

RESOLUTION NO. 5371-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY CALLING AN ELECTION TO BE HELD ON NOVEMBER 6, 2018, FOR VOTER CONSIDERATION OF A MEASURE TO ADOPT A CITY CHARTER AND TO AUTHORIZE A REAL PROPERTY TRANSFER TAX; ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AND PROVIDING FOR SUBMITTAL OF BALLOT ARGUMENTS AND REBUTTALS AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS

WHEREAS, the City of Union City was incorporated as a general law city in 1959 by residents seeking to manage local affairs; and

WHEREAS, the authority of general law cities has diminished through State mandates and State law regarding use of local resources: and

WHEREAS, charter cities have a variety of tools to address local concerns through the power of home rule granted by the California Constitution; and

WHEREAS, becoming a charter city would provide Union City with more local autonomy and expand the City's economic and fiscal independence to promote the health, safety, and welfare of all residents; and

WHEREAS, establishing Union City as a charter city gives Union City more local control over City affairs and local funding needs; and

WHEREAS, being a charter city allows for more options for funding important local services or capital projects. The largest impact for Union City would be the ability to implement an enhanced real property transfer tax; and

WHEREAS, to address these issues, the City Council provided direction to a City staff and the City Attorney's Office to prepare a draft charter for the City Council to consider submitting to the voters of Union City to change Union City to a charter city, which would also empower the voters to approve an enhanced real property transfer tax; and

WHEREAS, the City Council held two duly noticed public hearings on May 10, 2018 and June 12, 2018 to receive comments from the public and to consider the proposed draft Union City City Charter as legally required by Government Code Section 34458; and

WHEREAS, following both public hearings and after considering all testimony, evidence, and comments from the public, the City Council directed the preparation of a ballot measure to submit to the voters of Union City the approval of the Union City City Charter and an ordinance that would authorized an enhanced real property transfer tax; and

WHEREAS, this Measure will expand local control over local funds for local needs, with funding that cannot be taken by the State; and

WHEREAS, this Measure will expand local control to maintain the quality of life for Union City residents and keep Union City a great place to live, work and play; and

WHEREAS, this Measure will provide funding that can be used for park maintenance including playfields and trimming trees to give our children a safe place to play; and

WHEREAS, this Measure will provide funding to maintain current levels of public safety and police services including neighborhood police patrols, and crime and gang prevention programs; and

WHEREAS, much of the revenue collected under this Measure will be paid by corporate and commercial real estate owners; and

WHEREAS, this Measure will expand local control for essential services including youth and gang violence prevention programs, maintaining city parks, fire protection services, and senior programs; and

WHEREAS, the proposed City Charter authorizes the City to levy a real property transfer tax and exercise other powers to raise revenue. It would retain the existing form of government and existing Municipal Code and require that the City follow a number of State laws governing general law cities including State laws related to the payment of prevailing wages for public works projects and relations with represented bargaining units of City employees; and

WHEREAS, the tax to be submitted to the voters, if approved, would authorize a tax on the sale of property. Payment of the tax could be negotiated between buyer and seller. The tax would not be an annual tax on property, only a tax on the sale of property. The tax rate would be ten dollars (\$10.00) per each one thousand dollars (\$1,000.00), or fraction thereof, of the consideration paid for real property. The tax would be owed at the time of sale of real property. The tax would collected by the City. Both the Union City City Charter and the tax would be approved if the measure receives at least a simple majority vote of affirmative votes; and

WHEREAS, revenues from a real property transfer tax would be for general revenue purposes and go into the City's general fund and could be used for any legitimate government purpose; and

WHEREAS, Article XIII C, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a real property transfer tax, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, the tax imposed and the City Charter proposed by this Measure will only become effective if approved by a simple majority of the City's voters at the November 6, 2018 election; and

WHEREAS, the City Council has authority to submit this Measure to the voters of Union City pursuant to Article XI, Sections 3 and 5 of the California Constitution and California Elections Code Sections 9222 and 9255 and California Government Code Section 53724; and

WHEREAS, based on all of the information presented at the July 24, 2018 meeting of the City Council, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA, review is not required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Union City that:

SECTION 1. The foregoing recitals are true and correct and are hereby incorporated by reference.

SECTION 2. Pursuant to the requirements of the laws of the State of California, the City Council hereby calls an election at which it shall submit to the qualified voters of the City of Union City a measure that, if approved by a majority vote, would make Union City a Charter City and impose a real property transfer tax. This measure shall be designated by letter by the Union City County Registrar of Voters. Pursuant to California Elections Code Section 10400 et seq., the election for this measure shall be consolidated with the established statewide election to be conducted on November 6, 2018.

SECTION 3. The City Council does hereby submit for adoption by the qualified voters of the City of Union City at the General Municipal Election of November 6, 2018, the following question:

To enhance local control with funding that cannot be taken by the State for essential services including fire/police protection; youth violence/gang prevention programs; maintaining city parks/senior	YES	
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services; and other essential services; shall a measure be adopted establishing Union City as a Charter City and a real property transfer tax of \$10 per \$1,000, until ended by voters, paid only by property buyers/sellers, providing \$5,000,000 dollars annually, with funds benefiting Union City?	NO	
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SECTION 4. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (proposed City Charter) and Exhibit B (proposed Ordinance) (the “Measure”) hereto, including the proposed Charter of the City of Union City and an ordinance authorizing a real property transfer tax, and shall be made available to the public upon request. The Measure shall be completely printed in the voter pamphlet. If a simple majority of the qualified voters voting on the Measure vote in favor therefor, both the Union City Charter and real property transfer tax shall be approved and the Measure shall be deemed adopted upon the City Council’s declaration of the results of the election. The Charter shall take effect when accepted and filed by the California Secretary of State. The ordinance shall be effective ten (10) days after the declaration of the vote. The real property transfer tax shall become operative when the Charter goes into effect. The City Council hereby approves the proposed real property transfer tax ordinance, attached as Exhibit B, the form thereof, and its submission to the voters of Union City at the November 6, 2018 election.

SECTION 5. The Board of Supervisors of Alameda County is hereby requested to consent and agree to the consolidation of the General Municipal Election described in this Resolution with the General Election on Tuesday, November 6, 2018, and to issue instructions to the Alameda County Registrar of Voters to take any and all steps necessary for the holding of the Consolidated General Municipal Election. This request is made pursuant to California Elections Code section 10403, and the City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418.

SECTION 6. The Board of Supervisors of Alameda County is hereby requested to permit the Alameda County Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct a Consolidated General Municipal Election in the City on November 6, 2018, pursuant to this Resolution, including but not restricted to the providing and printing of ballots and polling place cards, election supplies, voting booths, flags, registration lists and any other materials and services required to lawfully conduct the election. The City recognizes that additional costs will be incurred by the County by reason of this Consolidated General Municipal Election, and the City agrees to reimburse the County based on the County's established rates. This request is made pursuant to California Elections Code section 10002.

SECTION 7. Unless otherwise specified in this Resolution, the General Municipal Election shall be held and conducted as provided in Resolution No. 5344-18, and as provided by law for holding municipal elections.

SECTION 8. (a) In accordance with Elections Code sections 9282 and 9283, arguments

submitted for or against the Measure shall not exceed 300 words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by not more than five (5) persons.

(b) In accordance with Elections Code section 9282, the following headings, as appropriate, shall precede the arguments' wording, but shall not be counted in the 300 word maximum: "Argument Against Measure _____" or "Argument For Measure _____" (the blank spaces being filled only with the letter or number, if any, designating the Measure).

(c) In accordance with Elections Code section 9283, printed arguments submitted to voters in accordance with section 9282 of the Elections Code shall be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers. Arguments are due in the office of the City Clerk prior to 11:00 a.m. on August 7, 2018.

(d) The City Council hereby authorizes Mayor Dutra-Vernaci to prepare and file a ballot argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure. Members of the City Council who sign the ballot argument may use their titles.

SECTION 9. (a) Pursuant to Elections Code section 9285, when the City Clerk has selected the arguments for and against the Measure, that will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut.

(b) Rebuttal arguments shall not exceed 250 words and may be signed by more than five persons. However, only the first five persons to sign will be printed with the ballot measure. The persons that sign the rebuttal arguments may be different persons than the persons that signed the direct arguments.

(c) The last day for submittal of rebuttal arguments for or against the Measure shall be by 11:00 a.m. on August 17, 2018.

