

**CITY OF PALO ALTO
MEASURE K**

Shall the measure to raise funds for public safety, affordable housing, rail crossing safety, homeless services, and general city services, by levying a tax on businesses in the City of Palo Alto at a monthly rate of 7.5 cents per square foot occupied by a business, up to \$500,000 per business, with annual 2.5% adjustments for inflation and exemptions for grocery stores and businesses under 10,000 square feet, raising approximately \$9.6 million annually for 35 years, be adopted?

**YES
NO**

**CITY ATTORNEY'S IMPARTIAL ANALYSIS OF
MEASURE K**

The Palo Alto City Council has placed this measure on the ballot. If voters approve it, the measure would amend the Municipal Code to add a tax on businesses operating in Palo Alto.

Background: Unlike most communities in California, Palo Alto does not currently require local businesses to contribute to city services through a local business tax. After lengthy discussions and outreach, the City Council decided to seek voter approval to tax mid-sized and large businesses operating in the City to raise funds for general city services, including public safety, affordable housing, transportation and train crossing safety, and homeless services.

The Measure: The measure would amend the City's Municipal Code to establish a tax on businesses operating in the City of Palo Alto as follows:

- Businesses would pay a tax of seven and one-half cents (\$0.075) per month for each square foot of space occupied by the business in Palo Alto above 10,000 square feet.
- No tax would be imposed on:
 - Small businesses (10,000 square feet or less)
 - Grocery stores
 - Residential uses
 - Vacant and unoccupied space
 - Non-profit organizations, schools, and banks and financial institutions, as required by State law
- Offsets, or tax credits, would be made for businesses that remit transient occupancy tax (hotels) and businesses that have discretion to direct sales and use activity to Palo Alto for purposes of paying sales and use taxes.
- The total tax on a business would be capped at \$500,000 per year.

The tax would begin in January 2023 but payments would not be due until January 2024. For the first two years, the tax would be imposed at half the rate. The tax rate and cap would be increased by 2.5% annually to account for general inflation, beginning July 2026. The tax would terminate January 1, 2058, unless extended by voters.

The proposed tax is estimated to raise approximately \$9.6 million each year for 35 years. The measure is a general tax, which means the City may use the revenues for any governmental purpose. Tax revenues cannot be taken away by the State. The City Council has adopted advisory spending guidelines stating its intention to expend revenues on long-term stable funding for public safety, affordable housing and homeless services, and grade separated train crossings that maintain safety and mobility for vehicles, bicyclists, and pedestrians, and to annually report on tax revenues and expenditures.

**CITY ATTORNEY'S IMPARTIAL ANALYSIS OF
MEASURE K-Continued**

This measure requires approval by a simple majority of voters voting on the measure.

A "Yes" vote will amend the Municipal Code to implement the business tax.

A "No" vote means the proposed tax will not be implemented.

Molly Stump
City Attorney

THE ABOVE STATEMENT IS AN IMPARTIAL ANALYSIS OF THE MEASURE. IF YOU DESIRE A COPY OF THE MEASURE, PLEASE CALL THE CITY CLERK'S OFFICE AT (650)329-2571 AND A COPY WILL BE MAILED AT NO COST TO YOU, OR YOU MAY ACCESS THE TEXT FROM THE INTERNET AT https://www.cityofpaloalto.org/files/assets/public/city-clerk/election-info/2022/please_docusign_reso_10064_business_tax.pdf.

COMPLETE TEXT OF MEASURE K

Ordinance of the Council of the City of Palo Alto Amending Title 2 of the Municipal Code to Add Chapter 2.37 to Establish a Tax on Businesses Operating in the City of Palo Alto

The People of the City of Palo Alto do ordain as follows:

SECTION 1. Title 2 (Administrative Code) of the Palo Alto Municipal Code is hereby amended by adding Chapter 2.37 (Business Tax) as follows:

Chapter 2.37 BUSINESS TAX

2.37.010 Title

This chapter is the "City of Palo Alto Business Tax Ordinance."

2.37.020 Definitions

The definitions in this section apply to the words and phrases used in this chapter unless the context clearly indicates otherwise.

- (a) "Business" means any commercial enterprise, trade, calling, art, vocation, profession, occupation, or means of livelihood, whether or not carried on for gain or profit.
- (b) "Business operator" means a person who transacts, maintains, manages, operates, controls, engages in, conducts, carries on, or owns a business in the city. It does not include the employee of a business who is not an owner or proprietor of the business.
- (c) "Calendar year" means the year beginning January 1 and ending December 31.
- (d) "City" means the City of Palo Alto.
- (e) "CPI Index" means the Consumer Price Index—All Urban Consumers for All Items for the San Francisco-Oakland-Hayward Area or any successor to that index designated by the Federal Bureau of Labor Statistics or the city council.
- (f) "Fiscal year" means the year beginning July 1 and ending June 30.
- (g) "Fixed place of business" means a place of business located in the city boundaries and occupied for the particular purpose of operating a business.
- (h) "Grocery store" means a business that exists for the primary purpose of selling a range of food items to consumers for consumption off site, such as canned foods; dry goods; fresh produce; fresh meats, fish, and poultry; and any area that is not separately owned within the store where food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR section 18982(a)(3), provided that any store that combines grocery items with other retail products or services is a grocery store for the purpose of this chapter only if two-thirds or more of the occupied space is designated to the sale of grocery items as listed in this section.
- (i) "Hotel" has the meaning provided in section 2.33.010.

