



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Julia H. Cooper

**SUBJECT:** SEE BELOW

**DATE:** June 12, 2020

Approved

Date

6/12/2020

**SUBJECT: AMENDED AND RESTATED TAX COLLECTION AGREEMENT  
BETWEEN THE CITY OF SAN JOSE AND THE COUNTY OF SANTA  
CLARA FOR THE SAN JOSE REAL PROPERTY CONVEYANCE TAX  
AND SAN JOSE REAL PROPOERTY TRANSFER TAX**

## **RECOMMENDATION**

Approve the amended and restated agreement between the City of San José and the County of Santa Clara providing for the notification, demand, collection, and distribution of taxes under the San José Real Property Conveyance Tax Ordinance and San José Real Property Transfer Tax Ordinance.

## **OUTCOME**

Approval of the amended and restated agreement will facilitate the notification, demand, collection, and distribution of taxes under the San José Real Property Conveyance Tax Ordinance and San José Real Property Transfer Tax Ordinance by the County of Santa Clara Clerk-Recorder's Office.

## **BACKGROUND**

### **San José Real Property Conveyance Tax**

Since 1985, the County of Santa Clara Clerk-Recorder's Office ("County") has performed the notification, demand, collection, and distribution of the San José Real Property Conveyance Tax ("Conveyance Tax") on behalf of the City. The proposed recommendation will amend and restate the 1985 collection agreement between the County and City to include the new San José Real Property Transfer Tax ("Transfer Tax") as well as modify existing agreement terms for consistency with updated procedures and practices.

*San José Real Property Transfer Tax*

On December 3, 2019, City Council approved a resolution to include a measure (Measure E) for a new real property transfer tax, to appear on the special municipal election to be consolidated with the statewide primary election on March 3, 2020. On March 3, 2020, San José voters approved the Transfer Tax with over 53% support. This new tax is imposed at a tiered level for property transfers \$2 million and over. Property transfers under \$2 million are exempt from the Transfer Tax; and based on 2017-2018 data, this exempts approximately 95% of real property sales in San José.

For transfers of \$2 million or more, there are three tax tiers:

- \$2,000,000.00 to \$5,000,000 at 0.75%
- \$5,000,000.01 to \$10,000,000 at 1.00%
- Over \$10,000,000 at 1.50%

Revenues generated by the Transfer Tax will fund general City of San José (“City”) services, including affordable housing for seniors, veterans, disabled, and low-income families, and helping homeless residents move into shelters/permanent housing. Measure E requires a Community Oversight Committee, comprised of residents of the City, to provide oversight over the expenditure of the tax revenues.

On December 10, 2019, City Council approved the following spending priorities for the General Fund revenue from the Transfer Tax:

| <b>Spending Priority</b>   | <b>% of Transfer Tax Revenue</b> |
|--|----------------------------------|
| Permanent supportive and affordable rental housing for extremely low-income households | 45%                              |
| Affordable rental housing for low-income households                                    | 35%                              |
| Below market-rate for-sale housing and rental housing for moderate income households   | 10%                              |
| Homelessness prevention  | 10%                              |
| City Administration  | 5%                               |

The new tax goes into effect on July 1, 2020 and with approval of this agreement, the County will provide the notification, demand, collection, and distribution of the Transfer Tax on behalf of the City.

The 2020-2021 Proposed Operating Budget includes \$30 million in Transfer Tax revenue. On an ongoing basis, up to approximately \$70 million is projected annually from the Transfer Tax measure and these funds will be allocated as part of the annual budget process, in accordance with the Council approved Measure E spending priorities.