(d) The City Council hereby authorizes Mayor Dutra-Vernaci to prepare and file a rebuttal argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure. Members of the City Council who sign the rebuttal argument may use their titles. In accordance with Elections Code section 9287, any council members authorized by the City Council to do so may sign the rebuttal argument for the Measure.

SECTION 10. In accordance with Elections Code section 9280, the City Attorney is

directed to file with the City Clerk, by 11:00 a.m. on August 7, 2018, an impartial analysis of the Measure, not to exceed 500 words, showing the effect of the Measure on the existing law and the operation of the Measure.

SECTION 11. (a) The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Alameda County Elections Department. The City Clerk is hereby authorized and directed to take all steps necessary to place the Measure on the ballot and to cause a synopsis of the Measure attached as Exhibit A and Exhibit B to be published once in a newspaper of general circulation in accordance with California Elections Code section 12111 and California Government Code section 6061. A copy of the Measure shall be made available to any voter upon request. The City Clerk is authorized and directed to give further additional notice of the Measure in the time, form, and manner required by law.

(b) In all particulars not recited in this Resolution, and except as provided for in Elections Code sections 10403 and 10418, the election shall be held and conducted as provided by law for holding municipal elections.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 24th day of July, 2018 by the following vote:

AYES: Councilmembers Duncan, Gacoscos, Singh, Dutra-Vernaci
NOES: Vice Mayor Ellis Mayor
ABSENT: None
ABSTAIN: None



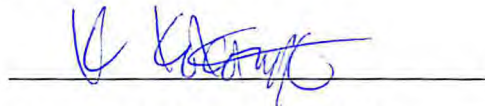
CAROL DUTRA-VERNACI
Mayor

ATTEST:



ANNA M. BROWN
City Clerk

APPROVED AS TO FORM:



KRISTOPHER J. KOKOTAYLO
City Attorney

CHARTER OF THE CITY OF UNION CITY

STATEMENT OF PURPOSE

The City of Union City was incorporated as a general law city in 1959, combining the communities of Alvarado, New Haven, and Decoto, by residents seeking to manage local affairs. Over time, the authority of general law cities over local affairs has diminished. The State continues to add mandates for cities that require local resources to address State concerns, increase its control over local matters, and redirect much needed local revenue for its own purposes. Changes in State law have limited the ability of Union City residents to decide how to use local dollars for local needs. The power of home rule, granted by the California Constitution, makes available to charter cities a variety of tools to use to construct local policy and address local concerns. We the people of Union City, are sincerely committed to the belief that local government has the closest affinity to the people governed and are firmly convinced that the economic and fiscal independence of our local government will better serve and promote the health, safety and welfare of all the residents of Union City. Based on these principles, we do here by exercise the express right granted by the Constitution of the State of California and do ordain and establish this Charter for the City of Union City.

ARTICLE I. ESTABLISHMENT OF HOME RULE, POWER OVER MUNICIPAL AFFAIRS, GENERAL LAW POWERS

Section 100. Powers of the City. The City of Union City (the “City”) shall have full power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinance, resolutions, and regulations with respect to municipal affairs, subject only to the limitations and restrictions imposed on that power by this Charter, the Constitution of the State of California, and the laws of the United States.

Section 101. Municipal Affairs. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California. Each of the matters set forth in this Charter are declared to be municipal affairs, consistent with the laws of the State of California. The municipal affairs set forth in this Charter are not intended to be an exclusive list of municipal affairs over which the City Council may govern. The exercise of home rule over each matter set forth in this Charter uniquely benefits the residents of the City and addresses local concerns within the City.

Section 102. Powers under State Law.

- (a) In addition to the power and authority granted by this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinances, resolutions, and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between this Charter and the general laws of the State of California related to a municipal affair, this Charter shall control.

- (b) Nothing in this Charter is intended to restrict the City in exercising any right, power or authority granted under the general laws of the State of California. However, the provisions of this Charter shall prevail in the event of any conflict with the general laws of the State of California, unless preempted by state law on matters of statewide concern.