COMPLETE TEXT OF MEASURE K-Continued

- (j) "Operate" means to conduct a business and includes all stages of conducting a business from initial planning to the wind-down of a business, whether or not a profit is being made.
- (k) "Person" means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, receiver, syndicate or other group or combination acting as a unit and includes the plural as well as the singular number.
- (l) "Quarter" means the three-month quarter of the fiscal year. The "first quarter" is the months of July, August, and September; the "second quarter" is the months of October, November, and December; the "third quarter" is the months of January, February, and March; and the "fourth quarter" is the months of April, May, and June. The term "same quarter of the previous fiscal year" means the quarter of the same number in the previous fiscal year.
- (m) "Square footage" means the rentable square footage used by a business as specified in a business's lease or, if the business floor space is owned by the business, as calculated in the same manner as if the area was rented using commonly accepted standards of measurement for leasing purposes such as the Standard Methods of Measurement published by the Building Owners and Managers Association (BOMA). Any method of measurement used must meet the following minimum standards:
 - (1) It shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building.
 - (2) It shall include both the area used by the business and a proportionate share of the building service areas such as lobbies, corridors and other common areas in a building unless assigned to another business for tax calculation purposes.
 - (3) It shall not include vertical penetrations through the building such as stairs, elevators, or heating, ventilation, air conditioning, utility, or telephone systems, except on the lowest floor of stairs and elevators.
 - (4) For the business of renting or leasing property, it shall include area used primarily for the business operator's offices and operational facilities.
 - (5) It shall not include residential uses, including multiple-family use as defined in section 18.04.030(102), two-family use as defined in section 18.04.030(141), single-family residential use as defined in section 18.04.030(86)(A)), mobile home park as defined in section 18.04.030(97), residential care homes as defined in section 18.04.030(124), supportive housing as defined in section 18.04.030(135.5), transitional housing as defined in section 18.04.030(138), emergency shelter as defined in section 18.04.030(50), and any equivalent residential use defined by the city.
 - (6) It shall include hotel as defined in section 18.04.030(73).
 - (7) Square footage for businesses with multiple locations will be measured and tax assessed will be calculated based on the aggregate square footage for the business for all locations in the city.

COMPLETE TEXT OF MEASURE K-Continued

- (n) "Tax Administrator" means the Director of Administrative Services, or successor position, or their designee.
- (o) "Transient Occupancy Tax" means the tax imposed under section 2.33.020.
- (p) "Transitory business" means a business that operates in the city for less than 90 days in the course of one calendar year (such as seasonal sale lots, special events, concerts/performance/circuses, filming, and party rentals).
- (q) "Vacant" means a severable portion of the physical location that a business is occupying, such as an entire floor, a building, or a portion of a floor with independent entrance and exit, that is free from any use, fixtures, furniture, and equipment, and is immediately available for use by a new tenant or owner.

2.37.030 Obligation to Pay Business Tax

- (a) It is unlawful for any business operator, either for themselves or for any other person, to operate in the city any business taxed under this chapter without paying all business tax required by this chapter.
- (b) If a business has more than one business operator, then the payment of the business tax by one business operator excuses any other business operators from the obligation to pay the business tax for that period for which the tax has been paid.
- (c) The requirement to pay business tax is in addition to and separate from the requirement to obtain a business registration certificate under section 4.60.030.
- (d) The payment of business tax does not authorize the doing of any act which the person or business paying the business tax is not otherwise entitled to do and does not excuse the business from complying with other applicable Code requirements.

2.37.040 Imposition of Business Tax

Any business operator operating a business at a fixed place of business in the city must pay a business tax at the following rates:

- (a) Beginning January 1, 2023, the tax shall be imposed at the following rates:
 - (1) For the first 10,000 square feet occupied by a business in the city, no tax shall be imposed.
 - (2) For each square foot occupied by a business in the city over 10,000 square feet, a monthly tax of three and three-quarter (3.75) cents per square foot shall be imposed.
- (b) Beginning January 1, 2025, the tax shall be imposed at the following rates:
 - (1) For the first 10,000 square feet occupied by a business in the city, no tax shall be imposed.
 - (2) For each square foot occupied by a business in the city over 10,000 square feet, a monthly tax of seven and one-half (7.5) cents per square foot shall be imposed.

COMPLETE TEXT OF MEASURE K-Continued

- (c) The maximum amount of tax a business must pay is capped at \$500,000 (five hundred thousand dollars) per fiscal year.

