

FULL TEXT OF MEASURE \_\_\_\_

**ORDINANCE NO. 2016-03**

**AN ORDINANCE OF THE CITY OF ALBANY ENACTING A  
SPECIAL PARCEL TAX TO FUND  
REPAIRING AND UPGRADING PUBLIC SIDEWALKS AND REMOVING  
OBSTRUCTIONS TO IMPROVE SAFETY AND ACCESSIBILITY**

**WHEREAS**, Albany residents have identified safe, passable sidewalks as an important aspect of quality of life and a high priority for investment by the City to ensure that pedestrians, including individuals with disabilities that affect mobility, are able to move safely through the City without using cars; and

**WHEREAS**, the City of Albany—like all California cities—has faced decreasing revenues to make essential infrastructure investments, resulting in deferred maintenance to many public facilities, including sidewalks; and

**WHEREAS**, without a dedicated source of additional funding to invest in deferred maintenance to Albany’s public sidewalks, the City would be unable to address in a timely way needed repairs and upgrades to its sidewalks or to remove obstructions to improve safety and accessibility; and

**WHEREAS**, delaying maintenance and repairs to Albany’s sidewalks increases the replacement costs in the long-run, and the City is committed to repairing our deteriorating sidewalks before the costs become more expensive in the future; and

**WHEREAS**, with a dedicated source of funding to address needed sidewalk repairs and upgrades, the City would be able to accelerate urgent work to improve the safety and quality of

Albany's sidewalks, avoiding the steeper costs of deferring the work later. Repairing and upgrading Albany's sidewalks and removing mobility obstacles will improve opportunities for residents and visitors to safely use alternative modes of transit to get around the City to play, work, and shop; and

**WHEREAS**, this ordinance would create a guaranteed source of local funding for Albany's public sidewalks 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 reducing vehicle miles traveled within the community by improving pedestrian facilities; and

**WHEREAS**, in 2010, the City approved a Climate Action Plan, which included a vision for an interconnected transportation system and land use pattern that shifts travel from autos to walking, biking, and public transit; and

**WHEREAS**, Climate Action Plan Measure TL 1.3: call for implement of improvements to encourage walking in the community by eliminating obstacles such as deteriorated sidewalks; and

**WHEREAS**, in 2012, the City approved an Active Transportation Plan that includes a detailed strategy to encourage pedestrian travel throughout the City. A key part of this strategy is improving the safety and convenience of pedestrian facilities; and

**WHEREAS**, in April 2016, the City adopted an updated General Plan that includes a variety of policies that will lead to improvements to sidewalks; and

**WHEREAS**, General Plan Policy T-2.10 calls for the City to establish reliable and sustained funding sources to ensure maintenance of transportation facilities including sidewalks; and

**WHEREAS**, General Plan Policy T-3.6: calls for priority walking corridors to be identified and targeted for sidewalk improvements including maintenance; and

**WHEREAS**, in light of the foregoing benefits and considerations, the City wishes to improve its commitment to pedestrian sidewalks; and

**WHEREAS**, the proposed special tax to be submitted to the voters is authorized by Article XIII A of the California Constitution and Section 50075 of the California Government. It 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. Article 4-14 is hereby added to Chapter IV of the Albany Municipal Code, to read as follows:

4-14 SAFE AND ACCESSIBLE SIDEWALKS SPECIAL PARCEL TAX

4-14.1 TITLE. This Article shall be known as the “City of Albany Safe and Accessible Sidewalks Special Parcel Tax.”

4-14.2 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. “Sidewalk maintenance and obstruction removal” means repairing and upgrading public sidewalks and removing obstructions to improve safety and accessibility, and includes but is not limited to the following:

1. Relocation of shallow utility lines located within area of sidewalk repair;
2. Grinding of stumps of removed trees;
3. Replacement of soil or mulch in landscape strips as necessary to avoid a hazardous condition;

4. Repair of private driveways if necessary to maintain functionality of the existing driveway;
5. Funding for expedited repairs in locations with occupants that have special access needs (e.g., limited mobility, special events, etc.); and
6. Extending the length of a sidewalk to be repaired beyond the area of immediate hazard in order that the repaired sidewalk can tie into an existing sidewalk in relatively good condition.
7. Lighting repairs and improvements to enhance pedestrian safety.

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.

#### 4-14.3 TAX IMPOSED.

A. An annual special tax in the amounts set forth in Section 4-14.4 is hereby imposed on every parcel of real property within the City.

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 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 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 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 renter occupants eligible for this exemption. Only one such rebate shall be allowed annually to a rental unit.

4-14.4 TAX RATES.

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

<b>Parcel Type</b>	<b>Size of Parcel (square feet)</b>	<b>Rate, per parcel or unit</b>
Single-family Residential	0-2,500	\$27.60 per parcel
	2,501-5,000	\$38.65 per parcel
	Over 5,000	\$49.69 per parcel
Condominium/Townhouse	Not Applicable	\$15.46 per unit
Multi-family Residential	Not Applicable	\$15.46 per unit
Nonresidential	0-5,000	\$49.69 per parcel
	5,001 – 10,000	\$71.88 per parcel
	10,001 – 20,000	\$77.29 per parcel
	20,001 AND ABOVE	\$88.50 per parcel

B. The tax rate schedule in the table above shall apply beginning January 1, 2017 and ending December 31, 2017. To keep the tax on each property in constant first year dollars for each year subsequent to 2017, the tax per year 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:

$$\begin{array}{l} \text{Tax rate for} \\ \text{the current} \\ \text{year} \end{array} = \begin{array}{l} \text{Tax rate for} \\ \text{the preceding} \\ \text{year} \end{array} \times \begin{array}{l} \text{Change in Consumer Price Index from} \\ \text{April of the immediately preceding year} \\ \text{to April of the current year or 1.02,} \\ \text{whichever is less} \end{array}$$

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.

4-14.5 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.

4-14.6. 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.

4-14.7 USE OF TAX REVENUE.

A. Revenue from the special tax, including penalties and interest thereon, shall be used for sidewalk maintenance and obstruction removal, including but not limited to repairing and upgrading public sidewalks and removing obstructions to improve safety and accessibility, consistent with the Sidewalk Repair Policy adopted by the City Council. The currently approved Sidewalk Repair Policy is attached as Exhibit A. The City Council may amend the Sidewalk Repair Policy from time to time in its discretion, which changes shall be incorporated into this Article. In no case, however, shall changes to Sidewalk Repair Policy authorize the use of special tax revenue for projects unrelated to repairing and upgrading public sidewalks and removing obstructions from public sidewalks to improve safety and accessibility or for other purposes authorized in this Article.

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.

4-14.8 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 Safe and Passable Sidewalk 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 public sidewalk maintenance and obstruction removal projects and for related election, administration, and legal fees as set forth in Section 4-14.7. 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.

4-14.9 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.

4-14.10 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.

4-14.10 EXPIRATION OF TAX. The authority to levy the special tax shall remain in effect until December 31, 2026, and as of that date is repealed unless a later ordinance is adopted and approved by the voters that either deletes or extends that date. Special taxes imposed in 2026 shall remain due and owing until paid, even after the authority to impose the special tax has expired.

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. 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 2016/17 and each year thereafter.

Section 4. This Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). The special tax authorized by this Ordinance is a special tax that can only be used to fund the projects, facilities, and services described in the Ordinance but does not approve any of the described projects or services. As such, under CEQA Guidelines section 15378(b)(4), the special tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project or service that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project or service. Therefore, pursuant to CEQA Guidelines Section 15060, review of the Ordinance under CEQA is not required. Prior to commencement of any project or service funded by the special tax, any necessary environmental review required by CEQA shall be completed. The City shall perform CEQA analysis for the project prior to approving the project or service, if the project or service requires analysis under CEQA.

Section 5. If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this ordinance, and such holding

shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding. If any section, subsection, phrase, clause, sentence, or word in this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of this Ordinance but shall be confined to the article, section, subsection, subdivision, clause, sentence or word so held invalid or unconstitutional.

Section 6. This Ordinance shall be considered adopted on the date that the City Council declares the results of the election at which it was voted upon and shall be effective immediately because it is an ordinance relating to taxes.