ARTICLE II. CONTINUATION OF BOUNDARIES, FORM OF GOVERNMENT, AND EXISTING LAW

Section 200. Incorporation and Succession. The City shall continue to be a municipal corporation known as the City of Union City. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

Section 201. Form of Government. The government of the City shall continue to be the Council-Manager form of government as established by the Union City Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 202. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.
- (b) The City Council shall appoint the City Manager.
- (c) The City Manager, as the chief administrative officer of the City, shall, consistent with the Union City Municipal Code, appoint all department heads other than the City Attorney. The City Council and its members shall deal with the administrative services of the City only through the City Manager except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager.
- (d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws. All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

Section 204. General State Laws. Except as provided in this Charter and in any ordinance, code, resolution, or other law adopted by the City Council regarding a matter that is a municipal affair, the City shall be governed by the general laws of the State of California.

ARTICLE III. MUNICIPAL REVENUE

Section 300. Revenue Raising Power. The City may exercise all powers of a charter city to generate revenue, including but not limited to taxes, fees, assessments, and other charges.

Section 301. Real Property Transfer Tax. Without limiting the general power of the City to generate revenue, as expressed in Section 300 above, the City may impose a tax on the conveyance of real property based upon the price paid for the real property. Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

ARTICLE IV. PREVAILING WAGES FOR PUBLIC WORKS AND PUBLIC CONTRACTING

Section 400. State Prevailing Wage Law. The City shall comply with the laws of the State of California applicable to general law cities regarding the payment of prevailing wages for public works projects.

Section 401. Contracting for Public Works. The City shall comply with the laws of the State of California applicable to general law cities regarding contracting for public works. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding contracting for public works shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE V. LABOR RELATIONS

Section 500. State Labor Relations Law. The City shall comply with the laws of the State of California applicable to general law cities regarding labor relations. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding labor relations shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE VI. ELECTIONS

Section 600. State Elections Law. The City shall comply with the laws of the State of California applicable to general law cities regarding elections. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding elections shall continue to apply when this Charter takes effect and may be amended thereafter.

Section 601. Initiative, Referendum, and Recall. Without limiting the general applicability of Section 600 of this Charter, the City shall comply with the laws of the State of California applicable to general law cities regarding initiative, referendum, and recall.

ARTICLE VII. INTERPRETATION, SEVERABILITY, AND AMENDMENT

Section 700. Construction and Interpretation. The language of this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter that is a municipal affair. Every reference in this Charter to state or federal law shall mean that law as it exists when this Charter takes effect or as it may thereafter be amended.

Section 701. Severability. If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 702. Amendment of Charter. As provided by state law, this Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the City Council.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF UNION CITY ADDING CHAPTER 3.26 (REAL PROPERTY TRANSFER TAX) TO THE UNION CITY MUNICIPAL CODE

WHEREAS, the City of Union City was incorporated as a general law city in 1959 by residents seeking to manage local affairs; and

WHEREAS, the authority of general law cities has diminished through State mandates and State law regarding use of local resources; and

WHEREAS, charter cities have a variety of tools to address local concerns through the power of home rule granted by the California Constitution; and

WHEREAS, becoming a charter city would provide Union City with more local autonomy and expand the City's economic and fiscal independence to promote the health, safety, and welfare of all residents; and

WHEREAS, establishing Union City as a charter city gives Union City more local control over City affairs and local funding needs; and

WHEREAS, being a charter city allows for more options for funding important local services or capital projects; and

WHEREAS, the City Council provided direction to City staff and the City Attorney's Office to prepare a draft charter for the City Council to consider submitting to the voters of Union City to change Union City to a charter city, which would also empower the voters to approve an enhanced real property transfer tax; and

WHEREAS, the City Council held two duly noticed public hearings on May 10, 2018 and June 12, 2018 to receive comments from the public and to consider the proposed draft Union City City Charter consistent with Government Code Section 34458; and

WHEREAS, following both public hearings and after considering all testimony, evidence, and comments from the public, the City Council directed the preparation of a ballot measure to submit to the voters of Union City the approval of the Union City City Charter and an ordinance that would authorized an enhanced real property transfer tax; and

WHEREAS, the proposed City Charter authorizes the City to levy a real property transfer tax; and

WHEREAS, the tax to be submitted to the voters, if approved, would authorize a tax on the sale of property. Payment of the tax could be negotiated between buyer and seller. The tax would not be an annual tax on property, only a tax on the sale of property. The tax rate would be ten dollars (\$10.00) per each one thousand dollars (\$1,000.00), or fraction thereof, of the consideration paid for real property. The tax would be owed at the time of sale of real property.

