



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lee Wilcox

**SUBJECT: EXPLORATION OF A POTENTIAL  
REAL PROPERTY TRANSFER TAX  
MEASURE**

**DATE:** November 8, 2019

Approved

*D. D. Sy L*

Date

*11/8/19*

## RECOMMENDATION

- (a) Accept the staff report regarding the outcome of recent public opinion polling around potential 2020 ballot measures.
- (b) Direct the City Manager and City Attorney to return with a potential real property transfer tax measure on December 3, 2019 with a proposed ballot question, ordinance, resolution, and other items required for the City Council to call an election to place the tax measure on the March 3, 2020 ballot.

## OUTCOME

After hearing from the City's survey research consultant (Fairbanks, Maslin, Maullin, Metz & Associates, or FM3) about the outcomes of a recent public opinion survey exploring the feasibility of a real property transfer tax measure, the City Council will provide direction to the Administration about whether to move forward with further exploration of placing this potential ballot measure before the voters at the March 3, 2020 primary election.

## BACKGROUND

On June 4, 2019, the City Council accepted a staff report on potential 2020 ballot measures that could help provide funding resources for affordable housing and to address homelessness. The Council directed the City Manager to explore the feasibility of the following:

- A parcel tax on commercial properties only;
- A parcel tax on vacant properties; and
- Variations of a real property transfer tax, such as setting tiered tax rates depending on the value of the transfer and exempting property transfers under a certain transfer-value threshold.

As directed by Council, before moving forward with polling, on November 1, 2019, the Administration updated the Council via informational memorandum<sup>1</sup> about analysis of these options and decision to move forward with testing a tiered general levy on real property transfers over \$2 million.

## **ANALYSIS**

### ***Critical City Needs Assessment***

San José has a number of critical needs that could be addressed with additional revenues. At present, addressing the dual crises of homelessness and housing affordability is one of the City Council's top priorities. The housing shortage has reached crisis proportion. Regional housing production is significantly behind the increase in jobs in the region, resulting in skyrocketing housing costs, shrinking household budgets, overcrowding, and homelessness. Tens of thousands of residents are unstably housed or without a home. The San José metro housing market is considered one of the most expensive in the world; renters must earn \$52/hour (\$108,920/year) to afford monthly rent for a 2-bedroom apartment of \$2,723<sup>2</sup>. In San José, nearly 20 percent of households are "severely cost burdened." This means that residents are paying more than 50 percent of their gross income on housing, leaving insufficient income to pay for their other needs such as food, clothing, medical care and transportation.<sup>3</sup> According to the most recent homeless census, San José has approximately 6,200 homeless residents, more than 5,000 of whom are unsheltered. The census also found that the primary condition that led to homelessness was the loss of a job and, further, 68 percent of homeless people surveyed cited their inability to afford rent as their primary obstacle to obtaining housing.<sup>4</sup>

The need for affordable housing continues to outpace the funding sources necessary to develop apartments accessible to low and moderate income individuals and families. The Mayor and City Council has set a goal of producing 10,000 new affordable apartments and 15,000 market-rate housing units by 2023.

In accordance with the Council-approved Affordable Housing Investment Plan<sup>5</sup>, 3,503 affordable apartments will be funded or under construction by the end of fiscal year 2022-2023. When including additional funding sources, the total number affordable apartments to be funded and built during the next five years increases to 5,771 apartments. However, despite these efforts to produce more affordable housing, San José will still be 4,229 affordable apartments short of the

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<sup>1</sup> Informational Memorandum: <https://files.constantcontact.com/7a210436601/241c1f8c-e154-4f29-91da-8598464de753.pdf>

<sup>2</sup> City of San Jose Housing Market Update, First Quarter 2019: <http://sanjoseca.gov/DocumentCenter/View/84944>

<sup>3</sup> HUD Comprehensive Housing Affordability Strategy (CHAS) for San Jose, 2009-2013

<sup>4</sup> City of San Jose Homeless Census and Survey 2019: <http://www.sanjoseca.gov/DocumentCenter/View/85898>

<sup>5</sup> Affordable Housing Investment Plan Update, April 9, 2019:

<https://sanjose.legistar.com/View.ashx?M=F&ID=7134577&GUID=C49B0FE2-7BFE-41FF-8BD7-71A AFF090FE2>

10,000-unit goal. Additional resources are needed to meet this ambitious and critically important goal.

