

Ordinance

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
SECTION 4.59.230 TO CHAPTER 4.59 OF TITLE 4 OF THE  
SAN JOSE MUNICIPAL CODE TO EXTEND THE TERM OF  
THE MEASURE E REAL PROPERTY TRANSFER TAX  
REFUND PILOT PROGRAM FOR ONE ADDITIONAL YEAR  
THROUGH JUNE 30, 2024**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, on March 3, 2020, San José voters approved Measure E, a transfer tax on real estate transactions where the purchase price exceeds \$2 million;

**WHEREAS**, in December 2021, the City Council of the City of San José adopted by Ordinance a two-year pilot program allowing refunds of the Measure E transfer tax paid by qualifying Charitable Organizations who sell real property and affordable housing providers who purchase real property, provided that the refund was committed towards programs or services assisting extremely low income and lower-income residents in San José.

**WHEREAS**, the pilot program expires for real property transfers that occur after June 30, 2023 and the City Council wishes to extend the pilot program for an additional year to enable Charitable Organizations and affordable housing providers to be able to

continue seeking refunds in order to reinvest those monies back into programs that benefit extremely low income and lower-income residents in San José;

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 4.59 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

**4.59.230 Refunds to Charitable Organizations Under Certain Circumstances**

A. A Charitable Organization which is either a Direct Service Provider or a Grant-Maker that sells real property subject to the tax may, within six (6) months of payment of the tax, apply for a refund from the City on a form prescribed by the Director of Housing, accompanied by a declaration under penalty of perjury setting forth the following:

1. The amount of tax paid, including a copy of the deed recorded and a receipt or other evidence of having paid the tax, that shall include a statement showing the value of the consideration on which the tax due was computed;

2. A statement, accompanied by substantiating documentation, showing how one hundred percent (100%) of the proceeds from the sale of the real property (after deducting reasonable expenses, but not greater than ten percent (10%) of the proceeds, subject to approval by the Director of Housing) were, within six (6) months of the sale: (a) expended for services with a charitable community purpose, focusing on Education, Community-Based Health Services, Affordable Housing, or Human Services, where such services are targeted for and benefit Extremely Low-Income recipients, and such services are provided consistent with the Americans with Disabilities Act as well as both Federal and State Fair Housing laws; or (b) irrevocably restricted or endowed for a charitable purpose as defined by Section 501(c)(3) of the Internal Revenue Code, and in accordance with requirements of the Internal Revenue Service; or (c) both (a) and (b).
  3. A statement, accompanied by substantiating documentation, showing how an amount equal to three times (3x) or three hundred percent (300%) of the amount of the transfer tax paid was expended (within six (6) months of the sale), or will be expended within three (3) years of the sale, to fund direct services or provide grant-making (or both) that will fund services with a charitable community purpose, focusing on Education, Community-Based Health Services, Affordable Housing, or Human Services as discussed above; and
  4. Any other information required by the Director of Housing.
- B. The amount of the transfer tax not expended within three (3) years of the sale to either fund direct services or provide-grant making as described above in Section 4.59.230A.3 shall be immediately returned to the City, without notice, no later

than thirty (30) days from the third anniversary date of the sale that was the subject of the refund.

- C. The request for refund and all accompanying information required in Section 4.59.230A must be submitted by an authorized representative of the Charitable Organization to the Director of Housing within six (6) months of payment of the tax to be eligible for a refund.
- D. The Director of Housing will issue a decision to grant or deny the refund request described in Section 4.59.230A within thirty (30) days of the date on which the Director of Housing deems the refund request to be complete. The Director of Housing's decision will be final.
- E. If the refund request is granted, the Charitable Organization receiving the tax refund will maintain, for a minimum of three (3) years from the date of refund, all ledgers, vouchers, canceled checks, and other records and documents evidencing or relating to its refund request, showing that the expenditure of the proceeds from the transfer were used for a charitable purpose as set forth in Section 4.59.230A above. Any records or documents required to be maintained pursuant to this Section 4.59.230E will be made available for inspection and audit at no cost to the City at any time during regular business hours upon written request by the City Attorney, City Manager, Director of Finance, Director of Housing, or a designated representative of any of these officers.
- F. For purposes of Section 4.59.230A, these terms shall have the following meanings:
  - 1. "Affordable Housing" means either: (a) emergency residential shelter where emergency temporary lodging is provided to persons who are

homeless and where on-site supervision is provided whenever such shelter is occupied; or (b) deed-restricted affordable housing, where at least fifty-one percent (51%) of the residents are Extremely-Low Income San José residents.

