

## MEASURE A

### COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF MEASURE A

Measure A would authorize an extension of the County of Santa Clara's (the "County's") 0.125% (one-eighth cent) sales tax, approved by the County's voters in November 2012. This 0.125% County-wide sales tax is set to expire on March 31, 2023, and this Measure A would extend the current tax on an ongoing basis. The sales tax is a general tax, meaning the County can use the funds that the tax generates for any County purposes.

Until March 31, 2023, the County-wide sales tax rate is 9.0%, with two main parts:

- 7.25% in State taxes, part of which the County receives; and
- 1.75% in County-wide taxes, of which 1.625% funds transportation services.

Campbell and San Jose impose additional city sales taxes of 0.25% (one-quarter cent), for a total sales tax rate of 9.25% in those cities.

Measure A would extend the County-wide 0.125% sales tax rate approved by the County's voters in November 2012, on an ongoing basis. Measure A would maintain the current total sales tax rate of 9.0% for most of the County. The tax would continue to apply to most retail sales in the County. The total sales tax rate in Campbell and San Jose would continue to be 9.25%. The Town of Los Gatos will also consider an additional 0.125% sales tax increase at the November 6, 2018 election. If the County's voters approve this Measure A, and Los Gatos' voters approve its tax increase, the total sales tax rate in Los Gatos would be 9.125%.

The sales tax that would be extended by Measure A would continue to be a general tax, so the County could use funds from the tax for any County purposes. For example, as stated in the measure, the tax funds could be used for law enforcement and public safety, trauma and emergency room services, affordable housing, supportive services for the homeless, transit for seniors and the disabled, mental health services, agricultural preservation, services for children and families, and other governmental uses.

The measure requires approval by a majority of the votes cast in the County. The measure requires the County to issue an annual report summarizing the use of funds collected through this tax.

A "yes" vote is a vote to approve an extension of the existing County-wide sales tax of 0.125% (one-eighth cent tax), on an ongoing basis.

### COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF MEASURE A-Continued

A "no" vote is a vote to reject the extension of this County-wide sales tax of 0.125% (one-eighth cent tax) and allow it to expire on March 31, 2023.

Prepared by:

/s/ Andrew Shen  
Deputy City Attorney, City and County of San Francisco

On behalf of:

/s/ James R. Williams  
County Counsel

## COMPLETE TEXT OF MEASURE A

### ORDINANCE NO. NS-7.19

#### AN ORDINANCE CONTINUING THE EXISTING ONE-EIGHTH OF ONE CENT RETAIL TRANSACTIONS (SALES) AND USE TAX IN THE COUNTY OF SANTA CLARA ON AN ONGOING BASIS

##### Summary

Pursuant to California Revenue and Taxation Code Section 7285, this Ordinance continues the existing one-eighth of one cent retail transactions (sales) and use tax in the County of Santa Clara on an ongoing basis unless repealed by voters.

**WHEREAS**, on November 6, 2012, the voters of the County of Santa Clara approved Ordinance NS-7.13 imposing a one-eighth of one cent sales tax to be used for vital County purposes, including local priorities such as law enforcement and public safety, trauma and emergency room services, health coverage for low-income children, economic development and job creation, housing for the homeless, and programs to help students stay in school, with annual public reports to ensure financial accountability;

**WHEREAS**, the sales tax imposed by Ordinance NS-7.13 will expire March 31, 2023 by the terms of the ordinance;

**WHEREAS**, the County's need for sales tax revenue is projected to extend beyond March 31, 2023, to provide crucial services for County residents;

**WHEREAS**, the Board of Supervisors of the County of Santa Clara determines that it is in the public interest to continue the existing one-eighth of one cent sales tax on an ongoing basis unless repealed by voters;

**WHEREAS**, in order to continue the existing sales tax accordingly, the Board desires to adopt a transactions and use tax ordinance superseding Ordinance NS-7.13 to levy a tax of one-eighth of one cent that would continue on an ongoing basis unless repealed by voters;

**WHEREAS**, the tax revenues would continue to address vital local priorities, such as law enforcement and public safety; trauma and emergency care for the community; affordable housing; supportive services for the homeless; transit for seniors and the disabled; mental health services; agricultural preservation; services for children and families; and a more responsive and effective government; and,

**WHEREAS**, if the ordinance superseding Ordinance No. NS-7.13 is not approved by the voters, Ordinance No. NS-7.13 will remain effective and the one-eighth of one cent sales tax will continue to be levied until the expiration date of March 31, 2023.

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE  
COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:**

SECTION 1. Ordinance No. NS-7.13 is hereby superseded by the following as of the Operative Date:

##### **Sec. 1. Title.**

## COMPLETE TEXT OF MEASURE A-Continued

This ordinance shall be known as the County of Santa Clara Retail Transactions and Use Tax Ordinance. The County of Santa Clara hereinafter in this ordinance shall be called "County." This ordinance shall be applicable in the incorporated and unincorporated territory of the County.

##### **Sec. 2. Operative Date.**

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

##### **Sec. 3. Purpose.**

This ordinance is adopted to achieve the following purposes, among others, 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 Revenue and Taxation Code and Section 7285 of Part 1.7 of Division 2, which authorizes the County to adopt this tax ordinance, and 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 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.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization or Department of Tax and Fee Administration, as applicable, 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 or Department of Tax and Fee Administration, as applicable, in administering and collecting the California State Sales and Use Taxes.

D. 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 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.

##### **Sec. 4. Contract With State.**

Prior to the Operative Date, the County shall contract with the State Board of Equalization or Department of Tax and Fee Administration, as applicable, to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the County shall not have contracted with the State Board of Equalization or Department of Tax and Fee Administration, as applicable, 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.

## COMPLETE TEXT OF MEASURE A-Continued

### Sec. 5. Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of one-eighth of one cent (0.125%) 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.

### Sec. 6. 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 his or her 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 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 or Department of Tax and Fee Administration, as applicable.

### Sec. 7. Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the County 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 one-eighth of one cent (0.125%) 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.

### Sec. 8. 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.

### Sec. 9. 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 County shall be substituted therefor. However, the substitution shall not be made when:

1. 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 Department of Tax and Fee Administration, State Treasury, or the Constitution of the State of California.

2. The result of that substitution would require action to be taken by or against this County or any agency, officer, or employee

## COMPLETE TEXT OF MEASURE A-Continued

thereof rather than by or against the State Board of Equalization or State Department of Tax and Fee Administration, 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 "County" 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.

### Sec. 10. 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.

### Sec. 11. 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 County which is shipped to a point outside the County, pursuant to the contract of sale, by delivery to such point by the retailer or his 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 County shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with

### COMPLETE TEXT OF MEASURE A-Continued

Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with 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-County 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-County and a 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 County 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

### COMPLETE TEXT OF MEASURE A-Continued

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.

6. Except as provided in subparagraph (7), a retailer engaged in business in the County 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 County or participates within the County 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 County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" 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 County.

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 County 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.

### Sec. 12. Amendments.

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.

### Sec. 13. 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 County, or against any officer of the State or the County, 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.

### Sec. 14. Non-reliance on Section 7292.4.

For the avoidance of doubt, this ordinance is not adopted under the authority granted to the County by Section 7292.4 of the Revenue and Taxation Code.

### Sec. 15. Fiscal Accountability.

In order to ensure public fiscal accountability, the County shall

## COMPLETE TEXT OF MEASURE A-Continued

provide a public report summarizing all expenditures of funds raised pursuant to this ordinance on an annual basis.

### Sec. 16. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. Each section, subsection, sentence, clause and phrase hereof, would have been adopted irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be held invalid.

### Sec. 17. Effective Date.

This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect immediately, and shall supersede Ordinance No. NS-7.13 as of the Operative Date.

### Sec. 18. Termination Date.

The authority to levy the tax imposed by this ordinance shall continue on an ongoing basis unless and until repealed by the voters.

**SECTION 2.** This Ordinance, and all the provisions thereof, shall become effective only upon affirmative passage by a majority of the eligible voters of this County.

**SECTION 3.** The purpose of this Ordinance is to establish a government funding mechanism for general County purposes and the County is not committing to a course of action with respect to the tax revenue and therefore the ordinance is not a "project" subject to the California Environmental Quality Act (CEQA) as defined in Section 15378, subdivision (b)(4), of the CEQA Guidelines.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California on, JUL 03 2018 by the following vote:

AYES: CHAVEZ, CORTESE, SIMITIAN, WASSERMAN, YEAGER

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

/s/ S. Joseph Simitian  
President, Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

/s/ Tiffany Lennear  
Assistant Clerk of the Board of Supervisors

## ARGUMENT IN FAVOR OF MEASURE A

### Yes on Measure A continues critical County services without raising taxes.

These funds help maintain:

- affordable health insurance for children;
- law enforcement and public safety programs;
- mental health services for adults and children;
- trauma and emergency room services at Valley Medical Center;
- transit programs for seniors and the disabled;
- and, other vital County services.

With the uncertainty of federal funding from Washington D.C., we must take steps locally to protect critical services for seniors, children, low-income families—all of us.

**Yes on Measure A continues** an existing 1/8<sup>th</sup> cent sales tax generating \$50 million annually for these services.

**Yes on Measure A** helps maintain high quality programs at Valley Medical Center hospitals and clinics—used by almost one out of four County residents—including ER, burn center, rehabilitation center, neo-natal intensive care, cancer care, and other trauma services.

**Yes on Measure A** is critical to continued funding for public safety, expanding affordable housing opportunities, and children's access to quality childcare and preschool.

**Yes on Measure A** for essential public safety services including combating gang violence, drugs, domestic violence, and domestic violence protection programs to keep our communities safe.

**Yes on Measure A** allows the County to offer affordable childcare and preschool for all children.

**Yes on Measure A** allows Santa Clara County to fund innovative housing solutions for the homeless, which is far more cost-effective than emergency medical and health care or other services for the chronically homeless.

Annual audits and public reports have ensured that funds are spent properly, transparently and county officials are accountable to taxpayers. These audits and reports are mandated to continue.

### ARGUMENT IN FAVOR OF MEASURE A-Continued

Please join many including health professionals, senior advocates, children service providers, law enforcement, business and labor organizations-**Yes on Measure A** to protect these vital services.

[www.Yes-MeasureA.com](http://www.Yes-MeasureA.com)

/s/ Jeff Rosen  
Santa Clara County District Attorney

/s/ Adam Cosner  
President, Santa Clara County Firefighters

/s/ Gregg Adams  
Former Santa Clara Valley Medical Center Chief of Pediatric Trauma,  
Stanford School of Medicine Clinical Associate Professor of Surgery

/s/ Rosemary C. Kamei  
Santa Clara County Board of Education Member

/s/ Marilyn P. Mara  
Public Health Nurse

### REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE A

The County of Santa Clara seems to have a tax measure on the ballot every election, and sometimes two in the same year! November 2016, June 2016, November 2012, November 2010, November 2008 ... and 2018 is no different.

The County says this tax money will be spent on basic services; however the reality is this money will likely go towards paying for six figure pensions including pensions that exceed the IRS limit of \$235,000 per year! **Pension costs at the County will double, in the next six years according to CalPERS.** This means less money for fixing our roads, and higher taxes!

The Mercury News and NBC has reported extensively about irresponsible county spending such as:

- \$180 million overspent on just one new building, approximately 100% over budget.
- Creating a bigger bureaucracy by adding more management positions with the top manager being paid over \$500,000 a year in total compensation.
- \$11 million dollars of hospital equipment went missing.
- Paid \$1.4 million to settle a wrongful termination.
- County badges made with real gold and sterling silver.
- Last but not least, \$5 million for new statues?

Vote for fiscal accountability, **vote no on measure A.**

The County of Santa Clara should stop raising taxes again and again until they get their priorities straight.

#### **Vote No on Measure A.**

We need voters to keep The County in check from wasteful spending since they apparently will not do it themselves.

For more information go [www.SVtaxpayers.org](http://www.SVtaxpayers.org)

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

/s/ Pierluigi Oliverio  
Former San Jose Councilmember

/s/ John Inks  
Retired Aerospace Engineer

## ARGUMENT AGAINST MEASURE A

The County of Santa Clara seems to have a tax measure on the ballot every election, and sometimes two in the same year. Nov 2008, Nov 2010, Nov 2012, June 2016, Nov 2016...and 2018 is no different.

The County will tell you this tax money will be spent on basic services, however reality paints a different picture. In all likelihood, the money derived from this latest tax measure will go towards paying for six figure pensions, including those pensions that exceed the IRS limit of \$235,000 per year. According to CalPERS own data, pension costs at the County will double in the next six years. Despite higher taxes, this will undoubtedly translate into less money for core county services, such as fixing our county roads, helping the severely mentally ill and protecting our county election system from fraud.

The Mercury News and other media have reported extensively about irresponsible county spending, and frivolous "pet" projects:

- \$180 million overspent on just one new building, approximately 100% over budget.
- Creating a bigger bureaucracy by adding more management positions with the top manager being paid over \$500,000 a year in total compensation.
- Gambled \$392 million in bond proceeds to cover rising pension costs
- \$11 million dollars of hospital equipment went missing.
- Paid \$1.4 million to settle a wrongful termination.
- County badges made with real gold and sterling silver.
- Considered a \$1.15 million contract to hire a New York PR firm until multiple news articles called out the contract as frivolous.
- \$5 million for new statues.

The County of Santa Clara needs to **stop** raising taxes again and again until they get their priorities straight and can be held accountable.

Voters have had enough of wasteful spending with zero accountability and zero transparency. Please join us in voting NO on Measure A.

For more information go [www.SVtaxpayers.org/2018-measure-a](http://www.SVtaxpayers.org/2018-measure-a)

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

/s/ Pierluigi Oliverio  
Former San Jose Councilmember

/s/ Jennifer Imhoff  
Chair, Libertarian Party of Santa Clara County

/s/ John Inks  
Retired Aerospace Engineer

## REBUTTAL TO ARGUMENT AGAINST MEASURE A

Measure A continues critical funding for Valley Medical Center's Trauma Unit, Burn Unit, neo-natal intensive care unit, cancer care unit and other important health services for Santa Clara County residents—**without raising taxes**.

Measure A ensures important public safety programs including targeted efforts to reduce gang violence, combat drug dealing, and domestic violence prevention continue—all to keep our children, families and neighborhoods safe—**without raising taxes**.

Measure A means that we can help children have access to quality healthcare insurance and services, childcare programs and preschool options—**without raising taxes**.

Measure A helps fund creative and innovative homeless housing programs that not only place homeless families and others in affordable homes but are more cost-effective than expensive emergency health care programs that would normally be implemented—**without raising taxes**.

Measure A funds efforts to create affordable housing for working families, seniors and first-time homeowners; transportation programs for seniors; services assisting the disabled; mental health programs; and other programs for children and families—**without raising taxes**.

Measure A ensures that County public safety services—firefighters, ambulance services, animal welfare, and law enforcement all continue—**without raising taxes**.

Strict accountability and transparency provisions are required by this measure. Public audits and annual reports are published for review.

Support for Measure A includes businesses and labor organizations, non-profit organizations, nurses, doctors, firefighters, law enforcement professionals, teachers, and elected officials from all political parties. Please join us and them in ensuring these funds continue—**without raising taxes**.

### Vote Yes on Measure A.

[www.Yes-MeasureA.com](http://www.Yes-MeasureA.com)

/s/ Laurie Smith  
Santa Clara County Sheriff

/s/ Meri Maben  
Healthier Kids Foundation Board Member

/s/ Miguel Espana  
Hispanic Chamber of Commerce Silicon Valley, Chair, Board of Directors

/s/ Stephen Harris  
Chair, Department of Pediatrics, Santa Clara Valley Medical Center

/s/ Gail Anne Osmer  
Santa Clara County Senior Care Commissioner

## MEASURE S

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

Section 1217 of Article XII of the San Jose City Charter sets forth the requirements for procuring public works contracts exceeding \$100,000. Measure S, which the City Council placed on the ballot, would make several changes to Section 1217 and reorganize it.

Currently, Section 1217 makes public bidding the primary procurement method for public works contracts exceeding \$100,000. It requires the City to award such contracts to the lowest responsive and responsible bidder. The San Jose Municipal Code, not Section 1217, governs procurement of public works contracts under the \$100,000 threshold.

The \$100,000 threshold was last increased from \$50,000 in November 2001. Section 1217 does not authorize the threshold to increase with inflation.

Measure S would increase the threshold to \$600,000 and would authorize annual adjustments for inflation in the construction industry.

Currently, Section 1217 makes the bid amount the exclusive means of determining the lowest responsive and responsible bidder. Although this would remain the primary means of determining the low bidder, Measure S would add an alternative patterned on approaches used by the University of California and the City and County of San Francisco.

This alternative would allow consideration of a bidder's qualifications. A panel, without knowing the bid amounts, would assign each bidder a qualification score based on an evaluation of objective criteria in areas such as a bidder's safety record, past performance, labor compliance, demonstrated management competence, financial condition and relevant experience. The City would use a formula based on the bid amount and qualification score to determine the low bidder. Measure S provides that the City Council would adopt an ordinance setting forth this alternative approach.

Currently, Section 1217 allows the City to procure a "design-build" contract without public bidding if (1) the contract exceeds \$5,000,000, and (2) the City Council determines the contract would save money or result in faster project completion. Measure S would lower the threshold to \$1,000,000. This change would align Section 1217 with State law applicable to the use of design-build contracts by certain local agencies.

Currently, Section 1217's low-bid requirement prevents the City from implementing certain otherwise lawful programs supporting the use of small, local and economically disadvantaged businesses. For example, the City has a small and local preference program that it can apply only to contract procurements **not** subject to Section 1217's low-bid requirement. Measure S would add the necessary authorization for the City to apply such programs to contracts subject to Section 1217's low-bid requirement.

Currently, Section 1217 requires the City Council to publish notices inviting bids in a newspaper of general circulation. Measure S would allow electronic publication of such notices.

Currently, Section 1217 excludes maintenance and repairs incidental to maintenance from the definition of public works project. Measure S would clarify that construction, erection, improvement or demolition incidental to maintenance is also excluded.

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE S-Continued

Finally, Measure S would make non-substantive, organizational changes to Section 1217.

A "Yes" vote would amend the City Charter to implement the changes described above.

A "No" vote would not make these changes.

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

The above statement is an impartial analysis of Measure S. If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?nid=5694> or call 408-535-1260 and a copy will be sent at no cost to you.