Ordinance No. 2016-03 was submitted to the People of the City of Albany at the November 8, 2016 general municipal election. It was approved by the following vote of the People:

YES:

NO:

Ordinance No. 2016-03 was thereby adopted by the voters at the November 8, 2016 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 \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

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.

Nicole Almaguer, City Clerk

## **ORDINANCE 2016-03 – EXHIBIT A**

### **SIDEWALK REPAIR POLICY APPROVED BY ALBANY CITY COUNCIL JUNE 20, 2016**

#### **Purpose**

The purpose of the Sidewalk Repair Policy is to improve continuous sidewalk passability in public right of way by repairing sidewalk damage and removing vegetation obstructions.

#### **Legal Responsibility**

Under Section 5610 of the California Streets and Highways Code and per Albany Municipal Code Section 14-1.5b, property owners and persons in possession of property are required to maintain adjacent public sidewalks in a safe condition. The existence of this program does not abrogate the responsibility of the property owners to maintain their frontage improvements in a safe manner. As part of the administration of the Sidewalk Program, city staff are to use City newsletter, web page, and outreach events to provide information to property owners regarding their responsibilities for sidewalks.

#### **Repair Program:**

The City of Albany will annually determine priority areas for repair. The City will manage and pay the entire project cost of priority sidewalk repairs. Upon completion of the repair, the City will issue a certificate of compliance that returns responsibility for all future maintenance and repair to the property owner pursuant to existing State law. The Traffic & Safety Commission will annually propose prioritization of projects to the City Council as well as review sidewalk repair criteria. As part of the scope of work for a sidewalk repair project, expenditure of funds associated with the following is authorized:

- a) relocation of shallow utility lines located within area of sidewalk repair;
- b) grinding of stumps of removed trees;
- c) replacement of soil or mulch in landscape strips as necessary to avoid a hazardous condition;
- d) repair of private driveway if necessary to maintain functionality of the existing driveway;
- e) Funding for expedited repairs in locations with occupants that have special access needs (e.g., limited mobility, special events, etc.); and
- f) Extending the length of sidewalk to be repaired beyond the area of immediate hazard in order that the repaired sidewalk can tie into an existing sidewalk in relatively good condition.

#### **Public Notice for Repair Program**

A public notice will be mailed to all property owners adjacent to proposed areas of work ten days before the Traffic and Safety Commission's review of the proposed scope of work. The notice

will advise property owners that street trees may be subject to removal and that property owners are required to cut back other vegetation in the area of work. The notice will also advise owners that work may be underway for up to two weeks, and solicit requests for information regarding occupants that may have special access needs that will affect the timing of construction.

**Point of Permit Program:**

The City of Albany will require that specified construction projects above \$100,000 valuation will trigger a requirement that the property owner repair the sidewalk to City specifications. The City will conduct a no-cost inspection upon application. The property owner will be responsible for all repair costs of the scope of projected project would otherwise trigger sidewalk repairs, such as sewer lateral upgrades, cross-sidewalk drains, new driveway or curb-cuts, etc.

**Point of Sale Program:**

The City of Albany will require that specified real property transfers will trigger a requirement that the property owner upgrade damaged sidewalk (the program will function similar to the existing sewer lateral program). The City will conduct a no-cost inspection upon application. If no repairs are necessary, a certificate of compliance will be issued that discloses that the property owner has future responsibility for all maintenance and repair.

**Streetscape Improvement Projects:**

For sidewalks that that are in locations with fully funded streetscape-related Capital Improvement Projects, the need for repair will be evaluated on a case by case basis. The requirement for property owner repair will be deferred or an interim safety and accessibility solution may be acceptable.

**Refinements to Street Tree Program:**

The City will evaluate situations where street trees are causing structural damage to sidewalks. A range of options will be considered including root pruning, enlarging tree wells, realignment or ramping of sidewalks around or over roots, or alternative paving materials that extend the functional life of the sidewalk. If a street tree that is causing damage is known to cause uplift relative to other tree species, the tree shall be removed as part of the repair project and replaced with a species not expected to damage sidewalks. City staff shall have authority to remove any tree without public notice if during construction, roots are found in locations that indicate that a new sidewalk will be damaged in the relative near future and removal of the root is determined by the City Arborist to substantially weaken the health of the tree.