

**AMENDED AND RESTATED AGREEMENT BETWEEN
THE CITY OF SAN JOSE AND THE COUNTY OF SANTA
CLARA PROVIDING FOR THE NOTIFICATION, DEMAND,
COLLECTION, AND DISTRIBUTION OF TAXES UNDER
THE SAN JOSE REAL PROPERTY CONVEYANCE TAX
ORDINANCE AND SAN JOSE REAL PROPERTY
TRANSFER TAX ORDINANCE**

THIS AGREEMENT is made and entered into this _____ day of _____ 2020, by and between the CITY OF SAN JOSE, a municipal corporation, located at 200 E. Santa Clara Street, 13th Floor, San José, CA 95113 (hereinafter “CITY”), and the COUNTY OF SANTA CLARA, a political subdivision of the State of California, located at 70 W. Hedding Street, San José, CA 95110 (hereinafter “COUNTY”).

RECITALS

WHEREAS, on May 22, 1972, the CITY passed Ordinance No. 16251, amending the San José Municipal Code by enacting, adopting, and adding a new Article XVIII, which was subsequently renumbered to Chapter 4.58 of Title 4, providing for the imposition of a special tax upon transfers of real property located in the City of San José, as may be amended (the “San José Real Property Conveyance Tax”), and on March 13, 1984 passed Ordinance No. 21581 amending Chapter 4.58 of Title 4 of the San José Municipal Code to provide for certain changes in the collection of the San José Real Property Conveyance Tax; and

WHEREAS, on January 8, 1985, the CITY and the COUNTY entered into an agreement providing for the notification of and collection of taxes under the San José Real Property Conveyance Tax Ordinance at the collection fee rate set forth therein; and

WHEREAS, on March 3, 2020, San José voters passed Measure E amending Title 4 of the San José Municipal Code by adding Chapter 4.59 providing for the imposition of a general tax upon transfers of real property located in the City of San José, as may be amended (the “San José Real Property Transfer Tax”); and

WHEREAS, it is the intention of the CITY and the COUNTY to enter into a new amended and restated agreement whereby the COUNTY will, on behalf of the CITY, give notice of, make demand for, and collect both the San José Real Property Conveyance Tax and the San José Real Property Transfer Tax in exchange for the fee provided for in this AGREEMENT; and

WHEREAS, the San José Real Property Conveyance Tax and the San José Real Property Transfer Tax may be referred to collectively herein as the “Taxes”;

NOW, THEREFORE, in consideration of their mutual promises, covenants, and agreements set forth in this AGREEMENT, the parties hereby agree as follows:

SECTION 1. COUNTY COLLECTION.

A. Effective upon execution, and except as otherwise provided:

1. On behalf of the CITY, the COUNTY, through the County Clerk-Recorder’s Office, shall notice, make demand, collect and distribute to the CITY the San José Real Property Conveyance Tax imposed on each transfer by deed, instrument or writing, by which any lands, tenements or other real property sold, located in the City of San José, are or is granted, assigned, transferred or otherwise conveyed to, or vested in, a purchaser or purchasers thereof, or any person or persons at or by the direction of said purchaser or purchasers, when the value of the consideration exceeds One Hundred Dollars (\$100.00), said tax to be at the rate prescribed by CITY ordinance for each Five Hundred Dollars (\$500.00), or fractional part of Five Hundred Dollars (\$500.00), of the value of the consideration, a copy of which ordinance is attached hereto as **Exhibit 1**.
2. In addition, on behalf of the CITY, the COUNTY, through the County Clerk-Recorder’s Office, shall notice, make demand, collect and distribute

to CITY the San José Real Property Transfer Tax imposed on each transfer by deed, instrument or writing, by which any lands, tenements or other real property sold, located in the City of San José, are or is granted, assigned, transferred or otherwise conveyed to, or vested in, a purchaser or purchasers thereof, or any person or persons at or by the direction of said purchaser or purchasers, when the value of the consideration is equal to or exceeds Two Million Dollars (\$2,000,000.00), said tax to be at the rate prescribed by CITY ordinance, a copy of which ordinance is attached hereto as **Exhibit 2**, and as outlined below:

- a. Where the total value of the consideration is \$2,000,000 to \$5,000,000, the tax rate imposed on the total value of the consideration, including but not limited to the value of the consideration equal to or less than \$1,999,999.99, shall be 0.75%;
- b. Where the total value of the consideration is \$5,000,000.01 to \$10,000,000, the tax rate imposed on the total value of the consideration, including but not limited to the value of the consideration equal to or less than \$5,000,000, shall be 1.00%; or
- c. Where the total value of the consideration is greater than \$10,000,000, the tax rate imposed on the total value of the consideration, including but not limited to the value of the consideration that is equal to or less than \$10,000,000, shall be 1.50%.
- d. The tax rates described above in paragraphs a through c are summarized in the table below:

Value of Consideration	Rate
\$2,000,000 to \$5,000,000	0.75%
\$5,000,000.01 to \$10,000,000	1.00%
Over \$10,000,000	1.50%

For example, a transfer of real property where the value of consideration is \$11,000,000 would be taxed at a rate of 1.50% on the entire \$11,000,000.

- e. Transfers of real property where the value of the consideration is under \$2,000,000 (or under the applicable exemption threshold as set forth below) are still subject to the Real Property Conveyance Tax.
- f. Beginning July 1, 2025, the exemption threshold of under \$2,000,000 (i.e., \$1,999,999.99) will automatically adjust based on a consumer price index every five (5) years. The CITY's Director of Finance shall publish the exemption threshold as adjusted no later than April 30 prior to the July 1 date on which the adjustment to the exemption threshold becomes effective and shall provide notice to the COUNTY by the fifth business day in May.
- g. The Real Property Transfer Tax applies to transfers of ownership interests in a legal entity (e.g., a corporation, partnership, or limited liability company) that would be considered an ownership change of real property under California Revenue and Taxation Code Section 64.

B. For Recorded Transfers. If, for any reason, the COUNTY is unable to collect the Taxes after notice and demand when the instrument or writing is presented for

recordation, as applicable, the COUNTY will record the instrument or writing if otherwise recordable under the law and will inform transferor that copies of the recorded instrument or writing, or a report containing the information therein, will be given to the CITY for collection. The COUNTY will provide notice to the CITY of a party's refusal to pay through the provision of a copy of the recorded instrument or writing, or a report containing the information therein, to the CITY to allow the CITY to pursue collection of the Taxes. Nothing contained herein is intended to impose any obligation on the part of the COUNTY to pursue further the collection of the Taxes, after having given the CITY notice of a party's refusal to pay, unless otherwise agreed to by the CITY and the COUNTY in writing. The obligation for collection and litigation of the CITY's delinquent Taxes remains with the CITY.

- C. For Unrecorded Transfers. Where the CITY's Real Property Transfer Tax is imposed on unrecorded transfers involving change in ownership interests of legal entities considered a change in ownership of real property under California Revenue and Taxation Code Section 64, the COUNTY agrees to include a request for the payment of the CITY's Real Property Transfer Tax in the COUNTY's notice of documentary transfer tax sent by the COUNTY pursuant to Section A30-39.6 of the County Ordinance Code, and to include a request for payment of the CITY's Real Property Transfer Tax in the COUNTY's notice of delinquent documentary transfer tax sent by the COUNTY pursuant to Section A30-46.1 of the County Ordinance Code, with a copy to the CITY's Director of Finance. If the COUNTY thereafter receives payment of the CITY's Real Property Transfer Tax, the COUNTY will collect and distribute the CITY's Real Property Transfer Tax at the rate and in the manner set forth in this AGREEMENT.
- D. If the party owing the CITY's Real Property Transfer Tax in Section 1.C. above refuses to pay in whole or in part after demand, then the COUNTY shall notify the CITY of the party's refusal to pay and shall work cooperatively with the CITY to provide information requested by the CITY, which may include the Preliminary

Change of Ownership Reports in the possession of the COUNTY's Assessor (the "County Assessor"), to the extent the provision of such information is authorized pursuant to the requirements of California Revenue and Taxation Code Section 408.4.

When the CITY is conducting an investigation to determine whether a documentary transfer tax should be imposed for an unrecorded change in control or ownership of property, and upon written request of the CITY's Director of Finance or designee to the County Assessor, the County Assessor shall disclose information, furnish abstracts or permit access to all records in the County Assessor's possession to the designated employee(s) of the CITY's Finance Department pursuant to the authorization and requirements of California Revenue and Taxation Code Section 408.4, which are incorporated herein by reference. The written request shall comply with the requirements of and refer to California Revenue and Taxation Code Section 408.4, and the request shall be addressed to the attention of the County Assessor with the Assistant County Assessor copied on the request. Whenever the County Assessor discloses information, furnishes abstracts, or permits access to records in his or her office to the CITY pursuant to Section 408.4, the CITY shall reimburse the COUNTY for any reasonable costs incurred as a result thereof. The CITY acknowledges that pursuant to Section 408.4(b), the information the CITY receives from the County Assessor that is not a public record and that is not open to public inspection shall not become a public record and the CITY shall maintain the confidence of said information.

Nothing contained herein is intended to impose any obligation on the part of the COUNTY to pursue further the collection of the CITY's Real Property Transfer Tax, after having given the CITY notice of a party's refusal to pay, unless otherwise agreed to by the CITY and the COUNTY in writing. The obligation for collection and litigation of the CITY's delinquent Real Property Transfer Tax remains with the CITY.

