**BALLOT MEASURE QUESTION**

Jurisdiction Name: Union City  
Election Date: 11/6/18

Note: The information as it appears within the text box will be printed on the ballot and voter guide.

Insert ballot question text here:

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 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?

<table>
<thead>
<tr>
<th>TYPE OF MEASURE</th>
<th>PERCENTAGE NEEDED TO PASS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Measure</td>
<td>50% + 1</td>
</tr>
<tr>
<td>Parcel Tax</td>
<td>66.6667%</td>
</tr>
<tr>
<td>Bond Measure</td>
<td>2/3</td>
</tr>
<tr>
<td>Charter Amendment</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FULL TEXT OPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Text to be printed in the Voter Information Pamphlet:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>YES (note: must provide a MS Word file)</td>
</tr>
<tr>
<td>NO – Do not print, but it’s accessible at:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>AUTHORIZED REPRESENTATIVE/CONTACT PERSON</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(office use)</td>
<td></td>
</tr>
<tr>
<td>Print Name:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Phone #:</td>
<td>Email:</td>
</tr>
</tbody>
</table>

| CONTACT INFORMATION                         |  |
| (public use)                               |  |
| Phone #:                                    | Email: annab@unioncity.org |
|                                            | Website: www.unioncity.org |
MEASURE __
CITY ATTORNEY'S IMPARTIAL ANALYSIS

The City Council of the City of Union City is submitting to the voters the question of whether to adopt the Union City Charter to establish Union City as a charter city and to approve an ordinance that would authorize a real property transfer tax (the “Transfer Tax”) on the sale of property.

The City is a general law city bound by the general laws of the State of California, as established by the State Legislature and voter initiative. Charter cities are subject to State laws regarding matters of statewide concern but have sole authority over “municipal affairs” under the California Constitution. A matter is considered a municipal affair when its impact is local while a matter is generally considered of statewide concern where the impact is regional or statewide. Courts resolve whether a matter is a local or statewide affair. As a charter city, the City would possess local control over municipal affairs subject only to the limitations contained in the Union City Charter, the California Constitution, and federal law.

The Union City Charter provides that the City would retain the existing form of government and Municipal Code and requires that the City follow State laws related to: payment of prevailing wage; public contracting; labor relations; and elections. The Union City Charter authorizes the City to impose the Transfer Tax.

The City currently imposes a tax on the transfer of real property at the rate of fifty-five cents ($0.55) per one thousand dollars ($1,000) of value, which is the maximum tax rate permitted for general law cities. For example, a property currently sold for $100,000 results in a tax of $55 paid to the City. The City could impose a tax on the transfer of real property at a greater rate as a charter city.

The Transfer Tax is a tax on the conveyance of real property at the rate of ten dollars ($10) per one thousand dollars ($1,000) of value. Under the Transfer Tax, a property sold for $100,000 would result in a tax of $1,000 paid to the City. The Transfer Tax only applies to the transfer of property for consideration. Thus, for example, the Transfer Tax would generally not apply to property that is solely transferred by inheritance.

The Transfer Tax is a general tax. Therefore, the revenue from the tax will be deposited into the City’s general fund and may be used to maintain city services, including: fire/police protection; youth violence/gang prevention programs; and city parks/senior services. All revenue generated by the Transfer Tax will remain in Union City, and be subject to local control.

A “Yes” vote will adopt the Union City Charter to establish Union City as a charter city and authorize the Transfer Tax. A “No” vote will maintain the City of Union City as a general law city and reject the Transfer Tax. Measure __ would be approved if it received a simple majority of “Yes” votes.

Kristopher J. Kokotaylo, City Attorney
City of Union City
Pursuant to California Government Code Section 34458.5 a proposal to adopt or amend a charter must include a ballot description that enumerates the new city powers as a result of the adoption of the charter, including whether the City Council will have the power to raise its own compensation and the compensation of other city officials without voter approval.

Union City is currently a general law city. Union City would change from a general law city to a charter city if voters approve Measure __.