2.37.045 Order of Calculations

Tax owed shall be determined by applying the terms of this ordinance in the following order: first, application of the tax rate in subdivisions (a) or (b) of section 2.37.040 to the square footage of the business; second, application of business tax offsets as set forth in section 2.37.080, if any; and third, application of the tax cap in subdivision (c) of section 2.37.040, if applicable.

2.37.050 Annual Adjustment of Tax Rate and Cap

Beginning with the 2026-27 fiscal year, and each fiscal year thereafter, the tax rate in subdivision (b)(2) of section 2.37.040 and the cap in subdivision (c) of section 2.37.040 shall be automatically increased by two and one-half percent (2.5%).

2.37.060 Disposition of Tax Revenue

The tax imposed by this chapter is for the purpose of raising revenue 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.

2.37.070 Exemptions from Tax

- (a) The following businesses are exempt from the tax imposed by this chapter:
 - (1) Any business exempt from the tax by the laws of the United States or the State of California;
 - (2) Grocery stores;
 - (3) Businesses that occupy or use 10,000 square feet or less in the city; and
 - (4) Transitory businesses.
- (b) If a business operator operates a single integrated business that has two or more parts, one or more of which could be exempt from the tax imposed by this chapter if operated as a separate business, the city may, at its discretion, exempt from the tax any part of the business that would be exempt if operated as a separate business, provided the business's square footage can be reasonably allocated between the parts. If the city determines that the square footage cannot be reasonably allocated between the different parts of the business, then the entire business shall be taxed, unless to do so would violate a law of the United States or the State of California.

2.37.080 Business Tax Offsets

- (a) A business operator that operates a hotel in the city may deduct from the business tax it owes for a quarter for the business of operating the hotel an amount equal to the total transient occupancy tax collected and remitted to the city in the same quarter of the previous fiscal year from transients staying at the hotel.
- (b) The business operator of a business that has discretion to determine the location of the place of sale, place of use, or principal place of

COMPLETE TEXT OF MEASURE K-Continued

negotiation for sales or use tax purposes and which exercises that discretion and designates the city as the place of sale, place of use, or principal place of negotiation for sales or use tax purposes which results in the city receiving sales or use tax revenues that it would not otherwise have received, but for the business's exercise of its discretion to designate the city as the place of sale, place of use, or principal place of negotiation for sales or use tax purposes ("Discretionary Sales or Use Tax") may deduct from the business tax it owes for a quarter an amount equal to one half of the total sales tax or use tax received by the city from the Discretionary Sales or Use Tax of that business in the same quarter of the previous fiscal year. This offset can offset up to, but no more than, 75% of the business's quarterly business tax. The city and a business operator may enter into an agreement implementing this section.

- (c) A business operator of a business that has rights to property due to property ownership, a ground lease, or a lease that permits subleasing, and that is offering that property for sale or rent, may deduct from the business tax owed for the business an amount equal to the business tax associated with the square footage being offered for sale or rent, provided that the area to be sold or rented is completely vacant and available for immediate occupancy.
- (d) A business claiming an offset under this section must claim the offset with its tax filing for the quarter for which the offset is claimed.
- (1) If the information necessary for a business to claim an offset is not available, the business may defer claiming an offset for up to one year or for another period of time set by written agreement with the city.
- (2) The Tax Administrator may require a business claiming an offset to submit additional information to support the claim of the offset. The request for additional information must be made in writing and the information must be provided within thirty (30) days.
- (3) If the Tax Administrator determines that an offset claimed by a business is incorrect, the Tax Administrator may make an Initial Determination of the amount, if any, of the offset and the amount of tax due under subdivision (a) of section 2.37.150.

2.37.090 Quarterly Tax Payments

- (a) The tax imposed by this chapter shall be paid quarterly. The tax for each quarter is due the first day of the following quarter and is delinquent thirty (30) days later.
- (b) For the first quarter in which a business begins operating in the city, the business's tax shall be prorated for the number of days that the business was operating in the quarter.
- (c) For the last quarter in which a business operates in the city before closing, the business's tax shall be prorated for the number of days that the business was operating in the quarter.

2.37.100 Business Tax Filing for a New Business

When a business begins operating in the city for the first time, the business operator must provide the Tax Administrator with the following information, verified by the business operator as true and correct under

COMPLETE TEXT OF MEASURE K-Continued

penalty of perjury of the laws of the State of California, before beginning the operation of the business in the city:

- (a) The name of the business and the address or addresses at which it will be operating in the city;
- (b) The date on which the business will begin operating;
- (c) The nature of the business's activities;
- (d) The square footage in which the business will be operating in the city; and
- (e) Any other information required by the Tax Administrator that is reasonably required to administer this Chapter 2.37.

2.37.110 Quarterly Tax Returns

With each quarterly tax payment, a business operator must submit a quarterly tax return which contains the following information, verified by the business operator as true and correct under penalty of perjury of the laws of the State of California:

- (a) The name of the business and the address or addresses at which it is operating in the city;
- (b) The nature of the business's activities;
- (c) The square footage in which the business is operating in the city;
- (d) If the business operator claims an offset under section 2.37.080, sufficient information and documentation to establish the business's right to the offset and the amount of the offset;
- (e) Any other information required by the Tax Administrator; and
- (f) The amount of tax due based on the square footage of the business.

