1 to the following June 30.

Section 3. Tax Imposed.

An annual park and operations maintenance tax ("tax") in the amounts set forth in Section 4 is hereby imposed on every occupant of real property used for residential purposes within Zone 1 in the District. Where there is more than one person who is an occupant, the tax shall not exceed the amounts set forth in Section 4 for the occupants of any parcel or unit.

The tax is an excise tax imposed on the occupant as of July 1 of each year; provided, however, that if any building or structure on any parcel is unoccupied on that date, the tax is imposed on the first occupant occupying the building or structure during the year.

Notwithstanding the tax liability of the occupant, the owner of each parcel giving rise to tax liability under this resolution shall be responsible for the collection and/or remittance of the tax due and payable hereunder. The tax required to be collected by the owner constitutes a debt owed by the owner to the District.

Section 4. Amount of Tax.

The amount of the tax shall be \$12.00 per year on the occupant of all single-family residential parcels; \$8.28 per year on the occupant of a unit located on a multi-family residential parcel with two or more units; and \$12.00 per year on the occupant of all agricultural or ranch parcels (if a residence is located on the parcel).

There shall be a 50% discount available for an occupant who is a senior citizen (age 65 and over) whose annual

income is below the State-defined poverty level.

Where there is more than one person who is an occupant, tax on each parcel or unit shall not exceed the amounts set forth above.

Section 5. Use of Tax Proceeds.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special account designated for use of operations and maintenance of park and trail facilities only. Monies in such special account may only be used in the following manner:

A. Park Access, Infrastructure and Safety Improvements	57%
B. Resource-Related Projects	33%
C. Reserve for Unknown Events and Opportunities	10%
TOTAL:	100%

The overall commitment to natural resources shall be no less than 30 percent of the revenue raised by the entire measure.

The specific projects for which the proceeds of the tax have been deemed necessary will be described in the Spending Plan to be considered by the Board of Directors on August 3, 2004. Each listed project will legally require separate review and approval by the Board of Directors. Approval of the tax is not the equivalent of approval of any specific project listed and is not a guarantee that every project listed therein will be undertaken and completed in the time frame provided. However, the Board of Directors hereby commits, to the extent allowed by CEQA and similar environmental review laws, to pursuing completion of the listed projects.

The Board of Directors will hold annual public hearings on project selections and allocations funded by the Measure. Each year there will be a public accounting of the use of funds during the past year, as required by Government Code Section 50075.3, and approval of the use of funds for the next year, including review by the Board Finance Committee. The Board may hold public forums from time-to-time, whenever questions and/or issues arise that merit additional input from the general public, including stakeholder groups and organizations.

Section 6. Determination of Occupancy Uses.

The records of the County Assessor of the County of Alameda and the County of Contra Costa as of January 1 of each year and the records of the District and cities located within Zone 1 shall be used to determine the actual use of each parcel of real property and, for multi-family residential parcels, the number of units, for purposes of determining the tax hereunder.

Section 7. Collection.

The tax levied and imposed by this resolution shall be due July 1 of each year, but it may be paid in two installments due no later than December 10 and April 10. The tax shall be delinquent if not received on or before the delinquency date set forth in the notice mailed to the owner's address as shown on the most current assessment role of the Alameda County or Contra Costa County Tax Collector and shall be collected from the owner in such a

manner and at such times as the Board may provide. The tax due may, at the option of the Board and as a convenience for owners who are responsible for collection, be collected from the owner by Alameda County or Contra Costa County in conjunction with, at the same time, in the same manner, and subject to the same penalties as each county's collection of property taxes, as provided by Government Code Section 50077.

Section 8. Exemptions

The owner of real property that is unimproved is exempt from collection and payment of the tax.

The tax imposed hereby shall not apply to the occupant of any property who, for any reason, is legally exempt therefrom.

Section 9. Refunds-Improved Parcels.

The occupant or owner of an improved parcel which is unoccupied for at least six months of the year shall receive a refund of any tax paid, provided an application in a form satisfactory to the District's General Manager is filed no later than August 1 for the preceding year for which a refund is sought.