## **ANALYSIS**

With the passage of Measure E, City and County staff have met to discuss amending and restating the existing 1985 Conveyance Tax collection agreement to include the collection of the newly approved Transfer Tax. The County is the agency responsible for recording real property transfers in San José and is in the best position to ensure collection of the City's Conveyance Tax and Transfer Tax at the time of real property transfers. The major responsibilities of the County and the City are listed as follows:

The County agrees to:

- Notice, make demand, collect, and distribute the Conveyance Tax and Transfer Tax to the City for applicable real property transfers within the City.
- Provide the City with reports or copies of relevant information to assist the City in collecting delinquent taxes, if the County is unable to collect.
- Provide staff to appear at the City's administrative hearings or court proceedings when City is pursuing collection efforts against a delinquent taxpayer.
- Calculate the collection fee rate annually, inclusive of direct and indirect costs, to notice, make demand, collect, and distribute each tax.

The City agrees to:

- Reimburse the County for start-up costs to modify the County's tax collection systems so the County can begin collecting the Transfer Tax on July 1, 2020.
  - The agreement provides for a one-time start-up cost of up to \$25,000.
- Reimburse the County for on-going direct and indirect costs to facilitate the collection and distribution of taxes to the City.
  - The agreement provides for reimbursement of actual costs through the collection fee rate, referenced above, along with a year-end true-up statement to provide for any overcharged or undercharged amounts.
  - The projected 2020-2021 collection fee rates for the City's Conveyance Tax and Transfer Tax are 1.43% and 0.16%, respectively. The table below outlines the estimated tax revenue, collection fee, and collection fee rate for each tax.

|                | Estimated Tax Revenue FY 20-21 | Estimated Collection Fee | Collection Fee Rate (before true-up) |
|----------------|--------------------------------|--------------------------|--------------------------------------|
| Conveyance Tax | \$30.0M                        | \$425,000                | 1.43%                                |
| Transfer Tax   | \$30.0M                        | \$50,000                 | 0.16%                                |

- The Conveyance Tax collection fee is greater than the Transfer Tax due to the volume of transfers with applicable taxes. In FY 2018-2019, Conveyance Tax applied to approximately 9,350 transactions, while if the Transfer Tax would have been in place, it would have applied to approximately 550 transactions.

Finally, staff wishes to recognize the County's collaborative partnership to meet the City's timeline to begin collecting the Transfer Tax on July 1, 2020. The City greatly appreciates the transparency and teamwork in reaching this amended agreement with the County.

### **CONCLUSION**

Approval of the amended and restated collection agreement will facilitate the notification, demand, collection, and distribution of the City's existing Conveyance Tax and new Transfer Tax.

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

Revenues recognized from the Conveyance Tax and Transfer Tax will be reported to the Public Safety, Finance, and Strategic Support Committee as part of the Bi-Monthly Financial Reports. In addition, the collection fee rates will be reviewed annually by the Director of Finance.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 23, 2020 Council Meeting. In addition, County and City staff held a joint video conference on June 2, 2020 with representatives from interested title companies.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **COST SUMMARY/IMPLICATIONS**

The 2020-2021 Proposed Operating Budget includes a revenue estimate totaling \$30 million for the Transfer Tax. The 2020-2021 Proposed Capital Budget includes a revenue estimate totaling \$30 million for Construction and Conveyance (C&C) Tax revenue. While the Conveyance Tax revenue is not budgeted separately, approximately 99% of the total C&C is historically driven by Conveyance revenue.

### **BUDGET REFERENCE**

| Fund # | Appn # | Appn. Name                            | Proposed Appn. | Start-up Costs | 2020-2021 Proposed Operating Budget Page <sup>1</sup> | Last Budget Action (Date, Ord. No.) |
|--------|--------|---------------------------------------|----------------|----------------|---|-------------------------------------|
| 001    | TBD    | Measure E – 5% Program Administration | \$1,500,000    | \$25,000       | VIII - 10   | N/A                                 |

<sup>1</sup> The 2020-2021 Proposed Operating Budget is scheduled for approval by the City Council on June 16, 2020 and adopted on June 23, 2020.

### **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/  
JULIA H. COOPER  
Director of Finance

For questions, please contact Rick Bruneau, Deputy Director of Finance, at (408) 535-8310.

