



COUNCIL AGENDA: 6/20/23  
FILE: 23-931  
ITEM: 8.3

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** May 30, 2023

Approved

Date

6/8/23

**SUBJECT: PROPOSED ONE-YEAR EXTENSION OF THE MEASURE E REAL PROPERTY TRANSFER TAX REFUND FOR QUALIFYING NONPROFIT REAL PROPERTY TRANSFERS PILOT PROGRAM**

## RECOMMENDATION

- a) Approve extending the Measure E Real Property Transfer Tax Refund for Qualifying Nonprofit Real Property Transfers Pilot Program by one year, to June 30, 2024; and
- b) Approve an ordinance amending Section 4.59.230 of Title 4 of the San José Municipal Code that extends the Measure E Real Property Transfer Tax Refund for Qualifying Nonprofit Real Property Transfers Pilot Program to real property purchases that occur by June 30, 2024.

## SUMMARY AND OUTCOME

The Housing Department proposes to extend the Measure E Real Property Transfer Tax Refund for Qualifying Nonprofit Real Property Transfers Pilot Program (Refund Program) an additional year, until June 30, 2024. The purpose of the Refund Program is to provide charitable organizations or affordable housing providers the opportunity to apply for a refund of their Measure E transfer tax payment in exchange for providing City or County of Santa Clara deed-restricted affordable housing or other charitable services in the San José community. Charitable organizations who apply for a refund under this program must demonstrate that they provide direct services in education, health, housing, or human services to extremely low-income San José residents. By extending the Refund Program, the City can further evaluate its effectiveness. The Refund Program in San José did not yield significant results during its two-year trial period. It has been noted that there was only one refund application during the trial period. In spite of this, the one successful application has demonstrated the potential benefit to nonprofit organizations. It is crucial that Measure E funds are

allocated in a manner that best serves the community. Staff recommends a one-year extension of the program to further evaluate the program.

## **BACKGROUND**

On March 3, 2020, San José voters approved Measure E, creating a new real property transfer tax. The tax applies to property transfers of \$2 million or more (adjusted for inflation). It is set at the following rates:

- Transfers from \$2 million to \$5 million: 0.75%
- Transfers from \$5,000,000.01 to \$10 million: 1.0%
- Transfers over \$10 million: 1.5%.

The Measure E transfer tax took effect on July 1, 2020. Since its inception, the City has collected \$225 million in Measure E revenues. On November 10, 2020<sup>1</sup>, City Council approved amendments to Council Policy 1-18 that allocated Measure E revenue into four categories to fund affordable housing and homelessness prevention. The policy was updated again in April 2022 to the current allocation of funds:

- 1) 40% for the creation of new affordable housing for extremely low-income households;
- 2) 30% for the creation of new affordable housing low-income households
- 3) 5% for the creation of new affordable housing for middle-income households,
- 4) 10% for homelessness prevention and rental assistance programs, and
- 5) 15% homeless support programs including shelter construction and operations.

On December 7, 2021, City Council passed the Refund Program. The framework for refunding the tax to qualifying nonprofit organizations and nonprofit affordable developers involves real estate transactions executed for education, health, and human services targeting extremely low-income residents.

Specifically, this direction required that any proceeds from the sale of real property be used by:

- (a) Charitable organizations that:
  - (1) Provide direct services or make grants in the areas of education, health, housing, or human services serving extremely low-income San José residents;
  - (2) Irrevocably use or endow the proceeds from the conveyance of real property subject to the real property transfer tax for a charitable community purpose;
  - (3) Within three years of the property sale, fund direct services or make grants in the areas of education, health, housing, or human services serving extremely low-

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<sup>1</sup> <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4678010&GUID=987F419B-DEDE-4D20-AD2F-7ABA036AD726&Options&Search>

income San José residents in an amount to three times (300%) of the Measure E tax paid and refunded; or

(b) Charitable organizations, or limited partnerships with a general partner charitable organization, who purchase a qualifying affordable housing site.

