

Special Tax to Fund Operation and Maintenance of the Replacement Warm Water and Willard Pools

BALLOT QUESTION

Shall a special tax of \$0.00779 per square foot of improvements on land in Berkeley be authorized to fund maintenance and operation of the replacement Warm Water and Willard Pools, if a bond measure funding construction of those pools is adopted?

Financial Implications

The annual cost in fiscal year 2013-14 would be \$14.80 for a 1,900 square foot home, \$23.37 for a 3,000 square foot home and \$77.90 for a 10,000 square foot building.

FULL TEXT OF MEASURE

ORDINANCE NO. -N.S.

AUTHORIZING SPECIAL TAX TO FUND OPERATION AND MAINTENANCE OF THE REPLACEMENT WARM WATER AND WILLARD POOLS

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

Section 1. Findings and purpose.

A. On November 17, 2009, the Berkeley City Council adopted the Pools Master Plan, and on June 26, 2012, proposed a general obligation bond to fund replacement of the Warm Water Pool and Willard Pool.

B. It is necessary to have an assured source of funds for maintenance and operation of those pools or they would be at risk of closure or reduction in hours and programs in the future.

C. Construction of these replacement pools will serve the public interest of the residents of Berkeley by providing both recreational and therapeutic pools, thereby providing opportunities for improved health and fitness of Berkeley residents.

Section 2. Special tax.

A. The tax imposed under this Chapter is solely for the purpose of raising revenue to pay for operation and maintenance of the replacement Warm Water Willard Pools. "Operation and maintenance" includes recreation program services consisting of the administration and operation of the City's aquatics program, and maintenance and repair of the pools and their associated facilities, which include but are not limited to locker rooms, utility buildings, pumps, filters and piping.

B. Section 4 of Article XIII A of the California Constitution (Proposition 13) allows two-thirds of the qualified electors of the City to impose a special tax within the City,

provided the special tax is not an *ad valorem* tax on real property or a transaction tax or a sales tax on the sale of real property within the City. The tax imposed by this Chapter is a special tax that is authorized for elector approval by Section 4 of Article XIII A of the California Constitution.

Section 3. Tax authorized--Tax rate--Indexing.

A. There is imposed a special tax of \$0.00779 per square foot on all improvements in the City, for the purpose set forth in Section 2.A above.

B. The tax imposed by this Chapter shall be operative on July 1, 2013, subject to Section 12.

C. The City Council of Berkeley is authorized to increase the tax rate authorized by this Chapter annually in May by up to the greater of the cost of living in the immediate San Francisco Bay Area, per capita personal income growth in the state (each as verified by official United States Bureau of Labor statistics), or 5%. If either index referred to above is discontinued, the City shall use any successor index specified by the applicable agency, or if there is none, the most similar existing index then in existence.

Section 4. Definitions.

For purposes of this Chapter, the following terms shall be defined as set forth below:

A. "Building" means any structure having a roof supported by columns or by walls and designed for the shelter or housing of any person, chattel or property of any kind. The word "building" includes the word "structure."

B. "Improvements" means all buildings or structures erected or affixed to the land.

C. "Parcel" means a unit of real estate in one ownership as shown on the most current official assessment role of the Alameda County Assessor.

D. "Square footage" means the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding subsection 3 of this definition, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops,

balconies and to natural ground areas, terraces, pools and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

E. "Structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Section 5. Authority of the City Manager.

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

Section 6. Interest and penalties.

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

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

Section 7. Refunds.

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

Section 8. Collection.

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

Section 9. Severability clause.

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

Section 10. Violation--Penalty.

Failure to perform any duty or obligation imposed by this Chapter is a misdemeanor punishable as set forth in Chapter 1.20 of this code, but may be charged, in the discretion of the citing officer, as an infraction.

Section 11. Increase appropriations limit.

Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2013-14 through 2016-17.

Section 12. Effectiveness.

A. This Chapter shall take effect only if the voters also approve the general obligation bond measure on the November 6, 2012, ballot to construct a new Warm Water Pool and a new Willard Pool and make improvements to their associated facilities, and to renovate the locker rooms at King Pool, and that measure becomes effective.

B. No tax may be collected under this Chapter for any period during which the City does not have a lease for the facilities upon which tax proceeds would be spent, which conforms to the conditions set forth in the general obligation bond measure on the November 6, 2012, ballot.