The tax would collected by the City. Both the Union City City Charter and the tax would be approved if the measure receives at least a simple majority vote of affirmative votes; and

WHEREAS, revenues from a real property transfer tax would go into the City’s general fund and could be used for any legitimate government purpose; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a real property transfer tax, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, the tax imposed by this Ordinance will only become effective if approved by a majority of the City’s voters at the November 6, 2018 election; and

WHEREAS, based on all of the information presented at the July 24, 2018 meeting of the City Council, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA, review is not required.

THE PEOPLE OF THE CITY OF UNION CITY DO ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Amendment of Municipal Code. Chapter 3.26 “Real Property Transfer Tax” is hereby added to the Union City Municipal Code as follows:

**CHAPTER 3.26
REAL PROPERTY TRANSFER TAX**

Sections:

- 3.26.010 Short title.
- 3.26.020 Purpose and authority.
- 3.26.030 Definitions.
- 3.26.040 Tax imposed.
- 3.26.050 Tax rate.
- 3.26.060 Persons liable for tax.
- 3.26.070 Exceptions and exemptions.
- 3.26.080 Administration of tax.
- 3.26.090 Due dates, delinquencies, penalties, interest, administrative charges, and lien release recordation fees.
- 3.26.100 Declaration may be required.
- 3.26.110 Determination of deficiency; petition for redetermination.
- 3.26.120 Tax a debt.
- 3.26.130 Refunds.
- 3.26.140 Tax a lien or assessment against transferred real property.
- 3.26.150 Citizens oversight committee.

- 3.26.160 Annual audit.
- 3.26.170 Amendments.

3.26.010 Short title.

This chapter shall be known as the “Real Property Transfer Tax Ordinance.”

3.26.020 Purpose and authority.

The tax imposed by this chapter is solely for the purpose of raising revenues for the general governmental purposes of the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City’s general fund. This chapter is not enacted for regulatory purposes.

This ordinance is adopted pursuant to the City’s authority under Article XI, section 5 of the Constitution of the State of California and Section 301 of the Union City City Charter.

3.26.030 Definitions.

The following words and phrases shall have the meanings set forth below when used in this chapter:

A. “Changes in control and ownership of legal entities” means any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code section 64, as such statute reads and is interpreted by the California Department of Tax and Fee Administration.

B. “County Assessor” means the County Assessor of the County of Alameda.

C. “County Recorder” means the Office of the Clerk-Recorder of the County of Alameda.

D. “Person” and “persons” mean any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the State of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof. “Person” and “persons” also mean any natural person, who as an individual or with a spouse, owns fifty one percent (51%) or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term “person” is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

E. “Real property” and “realty” mean real property as defined by and under the laws of the state of California.

F. “Tax” means the tax authorized and imposed by this chapter.

G. “Tax administrator” means the Finance Director or other City Manager designee designated to administer the tax.

H. “Transfer of real property” means a sale, grant, assignment, transfer, or other conveyance of any lands, tenements, or other real property by deed, instrument, or other writing from a transferor to a transferee, or to a third person at or by the direction of transferee. “Transfer of real property” includes a change in control and ownership of a legal entity that results in a transfer of real property.

I. “Transferee” means a person to whom a transfer of real property is made.

J. “Transferor” means a person who makes a transfer of real property.

K. “Value of consideration” or “value of the consideration” means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrances after such transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer. “Value of the consideration” also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where such special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after such transfer, shall not be included in determining the value of the consideration. If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section. In the event that the asserted “value of consideration” for a transfer of real property is less than the fair market value, the Tax Administrator may assume that the “value of consideration” is the fair market value of the property but shall consider evidence submitted by the persons responsible for paying the tax that the lower amount represents the price agreed upon as part of a valid arms-length transaction.

3.26.040 Tax imposed.

A tax is hereby imposed on each transfer of real property located in the City of Union City, when the value of the consideration exceeds one hundred dollars (\$100.00).

3.26.050 Tax rate.

The rate of the tax imposed pursuant this chapter shall be ten dollars (\$10.00) for each one thousand dollars (\$1,000.00) of the value of consideration paid for a transfer of real property, or fractional part of each one thousand dollars (\$1,000.00) of the value of consideration.