Section 10. Refunds-Claim Required.

Any person claiming a refund of the tax for any reason not provided herein shall first file a written claim with the Clerk of the Board of the East Bay Regional Park District on a form specified by the Clerk. Such claim must be filed no later than 100 days after payment of the tax. All claims must be filed by the person who paid the tax or his or her guardian, conservator, or the executor of his or her estate. No claim may be filed on behalf of other taxpayers or a class of taxpayers. Filing of a claim shall be a condition precedent to legal action against the District for a refund of the tax.

Section 11. Untimely or Unpaid Taxes.

A one-time penalty of ten percent (10%) of the tax due is hereby imposed on all taxpayers who fail to pay the tax provided by this resolution when due. The penalty shall become a part of the tax debt herein required to be paid. In addition, if the tax remains unpaid as of July 1 of the following year, an additional penalty of one and one-half percent per month shall accrue on all amounts unpaid. If collected by the Counties, the provisions of the Revenue and Taxation Code shall be applicable.

The amount of any tax or penalty imposed under the provisions of this resolution shall be deemed a debt to the District. Any person owing money under the provisions of this resolution shall be personally liable for such amount in any action brought in the name of the District for the recovery of the amount owed. The District will be entitled to recover from the person against whom such an action is brought its costs incurred in connection with such action including its reasonable attorney's fees.

Section 12. Appropriations Limitation.

In no case shall the revenues generated by the tax levied and imposed by this resolution exceed the limitation established by Article XIII B of the Constitution of the State of California.

Section 13. Administrative Interpretation.

The Board may, by resolution, adopt guidelines for administrative matters related to the interpretation and enforcement of this resolution. Such guidelines may establish new uses or may modify uses listed in Section 5 provided that the maximum for any use can be no more than \$12.00 per year.

Section 14. Savings Clause.

If any provision, sentence, clause, section or part of this resolution is found to be unconstitutional, illegal or invalid, such finding shall affect only such provision, sentence, clause, section or part, and shall not affect or impair any of the remaining parts of the resolution.

Section 15. Authority for Resolution.

This resolution is enacted pursuant to the authority of Public Resources Code Section 5566, Government Code Section 50077 and Article XIID, Section 3(a) of the California Constitution.

Section 16. Challenge to Tax.

Any action to challenge the tax imposed by this resolution shall be brought pursuant to Government Code Section 50077.5 and Code of Civil Procedure Section 860 et seq.

Section 17. Election Required for Tax to be Effective.

This resolution shall take effect immediately. Notwithstanding the effective date of this resolution, the tax imposed pursuant to this resolution shall not become effective until submitted to a vote of the electorate at the November 2, 2004 election and approved by two-thirds of the voters voting at the election.

Section 18. Effective Date of Tax and 15-Year Sunset.

If this resolution is approved by two-thirds of the voters, the tax shall become effective on July 1, 2005 and shall terminate on June 30, 2020.

Moved by Director Sutter, seconded by Director Siri, and adopted this 20th day of July, 2004, by the following vote:

FOR: Directors Beverly Lane, Ted Radke, Carol Severin, Doug Siden, Jean Siri, John Sutter, Ayn Wieskamp

AGAINST: None

ABSENT: None

ABSTAIN: None

RESOLUTION NO. 2004-7-171

August 3, 2004

**APPROVAL OF SPENDING PLAN
FOR ZONE 1 PARCEL TAX PROCEEDS**

WHEREAS, over the past 14 years, the East Bay Regional Park District has increased in acreage by 45.5%, and during this same period funds for maintenance and operation of District facilities have grown slowly in constant dollars, and

WHEREAS, the Park District has taken steps to improve efficiencies in all areas, however, continued efficiencies are unlikely to provide sufficient savings to continue developing and opening land-banked properties, and

WHEREAS, the Zone 1 area contains the oldest parks in the system, some dating back to the 1930s, and the highest population density and park use in the District by the urban communities lining the eastern shoreline of the San Francisco Bay, and