**ANALYSIS**

Over the last two years, the Housing Department and City Attorney’s Office have been diligently working on developing a straightforward and concise application process for the Refund Program. Unfortunately, it has become increasingly clear that the program has not been able to achieve the desired outcome. The number of applications received has been exceedingly low, with only one submitted thus far. Table 1 below provides a summary of the one application received to date. Additionally, there seems to be little public interest in the program. The administrative workload required to manage the program is disproportionate to the demand for the service as currently structured.

**Table 1: Refund Program Results to Date**

<b>Refund Request</b>	<b>Charitable Purpose</b>	<b>Amount</b>
Markham Plaza II, LP	Qualifying organization that has purchased an affordable housing site	\$405,000

Notably, a refund application approval was granted to a limited partnership that purchased an affordable housing site Markham Plaza II. The Markham Plaza II development provides 151 affordable apartments for formerly homeless persons. The site was developed by CORE Affordable Housing, managed by EAH Housing, a nonprofit affordable housing developer. The approved refund of \$405,000 will be utilized to renovate the property, further contributing to the benefit of the community. This transaction demonstrates that the Refund Program can provide necessary support to charitable organizations and affordable housing providers, and the City’s commitment to supporting charitable organizations and the people they serve.

***Proposed One-Year Extension of the Program***

The Housing Department requests City Council approval to extend the Refund Program until June 30, 2024. The Department's request is based on the potential benefit of the program as demonstrated by the Markham Plaza II project. The Department will collect more data before recommending making the program permanent or terminating the program and reallocating the funds towards the pipeline of affordable housing in San José. Staff will increase outreach efforts and community engagement during this extension.

### ***Need for Measure E Funds***

The Measure E revenue serves as a crucial financial resource for the City of San José in its efforts to fund the development and construction of affordable housing. The request to extend the Refund Program will enable staff to gain more insight to its efficacy. In the event that the Refund Program is discontinued, the funds can be put toward achieving the goal of providing affordable housing for the community. The needs for Measure E funds already outstrip the funds available – discontinuing the Refund Program would allow for more funds to address the needs of our housing and homelessness programs.

### ***Racial Equity Impact Analysis***

When evaluating the potential discontinuation of the Refund Program in San José, it's important to consider the potential impact on racial equity. Continuing the pilot program and regularly assessing its outcomes will prioritize extremely low-income communities of color through the City Council-directed Refund Program. Also, ending the Refund Program could disproportionately affect communities of color and limit their access to the resources that charitable organizations and limited partnerships will receive through this program. According to the Philanthropic Initiative for Racial Justice, only 10% of United States grant dollars go towards people of color<sup>2</sup>, emphasizing the importance of prioritizing communities of color throughout City policies. It is essential to contemplate the continuing consequences of such a decision to end the Refund Program and prioritize racial equity before taking action. Recognizing that the Refund Program can provide resources for charitable organizations is crucial. By conducting an extend evaluation, we can evaluate if the program is effective and equitable and benefits the organizations that rely on these resources and the broader community.

## **EVALUATION AND FOLLOW-UP**

The recommendation outlined in this memorandum will extend the Refund Program to June 30, 2024. Over the coming year, staff will reach out to key stakeholders to understand the components of the Refund Program that are working well and areas that may be improved. Staff will report on the number of refunds sought and awarded in the annual Measure E report sent to the Housing and Community Development Commission which serves as the Measure E Oversight Committee.

## **COST SUMMARY**

If this action is approved by City Council, staff will bring forward appropriation actions as part of the annual budget process setting aside a portion of the Measure E revenues received to issue refunds to qualifying charitable organizations and affordable housing developers.

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<sup>2</sup> <https://racialequity.org/philanthropy-needs-to-deepen-investments-for-racial-and-gender-justice/>

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### **COORDINATION**

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

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 20, 2023 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment; Categorical Exempt, File No. ER21-023, CEQA Guidelines Section 15301, Existing Facilities. Any new development using these funds would be required to undergo review under CEQA.

### **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

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The principal author of this memorandum is Darius Brown, Senior Development Officer. For questions, please contact [Darius.brown@sanjoseca.gov](mailto:Darius.brown@sanjoseca.gov) or (669) 250-8851.