3.26.060 Persons liable for tax.

Any person who makes a transfer of real property subject to the tax imposed by this chapter and any person to whom such a transfer is made shall be jointly and severally liable for payment of the tax. The transferor and transferee may apportion the tax among themselves.

3.26.070 Exceptions and exemptions.

A. Government Entities. A transfer of real property shall be exempt from any tax imposed pursuant to this chapter if the transferee is the United States or any political subdivision thereof, the State of California, any city, county, city and county, district or any other political subdivision of the State of California.

B. Writings That Secure a Debt. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

C. Transfers of Real Property to Effectuate a Plan of Reorganization. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form, or place of organization is effected.

Subsections (1) to (4), above, shall only apply if the making, delivery, or filing of instruments of transfer or conveyance occurs within five (5) years from the date of such confirmation, approval, or change.

D. Orders of the Securities and Exchange Commission. Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
2. Such order specifies the property which is ordered to be conveyed; and
3. Such conveyance is made in obedience to such order.

E. Transfer of Certain Partnership Property.

1. In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no tax shall be imposed pursuant to this chapter by reason of any transfer of an interest in the partnership or other entity or otherwise, if both of the following occur:
 - a. The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.

b. The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.

2. If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this chapter, the partnership or other entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value (including the value of any lien or encumbrance remaining thereon), all realty held by the partnership or other entity at the time of the termination.

3. Not more than one (1) tax shall be imposed pursuant to this chapter by reason of a termination described in subsection (E)(2) of this section, and any transfer pursuant thereto, with respect to the realty held by a partnership or other entity treated as a partnership at the time of the termination.

4. No tax shall be imposed pursuant to this chapter by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.

F. Deed in Lieu of Foreclosure. Any tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount, and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument, or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

G. Transfer of Restricted Affordable Units. The tax imposed pursuant to this chapter shall not apply to transfers of real property if the real property is encumbered by a recorded and enforceable covenant executed in favor of the City restricting the ownership and occupancy of the real property, for a period of no less than thirty (30) years following the date of transfer, to “persons and families of low or moderate income” as defined in California Health and Safety Code Section 50093.

H. Transfers between Spouses and Domestic Partners.

1. Any transfer made during the term of a marriage or domestic partnership between spouses or domestic partners shall be exempt from the tax imposed pursuant to this chapter.

2. Any transfer of property from one spouse or domestic partner to the other in accordance with the terms of a decree of dissolution or legal separation or in fulfillment of a property settlement incident thereto shall be exempt from the tax imposed pursuant to this chapter. This exemption shall apply only to property that was acquired by the spouses or domestic partners prior to the final decree of dissolution. This exemption shall not apply to a transfer of property to a third party, despite the existence of a valid court order or settlement agreement.

a. For domestic partners, the two parties to the transfer must have on file a valid domestic partnership registration (a) under existing law and procedures for the state of California domestic partnership registry, or (b) with a governmental agency of a jurisdiction that recognizes domestic partnership registration.

b. If domestic partners do not own, as joint tenants, the property that is the subject of their dissolution agreement, they must demonstrate that they were living together at the location of the real property in question either at least six months prior to the dissolution of the domestic

partners relationship or the entire period of ownership of the transferring partner, whichever is more.

c. To qualify for this exemption, domestic partners must provide that portion of their dissolution and property settlement agreement pertaining to the division or transfer of property, which shall be filed with the Office of the City Clerk. The copy of the settlement agreement shall be accompanied by an affidavit with verifiable signatures or proof of identity, that the copy is an accurate and authentic reproduction of the final settlement agreement between the parties.

I. Transfers That Confirm or Correct a Recorded Deed. A transfer of real property without consideration that confirms or corrects a deed shall be exempt from the tax imposed pursuant to this chapter. The correcting or confirming transfer must be recorded no later than ninety (90) days after the recordation of the transfer requiring correction or confirmation.

3.26.080 Administration of tax.

The Tax Administrator shall collect the tax imposed pursuant to this chapter and shall otherwise administer this chapter. The Tax Administrator may make such rules and regulations, not inconsistent with this chapter, as he or she may deem reasonably necessary or desirable to administer this article, as well as necessary forms and receipts.

3.26.090 Due dates, delinquencies, penalties, interest, administrative charges, and lien release recordation fees.

The tax imposed pursuant to this chapter is due and payable at the time the deed, instrument, or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid ninety (90) days later. If a transfer of real property is effected but not recorded with the County Recorder within ninety (90) days of the date on which the deed, instrument, or writing was delivered, all statutes of limitations regarding liability for the tax imposed pursuant to this chapter shall be tolled until the City has actual knowledge of the transfer, at which time the tax on the unrecorded transfer shall relate back to the date on which the deed, instrument, or writing was delivered. Penalties and interest shall be deemed to have begun accruing on the date the deed, instrument, or writing was delivered, and shall be the joint and several liability of the persons referred to in Section 3.26.060. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of the tax due shall accrue. In the event only a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the unpaid portion. An additional penalty of fifteen percent (15%) of the amount of tax due shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one percent (1%) per month or fraction thereof, on the amount of the tax, inclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalties shall become part of the tax. An administrative charge and a release of lien filing fee equal to the amount charged by the County Recorder shall be added to the amount owed for each property approved for a tax lien by the City Council.

3.26.100 Declaration may be required.

A. The tax imposed by this chapter shall be paid to the Tax Administrator by the persons referred to in Section 3.26.060. The Tax Administrator shall have the authority, pursuant

to this chapter and any promulgated rules and regulations, to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by their duly authorized agent. If a declaration is required, it shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which a purchaser or transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument, or writing effecting the transfer for which the tax is being paid. The Tax Administrator may require delivery of a copy of such deed, instrument, or writing whenever they deem such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The Tax Administrator may but is not required to rely on the declaration as to the amount of the tax due.

B. Whenever the Tax Administrator has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, they may, by notice served upon any person liable for the tax, require them to furnish a true copy of their records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three (3) years after recordation of the deed, instrument, or writing which transfers such property.

3.26.110 Determination of deficiency; petition for redetermination.

A. If on the basis of such information as the Tax Administrator receives pursuant to Section 3.26.100, or on the basis of such other relevant information that comes into his or her possession, he or she determines that the amount of tax due as set forth in the declaration, or as paid, is insufficient, he or she may re-compute the tax due on the basis of such information.

B. If the declaration referenced in Section 3.26.100 is not submitted, the Tax Administrator may make an estimate of the value of the consideration for the property transferred and determine the amount of tax to be paid on the basis of any information in his or her possession or that may come into his or her possession.

C. More than one deficiency determination may be made of the amount due with respect to any single transfer of real property.

D. The Tax Administrator shall give written notice to a person liable for payment of the tax imposed pursuant this chapter of a deficiency determination made under this section. Such notice shall be given within three (3) years after the recordation of the deed, instrument, or writing effecting the transfer on which the tax deficiency determination was made.

E. Any notice required to be given by the Tax Administrator under this chapter may be served personally or by mail. If service is made by mail, it shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at the address as it appears in the records of the City or as ascertained by the Tax Administrator. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

F. Any person against whom a deficiency determination is made under this chapter or any person directly interested may petition the Tax Administrator for a redetermination within sixty (60) days after service upon the person of notice thereof. If a petition for redetermination is not filed in writing with the Tax Administrator within the sixty (60) day period, the determination becomes final at the expiration of the period.

G. If a petition for redetermination is filed within the sixty (60) day period, the Tax Administrator shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing, and shall give ten (10) days' notice of the time and place of the hearing. The Tax Administrator may designate a hearing officer for the purpose of conducting hearings. A hearing on a tax deficiency redetermination may be continued from time to time as may be necessary.

H. As part of a redetermination hearing, the Tax Administrator may decrease or increase the amount of the tax owed before a redetermination decision becomes final, but the amount may be increased only if the Tax Administrator asserts a claim for the increase at or before the hearing.

I. The order or decision of the Tax Administrator upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner or at the time of hearing of redetermination. There is no administrative appeal to the City Council of the Tax Administrator's decision on a petition for redetermination. Writs challenging the Tax Administrator's decision must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California Code of Civil Procedure Section 1094.6.)

