

Memorandum

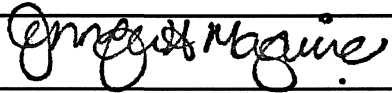
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Wilcox

**SUBJECT: POLLING PLAN: POTENTIAL
MARCH 2020 BALLOT MEASURES**

DATE: November 1, 2019

Approved



Date

11/1/2019

INFORMATION

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 property tax on commercial properties only;
- A 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.

In addition, the Council directed that, before moving forward on its next poll, the Administration provide an update via informational memorandum regarding the options explored and next steps.

The Administration plans to have its survey research partner conduct the second public opinion survey on potential March 2020 ballot measures in early November 2019, ensuring timely and accurate data for the Administration and Council to consider. The purpose of this survey is exploratory in nature. This survey was originally slated for mid-August 2019, however, two factors caused the Administration to pause this effort.

First, the State Legislature was considering legislation that would have changed ballot language requirements for certain types of measures. This legislation passed the Legislature, but was not acted on by Governor Newsom until October 13, 2019. The legislation was vetoed.

Second, the Administration was informed that a coalition of local nonprofits and housing advocacy groups had conducted and would be conducting private polling around potential San José revenue measures. Leadership from these organizations have shared some findings with the Administration, which is discussed below.

The City's survey research partner will be conducting exploratory polling in the coming weeks. The Administration plans to provide an informational update to Council no later than the November 19 City Council meeting, then bring forward potential March ballot measures for placement on the ballot at the December 3 City Council meeting if Council so directs.

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 \$2,723¹. 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.² 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.³

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 Plan⁴, 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 10,000-unit goal. Additional resources are needed to meet this ambitious and critically important goal.

¹ City of San Jose Housing Market Update, First Quarter 2019: <http://sanjoseca.gov/DocumentCenter/View/84944>

² HUD Comprehensive Housing Affordability Strategy (CHAS) for San Jose, 2009-2013

³ City of San Jose Homeless Census and Survey 2019: <http://www.sanjoseca.gov/DocumentCenter/View/85898>

⁴ Affordable Housing Investment Plan Update, April 9, 2019:
<https://sanjose.legistar.com/View.ashx?M=F&ID=7134577&GUID=C49B0FE2-7BFE-41FF-8BD7-71AAFF090FE2>

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 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.

Commercial-Only Parcel Tax

In accordance with Council direction, the Administration developed financial models and explored the feasibility of a parcel tax on commercial properties.

According the Santa Clara County Assessor, San José has 245,981 parcels, categorized as follows:

Agricultural & Miscellaneous	Industrial & Manufacturing	Office	Retail	Multi-family	Mobile Home	Single-Family Housing	Total
4,016	2,799	2,092	3,179	11,195	6,509	216,191	245,981

The total number of non-residential parcels in San José is 12,086. Using a flat-rate model, obtaining \$50 million per year would require an annual parcel tax on non-residential properties of approximately \$4,140 per parcel. This amount could be cost prohibitive for owners of smaller parcels. Additionally, voter support for such a rate could be difficult to achieve. The Administration was unable to find examples of other jurisdictions that had successfully introduced and passed a flat-rate parcel tax at a similar rate.

Staff also analyzed the potential to assess a tax based on parcel size. Non-residential parcel area totals 965,364,856 square feet citywide. To obtain \$50 million would require an average tax of approximately 5.2 cents per square foot. As reported to the Neighborhood Services and Education Committee on October 10, 2019, the Administration is currently testing the model of using parcel area or building/improved area as the basis for assessing a potential parks and recreation measure. Polling on this potential measure will inform whether using the parcel area methodology is viable and warrants future study.

It is important to note that the Administration is concurrently working on a Council Policy Priority to develop a Commercial Linkage Fee for housing. Given this work, the Administration does not recommend further exploration of a commercial-only tax until that work effort has concluded.

Vacancy Tax

In the past few years, some cities locally and globally have introduced various types of taxes on vacant properties with two goals in mind:

- 1) Encourage the property owner to rent or occupy the property; or
- 2) Generate revenue to fund affordable housing needs.

Cities worldwide already enacting vacant homes taxes include Paris, France; Melbourne, Australia; Vancouver, British Columbia; and Oakland, California, and London, Hong Kong, and San Francisco have discussed or are considering some form of vacancy taxes. Paris, which is estimated to contain more than 100,000 second homes, charges a 60 percent property tax surcharge on vacation homes. Melbourne and Vancouver both base their taxes on assessed valuation. However, this model isn't allowed under California law. Under state law, a vacancy tax may not be based on property value and instead must be imposed as a flat dollar amount.

Oakland's measure will assess a flat parcel tax of \$6,000 per year for most vacant parcels and \$3,000 per year for vacant condominiums, duplexes, townhome units and vacant ground-floor retail.

The Administration studied both the Vancouver and Oakland models in depth to understand the administrative requirements, potential revenues, and potential costs of launching such a program. Both programs are quite young.

Enacted in November 2016, the Vancouver Empty Homes Tax "is intended to bring underutilized properties back into use as rental housing, limit speculative investment and ensure housing is used as homes first."⁵ The vacancy tax applies to residential properties that are not used as principal residences, rented for a minimum of six months per year, or determined to be exempt due to redevelopment or major renovations.