WHEREAS, the parks and trails in Zone 1 are identified as having un-funded projects in excess of \$85 million in capital projects and over \$5 million per year in needed ongoing operational expenses, and

WHEREAS, the Board of Directors has determined that a parcel tax measure is necessary as a means to seek necessary revenues, and

WHEREAS, District Staff has recommended the proposed Spending Plan, which includes the necessary and optimal uses of the revenue from the proposed tax, and

WHEREAS, this Spending Plan has been reviewed by the Board Legislative Committee, and was recommended by the Committee for favorable consideration by the Full Board at their meeting of July 9, 2004,

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Regional Park District hereby approve the Spending Plan for the Zone 1 Parcel Tax, as attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that the percentages of the proceeds committed to projects is as follows:

A. Park Access, Infrastructure and Safety Improvements	57%
B. Resource-Related Projects	33%
C. Reserve for Unknown Events and Opportunities	10%
TOTAL	100%

BE IT FURTHER RESOLVED that approval of the Zone 1 parcel tax by the voters will assure funding for the projects listed in the Spending Plan, but will not constitute approval of any particular project, and

BE IT FURTHER RESOLVED that the Board of Directors will review and approve each project individually,

BE IT FURTHER RESOLVED that approval of the Spending Plan itself does not guarantee that each and every project listed will be completed or undertaken in the time frame proposed, and within the overall percentage allocations listed above, the Board may make adjustments reflecting opportunities that arise over the life of the tax

that are found to be beneficial resource and enhancement, or public access and safety projects within the zone but that are not necessarily identified on the current project list, and

BE IT FURTHER RESOLVED, that the Board of Directors hereby includes as an eligible project support for the operation and maintenance of the Oakland Zoo, not to exceed \$100,000/year, which amount may be granted on an annual basis pursuant to terms and conditions of a Local Agency Grant contract to be established between the East Bay Regional Park District and the Oakland Zoo, and

BE IT FURTHER RESOLVED that the Board of Directors will hold annual public hearings on project selections and allocations funded by the Zone 1 Parcel Tax, and that each year there will be a public accounting of the use of funds during the past year and approval of the use of funds for the next year, including review by the Board Finance Committee, and

BE IT FURTHER RESOLVED that the Board of Directors may hold public forums from time-to-time, whenever questions and/or issues arise that merit additional input from the general public, including stakeholder groups and organizations, and

BE IT FURTHER RESOLVED that park facilities in Zone 1, in common with the majority of District facilities, are currently supported by General Fund monies derived from property tax revenues, grants, revenues from fees and charges, and other miscellaneous funding sources, and it is the specific intention of the Board of Directors that new funds raised by the parcel tax by these communities will augment existing funding sources, and

BE IT FURTHER RESOLVED that despite the Park District's commitment to the projects listed in the Spending Plan and the potential funding for them represented by the proposed tax, because approval of the necessary resolutions will not directly or indirectly lead to any identifiable work that could affect the environment, approving the proposed tax does not constitute a "project" as defined by CEQA, and

BE IT FURTHER RESOLVED that since the tax is a special tax, the District must identify the uses to which it will put the tax proceeds, however, approval of a tax for funding of those categories of work is not a commitment to a specific project that will affect the environment, and for those reasons, the action proposed is not a "project" requiring CEQA compliance, and

BE IT FURTHER RESOLVED that the Board of Directors of the East Bay Regional Park District hereby authorize the General Manager and Clerk of the Board to formally request the Alameda County Registrar of Voters and Contra Costa County Elections Office to print this resolution and full project list in the Voter Information Pamphlet, and

BE IT FURTHER RESOLVED that the General Manager is hereby authorized and directed, on behalf of the District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

Moved by Director Radke, seconded by Director Sutter, and adopted this 3rd day of August, 2004, by the following vote:

FOR: Directors Jean Siri, John Sutter, Carol Severin, Ted Radke, Ayn Wieskamp

AGAINST: None

ABSENT: Directors Doug Siden, Beverly Lane

ABSTAIN: None