In addition to increasing housing production, meeting the needs of the more than 5,000 individuals who are unsheltered by scaling services such as shelter, case management and street-based connections to services is critically important. The City has several programs in development that will need financial resources over time, including:

- Navigation Center: Shelter and support services for highly vulnerable and long-term homeless residents who often do not access traditional shelters.
- Hotel/Motel Acquisition: Acquiring hotels and converting to housing, which has proven to be a relatively quick and cost-effective method at housing homeless.
- Street-based Outreach & Case Management: Scaling this program to meet the need; there are currently more requests for street-based assistance than there are resources to assist.
- Family Support Systems: Building out family support systems including increasing temporary beds (shelters and motels), data sharing, and cross coordination amongst safety net providers and developing a 24/7 helpline for families experiencing homelessness.
- Daytime Services and Support: Creating more daytime opportunities for homeless to access basic needs (showers, laundry, haircuts) and also connect to service support.

Finally, the Administration hopes to expand the already successful homeless prevention system in partnership with Destination: Home. The program has helped over 800 families and individuals at imminent risk of homelessness, by providing financial support and services, with 92 percent remaining stably housed one year after leaving the prevention program. Currently the need is greater than the resources available to help, the program is serving just 30 percent of those qualified individuals and families who are requesting help.

The Administration's goal is to obtain additional funding that is able to address the need for affordable housing and the high rate of homelessness and be flexible enough to address emerging needs. For example, in one year, there may be a need for family housing, but as the population changes, there may be a need to house young adults or seniors, or even to address other as yet undefined needs.

Under California law, a general tax requires a simple majority vote (50 percent + 1 vote) to pass, while a special tax that is restricted for a specific purpose requires the approval of two-thirds of the voters casting a ballot to pass. In the upcoming survey, the Administration will be testing the viability of a general tax model.

### ***Survey Research***

The City's survey research partner FM3 conducted a poll regarding the potential real property transfer tax beginning on November 5, 2019. Polling was not completed in time to meet the Friday, November 8<sup>th</sup> deadline to post this staff report in accordance with the City's Sunshine Ordinance, and will be presented in a supplemental memorandum as soon as available. Representatives of FM3 are scheduled to present results to Council at the November 19<sup>th</sup> Council meeting.

The survey asked voters likely to vote in the March 3, 2020 primary election about their likelihood of supporting a potential tiered real property transfer tax for general City services, such as addressing homelessness and the need for affordable housing and would be subject to the discretion of the Council in making budgetary decisions. (Under California law, a general tax requires a simple majority vote (50 percent + 1 vote) to pass, while a special tax that is restricted for a specific purpose requires the approval of two-thirds of the voters casting a ballot to pass.)

***Ballot Question Tested***

*To fund general San José city services, like 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 the following rates: transfers valued under \$2,000,000 EXEMPT, \$2,000,001 to \$5,000,000 at 0.75%, \$5,000,001 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?*

***Real Property Transfer Tax***

A real property transfer tax is a tax paid on each deed or other recorded instrument transferring real property, such as the sale of real property. In addition, some jurisdictions apply the tax to unrecorded transfers.

The amount of the tax is based on the value of the real property interest conveyed above a specified threshold. In California, counties and general law cities are authorized to impose a real property transfer tax under the Documentary Transfer Tax Act at the rate of \$0.55 per \$500, for transactions with a value exceeding \$100.

San José, as a Charter City, has authority under the State Constitution to impose a transfer tax and is not limited to the tax rate specified under the Documentary Transfer Tax Act. The City currently charges a real property transfer tax (the Real Property Conveyance Tax, Chapter 4.58 of the Municipal Code) at a rate of \$1.65 per \$500 (\$3.30 per \$1,000) for transactions with a value exceeding \$100. The revenues from the City's Conveyance Tax are allocated to libraries, fire protection facilities, parks, maintenance yards, communications facilities, and general municipal improvements.

The State's Documentary Transfer Tax and the City's Conveyance Tax operate similarly as both were modeled after the Federal Documentary Stamp Tax. Exemptions under both the Documentary Transfer Tax and the City's Conveyance Tax include inheritance, gifts, certain government transactions, and divorce. This tax may be paid by either the buyer or the seller of the property, or may be split between the two.

In the previous survey, the Administration explored and found that a new Real Property Transfer Tax of \$4.99 per \$1,000 of transfer value would be viable as a general tax. Per Council direction, the current survey is testing the viability of a model that is tiered. Transfers under a certain threshold would be exempt, providing relief to first-time buyers of homes and condominiums, as well as to those purchasing and transferring small business properties. The tax would be tiered, which is a model used in several other Bay Area cities, including San Francisco, Oakland, Berkeley, and Richmond. In addition, following the model in San Francisco and Santa Clara County, unrecorded transfers<sup>6</sup> would be covered by the ordinance.

The proposed model is to exempt transfers with a value of \$2 million and under. Based on 2017-2018 data, this would exempt 95 percent of single-family, condominium, and townhome sales in San José.

The proposed rates tested were:

- 0.75% for transfers valued \$2,000,001 to \$5,000,000;
- 1.0% for transfers from \$5,000,001 to \$10,000,000;
- and 1.5% for transfers above \$10,000,000.