- E. The COUNTY will provide staff, if requested, to appear at the CITY's administrative hearings or court proceedings. Any cost to the COUNTY therefor will be included in the collection fee rate as determined in Section 1.G.
- F. The COUNTY will refer to the CITY any requests for refund of the Taxes paid. The COUNTY, under no circumstances, will make a refund on the CITY's behalf.
- G. Each fiscal year, the COUNTY shall establish a collection fee rate for the purpose of calculating the fee due to the COUNTY for the notification and collection of the Taxes on behalf of the CITY. On or before June 15 of each fiscal year, the Director of Finance or Controller-Treasurer for the County of Santa Clara will notify the CITY's Director of Finance of the rate to be charged during the upcoming fiscal year commencing on July 1. Said rate will be based on the anticipated direct and indirect costs to be incurred by the COUNTY during that fiscal year resulting from the COUNTY's activities on behalf of the CITY for the notification, demand, collection, and distribution of the Taxes, and the methodology used for cost allocation shall be based on Generally Accepted Accounting Principles (GAAP) for state and local governments. To that end, the COUNTY and the CITY agree to work collaboratively to revisit the methodology used to calculate the collection fee rate, commencing with the calculation of the collection fee rate for the fiscal year beginning July 1, 2021 and every year thereafter during the term of this AGREEMENT, to ensure that the methodology used for cost allocation is consistent with GAAP. The Controller will make available to the CITY's representatives records and data upon which the rate was developed. Any overcharge or undercharge incurred by the COUNTY for the fiscal year will be set forth in an end-of-the-fiscal-year true-up statement provided to the CITY by the COUNTY on or before July 31 detailing the amount overcharged or undercharged, as applicable. Upon the CITY's receipt of the end-of-the-year true-up statement and after approval by the CITY, the COUNTY may make the appropriate adjustment by either reimbursing to the CITY the

amount of the overcharge or deducting the amount owed to the COUNTY for the undercharge from the Taxes due to the CITY for the next month(s).

- H. The COUNTY shall provide the CITY a report each month showing date of property transfer, transfer document number, Council District number, and tax amount collected.
- I. The COUNTY shall transmit to the CITY all Taxes collected during each month on the tenth (10th) day of the following month. The payment will consist of a wire transfer, ACH, or other agreed-upon method of payment and the report as specified in Section 1.H. above. The COUNTY shall deduct from the amount of Taxes collected a charge for collection based on the rate for the fiscal year as determined in Section 1.G. above.
- J. The COUNTY agrees to permit authorized personnel of the CITY to examine the records of the County Clerk-Recorder concerning the collection of the Taxes as set forth in Section 4.
- K. The COUNTY agrees that communications and payments sent to the CITY shall be addressed to the CITY as set forth in Section 6.
- L. The COUNTY shall use the same procedures as presently followed for collection of the County Real Property Transfer Tax with the following exceptions:
 - 1. The San José Real Property Conveyance Tax shall be at the rate prescribed by CITY ordinance attached as **Exhibit 1** for each Five Hundred Dollars (\$500.00), or fractional part of Five Hundred Dollars (\$500.00), of the value of the consideration;
 - 2. The San José Real Property Transfer Tax shall be at one of the applicable rates prescribed by CITY ordinance attached as **Exhibit 2**;

3. The CITY Taxes apply to the total consideration paid as defined by the applicable CITY ordinance;
4. The Taxes apply only to real property transferred within the city limits of San José;
5. The Taxes do not apply to transfers of real property if otherwise exempt as set forth in the ordinances attached hereto as **Exhibits 1 and 2**; and
6. Recordation will not be denied if payment of the CITY Taxes is refused.

SECTION 2. CITY AGREEMENT.

- A. The CITY agrees to indemnify, hold harmless and defend the COUNTY in connection with any claim or suit filed by a third party naming the COUNTY which arises out of the collection of said Taxes by the COUNTY for the CITY (including but not limited to the CITY's disclosure of confidential information provided to the CITY pursuant to California Revenue and Taxation Code Section 408.4 which the CITY discloses in violation of California Revenue and Taxation Code Section 408.4), and in the event that the collection of said Taxes is enjoined by legal process, the CITY agrees to reimburse the COUNTY for any expenses incurred by the COUNTY in providing for the collection of the enjoined Taxes.
- B. All communications concerning notification, collection, and distribution of the Taxes sent by the CITY to the COUNTY shall be addressed to the COUNTY as set forth in Section 6.

SECTION 3. REIMBURSEMENT FOR PROGRAMMING COSTS.

- A. Start-up Costs: The CITY shall be responsible for additional infrastructure or programming costs incurred by the COUNTY to modify its current tax collection system(s) to begin the collection of the San José Real Property Transfer Tax as

described herein. The COUNTY will provide an estimate to the CITY of the additional costs and will notify the CITY of any changes to the estimated costs in advance of incurring such costs or increased costs. The CITY's Director of Finance will approve any changes to the estimated costs that are reasonably necessary to carry out the purposes of this AGREEMENT; however, in no event shall the estimated costs, together with any changes to the estimated costs, exceed \$25,000. The COUNTY will invoice the total additional infrastructure or programming costs to CITY upon completion and the parties agree that these costs shall be deducted from the CITY's Real Property Transfer Tax collected in July 2020 and due the CITY in August 2020 as set forth in Section 1.I. above; however, if the Real Property Transfer Tax collected in July is insufficient to reimburse the COUNTY for its costs, then such unpaid costs shall be deducted from the Real Property Transfer Tax due the CITY in subsequent month(s), until paid in full.

- B. Ongoing Costs: The CITY and the COUNTY agree that the ongoing costs of the infrastructure and programming required to facilitate the collection of the CITY's Taxes shall be allocated to the CITY as an indirect cost calculated consistent with the provisions of Section 1.G. of this AGREEMENT.

SECTION 4. CITY'S RIGHT TO AUDIT/INSPECT RECORDS.

- A. The COUNTY agrees to maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures (such as programming and personnel costs) charged to the CITY in connection with the calculation and collection of the Taxes for a minimum period of three (3) years, or for any longer period required by law, from the date of payment to the COUNTY pursuant to this AGREEMENT.
- B. The COUNTY further agrees to maintain additional records and documents documenting the calculation and collection of the Taxes under this AGREEMENT

during a fiscal year for a minimum period of three (3) years calculated from June 30 of such fiscal year or for any longer period required by law, from the date. For example, records and documents for the fiscal year ending June 30, 2020 documenting the calculation and collection of the Taxes under this AGREEMENT shall be maintained through June 30, 2023.

- C. Any records or documents specified in Sections 4.A and 4.B that are required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to the CITY, at any time during regular business hours, upon written request by the CITY's City Attorney, City Auditor, City Manager, or Director of Finance or a designated representative of any of these officers, which request is received by the COUNTY at least ten (10) business days prior to the date of the inspection or audit. Copies of such documents shall be provided to the CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the COUNTY's address indicated for receipt of notices in Section 6 of this AGREEMENT.

SECTION 5. FORCE MAJEURE.

- A. Neither the CITY nor the COUNTY shall be liable to the other for any unforeseeable interruption, delay, or failure to perform any covenant or promise contained in this AGREEMENT caused directly by acts of God, network failures, acts of civil or military authorities, government orders, war, civil disturbances, energy crises, transportation contingencies, interruptions in third-party telecommunications, epidemics, pandemics, quarantines, or other catastrophes or occurrences which are reasonably beyond the CITY's or the COUNTY's control; provided that any such delay or failure shall be remedied by the CITY or the COUNTY, as applicable, using commercially reasonable efforts as soon as possible after removal of the cause of such delay or failure.

- B. The CITY and the COUNTY shall use reasonable care to protect against the effects of force majeure, and the party seeking relief under this provision shall promptly notify the other party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by force majeure have been removed.

- C. Interruption, delay, or failure to perform any covenant or promise contained in this AGREEMENT caused directly by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither the CITY nor the COUNTY shall recover any claim for damages from the other if that claim for damages is caused directly by force majeure.

SECTION 6. NOTICES.

- A. Manner of Giving Notice: All notices and other communications required by this AGREEMENT must be in writing, and must be made via e-mail, personal service, or United States mail, postage prepaid.

- B. When Effective: A notice or other communication that is e-mailed is effective when sent, provided the sender receives an acknowledgement from the intended recipient (e.g. read receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective three (3) calendar days after deposit in the United States mail.

- C. To Whom Given: All notices and other communications between the CITY and the COUNTY regarding the AGREEMENT must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
Attn: Director of Finance
200 East Santa Clara Street, 13th Floor
San José, CA 95113
finance@sanjoseca.gov

To the County: County of Santa Clara
Attn: Office of the County Clerk-Recorder
70 West Hedding Street, 1st Floor, East Wing
San Jose, CA 95110
ClerkRecorder@rec.sccgov.org

- D. Changing Contact Information: Either the CITY or the COUNTY may change its contact information for receiving written notices and communications regarding the AGREEMENT by providing notice of such change to the other party pursuant to this Section.

SECTION 7. SEVERABILITY.

If any provision of this AGREEMENT should be held invalid or unenforceable, then that provision only shall be modified to the extent necessary to make such provision valid and enforceable. All other provisions shall be unaffected and shall remain in full force and effect, to the extent consistent with the intent of the CITY and the COUNTY as evidenced by this AGREEMENT as a whole.

SECTION 8. SURVIVAL OF CERTAIN TERMS.

The provisions of this AGREEMENT which, by their nature, should survive, shall survive expiration or termination of this AGREEMENT for any reason.

SECTION 9. WAIVER.

All waivers must be in writing and signed by the party against whom enforcement of the waiver is sought. Any waiver or failure to enforce any provision of this AGREEMENT on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

SECTION 10. ENTIRE AGREEMENT; MODIFICATION AND AMENDMENT; COUNTERPARTS.

- A. This AGREEMENT constitutes the final, complete and exclusive agreement of the CITY and the COUNTY with respect to the matters addressed in it and supersedes all prior and contemporaneous agreements, communications, negotiations or understandings between the CITY and the COUNTY with respect to the matters addressed in it.
- B. Each and every provision of law and clause required by law to be inserted in this AGREEMENT shall be deemed to be inserted and this AGREEMENT shall be read and enforced as though it were included. If changes in Federal or State law, or their implementing regulations require any provision(s) of this AGREEMENT to be modified, such modification shall automatically be incorporated into and made part of this AGREEMENT on the effective date of such required change.
- C. Except as provided above, no modification of this AGREEMENT shall be effective unless agreed to in writing by both the CITY and the COUNTY.
- D. This AGREEMENT may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

SECTION 11. COOPERATION OF THE PARTIES.