2.37.120 Agreements for Installment Payments

The Tax Administrator may enter into an agreement with a business operator, or may adopt regulations that apply to all or a group of business operators, to allow payment of the tax on a more or less frequent basis.

2.37.130 Businesses Operating in the Same Location

- (a) Each business operator operating a business in a location where one or more other businesses are also operating is obligated to pay business tax measured by the square footage occupied by that business.
- (b) The payment of business tax by a business operator absolves any other business operator from having to pay business tax measured by the same square footage.
- (c) Two or more business operators that are operating businesses in the same square footage may contractually agree which business will pay the business tax measured by that square footage.

2.37.140 Delinquent Taxes (Penalties and Interest)

COMPLETE TEXT OF MEASURE K-Continued

- (a) When a tax becomes delinquent, a penalty of 10% of the amount of the delinquent tax will be added to the amount of tax due. If the tax remains unpaid sixty (60) days after becoming delinquent, an additional penalty of 25% of the amount of the delinquent tax (excluding accrued interest and the initial penalty) will be added to the amount of tax due.
- (b) On the first of each month that a tax is delinquent, interest in the amount of 1.5% of the delinquent amount, excluding penalties and interest, will be added to the amount of tax due.
- (c) A business operator may apply to the Tax Administrator for a reduction or waiver of any accrued penalties or interest, and the Tax Administrator may reduce or waive any accrued penalties or interest upon a finding of good cause.

2.37.150 Administrative Procedure to Assess or Correct Tax

- (a) If the Tax Administrator determines that a business operator has incorrectly reported any information to the city or has not paid all or any of the tax, penalties, or interest that are due, the Tax Administrator may, using any information available to the Tax Administrator, issue an Initial Determination stating what the Tax Administrator believes to be the correct information and, if new or additional tax, penalties, or interest are due, how much tax, penalties, or interest are due. An Initial Determination must be issued within five (5) years of the last day of the quarter to which the Initial Determination applies, except in the case of an audit conducted under section 2.37.200, in which case it must be issued within ninety (90) days of the completion of the audit and can apply to any of the quarters that were subject to the audit. The Initial Determination shall be served on the business operator either personally or by U.S. mail to the most recent address for the business operator in the Tax Administrator's records. Service is effective upon deposit of the Initial Determination in the U.S. Mail.
- (b) A business operator affected by an Initial Determination may within thirty (30) days of service of an Initial Determination contest the Initial Determination and request a hearing before the Tax Administrator by filing with the Tax Administrator a written request for a hearing. The further accrual of penalties and interest shall be tolled upon the filing of a request for a hearing. If a business operator does not contest an Initial Determination and request a hearing with the Tax Administrator within fifteen (15) days of service of the Initial Determination, the Initial Determination shall become final and cannot be appealed.
- (c) If a business operator timely contests an Initial Determination and requests a hearing, the Tax Administrator shall set a hearing within sixty (60) days of the filing of the request for a hearing. Notice of the hearing shall be served on the business operator either personally or by U.S. mail to the most recent address for the business operator in the Tax Administrator's records.
- (d) At the hearing the business operator may present evidence and argument regarding the Initial Determination to show why the Initial Determination is incorrect and to show what the determination of the Tax Administrator should be. Within sixty (60) day after the close of the hearing, the Tax Administrator shall serve a Final Determination, setting forth the Tax Administrator's determination of the facts and issues that were the subject of the Initial Determination. The Final

COMPLETE TEXT OF MEASURE K-Continued

Determination shall be served on the business operator either personally or by U.S. mail to the most recent address for the business operator in the Tax Administrator's records. Service is effective upon deposit of the Final Determination in the U.S. Mail. Unless an appeal of a Final Determination is filed under section 2.37.170, any penalties or interest tolled under subdivision (b) of this section will resume accruing ten (10) days after the service of the Final Determination.

2.37.160 General Administrative Remedy

- (a) Any person affected by a decision of the Tax Administrator ("the challenger"), except for decisions under section 2.37.150, may challenge that decision by filing a written objection to the decision with the Tax Administrator. The objection must be filed within thirty (30) days of the issuance of the decision being challenged. If the Tax Administrator was required to provide notice of the decision, then the time to file an objection to the decision begins to run from the date of service of the notice of the decision. The Tax Administrator shall serve a written response to the objection within thirty (30) days of the filing of the objection, which period can be extended by the Tax Administrator for an additional thirty (30) days. The Tax Administrator's response to the objection shall be served on the challenger either personally or by U.S. mail to the most recent address for the challenger in the Tax Administrator's records.
- (b) The challenger may request a hearing on the Tax Administrator's response to the objection by filing a request for a hearing with the Tax Administrator within thirty (30) days of service of the response to the objection. If a timely request for a hearing on a response to the objection is filed with the Tax Administrator, the Tax Administrator shall set a hearing within sixty (60) days of the filing of the request for a hearing. Notice of the hearing shall be served on the challenger either personally or by U.S. mail to the most recent address for the challenger in the Tax Administrator's records.
- (c) At the hearing the challenger may present evidence and argument regarding the decision being challenged to show why the decision is incorrect and to show what it should be. Within sixty (60) days after the close of the hearing, which the Tax Administrator may extend for an additional sixty (60) days, the Tax Administrator shall serve a Final Determination on the decision, setting forth the Tax Administrator's determination of the decision that was challenged. The Final Determination shall be served on the challenger either personally or by U.S. mail to the most recent address for the challenger in the Tax Administrator's records. Service is effective upon deposit of the Final Determination in the U.S. mail.

2.37.170 Appeals

- (a) A Final Determination of the Tax Administrator under section 2.37.150, subdivision (d), or section 2.37.160, subdivision (c), can be appealed to the City Manager by filing a written notice of appeal with the City Manager within thirty (30) days of service of the notice of the Final Determination being appealed.
- (b) Only a business operator who files a timely request for a hearing on an Initial Determination under section 2.37.150 and participates in the hearing or a challenger who files an objection to a decision and files a request for a hearing on the response to the objection under

COMPLETE TEXT OF MEASURE K-Continued

section 2.37.160 and participates in the hearing can file an appeal under this section.

- (c) If a timely appeal is filed with the City Manager, the City Manager, or the City Manager's designee, shall set a hearing within sixty (60) days of the filing of the appeal, which may be extended by the City Manager for an additional thirty (30) days. Notice of the hearing shall be served on the appellant either personally or by U.S. mail to the most recent address for the challenger in the Tax Administrator's records. The tolling of the accrual of penalties or interest under section 2.37.150, subdivision (b), shall continue upon the timely filing of an appeal under this section.
- (d) At the hearing the appellant and the Tax Administrator may present evidence and argument regarding the decision being appealed to show why the decision is correct or incorrect and to show what it should be. Within sixty (60) days after the close of the hearing, which the City Manager or the City Manager's designee may extend for an additional sixty (60) days, the City Manager or the City Manager's designee shall serve a written decision, setting forth the resolution of the appeal. The decision shall be served on the appellant either personally or by U.S. mail to the most recent address for the appellant in the City Manager's records. Service is effective upon deposit of the decision in the U.S. Mail. Any penalties and interest that were tolled under section 2.37.150, subdivision (b), shall resume accruing ten (10) days after the service of the decision.
- (e) A decision of the City Manager, or the City Manager's designee, served under subdivision (d) of this section is subject to judicial review under sections 1094.5 and 1094.6 of the Code of Civil Procedure with a writ petition filed in the appropriate court within ninety (90) days of the service of the written decision. Any tax, penalties, or interest determined by the decision to be owed to the city by the appellant must be paid to the city as a precondition to filing a writ petition challenging the decision, but a claim for a refund under section 2.37.190 does not have to be filed before filing a writ petition.

2.37.180 Constitutional Apportionment

- (a) No tax imposed by this chapter shall be applied to a business operator so as to constitute an undue burden on interstate commerce or intercity commerce or be violative of the equal protection or due process clauses of the United States or California constitutions.
- (b) A business operator who contends that the application of a tax imposed by this chapter on the business operator constitutes an undue burden on interstate commerce or intercity commerce or violates the equal protection or due process clauses of the United States or California constitutions may apply to the Tax Administrator for an apportionment of the tax imposed on the business operator that would remove the constitutional violation by filing a written request with the Tax Administrator that explains the factual and legal basis for the claimed constitutional violation and proposes a method of apportionment that would resolve the alleged constitutional violations.
- (c) The Tax Administrator, in consultation with City Attorney, shall review the application and within sixty (60) days of the filing of the application, which deadline may be extended for an additional sixty

COMPLETE TEXT OF MEASURE K-Continued

(60) days, issue a decision on the application. The decision on the application shall be served on the business operator either personally or by U.S. mail to the most recent address for the challenger in the Tax Administrator's records. The decision can be challenged under section 2.37.160.

2.37.190 Refunds

- (a) A business operator who believes that any tax, penalty, or interest has been illegally, erroneously, or mistakenly paid to, collected by, or otherwise received by the city may file a claim for a refund of the amount of tax, penalty, or interest claimed to have been improperly received by the city.
- (b) The claim must be filed with the Tax Administrator and signed under penalty of perjury by the business operator. The claim must state:
- (1) The legal and factual basis for the refund claim;
 - (2) The amount of tax, penalty, or interest allegedly improperly received by the city;
 - (3) The date or dates that the improper payments were made to the city; and
 - (4) The address of the claimant.
- (c) The claim must be filed with the Tax Administrator within two (2) years of the date of the allegedly improper payment to the city.
- (d) The Tax Administrator shall provide a written decision on the claim within thirty (30) days of the filing of the claim by serving the decision on the claimant either personally or by U.S. mail to the address provided in the claim. Service is effective upon deposit of the response in the U.S. Mail.
- (e) A claimant may challenge the Tax Administrator's decision on a refund claim under section 2.37.160.
- (f) This section does not apply to:
- (1) A claim for a refund arising out of a decision of the Tax Administrator, City Manager, or City Manager's designee under sections 2.37.150, 2.37.160, 2.37.170, or 2.37.190; or
 - (2) A claim that could have been asserted by the claimant, but was not, under sections 2.37.150, 2.37.160, 2.37.170, or 2.37.190.

2.37.200 Audits

- (a) The Tax Administrator may conduct an audit of any business operator to ensure proper compliance with the requirements of this chapter.
- (b) To initiate an audit the Tax Administrator shall provide written notice to the business operator that is the subject of the audit of the initiation of the audit by serving the notice personally or by U.S. mail to the most recent address for the business operator in the Tax Administrator's records. The notice shall state the period of time subject to the audit.

COMPLETE TEXT OF MEASURE K-Continued

- (c) Notice of the initiation of an audit for a quarter for which either a business tax filing for a new business or quarterly tax return was submitted under section 2.37.100 or section 2.37.110 must be served within three (3) years of the last day of the quarter to which the filing or return applied.
- (d) Notice of the initiation of an audit for a quarter for which neither a business tax filing for a new business nor a quarterly tax return was submitted under section 2.37.100 or section 2.37.110, but for which the business was registered as a business under section 4.60.030, must be served within five (5) years of the last day of the quarter for which the filing or return should have been filed.
- (e) Notice of the initiation of an audit for a quarter for which neither a business tax filing for a new business nor a quarterly tax return was submitted under section 2.37.100 or section 2.37.110, and for which the business was not registered as a business under section 4.60.030, must be served within seven (7) years of the last day of the quarter for which the filing or return should have been filed.
- (f) Upon completion of an audit, the Tax Administrator may make an Initial Determination under subdivision (a) of section 2.37.150 of any taxes, penalties, and interest determined to be owed and not paid for the audit period. The Initial Determination must be issued within ninety (90) days of the completion of the audit. If a business operator subject to audit is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the amount of tax due and the reasonable estimate shall be entitled to a rebuttable presumption of correctness.

2.37.210 Maintenance and Review of Records

- (a) Business operators must maintain for six (6) years records of square footage and information necessary to calculate the tax. If the Tax Administrator serves notice of the initiation of an audit, the information pertinent for the quarters subject to the audit must be maintained until the conclusion of the audit.
- (b) The Tax Administrator may with reasonable notice inspect the premises and records of the business operator.
- (c) The Tax Administrator may request the city council to issue an administrative subpoena for records of a business operator or other persons with relevant information.

2.37.220 Confidentiality of Records

All documents submitted to the city by a business operator under this chapter and all documents of a business operator inspected by the Tax Administrator in the conduct of an audit are presumed to be confidential and will not be subject to public inspection to the fullest extent allowed by law and must be maintained so that the contents of the documents will not become known except to persons charged with the administration of this chapter. Confidential documents may be shared with consultants retained by the city to aid in the administration of this chapter, provided the consultants agree to maintain the confidentiality of the documents. However, nothing in this section precludes the city from aggregating information and releasing it in a manner that does not identify any particular business or connect any information with a particular business.

COMPLETE TEXT OF MEASURE K-Continued

2.37.230 Action to Collect Delinquent Taxes

- (a) Any tax, penalty, and interest imposed on a business operator under this chapter is a debt owed by the business operator to the city, which may be recovered in an action filed by the city in a court of competent jurisdiction.
- (b) An action under this section shall be filed within three (3) years of an Initial Determination becoming final under subdivision (b) of section 2.37.150, the issuance of a Final Determination under subdivision (d) of section 2.37.150 that is not appealed, the issuance of a Final Determination under subdivision (c) of section 2.37.160 that is not appealed, or the issuance of a decision under subdivision (d) of section 2.37.170.
- (c) During the pendency of an action filed under this section, interest will continue to accrue under subdivision (b) of section 2.37.140 until the entry of judgment.
- (d) Before filing an action, the city may serve the business operator either personally or by U.S. mail at the most recent address for the business operator in the Tax Administrator's records with notice of the pending action and give the business operator fifteen (15) days to pay all of the delinquent taxes, penalties, and fees. If all of the delinquent taxes, penalties, and fees are not paid within the fifteen-day period, then an additional penalty of 25% of the amount of the delinquent tax (including accrued penalties and interest) shall be added to the total delinquency and may be recovered in the action.

2.37.240 Errors Not Binding on the City

No error by the Tax Administrator or any other officer, employee, or agent of the city in the application of this chapter shall prevent, prejudice, or estop the collection by or for the city of the full amount of tax owed by any person under this chapter.

2.37.250 Dates

If the last day for the performance of any act under this chapter is a Saturday, Sunday, or holiday recognized by the city, then the date for the performance of that act is extended to the next day that is not a Saturday, Sunday, or holiday recognized by the city.

2.37.260 Rules and Regulations

- (a) The Tax Administrator may adopt rules and regulations that are not inconsistent with the provisions of this chapter as may be necessary to aid in the application and enforcement of this chapter.
- (b) The Tax Administrator may adopt rules providing for the service or filing of any notices, filings, returns, or submittals required by this chapter. These rules may provide alternative means for serving or filing any notice, filing, return, or submittal, and may clarify the method of serving or filing any notice, filing, return, or submittal provided for in this chapter.

2.37.270 City Council Amendments

- (a) The city council may amend this chapter in any way it deems necessary without the approval of the electorate, provided the

COMPLETE TEXT OF MEASURE K-Continued

amendment does not increase the amount of tax that any person would pay.

- (b) Any amendment to this chapter that would reduce the amount of tax any taxpayer would pay, either temporarily or permanently, must be approved by two-thirds (2/3) of the members of the city council.
- (c) Notwithstanding subdivision (a) of this section, the city council may with the approval of two-thirds (2/3) of its members and without approval of the electorate reduce, revise, or eliminate any of the business tax offsets in section 2.37.080.

2.37.280 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Palo Alto hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

2.37.290 Savings Clause

No section, clause, part, or provision of this chapter shall be construed as requiring the payment of any tax that would be in violation of the Constitution or laws of the United States of America or of the Constitution or laws of the State of California.

2.37.300 Sunset

The tax imposed by this Chapter shall cease to be imposed on January 1, 2058.

SECTION 2. Implementation Procedures

1. The new tax imposed by this ordinance will go into effect on January 1, 2023.

2. Notwithstanding sections 2.37.090, 2.37.100, and 2.37.110 of the codified part of this ordinance, the tax imposed by this ordinance will initially be due on the following schedule:

(a) The initial tax payment for the tax that has accrued since January 1, 2023 will be due on January 1, 2024, or on a subsequent date established by the Tax Administrator and will be delinquent 30 days later if not paid.

(b) With its initial tax payment, each business shall provide the following information:

- (1) The name of the business and the address or addresses at which it will be operating in the city;
- (2) The nature of the business's activities;

COMPLETE TEXT OF MEASURE K-Continued

- (3) The square footage in which the business will be operating in the city;
- (4) If the business operator claims an offset under section 2.37.080, sufficient information and documentation to establish the business's right to the offset and the amount of the offset;
- (5) Any other information required by the Tax Administrator; and
- (6) The amount of tax due based on the square footage of the business.

(c) A business that begins operating for the first time after January 1, 2023, must submit its initial tax payment and initial information by the date provided in this uncoded section or by the date provided in codified section 2.37.090, whichever is later.

SECTION 3. General Tax. Proceeds of the tax imposed by this Ordinance shall be deposited in the general fund of the City and shall be available for any legal purpose.

SECTION 4. Effective Date. This ordinance shall be effective only if approved by a majority of the voters and shall go into effect immediately after the vote is declared by the City Council.

SECTION 5. Execution. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Palo Alto voting on the 8th day of November, 2022.

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

City Manager

Director of Administrative Services

ARGUMENT IN FAVOR OF MEASURE K

PALO ALTO HAS NO BUSINESS TAX, *unlike nearly every other Bay Area city*, and our community faces a funding crisis.

During the pandemic, City revenues fell 20%, forcing service cuts—police, firefighters, libraries, youth programs, and others—even as crime, fire danger and homelessness worsened.

Many services were restored using Federal Stimulus money, but that funding is ending. Without new revenue, the City must cut services again.

Nobody likes to pay tax; but it's the wrong time to cut critical services. This proposal protects our safety, health, and quality of life. We only remain the community we love if we fund the things we depend on.

The measure places a thoughtful, modest, *fair-share tax* only on large businesses:

- **IT'S FAIR:** Over time, Palo Alto's business employment has grown faster than our population; yet business' share of taxes has declined, while residents' share has increased. This is not fair to residents. Corporations must pay their ***fair share*** too.
- **IT'S REASONABLE:** For large businesses, the rate is **only about 1% of typical office rent**, phased in over two years starting in 2024. Commercial rents in Palo Alto increase *several percent per year* without corporate disruption.
- **IT PROTECTS SMALL BUSINESSES AND CONSUMERS:** The first 10,000 square feet are exempt for all businesses; as are grocery stores and nonprofits. Over half of Palo Alto businesses will pay nothing.

The measure will support:

- **Restoring Police, Fire and 911 staffing**, including expanded mental health services
- **Affordable Housing and Unhoused Services**, which are currently underfunded
- **Grade-separating our dangerous rail crossings**, essential for suicide prevention and reducing congestion as Caltrain adds service

This measure is good for Palo Alto residents *and* businesses. Without it, we face reductions. We cannot kick the can down the road.

VOTE YES for a Safe and Housed Palo Alto.

