

## MEASURE B

### CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE B

Measure B is a ballot measure that, if approved by a majority of the voters, would amend the San Jose Municipal Code to enact a one-quarter percent (0.25%) transactions and use tax. The Measure is a "general" tax, which means the City of San Jose may use the tax revenues for any governmental purpose, including improving police response to reduce violent crimes and burglaries; improving 911/emergency medical/fire response times; repairing potholes and streets; expanding gang prevention; and maintaining the City's long-term financial stability. The tax would terminate automatically on September 30, 2031, unless extended by voters.

If approved, Measure B would also require annual financial audits and yearly reports of the tax revenues. Additionally, the City Council would be required to appoint an independent citizen oversight committee that would review expenditures of the tax revenues.

While Measure B, which was placed on the ballot by the City Council, is a "transactions and use tax", it is commonly referred to as a sales tax. A transactions and use tax is levied on the same purchases as the existing sales tax with some minor exceptions.

Currently, the cumulative tax rate on retail sales in San Jose is 8.75% of the purchase price. The tax revenue is allocated among the State, Santa Clara County, the City, and other public agencies. San Jose's share is 1% of the purchase price. Measure B would increase the cumulative tax rate in San Jose to 9.00% and San Jose's share would increase from 1% to 1.25%.

Retailers and other businesses that collect the sales tax and the transactions and use tax at the time of sale remit the funds to the State Board of Equalization which administers these taxes, including transmitting payment to the City.

A "Yes" vote is a vote to approve a one-quarter percent transactions and use tax for 15 years.

A "No" vote is a vote against the transactions and use tax.

/s/ Richard Doyle  
City Attorney, City of San Jose

## COMPLETE TEXT OF MEASURE B

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE BY ADDING A NEW CHAPTER 4.60 ENACTING A RETAIL TRANSACTIONS AND USE TAX, ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, SUBJECT TO APPROVAL OF A MAJORITY OF THE ELECTORS VOTING ON THE TAX MEASURE AT THE SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, JUNE 7, 2016**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 4 of the San Jose Municipal Code is hereby amended to add a new Chapter, to be numbered, entitled and to read as follows:

### **CHAPTER 4.60 TRANSACTIONS AND USE TAX**

#### **4.60.010 Ordinance Title**

This ordinance shall be known as the City of San Jose Transactions and Use Tax Ordinance. The City of San Jose hereinafter shall be called "City". This ordinance shall be applicable in the incorporated territory of the City.

#### **4.60.020 Operative Date**

"Operative Date" means the first day of the first calendar quarter commencing more than one hundred ten (110) days after the adoption of this ordinance, the date of such adoption being as set forth below.

#### **4.60.030 Purpose**

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the California Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
- B. To adopt a retail transactions and use tax for the purpose of raising revenue for general municipal purposes. All taxes, penalties and interest collected under this Chapter 4.60 shall be deposited in the general fund of the City.
- C. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
- D. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.
- E. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of

## COMPLETE TEXT OF MEASURE B-Continued

the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

### **4.60.040 Contract with State**

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

### **4.60.050 Transactions Tax Rate**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of .25% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

### **4.60.060 Place of Sale**

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or the retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State of California or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

### **4.60.070 Use Tax Rate**

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of .25% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

### **4.60.080 Adoption of Provisions of State Law**

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

### **4.60.090 Limitations on Adoption of State Law and Collection of Use Taxes**

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefore. However, the substitution shall not be made:
  1. When the word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California; or

## COMPLETE TEXT OF MEASURE B-Continued

2. When the result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance.
3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
  - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or
  - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that code.
4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

### **4.60.100 Permit Not Required**

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

### **4.60.110 Exemptions and Exclusions**

- A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.
- B. There are exempted from the computation of the amount of transactions tax the gross receipts from:
  1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.
  2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or the retailer's agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:
    - a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with

## COMPLETE TEXT OF MEASURE B-Continued

Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
  3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
  4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.
  5. For the purposes of subparagraphs (3) and (4) of this Section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.
  2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.
  3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.
  4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.
  5. For the purposes of subparagraphs (3) and (4) of this Section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

## COMPLETE TEXT OF MEASURE B-Continued

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.
  7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

### **4.60.120 Amendments**

- A. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.
- B. The foregoing amendments shall not require voter approval.
- C. 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 transactions and uses not previously subject to the tax (unless such amendment occurs automatically by operation of the preceding paragraph).

### **4.60.130 Enjoining Collection Forbidden**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

### **4.60.140 Annual Audit**

Pursuant to Section 1215 of the City's Charter, as may be amended, the revenues from the tax imposed by this Chapter shall be subject to the annual audit performed by the City's independent auditor of the City's municipal books, records, accounts and fiscal procedures and which is reported in the City's Comprehensive Annual Financial Report.

## COMPLETE TEXT OF MEASURE B-Continued

### **4.60.150 Citizen Oversight Committee**

An Independent Citizens Oversight Committee appointed by the City Council shall review the expenditures of revenues generated by the tax imposed by this Chapter.

### **4.60.160 Severability**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

### **4.60.170 Effective Date and Operative Date**

This ordinance relates to the levying and collection of the City's transactions and use taxes and shall become effective immediately under the authority of City Charter Section 605(c) and shall become operative only if approved by a majority of the voters voting on the measure at the June 7, 2016 Special Municipal Election. The Operative Date of this ordinance shall then be October 1, 2016 as provided in Section 4.60.020.

### **4.60.180 Sunset Date**

This ordinance shall expire on September 30, 2031, unless otherwise extended by voter approval.

## ARGUMENT IN FAVOR OF MEASURE B

Mayor Liccardo, San Jose police officers, firefighters, and business leaders agree: Measure B will make our city **safer and stronger**.

**Measure B is needed to improve police response times.** We have lost hundreds of police officers, making it difficult to respond quickly to 911 calls. Measure B will make funding available to hire more officers.

**Measure B is needed to reduce response times for medical emergencies, when every second counts.** Measure B raises funds that can be used to ensure that those suffering from heart attacks, strokes, or other emergencies get an immediate response.

**Measure B is needed to help fight gangs and drug crimes.** It will raise funds that can be used to expand gang suppression and prevention programs, crack down on drug dealers, and provide options for at-risk youth.

**Measure B is needed to repair roads and infrastructure.** San Jose has over 550 miles of major streets and neighborhood roads rated as being in "poor" or "failed" condition, with many containing huge potholes. Every dollar of Measure B revenue used to fix poor roads today will save \$5 reconstructing those same roads later.

Measure B allows us to avoid debt and provides needed funding to invest in important basic services like:

- Improving 911 police and fire response times;
- Improving police response to violent and property crimes;
- Restoring additional police officers on patrol;
- Expanding proven anti-crime programs like gang prevention and after-school academics;
- Restoring fire engines, paramedic and firefighting services;
- Repairing streets.

**Measure B has strong accountability provisions.** It requires independent citizens' oversight and annual financial audits to help ensure funds are spent appropriately.

Now that we've tightened our belts through fiscal reforms and cut costs, we need this temporary measure to restore basic city services.

For a safer San Jose, Vote Yes on Measure B. Find out more at **[www.sjprotectsvitalservices.com](http://www.sjprotectsvitalservices.com)**.

/s/ Sam Liccardo  
Mayor of San Jose

/s/ Rob Davis  
San Jose Chief of Police (Retired)

/s/ Matthew R. Mahood  
President & CEO, San Jose Silicon Valley Chamber of Commerce

/s/ Richard Konda  
Asian American Non-Profit Leader

/s/ Ivy Vuong  
Business Owner



## REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE B

The argument in favor of this blank check tax increase says that it will be spent on police and roads. However, there is no legal guarantee whatsoever.

Let's repeat that: **there is no legal commitment to spend your tax dollars on core city services**. Your tax dollars can actually be spent on a whim at each weekly city council meeting.

For example the City of San Jose created a brand new program called Office of Immigration Affairs. This new program staffed by city employees provides service to undocumented residents and their families. Whatever your opinion is on immigration, we can all agree this is a federal responsibility, not a city responsibility, such as road maintenance and providing police protection.

Tax dollars should be spent on core services like police and roads and not on new programs that the city has never offered and are not in the city charter.

Vote no on measure B and have the city council bring back a tax that is 100% legally dedicated to pay for police and roads.

The city continues to spend millions of your tax dollars every year to subsidize three golf courses, a luxury hotel, Mexican Heritage Plaza, and million dollar bailouts for art groups that go bankrupt.

Vote NO on a tax that has zero restrictions, which can and will be spent on anything. Vote no to tell them police and roads are a priority.

For more information, please visit our website:

[www.SVTaxpayers.org/2016-san-jose-sales-tax](http://www.SVTaxpayers.org/2016-san-jose-sales-tax)

/s/ Pierluigi Oliverio  
Councilmember

/s/ Mark W.A. Hinkle  
President: Silicon Valley Taxpayers Association

/s/ Jerry Mungai  
San Jose Resident

/s/ Elizabeth C. Brierly  
San Jose homeowner

## ARGUMENT AGAINST MEASURE B

Budgets reflect priorities, especially with expenditures.

What's in the budget is a priority.

What is NOT in the budget is NOT a priority.

That means that the projects the San Jose City Council wants to fund (police, fire, road improvements) with new taxes are NOT a priority because they're not in the current budget.

If it's NOT a priority for the City Council, why should the voters of San Jose support any new taxes? Answer: they shouldn't.

The streets of San Jose are terrible. If the San Jose City Council thinks they are a priority, then why is road maintenance under-funded?

Because they don't consider roads a priority. Do you agree?

The City Council says we need to hire more police to be fully staffed. Again, if money for new police isn't in the current budget, that means that everything currently in the budget is higher priority than a fully staffed police department is. Do you agree?

What does the City Council think is more important than police, fire, and roads?

Answer: Three golf courses, a luxury hotel, the Mexican Heritage Plaza, and millions to subsidize art groups that go bankrupt. Do you agree?

Remember, sales taxes are regressive: they most hurt the poor, the unemployed, the homeless, and those on fixed incomes.

Furthermore, high sales taxes drive consumers to shop the Internet to avoid sales taxes, hurting local businesses, and local jobs.

One final thought: the levels of taxes we pay are either:

1. too high
2. about right
3. too low

If you think taxes are too low, by all means, raise them. But, if you think taxes are about right or too high, you should oppose this sales tax increase, and **Vote NO on Measure B**.

For more information, please visit:

[www.SVTaxpayers.org/2016-san-jose-sales-tax](http://www.SVTaxpayers.org/2016-san-jose-sales-tax)

/s/ Pierluigi Oliverio  
Councilmember

/s/ Mark W.A. Hinkle  
President: Silicon Valley Taxpayers Association

/s/ Elizabeth C. Brierly  
San Jose Resident

/s/ Steven B. Haug  
Treasurer SVTA

## REBUTTAL TO ARGUMENT AGAINST MEASURE B

As a city, we've tightened our belts, passed fiscal reforms and used the savings to help us improve public safety. But there's more that must be done to balance our budgets while keeping our neighborhoods safe.

That's why a broad coalition has united behind Measure B.

Mayor Sam Liccardo, the Silicon Valley-San Jose Chamber of Commerce, San Jose police and firefighters, community and business leaders all agree—we need Measure B.

We agree that we must improve police response times.

We agree that we must reduce response times for medical emergencies.

We agree that we must expand gang suppression and prevention programs and provide at-risk youth with better opportunities.

We agree that we must repair our roads and fill potholes.

We agree on the priorities for San Jose—and Measure B will raise revenue to help fund those priorities and make our city safer and stronger.

Opponents of Measure B argue that we need to cut other programs to invest in these services, but this isn't correct. In the past ten years, San Jose has reduced its workforce by nearly 23% and agreed on substantial pension savings.

We don't want to close libraries and parks in order to improve public safety and repair our streets. The public wants, and deserves, to have our basic priorities supported.

Our coalition includes city leaders, labor and business—and we all agree that we need Measure B.

If you agree that we should do more to strengthen San Jose, join our bipartisan coalition in voting "Yes on Measure B."

Learn more at [www.sjprotectsvitalservices.com](http://www.sjprotectsvitalservices.com).

/s/ Jim Cunneen  
Republican Former State Assemblymember, Former CEO of San Jose Silicon Valley Chamber of Commerce

/s/ Adonna J. Amoroso  
Deputy Chief of Police—Retired

/s/ Thang Do  
President, Aedis Architects, San Jose

/s/ James H. Carter  
Deputy Chief San Jose Fire Dept Retired

/s/ Esther C. Faria  
Owner of Bellarmine Barber Shop