Before implementing the program, Vancouver studied power usage and estimated that 10,800 homes were vacant for a year or more. In 2018, the first year of the program, Vancouver determined that 2,538 homes were vacant and subject to the tax, while 178,120 were occupied and 5,385 vacant but exempt from taxation. Empty Homes Tax revenues earned and collected totaled \$38 million. Vancouver reports one-time costs for program implementation of C\$7.5 million and first-year annual operating costs of C\$2.5 million.

While it appears that the number of vacant homes declined, the methodology initially produced an estimate, not an actual baseline. Anecdotal reports and news stories do make it appear that some property owners have placed units on the rental market in response to the vacancy tax. It is important to note that property owners in Vancouver also face a provincial Speculation and Vacancy Tax, which may provide an additional financial incentive to rent out vacant properties.

What Vancouver and other international cities have in common with San José is a tight rental market and high cost for-sale housing. What is different in these cities is a high rate of foreign investment in condominiums and houses (primarily from China and Russia) and significant amounts of vacation-home ownership due to tourism appeal. As discussed below, it is impossible to determine at this time how much revenue this model would produce in San José due to a lack of solid data on the number of homes that would qualify as vacant.

A model that may be closer to San José's is that of Oakland, however, that program will not be implemented until fiscal year 2020-2021. In Oakland, voters approved Measure W on November 6, 2018 by a margin of 70 percent, authorizing a 20-year annual tax on vacant property. Oakland went beyond taxing residential properties to include vacant land and ground-floor retail in its tax measure. The tax's purpose is to generate funds for homelessness and affordable housing; reduce the number of properties kept vacant and undeveloped; and reduce blight, crime, and illegal dumping. The tax will be implemented and levied in late 2020 and collected in 2021.

⁵ **2018 Empty Homes Tax Annual Report**, City of Vancouver and Housing Vancouver. Online at: <https://vancouver.ca/files/cov/empty-homes-tax-annual-report.pdf>

Oakland defines a vacant parcel as undeveloped land, residential properties, and ground-floor commercial spaces that are in use less than 50 days in a calendar year. The vacant property tax rate is \$6,000 per year for most types of vacant parcels, and \$3,000 per year for vacant condominiums, duplexes, townhome units and vacant ground-floor retail. Exemptions include very low-income owners, low-income seniors, disabled owners, non-profit organizations, and properties that are in various stages of active development and construction.

It is too early to project what impact Oakland's tax will have on vacancies, blight, or illegal dumping, or what levels of revenue will be generated. At the time Measure W was placed on the ballot, Oakland estimated annual revenues of \$10 million and staffing costs of \$450,000. San José will continue to study this model as the City of Oakland begins implementation.

A recent study of U.S. Census Data received widespread news coverage about the high numbers of vacant homes in the Bay Area. According to the study conducted for the mortgage company Lending Tree, the San José metropolitan statistical area has 8,855 homes that are vacant and not on the housing market.

San José Metropolitan Statistical Area Housing Unit Data

Total Households	Total Occupied Households	Total Vacant Households	For Rent	Rented, not yet occupied	For Sale	Sold, not yet occupied	Seasonal, recreational, occasional	Migrant worker housing	Other vacant
676,737	647,891	28,846	9,558	3,080	1,645	1,794	3,880	34	8,855

The Administration has two caveats about this data: first, the metropolitan statistical area covers all of Santa Clara and San Benito counties. Given the variations in communities throughout the two counties, it is difficult to project how many of the vacant homes counted are actually in San José. Second, the Census develops its data from the American Community Survey, then models and projects the numbers. Data would have to be confirmed using other methods, such as the utility study Vancouver commissioned.

The San José Code Enforcement Division in the Planning, Building and Code Enforcement Department operates a. Property owners with properties that meet the definition of "neglected vacant," "vacant," or "abandoned" are required to register those properties in the Program. The Program requires property owners to maintain their properties to minimum standards and pay a cost-recovery fee. Currently, 31 residential properties are registered in the Program, a number that has dropped in recent years as the housing prices have increased. Code Enforcement is also monitoring vacant commercial and industrial properties in a defined area Downtown as part of the Program, and to date, 26 properties are registered for the Program.

Given the complexities and costs of program implementation, and the unknowns about the volume of vacant properties, the Administration is not pursuing a vacancy tax for the March

2020 election. Should Council wish to further explore the issue, it can be considered at the next City Council Policy Priority Setting Session in 2020.

Real Property Transfer Tax

As discussed above, a coalition of non-profit housing organizations has been conducting private polling regarding the feasibility of various revenue measures. According to the information shared with the Administration verbally, a progressive model of property transfer tax continues to be the most viable option, particularly a general tax that could be used for critical City needs, such as addressing homelessness and providing affordable housing and would be subject to the discretion of the Council in making budgetary decisions.

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. 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 \$.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 upcoming survey will test the viability of a model that is progressive. 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.

HONORABLE MAYOR AND CITY COUNCIL

November 1, 2019

Subject: Polling for Potential 2020 Ballot Measures

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The Administration will inform the Council of survey results on November 19, before bringing forward recommendations for ballot placement no later than December 3, 2019. Note, the deadline to submit ballot measures for the March 3, 2020 election is Friday, December 6, 2019. The Administration has been in conversation with and will continue to engage with stakeholders including organizations representing real estate, property owners, business, labor, nonprofit, and advocacy communities.

/s/

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