In dollar values (as expressed in the existing conveyance tax ordinance), the proposed percentage rate would translate to:

- \$3.75 per \$500 of transfer value from \$2,000,001 to \$5,000,000;
- \$5 per \$500 of transfer value from \$5,000,001 to \$10,000,000;
- and \$7.50 per \$500 of transfer value for transfers above \$10,000,000.

The proposed tax would apply to the full value of consideration.

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<sup>6</sup> While most real estate ownership is effected when a deed or other instrument conveying title is recorded, transactions which effect changes in ownership of partnerships, limited liability companies, trusts, corporations or other legal entities do not necessarily involve recordable documents. For example, ownership can be changed via stock purchase agreements between related or unrelated companies. These kinds of transactions are oftentimes referred to as unrecorded transfers of change of ownership between legal entities.

For comparative purposes, Table 1 shows the proposed rates in neighboring major cities.

**Table 1: Real Property Transfer Taxes in Oakland and San Francisco**

<b>Oakland**</b>	<b>San Francisco*</b>
\$10 per \$1,000 up to \$300,000;	\$5 per \$1,000 up to > \$250,000
\$15 per \$1,000 \$300,000-\$2 million;	\$6.80 per \$1,000 \$250,000 to >\$1 million
\$17.50 per \$1,000 \$2 million-\$5 million	\$7.50 per \$1,000 \$1 million to >\$5 million
\$25 per \$1,000 over \$5 million	\$22.50 per \$1,000 \$5 million to >\$10 million
	\$27.50 per \$1,000 \$10 million to >\$25 million
	\$30 per \$1,000 \$25 million or more

\* Rate applies to the full value of consideration.

\*\*Levied as a percentage of the value of consideration.

Potential new revenues, modeled on existing San José conveyance tax revenues and recorded transfers, are shown in Table 2 below.

**Table 2: Potential Revenue Scenarios from a New Transfer Tax**

<b>Transfer Value</b>	<b>New Tax Rate</b>	<b>Projected new taxes</b>		
		<b>Recessionary Scenario*</b>	<b>20-Year Average Scenario**</b>	<b>2017-2018 Tax Year Model Scenario***</b>
Up to \$2 million	Exempt	0	0	0
\$2,000,001 to \$5,000,000	0.75%	\$5 million	\$6.2 million	\$9.1 million
\$5,000,001 to \$10,000,000	1.0%	\$2 million	\$2.5 million	\$3.7 million
\$10,000,001+	1.5%	\$15.1 million	\$41 million	\$60.3 million
<b>Total potential new taxes</b>		<b>\$22.1 million</b>	<b>\$49.7 million</b>	<b>\$73.1 million</b>

\* Based on lowest 3-year Great Recession Average, with additional decline in \$10M+ transfers

\*\* Based on 20-year average conveyance tax revenue

\*\*\*Based on 2017-2018 conveyance tax revenues

It is important to note that revenues from real property transfer taxes are driven by the strength and health of the local real estate market. As shown by the City's experience with the

Construction and Conveyance Taxes, these revenues are volatile and vary significantly from year-to-year, especially during an economic downturn.

### **CONCLUSION**

A new real property transfer tax has the potential to provide additional revenues that could be used to address critical needs facing the City of San José, such as addressing the crises of homelessness and housing affordability. The November 19<sup>th</sup> discussion will provide the Administration with direction about whether to bring forward a potential measure for consideration for placement on the March 3, 2020 ballot.

### **EVALUATION AND FOLLOW-UP**

Based on City Council direction on November 19<sup>th</sup>, the Administration will bring forward recommendations no later than December 3, 2019. Note, the deadline to submit ballot measures for the March 3, 2020 election is Friday, December 6, 2019.

### **CLIMATE SMART SAN JOSE**

This proposal does not impact Climate Smart San José goals.

### **PUBLIC OUTREACH**

FM3 conducted a public opinion poll both online and by telephone in English, Spanish, and Vietnamese. In addition, the Administration held discussions with various stakeholders, including nonprofit housing advocacy organizations, parks advocates, representatives of labor, realtors, and large office/property owners. This memorandum will be posted on the City's Council Agenda website for the November 19, 2019 Council Meeting.

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the City Manager's Budget Office, the Finance Department, and the Housing Department.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation is associated with this item.

HONORABLE MAYOR AND CITY COUNCIL

November 8, 2019

**Subject: Exploration of A Potential Real Property Transfer Tax Measure**

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**CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

LEE WILCOX

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For questions, please contact Lee Wilcox, Chief of Staff, (408) 535-4873, or Michelle McGurk, Assistant to the City Manager, at (408) 535-8254.