2. “Charitable Organization” means an organization that: (a) qualifies for exemption from federal income tax under Internal Revenue Code Section 501(c)(3); and (b) is current and in compliance with all California Secretary of State, California Franchise Tax Board, and Internal Revenue Service requirements for tax-exempt organizations.
3. “Community-Based Health Service” means a community-based health or mental health clinic or patient services program located in the City where at least fifty-one percent (51%) of the patients/clients are Extremely Low-Income San José residents. Community-Based Health Service does not include hospitals.
4. “Direct Service Provider” means a Charitable Organization that: (a) currently provides services for a charitable community purpose, focusing on Education, Community-Based Health Services, Affordable Housing, or Human Services; and (b) provided such services for at least three (3) years prior to the date the property was sold in an amount equal to or greater than the total amount of the refund requested.
5. “Education” means a public preschool or public Kindergarten – 12th grade facility or program located in the City, where at least fifty-one percent (51%) of the students enrolled are from Extremely Low-Income San José households.

6. “Extremely Low-Income” shall have the meaning given in California Health & Safety Code Section 50106.
  7. “Grant-Maker” means a Charitable Organization that: (a) currently provides funding for a charitable community purpose, focusing on Education, Community-Based Health Services, Affordable Housing, or Human Services; and (b) provided such funding for at least three (3) years prior to the date the property was sold in an amount equal to or greater than the total amount of the refund requested.
  8. “Human Services” means services provided to help Extremely Low-Income residents in the areas of homelessness prevention and accessing permanent housing; services for survivors of gender-based violence or sexual assault; services for seniors or individuals with disabilities; supportive and social services for children, youth, and families; services for the unhoused; food distribution services including, but not limited to, services provided by food pantries and food banks; or services provided by multi-service human and social service agencies, where at least fifty-one percent (51%) of the clients served are Extremely Low-Income San José residents.
- G. If the purchaser of a Qualifying Affordable Housing Site, as defined below, is either a Charitable Organization or a limited partnership with a general partner that is a Charitable Organization, then the purchaser may apply for a refund of the tax. A “Qualifying Affordable Housing Site” means real property or an interest created by a ground lease of the real property with a term of at least sixty (60) years where there is a covenant or regulatory agreement recorded against the real property that meets all of the following requirements: (i) the entire site, excluding any City mandated ground floor commercial or retail space, must be

restricted to be used for Affordable Housing purposes; (ii) all non-manager dwelling units are or will be restricted for a term of at least fifty-five (55) years as affordable for lower income households as defined in California Health and Safety Code Section 50079.5 (with rents not to exceed thirty percent (30%) of eighty percent (80%) of the Area Median Income as determined pursuant to California Tax Credit Allocation Committee regulations and applicable federal law); (iii) the covenant or regulatory agreement imposing the rent and income restrictions is expressly enforceable by either the City of San José or the County of Santa Clara and may not be amended without their consent; and (iv) at the time of the refund request, the term of the covenant or regulatory agreement has at least thirty (30) years remaining.

H. The purchaser of a Qualifying Affordable Housing Site that meets all of the requirements of Section 4.59.230G above, and commits to reinvesting the refund in renovations at or services to residents of the property that is subject of the refund, may, within six (6) months of payment of the tax, apply for a refund from the City on a form prescribed by the Director of Housing, accompanied by a declaration under penalty of perjury setting forth the following:

1. The amount of tax paid, including: (i) a copy of the recorded deed and memorandum of lease, if applicable; (ii) a receipt or other evidence of having paid the tax; (iii) a statement showing the value of the consideration on which the tax due was computed; (iv) a copy of the recorded covenant or regulatory agreement meeting all of the criteria establishing the site as a Qualifying Affordable Housing Site; (v) documentation substantiating that the refund will be reinvested in renovations at or services to residents of the property purchased that is the subject of the refund; and (vi) any other information required by the Director of Housing.

2. The purchaser requesting the refund shall provide evidence that the purchaser is either (a) a Charitable Organization in good standing as defined in Section 4.59.230F; or (b) a limited partnership in good standing that is current and in compliance with all California Secretary of State, California Franchise Tax Board, and Internal Revenue Service requirements, with a general partner that is a Charitable Organization in good standing.
- I. The request for refund and all accompanying information required in Section 4.59.230H must be submitted by an authorized representative of the purchaser of the Qualifying Affordable Housing Site under penalty of perjury to the Director of Housing within six (6) months of payment of the tax to be eligible for a refund.
- J. The Director of Housing shall issue a decision to grant or deny the purchaser's refund request described in Section 4.59.230H within thirty (30) days of the date on which the Director of Housing deems the refund request to be complete. The Director of Housing's decision shall be final.
- K. The Director of Housing may take such action and make such rules and regulations not inconsistent with this Section 4.59.230 as the Director of Housing may deem reasonable or desirable to administer its provisions.
- L. This Section shall be effective retroactively from January 1, 2021, and shall apply to transactions that satisfy the requirements set forth herein that take place between January 1, 2021 and June 30, 2023~~2024~~, unless otherwise extended by the City Council. Accordingly, for transactions that take place on June 30, 2023~~2024~~, the last date to submit a request for refund is December 31, 2023~~2024~~. ~~Further, the deadline to submit a request for refund for eligible~~

~~transactions that take place between January 1, 2021 through the effective date of this ordinance shall be extended to June 30, 2022 or six (6) months from the payment of the tax, whichever is later.~~

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk