

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: August 3, 2020

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of the 2<sup>nd</sup> Reading of Ordinance 753 N.S., Amending Chapter 20, Article IV of the Piedmont City Code Providing for an Increase of the Real Property Conveyance Tax

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RECOMMENDATION

Approve the 2<sup>nd</sup> reading of Ordinance 753 N.S., which would amend Chapter 20, Article IV of the Piedmont City Code providing for an increase of the Real Property Conveyance Tax.

BACKGROUND

At its meeting of July 20, 2020, the Council approved the first reading of Ordinance 753 N.S which would amend Chapter 20, Article IV of the Piedmont City Code providing for an increase of the Real Property Conveyance Tax from \$13.00 to \$17.50 per \$1,000 of purchase price of a property.

If the Council wishes to place this matter before the voters at the General Municipal Election of November 3, 2020, a second and final reading is required. State law requires that this ordinance be passed by a 4/5<sup>ths</sup> vote of the Council. The Ordinance would require approval by a majority vote of the electorate to take effect, and would take effect on July 1, 2021. If approved by voters, the new tax rate would be in effect until otherwise modified or terminated by voters. If the Ordinance is not approved by voters, the existing tax and tax rate would remain in effect without modification.

By: John O. Tulloch, City Clerk

ORDINANCE NO. 753 N.S.

AN ORDINANCE AMENDING CHAPTER 20, ARTICLE IV  
OF THE PIEDMONT CITY CODE PROVIDING FOR AN INCREASE OF THE REAL  
PROPERTY CONVEYANCE TAX

The People of the City of Piedmont hereby ordains as follows:

SECTION 1. FINDINGS

It is the intent of the City Council of the City of Piedmont in adopting this Ordinance to provide for the increase of an existing tax imposed on each transfer, by deed, instrument or writing, by which any lands, tenements or other real property sold, located in the City. The increase in such tax is made necessary due to aging infrastructure which is escalating operating costs that outpace the growth of City revenues; the City's desire to maintain the quality of services provided and to address its ongoing capital needs; and the City Council's determination that without additional revenues, the City will be compelled to make spending reductions to programs and services that may jeopardize the public health, safety and general welfare of residents and visitors, as well as curtail funding for maintenance, construction and other improvements to City facilities, infrastructure and the natural environment. As a result, the City Council has determined that it is appropriate and fiscally prudent to submit a revised real property conveyance tax to the voters. The tax would apply to the sale of real property until ended by the voters; and revenues from the tax could be used for any legitimate governmental purpose; this measure is not a commitment to any particular action or purpose. The tax is a general tax and shall be approved if the measure receives at least a simple majority of affirmative votes.

SECTION 2. AMENDMENT OF CHAPTER 20, ARTICLE IV

Chapter 20, Article IV of the City Code is hereby amended to read in its entirety as follows:

“ARTICLE IV. REAL PROPERTY CONVEYANCE TAXSEC. 20.83 TITLE AND PURPOSE

This article may be cited as the “Piedmont Real Property Conveyance Tax Ordinance.” The tax imposed under this article is a general tax solely for the purpose of raising revenue for the usual and current expenses of the City. This article is not enacted for regulatory purposes.

SEC. 20.84 IMPOSITION OF TAX

A tax is hereby imposed on each transfer, by deed, instrument or writing, by which any lands, tenements or other real property sold, located in the City, are or is granted, assigned, transferred or otherwise conveyed to, or vested in, a purchaser or purchasers thereof, or any other person or persons at or by the direction of said purchaser or purchasers, when the value of the consideration exceeds one hundred dollars, said tax to be at the rate of seventeen dollars and fifty cents (\$17.50) for each

## Ordinance 753 N.S.

one thousand dollars or fractional part of one thousand dollars of the value of the consideration. Transfers for no consideration are exempt.

As used herein, “value of the consideration” means the total consideration, valued in money of the United States, paid or delivered or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness, existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrance after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of the transfer. “Value of the consideration” also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such a special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the value of the consideration cannot be definitively determined, or is left open to be fixed by future contingencies, “value of the consideration” shall be deemed to mean the fair market value of the property at the time of transfer after deducting the amount of any lien or encumbrance if any of a type which would be excluded in determining the value of the consideration pursuant to above provisions of this section.

#### SEC. 20.85 LIABILITY FOR PAYMENT

Any tax imposed pursuant to section 20.84 hereof shall be paid by any person who makes, signs or issues any document or instrument by which any lands, tenements or other real property sold, located in the City, are or is granted, assigned, transferred or otherwise conveyed to, or vested in, a purchaser or purchasers thereof or for whose use or benefit the same is made, signed or issued.

#### SEC. 20.86 EXEMPTION-WRITTEN SECURITY INSTRUMENT

Any tax imposed pursuant to this article shall not apply to any instrument in writing given to secure a debt.

#### SEC. 20.87 SAME-UNITED STATES, STATE OR POLITICAL SUBDIVISION

Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this article when the exempt agency is acquiring title. Any tax imposed by this article shall also not apply with respect to any deed, instrument or other writing by which the State of California, any political subdivision thereof, or any agency or instrumentality of either thereof, conveys to a

Ordinance 753 N.S.

nonprofit corporation realty, and the acquisition, construction or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a government unit, within the meaning of Section 1.103-1(b) of Title 26 of the Code of Federal Regulations.

SEC. 20.88 SAME-BANKRUPTCY PROCEEDINGS

Any tax imposed pursuant to this article shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganizing or adjustment:

- (a) Confirmed under the Federal Bankruptcy Act, as amended;
- (b) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
- (c) Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
- (d) Whereby a mere change in identity, form or place of organization is effected.

Subdivisions (a) to (d), inclusive, of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change.

SEC. 20.89 SAME INSTRUMENTS PURSUANT TO S.E.C. ORDER

Any tax imposed pursuant to this article shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:

- (a) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79K of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
- (b) Such order specifies the property which is ordered to be conveyed; and
- (c) Such conveyance is made in obedience to such order.

SEC. 20.90 SAME-PARTNERSHIPS

(a) In the case of any realty held by a partnership, no levy shall be imposed pursuant to this article by reason of any transfer of an interest in a partnership or otherwise if:

Ordinance 753 N.S.

(1) Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

(2) Such continuing partnership continues to hold the realty concerned.

(b) If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this article, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

(c) Not more than one tax shall be imposed pursuant to this article by reason of a termination described in subdivision (b) of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

SEC. 20.91 INSTRUMENTS IN LIEU OF FORECLOSURE

Any tax imposed pursuant to this article shall not apply with respect to any transfer to a beneficiary or mortgagee which is taken in lieu of a foreclosure.

SEC. 20.92 ADMINISTRATION OF TAX

The tax collector of the City (hereinafter in this article referred to as “tax collector”) shall collect the tax imposed under this article and shall otherwise administer this article. He may make such rules and regulations, not inconsistent with the article, as he may deem reasonably necessary or desirable to administer this article.

SEC. 20.93 DUE DATES; DELINQUENCY; PENALTIES; INTEREST

The tax imposed under this article is due and payable at the time of the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of tax shall accrue.

In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty of ten percent shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one-half of one percent a month or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become a part of the tax.

SEC. 20.94 DECLARATION REQUIRED

## Ordinance 753 N.S.

The tax imposed by this article shall be paid to the tax collector by the persons referred to in section 20.85. Payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by his agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which the purchaser or transferee agrees to pay or which remain a lien on the property at the time of transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The tax collector may require delivery to him of a copy of such deed, instrument or writing whenever he deems such to be reasonably necessary to adequately identify such writing or to administer the provisions of this article. The tax collector may rely on the declaration as to the amount of the tax due, provided he has no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the tax collector has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, he may, by notice served upon any person liable for the tax, require him to furnish a true copy of the records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument or writing which transfers such property.

SEC. 20.95 DETERMINATION OF DEFICIENCY

If on the basis of such information as the tax collector receives pursuant to the last paragraph of section 20.94 and/or on the basis of such other relevant information that comes into his possession, he determines that the amount of tax due as set forth in the declaration, or as paid, as insufficient, he may re-compute the tax due on the basis of such information.

If the declaration required by section 20.94 is not submitted, the tax collector may make an estimate of the value of the consideration for the property conveyed and determined the amount of tax to be paid on the basis of any information in the possession or that may come into his possession.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

SEC. 20.96 NOTICE OF DETERMINATION

The tax collector shall give notice to a person liable for payment of the tax imposed under this article of his determination made under section 20.95 (“Notice of Determination”). Such Notice of Determination shall be given within three years after the recordation of the deed, instrument or writing effecting the transfer on which the tax deficiency determination was made.

## Ordinance 753 N.S.

SEC. 20.97 MANNER OF GIVING NOTICE

Any notice required to be given by the tax collector under this article may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid addressed to the person on whom it is to be served at his address as it appears in the records of the City or as ascertained by the tax collector. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

SEC. 20.98 PETITION FOR REDETERMINATION

Any person against whom a Notice of Determination is made under this article or any person directly interested may petition the tax collector for a redetermination within sixty days after service upon the person of notice thereof. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period. If there is no appeal of the tax collector's decision on a petition for redetermination, then the decision of the tax collector shall be final. Writs challenging the tax collector's decision must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (Code Civ. Proc. § 1094.6.)

SEC. 20.99 CONSIDERATION OF PETITION; HEARING

If a petition for redetermination is filed within the sixty-day period, the tax collector shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing, and shall give him ten days' notice of the time and place of the hearing. The tax collector may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary."

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. EFFECTIVE DATE & POSTING

This Ordinance shall require passage by a 4/5ths vote of the City Council in compliance with the provisions of Section 53724(b) of the California Government Code. This Ordinance shall be posted at City Hall after its second reading by the City Council for at least 30 days. If approved by majority of voters casting votes in the election on November 3, 2020, it shall become effective on July 1, 2021 (the "Effective Date").

SECTION 5. REPEAL AND REPLACEMENT OF EXISTING CITY REAL PROPERTY CONVEYANCE TAX

Ordinance 753 N.S.

Upon the Effective Date of this Ordinance, the existing Real Property Conveyance Tax, as enacted under Ordinances Nos. 277 N.S., 282 N.S., and 364 N.S., as codified at City Code Chapter 20, Article IV, shall be repealed, terminated, and of no further force and effect, and shall be replaced by the tax authorized by this Ordinance. In the event that this Ordinance is not adopted by the voters, this Ordinance shall have no effect and the provisions codified at City Code Chapter 20, Article IV shall remain in full force and effect until repealed by the City Council.

SECTION 6. TERMINATION DATE

The authority to levy the tax imposed by this ordinance shall extend until terminated by the voters.

[END OF ORDINANCE]