The CITY and the COUNTY acknowledge that fulfillment of the terms of this AGREEMENT may be frustrated or prevented by circumstances outside their control. The CITY and the COUNTY agree to cooperate fully, work in good faith, and mutually assist each other in the performance of this AGREEMENT and shall work to resolve problems associated with this AGREEMENT. Neither the CITY nor the COUNTY will unreasonably withhold its approval of any act or request of the other to which the CITY's or the COUNTY's approval is necessary or desirable.

SECTION 12. CHOICE OF LAW.

This AGREEMENT shall be construed and governed by the laws of the State of California. Any lawsuit relating to this AGREEMENT shall be instituted in a state court in the County of Santa Clara or a federal court in the Northern District of California, and the CITY and the COUNTY irrevocably consent and waive all objections to the jurisdiction of any such court.

SECTION 13. SECTION HEADINGS.

Section headings or titles are for convenience only and shall have no substantive effect in the interpretation of this AGREEMENT.

SECTION 14. RECITALS.

The Recitals are incorporated and made a part of this AGREEMENT.

SECTION 15. ADDITIONAL ACTS.

The CITY and the COUNTY hereto agree to do such acts and to execute such documents necessary to carry out the provisions and purposes of this AGREEMENT.

SECTION 16. INTERPRETATION.

The CITY and the COUNTY each acknowledge that this AGREEMENT is the product of mutual arms-length negotiations and drafting and that both the CITY and the COUNTY have been represented by legal counsel in the negotiations and drafting of this AGREEMENT. Accordingly, any ambiguities in this AGREEMENT will not be construed against the drafter and the identity of the drafter of any term of this AGREEMENT will have no application to the interpretation and enforcement of this AGREEMENT.

SECTION 17. EFFECTIVE DATE.

- A. This AGREEMENT shall take effect upon approval by the COUNTY's Board of Supervisors and the City Council of the City of San José, and renewal for each fiscal year thereafter shall be automatic. Either party hereto may terminate this

AGREEMENT by giving the other party ninety (90) or more days' notice in writing, pursuant to Section 6 of this AGREEMENT, of the intention to terminate. A fiscal year, as used herein, shall begin on July 1 and end on June 30 of the following year.

- B. This AGREEMENT replaces the agreement dated January 8, 1985 between the CITY and the COUNTY providing for the notification of and collection of taxes under the San José Real Property Conveyance Tax Ordinance.

SECTION 18. CONTRACT EXECUTION.

Unless otherwise prohibited by law or COUNTY or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the COUNTY and the CITY.

THE PARTIES TO THIS AGREEMENT hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives.

APPROVED AS TO FORM:

“CITY”

CITY OF SAN JOSE, a municipal corporation

KARIN MURABITO
Senior Deputy City Attorney

By _____
TONI J. TABER, CMC
City Clerk

“COUNTY”

COUNTY OF SANTA CLARA, a political subdivision of the State of California

By _____
CINDY CHAVEZ, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

TIFFANY LIN
Deputy County Counsel

EXHIBIT 1
CHAPTER 4.58
REAL PROPERTY CONVEYANCE TAX

4.58.010 Chapter Title and Purpose

- A. This Chapter 4.58 may be cited as the "San José Real Property Conveyance Tax Ordinance."
- B. The tax imposed under this chapter is solely for the purpose of raising revenue. This chapter is not enacted for regulatory purposes.

4.58.020 Definitions

As used in this chapter, the terms "real property" and "realty" mean real property as defined by and under the laws of the state of California.

4.58.030 Who Must Pay Tax

Any persons who make a transfer which is subject to the tax imposed under Section 4.58.100, and any persons to whom such a transfer is made, shall be jointly and severally liable for payment of the tax imposed under said Section 4.58.100.

4.58.040 Exemptions - Security for Debt

Any tax imposed pursuant to this chapter shall not apply to any transfer made solely to secure a debt; provided, however, that nothing herein contained shall be deemed to exclude the amount of any such indebtedness from being included in the "value of the consideration," pursuant to the second paragraph of Section 4.58.100, in connection with transfers which are not made solely to secure a debt.

4.58.045 Exemptions - Court Order Foreclosure

Any tax imposed pursuant to this chapter shall not apply with respect to any transfers made pursuant to any order by the court in any note, deed of trust or lien foreclosure proceeding or upon execution of a judgment.

4.58.050 Exemptions - Instruments In Lieu of Foreclosure

Any tax imposed pursuant to this chapter shall not apply with respect to any transfer to a beneficiary or mortgage which is taken in lieu of a foreclosure. The term "in lieu of foreclosure" means any transfer made with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor to prevent the sale of property given as security for performance of an obligation.

4.58.055 Exemptions - Loans Cosigned by Family Members

- A. The tax imposed pursuant to this chapter shall not apply to any reconveyance of real property from a family member who obtained a legal interest in the real property solely to satisfy a lender's requirement in qualifying for a loan to purchase or refinance that property; and the property is the principal residence of the transferee.

- B. For purposes of this section, the following terms shall have the following meanings:
 - 1. The phrase "real property" shall mean that real property used by the grantor or transferor of the real property (i) as the grantor's or transferor's principal residence, and (ii) to secure the loan; and

2. The phrase "lender's requirement" shall mean a loan condition imposed by a lender that the cosigner on the loan share an equal ownership interest in the real property; and
3. The term "loan" shall mean a loan of money that is needed by the grantor or transferor of the real property to purchase or refinance that real property; and
4. The term "family member" shall mean, with respect to any individual, only:
 - a. A lineal ancestor of such individual; or
 - b. The spouse of such individual; or
 - c. A lineal descendant of such individual, of such individual's spouse, or of the parent of such individual; or
 - d. The spouse of any lineal descendant described in subparagraph c.; or
 - e. A legally adopted child of the individual or of any family member described in subparagraphs a., b., c., or d.
5. The term "principal residence" shall mean a dwelling for which a homeowner's exemption or a disabled veteran's residence exemption has been granted in the name of the eligible grantor or transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence. The term "principal residence" shall also include any such definition as may be provided in California Revenue and Taxation Code Section 63.1(b)(1).

4.58.060 Exemptions - Instrument to United States

Any transfer to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this chapter when the exempt agency is acquiring title.

4.58.070 Exemptions - Plans of Reorganization or Adjustment

- A. Any tax imposed pursuant to this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment;
1. Confirmed under the Federal Bankruptcy Act, as amended;
 2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Subdivision (m) of Section 205 of Title II of the United States Code, as amended;
 3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Subdivision (3) of Section 506 of Title II of the United States Code, as amended; or
 4. Whereby a mere change in identity, form or place of organization is effected.
- B. Subdivisions 1 through 4, inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change.

4.58.080 Exemptions - Securities and Exchange Commission Orders

Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in Subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

- A. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
- B. Such order specifies the property which is ordered to be conveyed;
- C. Such conveyance is made in obedience to such order.

4.58.085 Exemptions - Domestic Partners

- A. The tax imposed pursuant to this chapter shall not apply to any transfer of real property between domestic partners during the term of their domestic partnership, if the requirements of Section 4.58.085D. are satisfied.
- B. The tax imposed pursuant to this chapter shall not apply to any transfer of real property between domestic partners for the purposes of effecting a division of assets upon the termination of their domestic partnership, provided that such property was acquired by either or both of the domestic partners prior to the termination of the domestic partnership, if the requirements of Section 4.58.085E. are satisfied.
- C. For purposes of this section, "domestic partners" means two individuals who have a current declaration of domestic partnership on file with the California

Secretary of State pursuant to the Domestic Partner Registration Act, California Family Code Section 297, et. seq., as may be amended, identifying themselves as each other's domestic partner.

- D. Domestic partners transferring real property to one another during the term of their domestic partnership shall be exempt from paying the tax imposed under this chapter if they provide a certified copy of their declaration of domestic partnership to the county recorder, or other evidence deemed sufficient by the director of finance of the city showing that they have a current declaration of domestic partnership on file with the California Secretary of State, at the time the instrument transferring the real property is recorded.
- E. Domestic partners transferring real property to one another for purposes of effecting a division of assets after the termination of their domestic partnership shall be exempt from paying the tax imposed under this chapter if they provide a certified copy of their notice of termination of domestic partnership filed with the California Secretary of State pursuant to the Domestic Partner Registration Act, California Family Code Section 297 et. seq., as may be amended, to the county recorder, or other evidence deemed sufficient by the director of finance of the city showing that they have a current notice of termination on file with the California Secretary of State, at the time the instrument transferring the real property is recorded.

4.58.090 Exemptions - Partnerships

- A. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if:

1. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, and
 2. Such continuing partnership continues to hold the realty concerned.
- B. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was transferred, for fair market value, all realty held by such partnership at the time of such termination.
- C. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection B above, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

4.58.095 Exemptions - Decree of Dissolution or Property Settlement

Any tax imposed pursuant to this chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife, or husband or wife prior to the final decree of dissolution.

4.58.100 Imposition of Tax - Amount

- A. A tax is hereby imposed on each transfer, by deed, instrument or writing, by which any lands, tenements, or other real property sold, located in the city, are or is granted, assigned, transferred or otherwise conveyed to, or vested in, a purchaser or purchasers thereof, or any other person or persons at or by the direction of said purchaser or purchasers, when the value of the consideration

exceeds one hundred dollars, said tax to be at the rate of one dollar and sixty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the value of the consideration.

- B. As used herein, "value of the consideration" means the total consideration, valued in money of the United States, paid or delivered or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness, existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrance after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of the transfer. "Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the value of the consideration cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the value of the consideration pursuant to above provisions of this section.

