

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE AT A SPECIAL MUNICIPAL ELECTION, TO BE CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION ON MARCH 3, 2020, A BALLOT MEASURE PROPOSAL TO AMEND TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ADD CHAPTER 4.59 RELATED TO A NEW REAL PROPERTY TRANSFER TAX**

**WHEREAS**, San José City Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

**WHEREAS**, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to add a new Chapter 4.59 to Title 4 of the San José Municipal Code related to a new Real Property Transfer Tax;

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

**SECTION 1.** A Special Municipal Election is hereby called and ordered to be held in the City of San José on March 3, 2020 for the purpose of voting on a ballot measure to add a new Chapter 4.59 to Title 4 of the San José Municipal Code for a new Real Property Transfer Tax, which as a general tax measure shall become operative if a majority of the electors voting on the measure vote to approve the imposition of the tax, and the revenues received from the tax may be used for general governmental purposes. The full text of the measure and the actual language of the proposed Ordinance amending the Code is attached to this Resolution as Exhibit A and incorporated by reference in this Resolution.

**SECTION 2.** The ballot measure will be placed on the ballot for the March 3, 2020 election in the following form:

**MEASURE \_\_\_\_**

To fund general City of San José services, including providing affordable housing for seniors, veterans, disabled, and low-income families and helping homeless residents move into shelters/permanent housing, shall an ordinance be adopted enacting a real property transfer tax including unrecorded transfers at these rates: transfers valued up to \$2,000,000 EXEMPT, \$2,000,000.01 to \$5,000,000 at 0.75%, \$5,000,000.01 to \$10,000,000 at 1.0%, and over \$10,000,000 at 1.5%; generating approximately \$70,000,000 annually, until repealed, with all money staying local?	YES	
	NO	

**SECTION 3.** The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County (“Registrar of Voters”) to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast; and all other services necessary to conduct an election.

**SECTION 4.** The City Council hereby requests that the Registrar of Voters consolidate the Special Municipal Election called and ordered to be held on March 3, 2020 with any other election that may be held on that date.

**SECTION 5.** The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

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

**SECTION 7.** The City Council hereby directs the City Clerk to take all actions necessary to submit the measure to the Registrar of Voters for placement on the March 3, 2020 ballot and facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies regarding the conduct of the Special Municipal Election.

***ALTERNATE 1 (FULL TEXT PUBLICATION)***

**SECTION 8.** Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to: (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause copies of the full text of the proposed measure set forth in the attached Exhibit A to be printed in the Voter Information Portion of the Sample Ballot; (d) cause copies of the Sample Ballot to be mailed to each of the qualified electors of the City of San José; and (e) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk’s website.

***ALTERNATE 2 (FULL TEXT NOT PUBLISHED)***

**SECTION 8.** Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to: (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: “If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?nid=5694> or call 408-535-1260 and a copy will be sent at no cost to you.”; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk’s website.

**SECTION 9.** Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure, if any, [and authorizes the City Council or any member or members of the Council to author and submit a ballot measure argument in favor of the ballot measure] [but determines that rebuttal arguments will not be allowed] OR [and approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes the City Council or any member or members of the City Council to author and submit a rebuttal, if any.]

**SECTION 10.** The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis in accordance with Section 9280 of the California Elections Code.

**SECTION 11.** The City Council hereby acknowledges that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

## **EXHIBIT A**

### **REAL PROPERTY TRANSFER TAX**

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN JOSE:

Title 4 of the San José Municipal Code is hereby amended to add Chapter 4.59 to be numbered, entitled, and to read as follows:

#### **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. "Director" shall mean the Director of Finance.
- C. 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 & 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 & 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 4.59.100C, 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 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.

#### **4.59.055 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 the husband and wife, or husband or wife 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 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 \$2,000,000.

- B. When the total value of the consideration exceeds \$2,000,000 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 \$2,000,000.01 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 \$2,000,000, 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. 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.

- D. For purposes of this Chapter, when computing the total value of the consideration and the tax owed if the value of consideration exceeds \$2,000,000, fractions of dollars of fifty (50) cents and greater shall be rounded up to the next whole dollar.

#### **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 & 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 & 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 situate 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**

- A. 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 20-21, 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.

- B. In connection with the Annual Report, the City Manager may recommend that the City Council consider an increase to the exemption threshold set forth in Section 4.59.100.

**4.59.360 Operative Date**

The operative date of this Chapter shall be 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 17070 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;
- 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); or
- D. Increasing the exemption threshold of the tax as set forth in Section 4.59.100 to an amount greater than \$2,000,000 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 \$2,000,000; or

- E. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax.