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2/7/2020

Mayor Sam Liccardo & Council Members

City of San Jose

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city.clerk@sanjoseca.gov

Dear Council Members & Mayor,

Reference: Council Agenda 2/11/20

Item 3.4 Transfer Tax Draft Framework

**Subject: Khamis Memo of Dated For 2/11/20 On Draft Framework
Recommendation To Exempt**

Councilmember Khamis's memo and recommendation to exempt all transfers to homebuilders be exempted from Measure E should be adopted by the City Council. Councilmember Khamis's analysis, conclusions and recommendations make sense as always.

Thank you,

Myron Crawford

Cc: Chris Burton

Economic Development Officer

City of San Jose

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March 16, 2020

San Jose City Council

City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113

Item 3.3 Draft Framework Related to Nonprofit Transfers and the Proposed Real Property Transfer Tax

Dear Honorable Mayor Liccardo and Councilmembers,

On behalf of the Santa Clara County Association of REALTORS® (SCCAOR) and our 6,000 members, I write in support of Mayor Liccardo, Councilmember Peralez, Councilmember Diep, and Councilmember Davis' memorandum and Councilmember Khamis' memorandum on this issue.

SCCAOR is a major proponent of working to help solve the region's housing crisis through increasing supply via production of all forms of housing. Measure E is a new funding source meant to increase resources for the production of new affordable housing. However, it is important to not hinder non-profit and for-profit housing development through increased fees and taxes. Recently, the City of San Jose has taken proactive steps to help facilitate increased housing production through fee reductions and tax exemptions. It is important to continue this philosophy as the region looks to rapidly increase housing supply in the coming years.

SCCAOR supports that all transfers of real property to non-profit and for-profit homebuilders be exempted from the proposed transfer tax increase. All steps possible need to be taken to incentivize development in San Jose. Sustained increase to the region's housing supply is an important part of the solution to our current housing crisis.

Regards,



Sandy Jamison
President, Santa Clara County Association of REALTORS®

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STAFF

Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

January 5, 2021

Honorable Mayor Sam Liccardo and Members of the City Council
City of San Jose
200 East Santa Clara Street, 18th Floor
San Jose, CA 95113

Dear Mayor Liccardo, Vice Mayor Jones, and Councilmembers Arenas, Davis, Carrasco, Cohen, Foley, Jimenez, Mahan, and Peralez.

Re: Item 3.3 - DRAFT FRAMEWORK RELATED TO CERTAIN NONPROFIT TRANSFERS AND THE MEASURE E TRANSFER TAX

We write today to comment on the proposed resolutions regarding the exemption of transfers of real property to or from 501(c)(3) nonprofit organizations from the Measure E transfer tax. We must acknowledge the leadership of many on the Council, and the majority of San Jose voters, who supported Measure E last spring. The real value of these additional resources for affordable housing production and preservation, and homeless prevention, is even more evident as the city works to respond to the increase in housing instability resulting from the COVID 19 pandemic. Housing affordability is central to this challenge, and will be essential to our local recovery.

Initially this was a discussion about how to ensure that the transfer tax does not unintendedly undermine the council goals of expanding affordable housing resources in the City. On this level we believe that staff has confronted the challenge in good faith, and has proposed a resolution that is both targeted and administratively feasible. At the same time, we understood in March that the Mayor, and a number of council members, were interested in extending this effort to exempt sales and transfers for other “charitable community-serving purposes for education, health, and human services targeting low-income residents.” Of course this language was an effort to address the concern that expanding the exemptions would lead to “charitable” non-profits be created simply to facilitate real estate transactions that avoid the transfer tax.

While we appreciate what we believe is the intention of this effort, we are concerned that this may appear simpler than it will be in practice. In fact, not all 501(c)3 not for profits are exempted from either property tax or sales taxes. There is a tremendous variety of such organizations and even “charitable” organizations must file with the Assessor’s office to be assessed against existing regulations to determine if they may be granted a full or partial exemption from property taxes. When this exemption is granted it applies only to property taxes and not to special assessments. A similar process is managed by the BOE to establish a “Welfare Exemption” at the state level. The process of determining which not for profit organizations would further meet the criteria for education, health, and human services targeting low-income residents in San Jose would fall to the city.

January 5, 2021

Honorable Mayor Sam Liccardo and Members of the City Council

Re: Item 3.3 - NONPROFIT TRANSFERS AND THE MEASURE E TRANSFER TAX

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Further, while admittedly our search was not exhaustive, we could find no precedent for exemption of non-profit purchases or sales from real estate transfer taxes in California, or in other states or cities across the country. The clear exception, as noted by staff, is for cases where property is transferred purely as a charitable gift. The current ordinance would seem to be in-line with other measures rather than a departure.

Nonetheless, we understand that there is a desire not to place additional burdens on community serving organizations that provide critical assistance to the very families, struggling with cost burdens and housing instability, which Measure E was intended to support. We also understand the goal of not discourage charitable giving that, due to tax implications, doesn't fit neatly into the category of a gift. In fact we are sure that approaches to this broader, community serving, intent have been explored in other cities and counties throughout the state. While the council's commitment to affordable housing in San Jose is exceptional, the impact on non-profits and charitable giving are not, as property transfer taxes are quite common.

We would recommend the following clarifying direction to City Staff:

- **Explore transfer tax measures in Charter cities around the state to learn how others have sought to address these challenges of both administrative process – how best to coordinate with the County Assessor, and targeted intent which maximizes social benefit to target populations.**
- **In developing a definition, and process, for recognizing organizations that have a “charitable community-serving purposes for education, health, and human services targeting low-income residents” in San Jose, start with a narrow definition and explain the reasoning behind the decisions that were made.**

As the staff memorandum makes clear, it is very difficult to determine the impact of these actions on actual receipts of Measure E funds. The ordinance is designed to collect relatively small fees on a large number of transactions. Nonetheless, these are important questions that get at the heart of the voters' and council's original intent. We believe that there is a way to meet most of the multiple goals in play, but we agree that the resolution will not be as simple as all would wish.

Sincerely,

Mathew Reed
Policy Manager