4.58.110 Administration of Tax - Director of Finance Authority - Federal Regulations Applicable

The director of finance of the city (hereinafter in this chapter referred to as "director") shall collect the tax imposed under this chapter and shall otherwise administer this chapter. He may make such rules and regulations, not inconsistent with the chapter, as he may deem reasonably necessary or desirable to administer this chapter. In the administration of this chapter, the director shall interpret its provisions consistently with those Documentary Stamp Tax Regulations adopted by the Internal Revenue Service of the United States Treasury Department which relate to the Tax on Conveyances and identified as Sections 47.4361-1, 47.4361-2 and 47.4362-1 of Part 47 of Title 26 of the Code of Federal Regulations, as the same existed on November 8, 1967, except that for the purposes of this chapter:

- A. The term "realty," as used in said regulations, shall be deemed to mean "real property" as such term is defined by and under the laws of the state of California;
- B. Those provisions of said regulations providing for deduction of the value of any lien or encumbrance existing before the sale and not removed thereby shall not apply;
- C. Those provisions of said regulations relating to the rate of tax shall not apply;
- D. Those provisions of said regulations which conflict with the provisions of this chapter shall not apply.

4.58.120 Due dates, Delinquency, Penalties and Interest

The tax imposed under this chapter is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. In the event that the tax is not paid prior to becoming

delinquent, a delinquency penalty of ten percent of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of ten percent shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one half of one percent a month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax.

4.58.130 Payment - Declaration and Records may be Required

The tax imposed by this chapter shall be paid to the director by the persons referred to in Section 4.58.030. The director shall have the authority as part of any rules and regulations promulgated by him as provided for herein to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by his agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also included all special assessments levied or imposed on the property by a public body, district agency which the purchaser or transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The director may require delivery to him of a copy of such deed, instrument or writing whenever he deems such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The director may rely on the declaration as to the amount of the tax due provided he has no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the director has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, he may, by notice served upon any person liable for the tax, require him to furnish a true copy of his records relevant to the value of

the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument or writing which transfers such property.

4.58.140 Determination of Deficiency

If on the basis of such information as the director receives pursuant to the last paragraph of Section 4.58.130 and/or on the basis of such other relevant information that comes into his possession, the director determines that the amount of tax due as set forth in the declaration, or as paid, is insufficient, he may recompute the tax due on the basis of such information.

If the declaration required by Section 4.58.130 is not submitted, the director may make an estimate of the value of the consideration for the property conveyed and determine the amount of tax to be paid on the basis of any information in his possession or that may come into his possession.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

4.58.150 Notice of Determination - Given When

The director shall give notice to a person liable for payment of the tax imposed under this chapter of his determination made under Section 4.58.140. Such notice shall be given within three years after the recordation of the deed, instrument or writing effecting the transfer on which the tax deficiency determination was made.

4.58.160 Notices - Procedures Required

Any notice required to be given by the director under this chapter may be served personally or by mail; if by mail, service shall be made by depositing the notice in the

United States Mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at his address as it appears in the records of the city or as ascertained by the director. The service is complete at the time of the deposit of the notice in the United States Mail, without extension of time for any reason.

4.58.170 Petition for Redetermination - Filing Time

Any person against whom a determination is made under this chapter, or any person directly interested may petition for a redetermination within sixty days after service upon the person of notice thereof. If a petition of redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

4.58.180 Petition for Redetermination - Consideration or Hearing

If a petition for redetermination is filed within the sixty-day period, the director shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing, and shall give him ten days' notice of the time and place of hearing. The director may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

4.58.190 Hearing - Increase or Decrease of Determined Amount

The director may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the director at or before the hearing.

4.58.200 Finality of Determination

The order or decision of the director upon a petition for redetermination becomes final thirty days after service upon the petitioner of notice thereof.

4.58.210 Tax Deemed a Debt to City

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 to the city 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.

4.58.220 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the city under this chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the director, and the provisions of Chapter 4.82 are satisfied.

4.58.230 Use of Tax Revenue - Deposit in Special Fund

- A. All of the taxes collected under this chapter shall, subject to the provisions hereinafter set forth, be expended for the acquisition, construction, reconstruction, replacement, remodeling, modification, alteration, enlargement, renovation, furnishing, and refurnishing of the following improvements, including preventive capital maintenance and energy efficient capital improvements, and subject to the limitation set forth below, for operating maintenance of certain of the following improvements, to wit:
1. City public library facilities, equipment and materials, including land and interests in land, library buildings, furniture, books, circulating or reference nonbook library materials, furnishings, equipment, parking areas, streets and sidewalks adjacent to city public library facilities, and other works, properties, structures and facilities necessary or convenient for the public

library system of the city. Expenditure may also be made for the leasing or rental of books.

2. City fire protection facilities, including land and interests in land, fire stations, fire engines and trucks, other motorized and nonmotorized firefighting equipment, streets and sidewalks adjacent to the city fire protection facilities, and other works, properties, structures and facilities necessary or convenient for the fire protection of the city.
3. City public park, recreation areas and facilities, equipment and materials, including land and interests in land, swimming pools, courts, children's play areas, turf, sprinkler systems, community center and recreation buildings, streets and sidewalks adjacent to city park, playground and recreation facilities, and equipment for maintenance, security, and recreation purposes at city parks, playgrounds, and recreation facilities and other works, properties, structures and facilities necessary or convenient for public park, playground and recreation purposes. Additionally, for any of the facilities described in this category A.3 constructed or installed within or upon any public school grounds or other public properties where city is given a right to use the same for public playground or recreation purposes. Further, for repayment of expenditures made in fiscal year 1982-1983 only, a reallocation of funds to the city public library facilities program (category A.1, above) from the Council District 2 parks pro gram for the construction of the Santa Teresa branch library; and for repayment in a subsequent year, or years, to the city public works maintenance facilities program (category A.5), of amounts previously loaned to the library facilities program (category A.1) for the construction of the Santa Teresa branch library.
4. City maintenance yards for park, playground and recreation facilities, including land and interests in land, buildings, streets and sidewalks

adjacent to city maintenance yards for park, playground and recreation facilities, and other structures or works necessary or convenient for the maintenance of the city's parks, playgrounds, and recreation facilities.

5. City public works maintenance facilities, including land and interests in land, buildings, streets and sidewalks adjacent to city public works maintenance facilities, and other structures and works necessary or convenient for the maintenance of the city's public works, and for fiscal year 1982-1983 only, a loan to the city public library facilities program (category A.1, above) for the construction of the Santa Teresa branch library.
 6. Communication facilities, including land and interests in land, buildings, structures, radio and other equipment, streets and sidewalks adjacent to city communication facilities, and other works, properties, or structures necessary or convenient for the communication facilities of the city and also including a communication services study to determine the future communication facilities needs of the city.
 7. General municipal improvements only as specified in an ordinance or resolution adopted by the city council.
- B. With respect to all taxes collected under this chapter, at least forty-eight percent of the taxes collected in any fiscal year on account of construction in a district (hereinafter referred to as "district of origin"), shall be expended for the purposes set forth in category A.3, above, situate in the district of origin. In fiscal years 1988-89 and 1989-90 ten percent, and in fiscal years 1990-91 and 1991-92, fifteen percent, of the taxes allocated to each district of origin for expenditure on purposes in category A.3 may be expended in any part of the city based upon need as determined by the council and without regard to district of origin. Such funds may also be expended for reimbursement of city's expenses incurred in

assessing the needs of the districts. Additionally, to the extent that taxes collected and to be distributed to each district of origin for each fiscal year exceed the sums set forth in the city's proposed 1988-93 five-year capital improvement plan, as proposed, such excess sums shall also be expended for category A.3 expenditures in any part of the city. Up to and including, but not more than, sixteen percent of the taxes collected in any fiscal year on account of construction in a district may be expended for improvements in category A.3, above, in any part of the city, or at San José Family Camp located in Tuolumne County, California, without regard to district of origin. Up to and including, but not more than, thirty-six percent of the taxes collected in any fiscal year on account of construction in a district may be expended for improvements in categories A.1, A.2, A.4, A.5, A.6, and A.7 above in any part of the city without regard to district of origin, provided that expenditures may also be made for improvements in category A.2 which are situate outside the city except that expenditures for public streets and sidewalks may be made only for public streets and sidewalks situate in the city. Expenditures may also be made for the repayment of expenditure of library program funds made in fiscal year 1982-83 only (category A.1), which were reallocated from the Council District 2 parks program for the construction of the Santa Teresa branch library, however, such expenditure shall not be considered as a part of the above thirty-six percent limitation.

Any amounts loaned to the library facilities program (category A.1) by the public works maintenance facilities program (category A.5) shall be repaid by the Council District 2 parks program to the public works maintenance facilities program (category A.5), in such amounts and at such times as the city council shall determine.

Expenditure of amounts repaid on a loan from the public works maintenance facility program (category A.5) for the construction of the Santa Teresa branch library shall not be considered in the calculation of the thirty-six percent expenditure limitation set out above in the fiscal year of such repayment.

As used herein, "district" means a council election district established pursuant to Section 403 of the charter of the City of San José; provided, however, that if the boundaries of said council districts are changed during any fiscal year, those districts in effect at the beginning of that fiscal year shall, for the purposes of administering the provisions of this chapter, be continued to be used for the remainder of that fiscal year.

Not more than ten percent of the taxes authorized to be expended in each category A.1 through A.7, may be expended in each such category for operating maintenance costs of capital facilities acquired or constructed with taxes collected under this chapter which first become operational on or after July 1, 1983, for not more than a period of five years on any specific capital facility within such categories. Operating maintenance costs shall be limited to salary and nonpersonnel expenses including equipment costs associated with building and grounds maintenance necessary to preserve the value of the physical plant. Capital facilities shall include city-owned public library buildings, fire stations, public parks and playgrounds (excluding Tully Road stables), community center buildings, recreation building, swimming pools, recreation courts, recreation and children's play areas, maintenance yards for park, playground and recreational facilities, public works maintenance buildings, communication buildings, parking areas which are a part of any of the foregoing facilities, landscape improvements on the grounds of such facilities and all improvements and equipment which are permanently attached to and affixed to the land or buildings of such facilities.