3.26.120 Tax a debt.

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this chapter shall be liable in an action brought in the name of the City for the recovery of such amount, plus the City's costs of bringing the action, including attorneys' fees and litigation costs. The provisions of this section shall not be deemed a limitation upon the right of the City to bring any other action, whether criminal, legal, or equitable, based upon the failure to pay the tax, penalty, or interest imposed by this chapter or the failure to comply with any of the provisions hereof.

3.26.130 Refunds.

Whenever the amount of any tax, penalty, or interest has been overpaid, or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in this section. The person who paid the tax must file with the Tax Administrator a written claim stating under penalty of perjury the specific grounds on which the refund is claimed. A refund claim must be filed within one (1) year of the date of payment. The claim shall be submitted on forms furnished by the Tax Administrator. The Tax Administrator may make such refund if they are satisfied that the claimant is entitled to the refund under the provisions of this chapter. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto.

3.26.140 Tax a lien or assessment against transferred real property.

A. The amount of tax, penalty, and interest imposed under the provisions of this chapter is assessed against the real property upon the transfer of which the tax is imposed. If the tax, penalties, or interest are not paid when due, they may be recorded as a lien against or a special assessment on the real property transferred. Any lien against the transferred real property shall

continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

B. The Tax Administrator shall file with the City Manager a written notice of liens and special assessments that the Tax Administrator believes should be recorded to collect the tax, penalties, or interest owed pursuant to this chapter. Upon the receipt of such notice, the City Manager shall fix a time and place for a public hearing on such notice before the City Council and present the same to the City Council.

C. The Tax Administrator shall cause a copy of such notice to be served upon the persons responsible for the tax, penalties, or interest owed. Notice shall be provided not less than ten (10) days prior to the time fixed for the hearing. Service shall be made by mailing a copy of the notice to the transferor and transferee of real property at their last known addresses. Service shall be deemed complete at the time of deposit in the United States mail.

D. Following the hearing, if the City Council determines that tax, penalties, or interest are owed pursuant to this chapter, it may authorize the imposition of a lien against the transferred real property and may order that any delinquent taxes, penalties, or interest that remain unpaid by the transferor or transferee shall constitute a special assessment against the transferred real property. If the City Council orders the imposition of a special assessment against the transferred real property, the special assessment shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

E. The Tax Administrator shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent charges consisting of the delinquent taxes, penalties, and interest at the rate of twelve percent (12%) per annum from the date of recordation to the date of lien.

F. Thereafter, the authorized special assessment may be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent property taxes. The assessment lien previously imposed upon the property is paramount to all other liens except for those of State, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the special assessment and all interest and charges due and payable thereon are paid. All taxes applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessments.

3.26.150 Citizens oversight committee.

There shall be a five-person committee of members of the public to review and report on the revenue and expenditure of funds from the tax adopted by this chapter. The City Council shall adopt a resolution establishing the composition of the committee and defining the scope of its responsibilities. Failure of the City Council to appoint a committee shall not in any way invalidate the tax imposed pursuant to this chapter.

3.26.160 Annual audit.

Each year, as part of audit of the City's financial statements, the City's independent auditors shall complete a report reviewing the collection, management, and expenditure of revenue from the tax levied by this chapter.

3.26.170 Amendments.

The following amendments to this ordinance must be approved by the voters of the City: increasing the tax rate or revising the methodology for calculating the tax such that a tax increase would result; imposing the tax on persons not previously subject to the tax; or extending the tax. The City Council may otherwise amend this Chapter without submitting the amendment to the voters for approval. The City Council may establish rules that are necessary and desirable for implementation of this ordinance.

SECTION 3. Adjustment of Appropriations Limit. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2018-19 and each year thereafter.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. If this ordinance is approved by a majority of the voters voting on the issue at the November 6, 2018 election, pursuant to Elections Code Section 9217, this ordinance shall become effective ten (10) days after the Council declares the results of the election. The tax authorized by the ordinance shall become operative upon the effective date of the Charter of the City of Union City. .

APPROVED by the following vote of the People of the City of Union City on November 6, 2018:

YESES:

NOES:

ADOPTED by Declaration of the November 6, 2018 election results by the City Council of the City of Union City at a regular meeting held on _____, 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS

APPROVED:

Carol Dutra-Vernaci, Mayor

ATTEST:

Anna Brown, City Clerk

APPROVED AS TO FORM:

Kristopher J. Kokotaylo, City Attorney