



# Memorandum

**TO:** CITY COUNCIL  
**SUBJECT:** SEE BELOW

**FROM:** Mayor Sam Liccardo  
**DATE:** January 4, 2021

**APPROVED:**

**DATE:** *January 4, 2021*

**SUBJECT: DRAFT FRAMEWORK RELATED TO CERTAIN NONPROFIT  
TRANSFERS AND THE MEASURE E TRANSFER TAX**

## **RECOMMENDATION**

1. Accept the recommendations of the March 13, 2020 memorandum of Councilmembers Peralez, Diep, Davis and myself, which includes acceptance of staff's recommendation and draft framework and directs the City Manager and City Attorney to explore how to rebate or waive the transfer tax "for real estate transactions that are executed for charitable community-serving purposes for education, health, and human services targeting low-income residents."
2. Consider as one of the options for the City Manager and the City Attorney to explore: issuance of a waiver or rebate for the collection of the transfer tax on sale of a property by a foundation or other 501(c)(3) nonprofits where those organizations have a charitable community-serving purpose primarily focused on education, health, housing, or human services targeting low-income residents, and a substantial number of the low-income beneficiaries of that organization live within the City of San Jose. Such a waiver might require a simple affidavit signed by the CEO of the organization, with accompanying documentation, and might require approval by the City Manager or Director of Housing.
3. Return to Council before the end of the current fiscal year, June 30, 2021, with a policy that could be considered and approved and then implemented for the new fiscal year starting July 1, 2021.

## **Background**

My deepest appreciation goes to the San José voters who approved the Measure E transfer tax on the March 3, 2020 ballot, rewarding the efforts of many of us, working with the affordable housing and non-profit communities to pass the measure. Thanks also to City staff and to the City Council for setting spending priorities for affordable housing and homelessness prevention.



Due to staff's necessary attention to the pandemic response, more than a year has passed since I brought forward a Rules Committee memorandum and then several colleagues and I submitted a Council memorandum in March to exempt certain nonprofit transfers that ultimately benefit nonprofit organizations. Nonprofit organizations organized under Internal Revenue Code Section 501(c)(3) are exempt from paying income, sales, and property taxes. Our current ordinance would mark a departure from that historic pattern.

In the lead-up to the March 2020 election, I heard from philanthropists in the community that the new transfer tax could discourage real estate transactions in San José executed for charitable community-serving purposes. This includes transfers by community foundations at market-rate prices, the proceeds of which are directed solely for charitable purposes.

My staff and City staff engaged early last year to determine how to enable such real estate transfers without the loss of revenue to non-profit organizations serving our community. To be sure, the devil is in the details, and a "simple fix" appears elusive. The primary complication lies in the collection of the transfer tax by the County. Given that both City and (particularly) County staff remain deeply engaged in critical pandemic response during this time, we would like to give room for a solution that meets the needs. I would like to believe that even amid those challenges, we could implement a new policy in the months ahead, to enable implementation in the new fiscal year starting July 1, 2021.