- C. All taxes collected under this chapter shall be placed in the "construction tax and property conveyance tax fund" established by Section 4.80.300 of the San José Municipal Code and used for the purposes set forth in this section. The director of finance shall establish and keep such accounts as may be necessary to account for said taxes.

- D. The city council in its discretion may transfer part or all of the interest earned on money deposited into the construction tax and property conveyance tax fund into any special fund or into the general fund.

4.58.235 Alternative Use of Tax Revenue - Deposit in the Special Fund

- A. Notwithstanding Section 4.58.230, commencing July 1, 1990, the city council shall expend monies collected pursuant to this chapter as provided in this section.
- B. All of the taxes collected under this chapter shall, subject to the provisions hereinafter set forth, be expended for the acquisition, construction, reconstruction, replacement, remodeling, modification, alteration, enlargement, renovation, furnishing and refurnishing of the following improvements, including preventive capital maintenance and energy efficient capital improvements, and subject to the limitations set forth below, for operating maintenance of certain of the following improvements, to wit:
1. City public library facilities, equipment and materials, including land and interests in land, library buildings, furniture, books, circulating or reference nonbook library materials, furnishings, equipment, parking areas, streets and sidewalks adjacent to city public library facilities, and other works, properties, structures and facilities necessary or convenient for the public library system of the city. Expenditure may also be made for the leasing, renting and processing of books.
 2. City fire protection facilities, including land and interests in land, fire stations, fire engines and trucks, other motorized and nonmotorized firefighting equipment, streets and sidewalks adjacent to the city fire protection facilities, and other works, properties, structures and facilities necessary or convenient for the fire protection of the city.

3. City public park, recreation areas and facilities, equipment and materials, including land and interests in land, swimming pools, courts, children's play areas, turf, sprinkler systems, community center and recreation buildings, streets and sidewalks adjacent to city park, playground and recreation facilities, and equipment for maintenance, security and recreation purposes at city parks, playgrounds and recreation facilities and other works, properties, structures and facilities necessary or convenient for public park, playground and recreation purposes, and for any of the facilities described in this category B.3 constructed or installed within or upon any public school grounds or other public properties where the city is given a right to use the same for public playground or recreation purposes.
4. City maintenance yards for park, playground and recreation facilities, including land and interests in land, buildings, streets and sidewalks adjacent to city maintenance yards for park, playground and recreation facilities, and other structures or works necessary or convenient for the maintenance of city parks, playgrounds and recreation facilities.
5. City public works maintenance facilities, including land and interests in land, buildings, streets and sidewalks adjacent to city public works maintenance facilities, and other structures and works necessary or convenient for the maintenance of the city's public works.
6. Communication facilities, including land and interests in land, buildings, structures, radio and other equipment, streets and sidewalks adjacent to city communication facilities, and other works, properties or structures necessary or convenient for the communication facilities of the city and also including a communication services study to determine the future communication facilities needs of the city.

7. General municipal improvements only as specified in an ordinance or resolution adopted by the city council.
- C. With respect to all taxes collected under this chapter, at least forty-eight percent of the taxes collected in any fiscal year on account of construction in a district (hereinafter referred to as "district of origin") shall be expended for the purposes set forth in category B.3 above situated in the district of origin. In fiscal years 1990-91 and 1991-92, fifteen percent of the taxes allocated to each district of origin for expenditure on purposes in category B.3 may be expended in any part of the city based upon need as determined by the council and without regard to district of origin. Such funds may also be expended for reimbursement of the city's expenses incurred in assessing the needs of the districts. Additionally, to the extent that taxes collected and to be distributed to each district of origin for each fiscal year exceed the sums set forth in the city's proposed 1989-94 five-year capital improvement plan, as proposed, such excess sums shall also be expended for category B.3 expenditures in any part of the city. To the extent that taxes collected and to be distributed to each district of origin for each fiscal year are less than the sums set forth in the city's proposed 1989-94 five-year capital improvement plan or the city's adopted budget for any particular year, such reductions shall be allocated to each district in proportion to each district's share of total tax revenues collected herein. Up to and including, but not more than, sixteen percent of the taxes collected in any fiscal year on account of construction in a district may be expended for improvements in category B.3 above, in any part of the city, or at San José Family Camp located in Tuolumne County, California, without regard to district of origin. Up to and including, but not more than, thirty-six percent of the taxes collected in any fiscal year on account of construction in a district may be expended for improvements in categories B.1, B.2, B.4, B.5, B.6 and B.7 above in any part of the city without regard to district of origin, provided that expenditures may also be made for improvements in category A.2 which are situated outside the city, except that expenditures for public streets and sidewalks may be made only for public streets and sidewalks

situated in the city. Any amounts loaned to the library facilities program (category B.1) by the public works maintenance facilities program (category B.5) shall be repaid by the Council District 2 parks program to the public works maintenance facilities program (category B.5), in such amounts and at such times as the city council shall determine.

Not more than ten percent of the taxes authorized to be expended in each category B.1 through B.7 may be expended in each such category for operating maintenance costs of capital facilities acquired or constructed with taxes collected under this chapter, for not more than a period of five years on any specific capital facility within such categories. Operating maintenance costs shall be limited to salary and nonpersonnel expenses including equipment costs associated with building and grounds maintenance necessary to preserve the value of the physical plant. Capital facilities shall include city-owned public library buildings, fire stations, public parks and playgrounds (excluding Tully Road stables), community center buildings, recreation buildings, swimming pools, recreation courts, recreation and children's play areas, maintenance yards for park, playground and recreational facilities, public works maintenance buildings, communication buildings, parking areas which are a part of any of the foregoing facilities, landscape improvements on the grounds of such facilities and all improvements and equipment which are permanently attached to and affixed to the land or buildings of such facilities.

- D. With respect to all taxes collected under this chapter, at least sixty-four percent of the taxes collected in any fiscal year shall be expended for the purposes set forth in category B.3 above.
- E. Beginning in fiscal year 1992-93, up to sixty-six percent of the amounts used for the purposes set forth in category B.3 above shall be distributed for district purposes as follows:

1. Twenty percent of such funds shall be equally allocated to each district to meet special needs.
 2. Eighty percent of such funds will be distributed as determined by the city council taking into consideration the following: undeveloped neighborhood and community serving park acres per population of one thousand; neighborhood and community serving developed park acres per population of one thousand; neighborhood and community serving developed park acres in good condition per population of one thousand; and square feet of neighborhood and community serving center space per population of one thousand.
- F. Beginning in fiscal year 1992-93, up to and including, but not more than, thirty-four percent of the amounts to be used for the purposes set forth in category B.3 above in any fiscal year may be expended in any part of the city for improvements in category B.3 above for natural open space area intended to be left in a natural state, or at San José Family Camp located in Tuolumne County, California, without regard to district of origin.
- G. To the extent that a construction or reconstruction project for the purposes set forth in category B.3 above expends five hundred thousand dollars or more of funds collected under this chapter and allocated for the purposes set forth in category B.3, two percent of such amounts shall be set aside for public art projects.
- H. Not more than thirty-six percent of the taxes collected in any fiscal year may be expended for improvements listed in categories B.1, B.2, B.4, B.5, B.6 and B.7 above in any part of the city without regard to district of origin, provided that expenditures may also be made for improvements in category B.2 which are situated outside the city, except that expenditures for public streets and sidewalks may be made only for public streets and sidewalks situated in the city.

- I. As used herein, "district" means a council election district established pursuant to Section 403 of the Charter of the City of San José; provided, however, that if the boundaries of said council districts are changed during any fiscal year, those districts in effect at the beginning of that fiscal year shall, for the purposes of administering the provisions of this chapter, be continued to be used for the remainder of that fiscal year.
- J. As used herein, "developed park acre" means any degree of improvements made to city land for the purpose of making it accessible and usable by the public for park and recreation purposes. Acreage in this category includes, without limitation, fully developed and minimally developed land.
- K. As used herein, "undeveloped park acre" means parkland not improved for recreation purposes, pursuant to an adopted park master plan or phased development plan, as applicable.
- L. As used herein, "good condition" means, in the opinion of the city manager, park property functional and safe for use by the public, pursuant to an adopted park master plan or phased development plan, and satisfactorily maintainable with a standard level of maintenance.
- M. Beginning July 1, 1992, not more than ten percent of the taxes authorized to be expended in each category B.1 through B.7 may be expended in each such category for operation and maintenance costs of capital facilities acquired or constructed with taxes collected under this chapter and overhead costs; provided, however, that monies collected pursuant to this chapter shall be reduced by ten percent annually beginning July 1, 1992, for operation and maintenance costs of capital facilities and overhead costs until no monies collected herein are used for such purposes.

1. Operating maintenance costs shall be limited to salary and nonpersonnel expenses including equipment costs associated with building and grounds maintenance necessary to preserve the value of the physical plant.
 2. Capital facilities shall include city-owned public library buildings, fire stations, public parks and playgrounds (excluding Tully Road stables), community center buildings, recreation buildings, swimming pools, recreation courts, recreation and children's play areas, maintenance yards for park, playground and recreational facilities, public works maintenance buildings, communication buildings, parking areas which are a part of any of the foregoing facilities, landscape improvements on the grounds of such facilities and all improvements and equipment which are permanently attached to and affixed to the land or buildings of such facilities.
- N. All taxes collected under this chapter shall be placed in the "construction tax and property conveyance tax fund" established by Section 4.80.300 of the San José Municipal Code and used for the purposes set forth in this section. The director of finance shall establish and keep such accounts as may be necessary to account for said taxes.
- O. The city council in its discretion may transfer part or all of the interest earned on money deposited into the construction tax and property conveyance tax fund into any special fund or into the general fund.

4.58.238 Alternative Use of Tax Revenues

Notwithstanding the provisions of Sections 4.58.230 and 4.58.235, the use of the tax revenues collected under this chapter shall be governed by Chapter 4.55.