ARGUMENT IN FAVOR OF MEASURE K-Continued

www.SafeAndHousedPaloAlto.org

Annette Glanckopf
Palo Alto Neighborhoods—Chair Emergency Prep Committees

William Dale
President, Palo Alto Professionals Firefighters

Enoch Choi
Medical Doctor

Yoriko Kishimoto
President, Friends of Caltrain; Former Mayor, City of Palo Alto; Vice President, MidPen Open Space District

Maico Campilongo
Co-owner, Terun and iTalico

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE K

The notion that the city will collapse without new taxes is absurd. Almost every city in California manages to survive and thrive while spending *far less per capita* than Palo Alto.

A temporary shortfall from the pandemic is **not** a good reason to start a *permanent new tax*.

A temporary shortfall **should** be the time to **take a hard look at city spending**, to sort out what's truly essential, which expenses can be deferred, and whether we really need to pay so many employees such high salaries to get the job done.

Don't be fooled by the claim that this tax is "modest" and "reasonable". Taxes usually start out small. *That's how politicians sell them to us*. But once a new type of tax exists, it becomes relatively easy to raise it. They will always cite some "critical service" as an excuse—over and over again!

How is this tax "fair"? All taxes are inherently unfair, because they take money by force from people who had better uses for it. But in addition to that, this tax is plainly an attempt to tax *only certain businesses*.

Larger businesses are already paying lots of taxes. Imagine what Palo Alto would be like *without* those businesses and the taxes they pay now!

More and more businesses are moving from California to lower-tax states. No single tax is the cause, but they all add up. Let's not make the problem worse.

No new taxes!

Vote **NO** on Measure K.

<https://scclp.org/just-vote-no>

Joe Dehn

Chair: Libertarian Party of Santa Clara County

Alan Kaiser

Palo Alto Resident

ARGUMENT AGAINST MEASURE K

This measure would create a new business tax to be levied on particular types of businesses for operating in Palo Alto, a *Floor Area Tax (FAT)*.

Two principles apply to most things we do:

- Moderate scarcity and sparseness is the root of great work.
- Timing is (nearly) everything.

To attempt to raise taxes right at the end of the Covid pandemic, in a time of spiking inflation and recessionary pressures, smacks of the worst possible timing—and Palo Alto spending is hardly moderate. In addition, the past four years have seen a steady reduction in Bay Area population.

The usual justifications for a tax are:

- Government needs money.
- Punishment for behaviors society wants to discourage.

Neither applies in this case.

Palo Alto is already among the top 5 municipalities in the entire state with the highest spending per capita. At \$9904 per capita (2020 figure) we are far outside the norm of about \$2000 for other California cities. A new tax at a time when Palo Alto coffers are already overflowing with money and is already spending so much will contribute little of usefulness to the kind of Palo Alto our residents would like to have.

Furthermore, the elements of this proposal that single out different kinds of businesses as taxable, while others are not, implies a considerable value judgment being made about which kinds of businesses we 'like' as a city. It's hard to see why the specific businesses exempted by this proposal are of particularly more social value than others not exempted.

This measure therefore has horrendous timing, a high level of arbitrary inequity built in, and does little to improve city services as promised.

We urge you to vote NO on new taxes.

Vote NO on Measure K.

Joe Dehn

Chair: Libertarian Party of Santa Clara County

Alan Kaiser

Palo Alto Resident

REBUTTAL TO ARGUMENT AGAINST MEASURE K

All parts of our community must pay their fair share for services.

Palo Alto coffers are not "overflowing." We all remember the severe cuts in 2020 to our Police, Fire and 911 services, libraries, the Children's Theater, youth programs and others. This measure avoids a return to those cuts.

Simple expense-per-resident numbers don't account for the fact that Palo Alto owns our own utilities; most cities do not. Also Palo Alto's daytime population is much larger than our resident population, because many people commute to work here and those people use our programs and services too.

All parts of communities must contribute to funding their essential services. Palo Alto has fewer visitors and business travelers now because of COVID and we are the last major city in our region without a Business Tax. We must adapt, and the time has come.

Small retail and service businesses—the ones exempt from this tax—struggled during COVID, while many large businesses recorded their best years ever. Businesses pay a far lower share of property taxes than they used to, and many, especially tech, do not pay any sales tax at all. For comparison, Palo Alto's business tax will be less than half of East Palo Alto's rate.

Safe streets, fast Fire and 911 response, and building affordable housing are important to residents and businesses alike.

Silicon Valley has generated spectacular corporate success, and some of that wealth must be reinvested in local communities. Vote YES on Measure K.

Kimberly Axtell
Co-owner, Copy Factory

Joe Head
Business Development, Charities Housing Development Corp.

Peter Drekmeier
Former Mayor, City of Palo Alto, Policy Director of Tuolumne River Trust

Greg Schmid
Former Vice Mayor, City of Palo Alto; Economist

Nadia Naik
Transit Advocate, Co-Founder CARRD (Californians Advocating Responsible Rail Design)