As a general law city, the powers of the City are defined by the general laws of the State of California, as established by the California Constitution, State Legislature and voter initiative. On the other hand, charter cities have the powers granted to them by their respective charters over “municipal affairs”. Charter cities remain subject to State laws regarding matters of statewide concern. Thus, charter cities possess local control over municipal affairs subject only to the limitations contained in the charter, the California Constitution, and federal law.

The proposed Union City Charter provides that Union City shall have the full power and authority to adopt laws and regulations regarding municipal affairs, except as limited by the Charter itself or applicable State or federal laws. It specifically provides that the City may exercise all powers of a charter city to generate revenue, including the power to enact a real property transfer tax. The proposed Union City Charter also provides that the City shall remain subject to and governed by California laws applicable to general law cities with respect to matters related to: payment of prevailing wage; public contracting; labor relations; and elections. Further, the proposed Charter states that the City’s current Municipal Code would not be altered by the Charter.

The proposed Union City Charter itself does not change the City Council’s authority to raise its own compensation and the compensation of other city officials without voter approval. Currently, under the general laws of the State (Government Code Section 36516) and the Municipal Code, the City Council may increase, by ordinance and without voter approval, their own salaries by up to 5% for each year since the last increase, effective upon the beginning of a new term of a councilmember. The last increase of City Council compensation was in 2008. Under the general laws of the State, the City Council may increase their own salaries by greater than 5% for each year since the last increase with voter approval. The City Council may increase the compensation of other city officials without voter approval.

Because compensation of City officials is a municipal affair, under the proposed Union City Charter, the City Council could enact a law to establish the ability of the City Council to raise the City Council’s compensation or the compensation of other city officials in a manner that is different from the general laws of the State without voter approval. The City Council would have to make any compensation changes at a noticed public meeting. The City Council or Union City residents could also propose amendments to the Charter related to City Council compensation.
ARGUMENT IN FAVOR OF MEASURE ___

**Vote YES on X** – keep OUR money LOCAL! Measure X will enhance local control over local funds for local needs. No Measure X funding can be seized by Sacramento.

The state takes more than $5 million from Union City every year. **YES on X** will expand local control and create a guaranteed funding source that cannot be taken by the state. Much of the revenue generated by Measure X will be paid by large property owners, and corporate and commercial real estate owners.

Many neighboring cities have already become more independent from Sacramento and enhanced their local control of local needs. **YES on X** gives Union City residents a greater voice in THEIR local government. Union City voters – not Sacramento politicians – better understand the needs of Union City.

**YES on X** will maintain essential local services with money that cannot be taken by the state including:

- Police and Fire protection safety services
- Youth violence prevention and gang intervention programs
- City parks, path and playfields that provide children a safe place to play
- Senior services and keeping the Senior Center open

**YES on X** will maintain our core city services, and won’t cost the average tax payer a dime. Only those buying and selling property, including large corporate and commercial real estate owners, pay a one-time charge to help keep Union City a safe, well-maintained community.

Measure X is fiscally accountable, with annual audits and yearly reports to the community to make sure Measure X funds are spent responsibly and as promised.

Enhance our local control and maintain our public safety, parks, and youth and senior services with funding that cannot be seized by Sacramento – **Vote YES on X**!

Join City Council members, Public Safety, Businesses, Youth, and Senior Leaders in voting **YES on X**.

Stan Rodrigues  
Union City Police Officers Association, President

Cara Milgate  
Intero Real Estate, Vice-President

Kelly Klug  
Chamber of Commerce, Co-President

Dan Rivera  
Union City Park and Recreation Commissioner

Joe Baldwin  
Alameda County Firefighters Local 55, Vice President
ARGUMENT AGAINST MEASURE

Union City voters should vote NO on becoming a Charter city. Why? All three CA cities that have filed bankruptcy were Charter cities: San Bernardino, Stockton and Vallejo. Charter cities are exempt from state laws on salary limits for elected officials. For example, the City of Bell paid its City Manager $800,000/year and Council members $100,000/year. Do you want this in Union City? Also, Charter cities are exempt from 1986 Proposition 62, which mandates a public vote whenever cities want to raise taxes on business licenses, hotel rooms, certain real estate transactions and other items. Do you want to waive your vote if the City wants to increase your taxes? You are already burdened with one of California’s highest sales tax rates at 10%. Now the City wants to add a real estate transfer tax that will significantly increase the cost for you to sell or buy a home or business in Union City. The City is taxing us two years later for the same programs in Measure QQ. Why are they requesting more taxes? The City is not managing our tax dollars wisely and is asking for the freedom to increase taxes without voter approval. Vote NO on Measure “____”.