4.58.240 Collection and Administration Costs

Anything in Section 4.58.230 to the contrary notwithstanding, the moneys placed in the property conveyance tax fund created under said Section 4.58.230 may be expended for the purpose of paying the costs of collecting the tax imposed under this chapter and of otherwise administering this chapter. Payment of such costs shall be prorated monthly among the various planning areas of origin in accordance with the taxes attributable during the month to the various planning areas of origin.

4.58.250 Tax a Lien

The amount of tax, penalty and interest imposed under the provisions of this chapter is hereby assessed against the property upon the transfer of which the tax is imposed, and if not paid when due, such tax shall constitute an assessment against such property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. Any person owing money to the city 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.

4.58.260 Notice of Public Hearing on Lien

The director of finance shall file with the city manager a written report covering those properties on which the city intends to file and record liens by reason of failure to pay any tax imposed pursuant to this chapter. Said report shall contain names of the transferor and transferee of such property, location of affected property, the amount of the lien opposite each property and other relevant data. Upon the receipt of such report the city manager shall present same to the city council, and the city council shall, by resolution, fix a time and place for a public hearing on such report. Said hearing may be held once a month.

The director of finance shall cause a written notice to be served upon the transferor and transferee of affected property not less than ten days prior to the time fixed for such hearing. Such service shall be by mailing a copy of such written notice to the transferor and/or transferee of property at their address as shown on the last equalized county assessment roll or as known to the director. Service shall be deemed complete at the time of deposit in the United States mail.

4.58.270 Public Hearing - Liens

Any transferor and transferee of real property which is subject to a lien pursuant to Sections 4.58.250 and 4.58.260 may appear before the city council. At such hearing the transferor and transferee of property may appear and offer evidence why the report should not be confirmed and the lien filed and recorded. The city council may make such revisions, corrections or modifications of the report as it may deem just. In the event that the city council is satisfied with the correctness of the report (as submitted or as revised, corrected or modified), it shall be confirmed or rejected by resolution and the lien ordered to be filed and recorded. The decision shall be final and conclusive.

4.58.280 Recording of Lien

The lien will be officially recorded in the county recorder's office. The lien may carry such additional administrative charges to defray the city's costs and expense of conducting the proceedings under this chapter. Said administrative charges shall be set forth in the schedule of fees established by resolution of council. The owner of the affected property shall be notified by mail at the address provided for in Section 4.58.260 by the director that the amount of tax, penalty charges, interest charges and administrative charges are due the city and that said lien has been recorded.

4.58.290 Collection of Delinquent Taxes as a Special Assessment

The director shall initiate proceedings to establish the total sum of unpaid real property conveyance tax, plus penalty charges, plus interest charges, plus administrative charges, plus a county collection charge (hereinafter in this chapter referred to as "delinquent taxes") as a special assessment against the transferred parcels of property situate within the city.

4.58.300 Report of Delinquent Taxes

A report covering delinquent taxes shall be prepaid by the director containing names of transferors and transferees, location of affected property and amount of delinquent taxes opposite each property. The director shall fix a time, date and place for an administrative hearing on the report and any protests or objections thereto. The city council shall fix a time and place for a public hearing on said report and any protests or objections thereto.

4.58.310 Notice of Hearing

The director shall cause written notice of the special assessment administrative hearing before the director and special assessment public hearing before the city council on the report mentioned in Section 4.58.300 to be mailed to the transferor and/or transferee of the affected real property at the address of the real property as shown on the last equalized assessment roll or as known to the director. Said notice shall state the time, date, and place of each hearing and inform transferor and transferee of their right to appear at each hearing and state his or her objections. The said written notice shall be mailed at least ten days prior to the special assessment administrative hearing which shall be held at least twenty days prior to the public hearing before the city council. Service shall be deemed complete at the time of deposit in the United States mail.

4.58.320 Administrative Hearing - Special Assessment

At the time fixed for consideration of the said report at the administrative hearing, the director shall hear it with any objections of the transferors and/or transferees liable to be assessed for delinquent taxes. At such hearing the transferor and/or transferee may appear and offer evidence why the said report should not be confirmed. The director may make such revisions, corrections or modifications of the said report as he may deem just, and, in the event he is satisfied with the correctness of the said report (as submitted, or as revised, corrected or modified), the director shall notify each person appearing before him of his decision.

4.58.330 Public Hearing - Special Assessment

The transferor and transferee of any property which is the subject of the said report may appear before the city council, and offer evidence why the said report should not be confirmed.

The city council may make such revisions, corrections or modification of the report as well as the director's decision as it may deem just. In the event that the city council is satisfied with the correctness of the report and the director's decision (as submitted or as revised, corrected or modified), they shall be confirmed or rejected by resolution. The decision of the city council on the report, all protests or objections made thereto and on the director's decision and all appeals therefrom shall be binding, conclusive and final.

4.58.340 Collection of Assessment

Upon confirmation of the said report by the city council, the delinquent taxes contained therein shall constitute a special assessment against the transferred properties which are contained in the confirmed report. The director of finance shall turn over to the county assessor for inclusion in the next property tax assessment the total amount of delinquent taxes. Thereafter, said assessment shall be collected at the same time, and

in the same manner and frequency as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure of sales as provided for delinquent ordinary municipal taxes.

The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county, and municipal taxes with which it shall be on parity. The lien shall continue until all delinquent taxes due and payable thereon are paid. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessments.

4.58.350 Designated Body

As an alternative to the procedures set forth in Sections 4.58.260 through 4.58.340, the public hearing(s) before the city council and the imposition of a special assessment lien referenced in those sections may be conducted and imposed by a designated body pursuant to Chapter 1.18 of this Code.

EXHIBIT 2
CHAPTER 4.59
REAL PROPERTY TRANSFER TAX

4.59.010 Chapter Title and Purpose

- A. This Chapter 4.59 may be cited as the "San José Real Property Transfer Tax Ordinance."
- B. The tax imposed under this Chapter is solely for the purpose of raising revenue. This Chapter is not enacted for regulatory purposes.
- C. The tax imposed under this Chapter is a general tax and is in addition to the special tax imposed by Chapter 4.58 of the San José Municipal Code, referred to as the "San José Real Property Conveyance Tax." The revenues from this general tax shall be deposited into the City's general fund and may be used for any City purpose.

4.59.020 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

- A. "Community Oversight Committee" means the committee described in Section 4.59.370.
- B. "CPI Index" means initially the Consumer Price Index - All Urban Consumers for All Items (with a base period of 1982 - 1984 = 100) for the San Francisco-Oakland-Hayward Area published by the United States Department of Labor, Bureau of Labor Statistics and such replacement index as determined pursuant to the provisions of this Chapter.

- C. "Director" means the Director of Finance.
- D. The terms "real property" and "realty" mean real property as defined by and under the laws of the State of California. Notwithstanding the preceding sentence, "realty sold" includes any acquisition or transfer of ownership interests in a legal entity that would be a change of ownership of the entity's real property under California Revenue and Taxation Code Section 64. In such cases, there shall be deemed to have been an instrument executed whereby there was transferred, for fair market value, all real property that experienced a change of ownership under California Revenue and Taxation Code Section 64.

4.59.030 Who Must Pay Tax

Any persons who make a transfer which is subject to the tax imposed under Section 4.59.100, and any persons to whom such a transfer is made, shall be jointly and severally liable for payment of the tax imposed under said Section 4.59.100.

4.59.040 Exemptions - Security for Debt

Any tax imposed pursuant to this Chapter shall not apply to any transfer made solely to secure a debt; provided, however, that nothing herein contained shall be deemed to exclude the amount of any such indebtedness from being included in the "value of the consideration," pursuant to Section 4.59.100G., in connection with transfers which are not made solely to secure a debt.

4.59.045 Exemptions - Court Order Foreclosure

Any tax imposed pursuant to this Chapter shall not apply with respect to any transfers made pursuant to any order by the court in any note, deed of trust or lien foreclosure proceeding or upon execution of a judgment.

4.59.050 Exemptions - Instruments in Lieu of Foreclosure

Any tax imposed pursuant to this Chapter shall not apply with respect to any transfer to a beneficiary or mortgagee which is taken in lieu of a foreclosure. The term "in lieu of foreclosure" means any transfer made with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor to prevent the sale of property given as security for performance of an obligation.

4.59.055 Exemptions - Loans Cosigned By Family Members

- A. The tax imposed pursuant to this Chapter shall not apply to any reconveyance of real property from a family member who obtained a legal interest in the real property solely to satisfy a lender's requirement in qualifying for a loan to purchase or refinance that property; and the property is the principal residence of the transferee.
- B. For purposes of this Section, the following terms shall have the following meanings:
1. The phrase "real property" shall mean that real property used by the grantor or transferor of the real property (i) as the grantor's or transferor's principal residence, and (ii) to secure the loan; and
 2. The phrase "lender's requirement" shall mean a loan condition imposed by a lender that the cosigner on the loan share an equal ownership interest in the real property; and
 3. The term "loan" shall mean a loan of money that is needed by the grantor or transferor of the real property to purchase or refinance that real property; and

4. The term "family member" shall mean, with respect to any individual, only:
 - a. A lineal ancestor of such individual; or
 - b. The spouse of such individual; or
 - c. A lineal descendant of such individual, of such individual's spouse, or of the parent of such individual; or
 - d. The spouse of any lineal descendant described in subparagraph c.;
or
 - e. A legally adopted child of the individual or of any family member described in subparagraphs a., b., c., or d.

5. The term "principal residence" shall mean a dwelling for which a homeowner's exemption or a disabled veteran's residence exemption has been granted in the name of the eligible grantor or transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence. The term "principal residence" shall also include any such definition as may be provided in California Revenue and Taxation Code Section 63.1(b)(1).

4.59.060 Exemptions - Instrument to United States

Any transfer to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this Chapter when the exempt agency is acquiring title.

4.59.070 Exemptions - Plans of Reorganization or Adjustment

- A. Any tax imposed pursuant to this Chapter shall not apply to the making, delivering or filing of transfers to make effective any plan of reorganization or adjustment:
1. Confirmed under the Federal Bankruptcy Act;
 2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code;
 3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code; or
 4. Whereby a mere change in identity, form or place of organization is effected.
- B. Subsections 1 through 4, inclusive, of section A. shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change.

4.59.080 Exemptions - Securities and Exchange Commission Orders

Any tax imposed pursuant to this Chapter shall not apply to the making or delivery of transfers to make effective any order of the Securities and Exchange Commission, as defined in Subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

- A. The order of the Securities and Exchange Commission in obedience to which such transfer is made recites that such transfer is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
- B. Such order specifies the property which is ordered to be transferred;
- C. Such transfer is made in obedience to such order.

4.59.085 Exemptions - Domestic Partners

- A. The tax imposed pursuant to this Chapter shall not apply to any transfer of real property between domestic partners during the term of their domestic partnership, if the requirements of Section 4.59.085D. are satisfied.
- B. The tax imposed pursuant to this Chapter shall not apply to any transfer of real property between domestic partners for the purposes of effecting a division of assets upon the termination of their domestic partnership, provided that such property was acquired by either or both of the domestic partners prior to the termination of the domestic partnership, if the requirements of Section 4.59.085E. are satisfied.
- C. For purposes of this Section, "domestic partners" means two (2) individuals who have a current declaration of domestic partnership on file with the California Secretary of State pursuant to the Domestic Partner Registration Act, California Family Code Section 297, et. seq., identifying themselves as each other's domestic partner.
- D. Domestic partners transferring real property to one another during the term of their domestic partnership shall be exempt from paying the tax imposed under this Chapter if they provide a certified copy of their declaration of domestic

partnership to the County Recorder, or other evidence deemed sufficient by the Director showing that they have a current declaration of domestic partnership on file with the California Secretary of State, at the time the instrument transferring the real property is recorded.

- E. Domestic partners transferring real property to one another for purposes of effecting a division of assets after the termination of their domestic partnership shall be exempt from paying the tax imposed under this Chapter if they provide a certified copy of their notice of termination of domestic partnership filed with the California Secretary of State pursuant to the Domestic Partner Registration Act, California Family Code Section 297 et. seq., to the County Recorder, or other evidence deemed sufficient by the Director showing that they have a current notice of termination on file with the California Secretary of State, at the time the instrument transferring the real property is recorded.

4.59.090 Exemptions - Partnerships

- A. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this Chapter by reason of any transfer of an interest in a partnership or otherwise, if:
1. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986, and
 2. Such continuing partnership continues to hold the realty concerned.
- B. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this Chapter, such partnership shall be treated as having executed an instrument whereby there

was transferred, for fair market value, all realty held by such partnership at the time of such termination.

- C. Not more than one tax shall be imposed pursuant to this Chapter by reason of a termination described in subsection B above, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.
- D. Notwithstanding any other language in this Section 4.59.090, nothing in this Section shall exempt from the tax imposed under this Chapter any “realty sold” as described in Section 4.59.110.

4.59.095 Exemptions - Decree of Dissolution or Property Settlement

Any tax imposed pursuant to this Chapter shall not apply to any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by one spouse or both spouses prior to the final decree of dissolution.

4.59.098 Title Changes Not Affecting Ownership

The tax imposed under this Chapter shall not apply where the deed, instrument, or other writing transferring title to real property between an individual or individuals and a legal entity or between legal entities resulting solely in a change in the method of holding title and in which the proportional ownership interests in the real property, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, remains exactly the same before and after the transfer.

4.59.100 Imposition of Tax - Amount

- A. In addition to the Real Property Conveyance Tax imposed under Chapter 4.58 of this Code and the requirements set forth therein, a general tax is also hereby imposed on each transfer, by deed, instrument or writing, by which any lands, tenements, or other real property sold, located in the City, are or is granted, assigned, transferred or otherwise conveyed to, or vested in, a purchaser or purchasers thereof, or any other person or persons at or by the direction of said purchaser or purchasers, when the total value of the consideration exceeds \$1,999,999.99 (the "Exemption Threshold").
- B. When the total value of the consideration is \$2,000,000 or greater, the tax shall be applied to the total value of the consideration at one of the following rates:
1. Where the total value of the consideration is \$2,000,000 to \$5,000,000, the tax rate imposed on the total value of the consideration, including but not limited to the value of the consideration equal to or less than \$1,999,999.99, shall be 0.75%;
 2. Where the total value of the consideration is \$5,000,000.01 to \$10,000,000, the tax rate imposed on the total value of the consideration, including but not limited to the value of the consideration equal to or less than \$5,000,000, shall be 1.0%; or
 3. Where the total value of the consideration is greater than \$10,000,000, the tax rate imposed on the total value of the consideration, including but not limited to the value of the consideration that is equal to or less than \$10,000,000, shall be 1.5%.
- C. The Exemption Threshold above shall automatically be adjusted, commencing July 1, 2025, and every five (5) years thereafter, if the cost of living in the City

has increased over the preceding five (5) year base period as shown by the CPI Index. For purposes of this Section, the base period for the first adjustment period commencing on July 1, 2025 shall be the CPI Index reported for December 31, 2019 to December 31, 2024. The base period for each subsequent adjustment period thereafter shall be December to December, unless otherwise determined by the Director. The Director shall publish the Exemption Threshold as adjusted no later than April 30 prior to the July 1 date on which the adjustment to the Exemption Threshold becomes effective.

- D. In the event the CPI Index is no longer published, the Director shall use as a 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, County of Santa Clara or the San Francisco Bay Area, as applicable. In the event that the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living commences publication of an index specific to the geographical area that includes the City or the County of Santa Clara, the Director shall be authorized to use this index to calculate the adjustment to the Exemption Threshold. For ease of administration, adjustments to the Exemption Threshold shall be rounded to the nearest \$100,000.
- E. Where the CPI Index shows a reduced cost of living in the City, the Exemption Threshold (as adjusted) shall be automatically reduced commensurate therewith, but in no event shall the Exemption Threshold (as adjusted) be reduced to an amount lower than \$1,999,999.99.
- F. Nothing contained in this Section shall prevent the City Council, at any time, from increasing the Exemption Threshold to an amount greater than \$1,999,999.99 or to an amount greater than the Exemption Threshold as adjusted by the CPI Index.

G. As used herein, "value of the consideration" means the total consideration, valued in money of the United States, paid or delivered or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness, existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property transferred and which continues to be secured by such lien, deed of trust or encumbrance after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of the transfer. "Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the value of the consideration cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the value of the consideration pursuant to above provisions of this Section.

4.59.110 Administration of Tax - Director of Finance Authority - Federal Regulations Applicable

The Director shall collect the tax imposed under this Chapter and shall otherwise administer this Chapter. The Director may take such action and make such rules and

regulations, not inconsistent with the Chapter, as the Director may deem reasonably necessary or desirable to administer this Chapter. In the administration of this Chapter, the Director shall interpret its provisions consistently with those Documentary Stamp Tax Regulations adopted by the Internal Revenue Service of the United States Treasury Department which relate to the Tax on Conveyances and identified as Sections 47.4361-1, 47.4361-2 and 47.4362-1 of Part 47 of Title 26 of the Code of Federal Regulations, as the same existed on November 8, 1967, except that for the purposes of this Chapter:

- A. The term "realty," as used in said regulations, shall be deemed to mean "real property" as such term is defined by and under the laws of the State of California. Notwithstanding the preceding sentence, "realty sold" includes any acquisition or transfer of ownership interests in a legal entity that would be a change of ownership of the entity's real property under California Revenue and Taxation Code Section 64. In such cases, there shall be deemed to have been an instrument executed whereby there was transferred, for fair market value, all real property that experienced a change of ownership under California Revenue and Taxation Code Section 64;
- B. Those provisions of said regulations providing for deduction of the value of any lien or encumbrance existing before the sale and not removed thereby shall not apply;
- C. Those provisions of said regulations relating to the rate of tax shall not apply; and
- D. Those provisions of said regulations which conflict with the provisions of this Chapter shall not apply.

4.59.120 Due Dates, Delinquency, Penalties and Interest

The tax imposed under this Chapter is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. If the deed, instrument, or writing effecting a transfer subject to the tax is not recorded, the tax imposed under this Chapter is due and payable at the time the deed, instrument or writing effecting the transfer is executed by the parties and is delinquent if unpaid 30 days thereafter unless otherwise specified by the Director. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of ten percent (10%) shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one half of one percent (0.5%) a month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax.

4.59.130 Payment - Declaration and Records May Be Required

- A. The tax imposed by this Chapter shall be paid to the Director by the persons referred to in Section 4.59.030. The Director shall have the authority as part of any rules and regulations promulgated by the Director as provided for herein to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by his or her agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also included all special assessments levied or imposed on the property by a public body, district agency which the purchaser or transferee agrees to pay or which remains a lien on the property at the time of

transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The Director may require delivery to him or her of a copy of such deed, instrument or writing whenever the Director deems such to be reasonably necessary to adequately identify such writing or to administer the provisions of this Chapter. The Director may rely on the declaration as to the amount of the tax due provided the Director has no reason to believe that the full amount of the tax due is not shown on the declaration.

- B. If the deed, instrument or writing by which any lands, tenements, or other realty sold within the City is granted, assigned, transferred, or otherwise conveyed is not recorded with the County Recorder's Office, the person who makes, signs, or issues such document or for whose benefit such document was made, signed, or issued, shall submit to the Director a declaration stating all relevant information that is necessary for the determination of the proper transfer tax, on a form or forms prescribed by the Director or as otherwise directed by the Director pursuant to rules and regulations promulgated in connection with the enforcement of this Chapter and the collection of the tax pursuant to Section 4.59.110 above. Such declaration for unrecorded transfers must be submitted to the Director within thirty (30) days from the date the document affecting the transfer is executed by the parties. Such declaration must be submitted to the Director regardless of whether any transfer tax is due or paid. Submitting a declaration that the Director determines to be incomplete in any material aspect may be deemed to be a failure to file this declaration for purposes of the statute of limitations set forth below.
- C. Whenever the Director has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, the Director may, by notice served upon any person liable for the tax, require him or her to furnish a true copy of his or her records relevant to the value of the consideration or fair market value of the property transferred. Except in the case of fraud, intent to evade the tax, or the failure to either record the deed, instrument or writing effecting a

transfer subject to the tax or failure to submit the declaration for unrecorded transfers, such notice may be served at any time within three (3) years after recordation of the deed, instrument or writing which transfers such property or for unrecorded transfers, within three (3) years of the later of the receipt by the Director of the declaration for unrecorded transfers described above or the date on which the unrecorded transfer occurred.