Eva Kamakea
Union City Senior Citizens Commissioner

Cathy Keesee
Certified Nurse Assistant

Maria Ramirez
Union City Resident

Elizabeth Ames
Former Union City Planning Commissioner
The fact is, Sacramento takes more than $5 million EVERY year from Union City. This is a serious situation that must be addressed to maintain our safety, local control over local needs, and quality of life. YES on X funding – by law – cannot be taken by Sacramento!

**FACT:** YES on X helps maintain critical police, fire, youth, senior and parks services, but doesn’t cost the average person a dime. Only those buying and selling property pay a one-time fee.

**FACT:** Much of the revenue from Measure X will be paid by corporate and commercial real estate owners – NOT the average resident. Without Measure X, large property owners will never have to pay their fair share, while residents continue to shoulder costs of maintaining our safety and quality of life.

Opponents are using untrue scare tactics – don’t believe them!

**FACT:** Many nearby cities – Hayward, Piedmont, Emeryville, Alameda, Albany, San Leandro, and others – are ALL Charter cities. Union City residents also deserve more local control over THEIR city. Local funding, for local needs – not to fix Sacramento’s budget!

**FACT:** Union City is fiscally accountable – including audits and public review to ensure Measure X funds are spent responsibly and as promised.

That’s why the local Chamber of Commerce, realtors, public safety professionals, and residents across Union City all say YES on X – maintain our public safety and keep our money LOCAL. It’s a no-brainer – **Vote YES on X**!

For the facts, visit: [www.unioncity.org/ballot](http://www.unioncity.org/ballot) measures

---

Domingo Filardo  
Senior Commissioner

Cara Milgate  
Intero Real Estate, Vice-President

Jo Ann Lew  
Planning Commissioner

Jeanelle Singh  
Local Small Business Owner

Roger Gonzalez  
50 + year resident and taxpayer
REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE “_____”

VOTE NO on Measure “_____” which would create a City Charter. Do you like paying extra taxes for Basic City Services? Did you know these taxes just pay for high city staff salaries and pension costs?

Annual taxes to residents include:

- 2010 Measure AA, then again with the 2014 Measure JJ Union City residents pay 10% sales tax one of the highest state rates, $3.1 million for the City.
- 2016 Measure QQ Union City residents pay a $123/parcel tax, $4.1 million for the City.

Union City is already imposing more than $7 million annually in extra taxes on its residents.

The City will ask for approval of Measure _____, a Real Estate Transfer at $10/$1,000 in valuation on your home when it sells. For a $1 million dollar property, $10,000 is the cost to you. Would you not want to give this $10,000 to your children/family vs. giving it to the City to pay for city staff pensions and bloated city salaries?

The proposed Measure “_____” tax would be the 6th highest in CA. Union City would be 1 of only 22 cities out of 482 (4.6% of all CA cities), to impose such a high tax. This tax along with others already imposed above, has made Union City uncompetitive for business investment. The only way the City can get you to pay this tax is if you approve the proposed change to a Charter City. VOTE NO on Measure “_____”

____________________________________________________
Eva Kamakea  
Union City Senior Citizens Commissioner

____________________________________________________
Cathy Keesee  
Certified Nurse Assistant

____________________________________________________
Maria Ramirez  
Union City Resident

____________________________________________________
Elizabeth Ames  
Former Union City Planning Commissioner
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.
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 be 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 XIIIC, 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.
3.26.050 Tax rate.
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.
3.26.120 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.

3.26.010 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.


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.


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.


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.


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.


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 owned 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.


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.

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 XIIIB 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: APPROVED AS TO FORM:

_____________________________   ______________________________
Anna Brown, City Clerk    Kristopher J. Kokotaylo, City Attorney