4.59.140 Determination of Deficiency

If on the basis of such information as the Director receives pursuant to Section 4.59.130 and/or on the basis of such other relevant information that comes into his or her possession, the Director determines that the amount of tax due as set forth in the declaration, or as paid, is insufficient, the Director may recompute the tax due on the basis of such information.

If the declaration required by Section 4.59.130 is not submitted, the Director may make an estimate of the value of the consideration for the property transferred and determine the amount of tax to be paid on the basis of any information in his or her possession or that may come into his or her possession.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

4.59.150 Notice of Determination - Given When

The Director shall give notice to a person liable for payment of the tax imposed under this Chapter of his or her determination made under Section 4.59.140. Such notice shall be given within three (3) years after the recordation of the deed, instrument or writing effecting the transfer on which the tax deficiency determination was made or within the later of three (3) years after receipt by the Director of the declaration for

unrecorded transfers or three (3) years after the date on which the unrecorded transfer occurred, as applicable.

4.59.160 Notices - Procedures Required

Any notice required to be given by the Director under this Chapter may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at such person's last known address as ascertained by the Director. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

4.59.170 Petition for Redetermination - Filing Time

Any person against whom a determination is made under this Chapter, or any person directly interested may petition for a redetermination within sixty (60) days after service upon the person of notice thereof. If a petition of redetermination is not filed within the sixty (60)-day period, the determination becomes final at the expiration of the period.

4.59.180 Petition for Redetermination - Consideration or Hearing

If a petition for redetermination is filed within the sixty (60)-day period, the Director shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing, and shall give ten (10) days' notice of the time and place of hearing. The Director may designate one (1) or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

4.59.190 Hearing - Increase or Decrease of Determined Amount

The Director may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Director at or before the hearing.

4.59.200 Finality of Determination

The order or decision of the Director upon a petition for redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof.

4.59.210 Tax Deemed a Debt to City

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 to the City 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.

4.59.220 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the City under this Chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the Director, and the provisions of Chapter 4.82 are satisfied.

4.59.230 Intentionally Omitted

4.59.240 Intentionally Omitted

4.59.250 Tax a Lien

The amount of tax, penalty and interest imposed under the provisions of this Chapter is hereby assessed against the property upon the transfer of which the tax is imposed, and if not paid when due, such tax shall constitute an assessment against such property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. Any person owing money to the City 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.

4.59.260 Notice of Public Hearing on Lien

The Director shall file with the City Manager a written report covering those properties on which the City intends to file and record liens by reason of failure to pay any tax imposed pursuant to this Chapter. Said report shall contain names of the transferor and transferee of such property, location of affected property, the amount of the lien opposite each property and other relevant data. Upon the receipt of such report the City Manager shall present same to the City Council, and the City Council shall, by resolution, fix a time and place for a public hearing on such report.

The Director shall cause a written notice to be served upon the transferor and transferee of affected property not less than ten (10) days prior to the time fixed for such hearing. Such service shall be by mailing a copy of such written notice to the transferor and/or transferee of property at their address as shown on the last equalized county assessment roll or as known to the Director. Service shall be deemed complete at the time of deposit in the United States mail.

4.59.270 Public Hearing - Liens

Any transferor and transferee of real property which is subject to a lien pursuant to Sections 4.59.250 and 4.59.260 may appear before the City Council. At such hearing the transferor and transferee of property may appear and offer evidence why the report should not be confirmed and the lien filed and recorded. The City Council may make such revisions, corrections or modifications of the report as it may deem just. In the event that the City Council is satisfied with the correctness of the report (as submitted or as revised, corrected or modified), it shall be confirmed or rejected by resolution and the lien ordered to be filed and recorded. The decision shall be final and conclusive.

4.59.280 Recording of Lien

The lien will be officially recorded in the County Recorder's office. The lien may carry such additional administrative charges to defray the City's costs and expense of conducting the proceedings under this Chapter. Said administrative charges shall be set forth in the schedule of fees established by resolution of the City Council. The owner of the affected property shall be notified by mail at the address provided for in Section 4.59.260 by the Director that the amount of tax, penalty charges, interest charges and administrative charges are due the City and that said lien has been recorded.

4.59.290 Collection of Delinquent Taxes as a Special Assessment

The Director shall initiate proceedings to establish the total sum of unpaid real property transfer tax, plus penalty charges, plus interest charges, plus administrative charges, plus a county collection charge (hereinafter in this Chapter referred to as "delinquent taxes") as a special assessment against the transferred parcels of property situated within the City.

4.59.300 Report of Delinquent Taxes

A report covering delinquent taxes shall be prepared by the Director containing names of transferors and transferees, location of affected property and amount of delinquent taxes opposite each property. The Director shall fix a time, date and place for an administrative hearing on the report and any protests or objections thereto. The City Council shall fix a time and place for a public hearing on said report and any protests or objections thereto.

4.59.310 Notice of Hearing

The Director shall cause written notice of the special assessment administrative hearing before the Director and special assessment public hearing before the City Council on the report mentioned in Section 4.59.300 to be mailed to the transferor and/or transferee of the affected real property at the address of the real property as shown on the last equalized assessment roll or as ascertained by the Director. Said notice shall state the time, date, and place of each hearing and inform transferor and transferee of their right to appear at each hearing and state his or her objections. The said written notice shall be mailed at least ten (10) days prior to the special assessment administrative hearing which shall be held at least twenty (20) days prior to the public hearing before the City Council. Service shall be deemed complete at the time of deposit in the United States mail.

4.59.320 Administrative Hearing - Special Assessment

At the time fixed for consideration of the said report at the administrative hearing, the Director shall hear it with any objections of the transferors and/or transferees liable to be assessed for delinquent taxes. At such hearing the transferor and/or transferee may appear and offer evidence why such report should not be confirmed. The Director may make such revisions, corrections or modifications of the report as the Director may deem just, and, in the event the Director is satisfied with the correctness of the report

(as submitted, or as revised, corrected or modified), the Director shall notify each person appearing before the Director of the Director's decision.

4.59.330 Public Hearing - Special Assessment

The transferor and transferee of any property which is the subject of the said report may appear before the City Council, and offer evidence why the said report should not be confirmed.

The City Council may make such revisions, corrections or modification of the report as well as the Director's decision as it may deem just. In the event that the City Council is satisfied with the correctness of the report and the Director's decision (as submitted or as revised, corrected or modified), they shall be confirmed or rejected by resolution. The decision of the City Council on the report, all protests or objections made thereto and on the Director's decision and all appeals therefrom shall be binding, conclusive and final.

4.59.340 Collection of Assessment

Upon confirmation of the said report by the City Council, the delinquent taxes contained therein shall constitute a special assessment against the transferred properties which are contained in the confirmed report. The Director shall turn over to the County Assessor for inclusion in the next property tax assessment the total amount of delinquent taxes. Thereafter, said assessment shall be collected at the same time, and in the same manner and frequency as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure of sales as provided for delinquent ordinary municipal taxes.

The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county, and municipal taxes with which it shall be on parity. The lien shall

continue until all delinquent taxes due and payable thereon are paid. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessments.

4.59.350 Designated Body

As an alternative to the procedures set forth in Sections 4.59.260 through 4.59.340, the public hearing(s) before the City Council and the imposition of a special assessment lien referenced in those sections may be conducted and imposed by a designated body pursuant to Chapter 1.18 of this Code.

4.59.355 Annual Report of the City Manager

Unless otherwise directed by the City Council, the City Manager shall include in the Annual Report submitted to the City Council pursuant to Section 701 (f) of the City Charter, commencing with the Annual Report for fiscal year 2020-2021, the amount of tax revenues received by the City from the tax imposed pursuant to this Chapter, the median home sales price for the prior fiscal year, and any other economic factors related to the sale price of real property in the City that the City Manager may choose to present or that the City Council may request.

4.59.360 Operative Date

This Chapter enacts a general tax for unrestricted general revenue purposes. This Chapter shall be effective only if approved by a majority of the voters voting thereon and shall have an operative date of July 1, 2020.

4.59.370 Community Oversight Committee

The City Council will appoint a Community Oversight Committee comprised of residents of the City to provide community oversight over the expenditure of the tax revenues.

The size, composition and specific responsibilities of the Community Oversight Committee will be determined by separate action of the City Council prior to the July 1, 2020 operative date.

4.59.380 Severability

Should any provision of this Chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

4.59.390 Effect of State and Federal Reference / Authorization

Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes,

and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

4.59.400 Subject to Annual City Audits

Pursuant to Section 1215 of the City Charter, as may be amended, the revenues from the tax imposed by this Chapter shall be subject to the annual audit performed by the City's independent auditor of the City's municipal books, records, accounts and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report.

4.59.410 Remedies Cumulative

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17000 et seq.), are cumulative. The use of one (1) or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

4.59.420 Amendment or Repeal

This Chapter may be amended or repealed by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of San José affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax or to suspend the tax for a period of time;

- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Chapter);
- D. An action, including an amendment to this Chapter to clarify the provisions related to the CPI Index and adjustments to the Exemption Threshold;
- E. Increasing the Exemption Threshold of the tax as set forth in Section 4.59.100 to an amount greater than \$1,999,999.99 and then reducing the increased amount of the Exemption Threshold provided that the amount of the Exemption Threshold, as revised, shall not be lower than \$1,999,999.99 or the Exemption Threshold as adjusted by the CPI Index, whichever is greater; or
- F. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax.