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CITY COUNCIL

Vincent Salimi, Mayor
Devin Murphy, Mayor Pro Tem
Anthony Tave, Council Member
Maureen Toms, Council Member
Norma Martínez-Rubin, Council Member

**PINOLE CITY COUNCIL
SPECIAL MEETING AGENDA**

**TUESDAY
July 12, 2022
6:00 P.M**

Please note: HYBRID MEETING FORMAT

**Attend in person : PINOLE CITY COUNCIL CHAMBERS - 2131 PEAR STREET
OR**

Attend VIA ZOOM TELECONFERENCE – Details provided below

Please note: Updated COVID-19 safety protocols will be posted outside the City Council Chambers. Please review this information before entering the Council Chambers.

How to Submit Public Comments:

In Person: Attend meeting at the Pinole City Council Chambers, fill out a yellow public comment card and submit it to the City Clerk.

Via Zoom:

Members of the public may submit a live remote public comment via Zoom video conferencing. Download the Zoom mobile app from the Apple Appstore or Google Play. If you are using a desktop computer, you can test your connection to Zoom by clicking [here](#). Zoom also allows you to join the meeting by phone.

From a PC, Mac, iPad, iPhone or Android:

<https://us02web.zoom.us/j/89335000272>

Webinar ID: 893 3500 0272

By phone: +1 (669) 900-6833 or +1 (253) 215-8782 or +1 (346) 248-7799

- Speakers will be asked to provide their name and city of residence, although providing this is not required for participation.
- Each speaker will be afforded up to 3 minutes to speak (subject to modification by the Mayor)
- Speakers will be muted until their opportunity to provide public comment.

When the Mayor opens the comment period for the item you wish to speak on, please use the “raise hand” feature (or press *9 if connecting via telephone) which will alert staff that you have a comment to provide and press *6 to unmute. **To comment with your video enabled, please let the City Clerk know you would like to turn your camera on once you are called to speak.**

Written Comments: All comments received **before 3:00 pm the day of the meeting** will be posted on the City's website on the agenda page ([Agenda Page Link](#)) and provided to the City Council prior to the meeting. **Written comments will not be read aloud during the meeting.** Email comments to comment@ci.pinole.ca.us Please indicate which item on the agenda you are commenting on in the subject line of your email.

Please note: Updated COVID-19 safety protocols will be posted outside the City Council Chambers. Please review this information before entering the Council Chambers.

OTHER WAYS TO WATCH THE MEETING

LIVE ON CHANNEL 26. They are retelecast the following Thursday at 6:00 p.m. The Community TV Channel 26 schedule is published on the city's website at www.ci.pinole.ca.us.

VIDEO-STREAMED LIVE ON THE CITY'S WEBSITE, www.ci.pinole.ca.us. and remain archived on the site for five (5) years.

If none of these options are available to you, or you need assistance with public comment, please contact the City Clerk, Heather Bell at (510) 724-8928 or hbell@ci.pinole.ca.us .

Americans With Disabilities Act: In compliance with the Americans With Disabilities Act of 1990, if you need special assistance to participate in a City Meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the City Clerk's Office at (510) 724-8928. Notification at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Note: Staff reports are available for inspection on the City Website at www.ci.pinole.ca.us. You may also contact the City Clerk via e-mail at hbell@ci.pinole.ca.us .

Ralph M. Brown Act. Gov. Code § 54950. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies, which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS

2. LAND ACKNOWLEDGMENT

Before we begin, we would like to acknowledge the Ohlone people, who are the traditional custodians of this land. We pay our respects to the Ohlone elders, past, present, and future, who call this place, Ohlone Land, the land that Pinole sits upon, their home. We are proud to continue their tradition of coming together and growing as a community. We thank the Ohlone community for their stewardship and support, and we look forward to strengthening our ties as we continue our relationship of mutual respect and understanding.

3. ROLL CALL, CITY CLERK'S REPORT & STATEMENT OF CONFLICT

An official who has a conflict must, prior to consideration of the decision: (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself /herself from discussing and voting on the matter; and (3) leave the room until after the decision has been made, Cal. Gov't Code § 87105.

4. CITIZENS TO BE HEARD (Public Comments)

Citizens may speak under any item not listed on the Agenda. *The time limit is 3 minutes for City Council items and is subject to modification by the Mayor. Individuals may not share or offer time to another speaker. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future meeting.*

5. WORKSHOP ITEMS

- A. Conduct Second Public Hearing Regarding Proposal for the City of Pinole to Become a Charter City and Review the Content of Proposed Charter and Real Property Transfer Tax Ordinance [Action: Conduct Second Public Hearing and Provide Direction to Staff (Casher)]**

6. ADJOURNMENT to the Special Joint City Council and Planning Commission Meeting of July 13, 2022 in Remembrance of Amber Swartz.

I hereby certify under the laws of the State of California that the foregoing Agenda was posted on the bulletin board at the main entrance of Pinole City Hall, 2131 Pear Street Pinole, CA, on the City's website, not less than 72 hours prior to the meeting date set forth on this agenda.

POSTED: July 7, 2022 at 4:00 P.M.

Heather Bell, CMC
City Clerk



CITY COUNCIL REPORT

5A

DATE: JULY 12, 2022

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: ERIC S. CASHER, CITY ATTORNEY

COPY: ANDREW MURRAY, CITY MANAGER

SUBJECT: CONDUCT SECOND PUBLIC HEARING REGARDING PROPOSAL
FOR THE CITY OF PINOLE TO BECOME A CHARTER CITY AND
REVIEW THE CONTENT OF PROPOSED CHARTER AND REAL
PROPERTY TRANSFER TAX ORDINANCE

RECOMMENDATION

Staff recommends the City Council conduct a public hearing regarding the proposal for the City of Pinole to become a charter city, review the content of the proposed charter and real property transfer tax ordinance, and provide any related direction to staff.

BACKGROUND

Cities in California are organized as either general law cities or charter cities. The City Council has discussed the possibility of becoming a charter city at multiple City Council meetings. A significant authority possessed by charter cities is the authority to impose a real property transfer tax ("RPTT") at an increased rate. Becoming a charter city requires approval by a majority of voters, as does any increase in the RPTT. A proposed RPTT and charter could be submitted to the voters as one ballot measure. The proposed measure would require approval from a simple majority (50%+1) of voters in order to pass. However, a four-fifths (4/5) vote of the City Council is required to place the measure on the ballot. More information regarding the process to become a charter city, as well as RPTTs, is contained in the June 7, 2022 City Council staff report, which is included as Attachment 3.

Prior to approving submission of the charter to the voters, the City Council must hold at least two (2) public hearings on the proposal of the charter and the content of the charter. One June 7, 2022, the City Council held the first required public hearing to consider the draft charter. At that meeting, the Council provide feedback on the draft charter and related issues. The City Council also directed staff to schedule the required second public hearing.

DISCUSSION

A. Draft Charter

The proposed charter for the City of Pinole is included below as Attachment 1. The current version of the draft charter is the same as the version considered by the City Council at the June 7, 2022 City Council meeting. If adopted, the only new power the City will have under the proposed charter is the power to enact an increased RPTT. The proposed charter will prohibit the City from exercising any other powers of a charter city. No change to the proposed charter, or the City's powers, would be permitted unless approved by the voters. A summary of the draft charter is contained in the June 7th staff report included as Attachment 3.

B. RPTT Ordinance

A significant authority possessed by charter cities is the authority to impose a RPTT at an increased rate. A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. Under the California Revenue and Taxation Code, general law cities may impose a RPTT of no more than \$0.55 per \$1,000 of value on the property. Pinole currently has a RPTT of the maximum rate allowed for general law cities. The RPTT is only collected when a property is sold, and is not an annual tax. Charter cities are not subject to state law regarding a RPTT because RPTTs are deemed municipal affairs. As a result, charter cities may impose RPTTs at a rate higher than the maximum statutory rate of \$0.55 per \$1,000.

At its June 7, 2022 meeting, the City Council directed staff to prepare a draft RPTT Ordinance. The draft RPTT Ordinance is included as Attachment 2.

i. Tax Imposed

The draft RPTT Ordinance establishes a tax rate of \$8 per \$1000 of value, which is equivalent to a tax of 0.8% on the sales price of real property. The tax will apply to any real property sold or transferred for value. The RPTT does not apply to inherited property or property otherwise given as a gift. In addition, the RPTT does not apply to transfers made within a marriage, or during dissolution of a marriage. Finally, the ordinance creates certain other legally required and standard exceptions to the RPTT.

The ordinance gives the City Council the power to decrease the tax, but the tax may not be increased above 0.8% unless the new rate is approved by the voters. Under the proposed ordinance, the buyer and seller are jointly responsible for the payment of the RPTT. In practice, whether the RPTT is paid by the buyer, seller, or split by the parties is a negotiated term in a purchase agreement. The RPTT is due at the time the deed or written instrument effecting the property transfer is recorded with the County.

Based on trends, staff believes that \$100,000 is a reasonable estimate of the amount of revenue the City will receive from the existing RPTT each year for the next few

years. Using this estimate, increasing the current RPTT to \$8 per \$1,000 (0.8%) will result in annual revenue of approximately \$1.45 million. If the City adopts an increased RPTT, the County will charge a 1-3% administrative fee in order to collect the tax on behalf of the City. The County also imposes its own RPTT of up to 0.11%, over which the City Council has no authority.

ii. *Rebates*

RPTT rebates are relatively rare, and only a few cities in California have adopted this type of tax rebate. The purpose of the rebate is to encourage certain types of improvements which a city has determined are important and beneficial. Berkeley and El Cerrito appear to be the only cities in the Bay Area that have unrestricted rebates. El Cerrito allows rebates for seismic upgrades, as well as energy and water conservation projects. Berkeley only allows rebates for seismic upgrades. Both Berkeley and El Cerrito limit the amount of the rebate to one-third (1/3) of the tax paid.

The City of Oakland also allows rebates for seismic upgrades, as well as energy and water conservation projects. However, the rebate is only available to low and moderate income homebuyers. Oakland's rebate is limited to one-third (1/3) of the tax paid by the buyer.

Based on City Council direction, the draft RPTT Ordinance also includes tax rebates for seismic upgrades, energy and water conservation projects, and sewer lateral repairs. Seismic upgrades include work on residential structures that would qualify for the California Earthquake Bolt and Brace program, or other similar programs that the City Council may identify by resolution. Energy and water conservation projects include installation of electric vehicle charging stations, rooftop solar, and the installation of storm water retention systems that comply with the California Plumbing Code.

Under the draft ordinance, a partial rebate for the cost of these qualifying repairs can be issued to property owners who complete these repairs either one (1) year before or after the property is sold. The complete RPTT tax will still be paid at the time of closing, but property owners will be able to apply for rebates and by providing the required documentation. The maximum amount of the rebate is capped at one-third (1/3) of the tax paid.

iii. *Low-Income Exemption.*

The City Council also requested information on the possibility of creating a low-income exemption for the RPTT. Oakland is the only city in California with an income-based exemption to the RPTT that staff was able to find. Under Oakland's ordinance, low- and moderate income first time homebuyers with an income of no greater than the area median income are eligible to pay the RPTT at a reduced rate. Specifically, the applicable rate is reduced by 0.5% (which is approximately one-third (1/3) of the predominate RPTT rate in Oakland of 1.5%). Qualifying homebuyers may apply for a refund after the tax is paid, and are required to submit necessary documentation.

A income based (partial or full) exemption to the RPTT may have limited application. A household that qualifies as low-income or moderate income may have difficulty qualifying for a mortgage large enough to buy a market rate single-family home. For this reason, it is possible that only those households purchasing deed restricted affordable units will be able to take advantage of this type of exemption.

If the City Council desires, it can direct staff to include an income-based exemption into the RPTT Ordinance.

C. Education and Outreach

The City can, if it desired, engage in limited education and outreach activities related to the possible transition to becoming a charter city and enacting an RPTT. At its June 7, 2022 meeting, the Council directed staff to commence such activities. Since that date, staff has worked with the City's consultant LEG to prepare basic outreach materials. A mailer was sent to every residential address in Pinole notifying residents that the City was considering the possibility of becoming a charter city and inviting residents to attend the July 12th public hearing. The mailer also provided a way for residents to offer feedback on priorities and directed them to a special City website to find out more information.

The special City website, <https://www.ci.pinole.ca.us/financialfuture>, includes a FAQ and basic information about becoming a charter city and the RPTT. The website also includes ways for residents to provide feedback on the proposal and City priorities.

If desired by the City Council, the City can engage in additional outreach activities. These activities are strictly educational and may not advocate for a potential ballot measure. Any potential educational materials will be closely reviewed by the City Attorney's Office to ensure compliance with applicable laws.

D. Process of Becoming Charter City

Becoming a charter city requires approval by a majority of voters. The City Council may, on its own motion, propose a new charter and submit it directly to the voters for approval at the next established statewide general election. The City Council must vote to submit the proposed charter to the voters at least eighty eight (88) days before the election.

The content of the charter must be finalized by the end of the second public hearing. Thereafter, the Council may not vote to place a measure on the ballot for twenty one (21) days. Based on this requirement, if the Council desires to move forward with the process of becoming a charter city, the next required step will be:

City Council action to place Charter Measure on Ballot: August 2, 2022

E. Council Direction

At the July 12, 2022 City Council meeting, staff will seek direction from the City Council on the following issues:

1. Whether to move forward with the process of becoming a charter city by preparing the necessary materials for the City Council to place a measure on the ballot at the August 2, 2022 meeting;
2. The content of the Draft Charter;
3. The content of the Draft RPTT ordinance; and
4. Whether to continue education and outreach activities.

FISCAL IMPACT

There is no direct fiscal impact from conducting this public hearing. If the City Council decides to proceed with pursuing a ballot measure to become a charter city, there will be a fiscal impact related to placing the measure on the ballot and staff time to prepare the necessary materials. Additionally, there will be a cost for any additional education and outreach activities the City conducts. The cost will vary depending on the scope of the outreach.

ATTACHMENTS

- A. Draft Charter
- B. Draft RPTT Ordinance
- C. June 7, 2022 Staff Report

DRAFT **CHARTER OF THE CITY OF PINOLE**

ARTICLE I. CONTINUATION OF BOUNDARIES

Section 101. Incorporation and Succession.

The municipal corporation now existing and known as the City of Pinole, hereafter referred to as the “City”, shall remain and continue to be a municipal body corporate and politic in name, in fact, and in law. The boundaries of the City shall continue as established prior to this Charter taking effect unless changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

ARTICLE II. FORM OF GOVERNMENT AND EXISTING LAW

Section 201. Form of Government.

The government of the City shall continue to be the Council-Manager form of government as established by the Pinole Municipal Code at the time that this Charter takes effect and by the laws of the State of California.

Section 202. City Council, City Manager, and City Attorney.

- (a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.
- (b) The City Council shall appoint the City Manager.
- (c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney and City Clerk. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.
- (d) The City Council shall appoint the City Clerk.
- (e) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws.

All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

ARTICLE III. POWERS OF THE CITY

Section 301. Real Property Transfer Tax

The City may exercise the powers of a charter city to impose a tax on the conveyance of real property, based upon the price paid for the real property ("real property transfer tax"). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

Section 302. General State Laws.

The City shall not exercise any of the powers of a charter city except as expressly provided for herein. Except as provided in this Charter, the powers of the City shall otherwise be constrained by, subject to, and governed by the general laws of the State of California as now and hereafter existing relating to cities organized under such general laws.

Section 303. Voter Approval

This Charter shall not be amended except by the electorate of the City of Pinole at a municipal election in accordance with the applicable laws of the State of California.

5109683.1

ORDINANCE NO. 2022-XX

**AN ORDINANCE OF THE CITY OF
PINOLE AMENDING CHAPTER 3.16 “REAL PROPERTY TRANSFER TAX”, OF THE
PINOLE MUNICIPAL CODE TO INCREASE THE REAL PROPERTY TRANSFER
TAX AND MAKE OTHER MISCELLANEOUS CHANGES**

WHEREAS, the power of home rule granted by the California Constitution makes available to charter cities tools to construct local policy and address local concerns; and

WHEREAS, under the terms of the proposed Charter for the City of Pinole, the only additional power provided to the City is the authority to implement a transfer tax, if the tax is approved by voters; and

WHEREAS, the revenue from the proposed increased real property transfer tax will provide a protected and reliable source of general fund revenue to maintain long term financial sustainability and services, and

WHEREAS, Section 301 of the proposed charter of the City of Pinole authorizes the City to adopt a real property transfer tax; and

WHEREAS, the proposed measure would approve a tax on the sale of real property within the City at the rate of eight dollars (\$8.00) per each one thousand dollars (\$1,000), or fraction thereof, of the consideration paid for real property; and

WHEREAS, the People of the City Pinole desire to establish the new real property transfer tax.

NOW, THEREFORE, the People of the City of Pinole do ordain as follows:

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Municipal Code Amendment.

Chapter 3.16, “Real Property Transfer Tax”, of the Pinole Municipal Code is hereby amended in its entirety to read as shown in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 3. Adjustment of Appropriations Limit. Pursuant to Article XIII B of the Constitution of the State of California and applicable laws, the appropriations limit for the City is hereby increased by the aggregate sum authorized to be levied by this tax for fiscal year 2022-23 and each year thereafter.

SECTION 4. Compliance with the California Environmental Quality Act. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). This

ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the city would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 5. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The People of the City of Pinole hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Amendment or Repeal.

Chapter 3.16 of the Pinole City Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment of any provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Pinole affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance if the City Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax or any definition applicable to the tax so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- C. The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception other than the discontinuation of an exemption or exception specifically set forth in this Ordinance; and,
- D. The collection of the tax imposed by this Ordinance, even if the City had for some period of time failed to collect the tax.

SECTION 7. Codification.

Upon adoption of this Ordinance pursuant to the voter approval referenced above, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this Ordinance in the Pinole Municipal Code.

Section 8. Publication & Effective Date.

This Ordinance shall take effect ten (10) days after the City Council declares the results of the vote at the November 8, 2022 election. The tax authorized by the ordinance shall become operative upon the effective date of the Charter of the City of Pinole or January 1, 2023, whichever occurs later. Within fifteen (15) days after the passage of this Ordinance the City Clerk shall cause this Ordinance or a summary thereof to be published or to be posted in at least three public places in the City of Pinole in accordance with the requirements of California Government Code Section 36933.

The foregoing ordinance was approved by the following vote of the People of the City of Pinole at an election held on November 8, 2022:

YESES:

NOES:

EXHIBIT A

Chapter 3.16 REAL PROPERTY TRANSFER TAX

- 3.16.010 Purpose and authority**
- 3.16.020 Definitions**
- 3.16.030 Tax imposed**
- 3.16.040 Tax rate**
- 3.16.050 Persons liable for tax.**
- 3.16.060 Exceptions and exemptions**
- 3.16.070 Rebate Program for Qualifying Work**
- 3.16.080 Administration of tax.**
- 3.16.090 Due dates, delinquencies, penalties, interest, and administrative charges**
- 3.16.100 Declaration may be required**
- 3.16.110 Determination of deficiency; petition for redetermination**
- 3.16.120 Tax a debt**
- 3.16.130 Refunds**
- 3.16.140 Tax a lien or assessment against transferred real property**
- 3.16.150 Annual audit**
- 3.16.160 Amendments**

3.16.010 Purpose and authority.

The tax imposed by this chapter is solely for the purpose of raising revenues for the general governmental purposes of the city. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund. This chapter is not enacted for regulatory purposes. This chapter is adopted pursuant to the city's authority under Article XI, Section 5 of the Constitution of the State of California and Section 301 of the Pinole City Charter.

3.16.020 Definitions.

As used in this Chapter, the following terms shall have the following meanings:

"Changes in control and ownership of legal entities" means any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code Section 64, as such statute reads and is interpreted by the California Department of Tax and Fee Administration.

"County assessor" means the county assessor of the county of Contra Costa.

"County recorder" means the office of the clerk-recorder of the county of Contra Costa.

"Person" and "persons" mean any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal

corporation, political subdivision of the state of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof. "Person" and "persons" also mean any natural person, who as an individual or with a spouse, owns fifty-one percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Qualifying work" means the projects listed in Section 3.16.080.

"Real property" and "realty" mean real property as defined by and under the laws of the state of California.

"Tax" means the tax authorized and imposed by this chapter.

"Tax administrator" means the finance director or as otherwise designated by the city manager to administer the tax.

"Transfer of real property" means a sale, grant, assignment, transfer, or other conveyance of any lands, tenements, or other real property by deed, instrument, or other writing from a transferor to a transferee, or to a third person at or by the direction of transferee.

"Transfer of real property" includes the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, if a purchase or transfer of ownership interest in a legal entity would constitute a transfer of real property (held directly or indirectly by the legal entity purchased or transferred) under California Revenue and Taxation Code section 64, as such statute reads and is interpreted by the California State Board of Equalization or California Department of Tax and Fee Administration. This subsection is applicable to the purchase or transfer of ownership interests in a partnership without regard to whether it is a continuing or a dissolved partnership or whether the real property is or was held directly or indirectly by the partnership or any member of the partnership. To the extent necessary to further the purposes of this chapter, the documents effectuating the purchase or transfer of ownership interest in a legal entity shall be deemed to have been an instrument executed whereby there was conveyed, for fair market value, all real property that experienced a change of ownership under California Revenue and Taxation Code Section 64.

"Transferee" means a person to whom a transfer of real property is made.

"Transferor" means a person who makes a transfer of real property.

"Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust, or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust, or encumbrances after such transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust, or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer.

"Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where such special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after such transfer, shall not be included in determining the value of the consideration. For the purposes of a transfer of real property as defined in this paragraph, "value of the consideration" means the fair market value of the property transferred, as determined by the Tax Administrator or County.

If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section.

In the event that the asserted "value of consideration" for a transfer of real property is less than the fair market value, the Tax Administrator may assume that the "value of consideration" is the fair market value of the property but shall consider evidence submitted by the persons responsible for the paying the tax that the lower amount represents the price agreed upon as part of a valid arms-length transaction.

3.16.030 Tax imposed.

A tax is hereby imposed on each transfer of real property located in the city of Pinole, when the value of the consideration exceeds one hundred dollars.

3.16.040 Tax rate.

The rate of the tax imposed pursuant this chapter shall be eight dollars (\$8) for each one thousand dollars (\$1000) of the value of consideration paid for a transfer of real property, or fractional part of each one thousand dollars of the value of consideration.

3.16.050 Persons liable for tax.

Any person who makes a transfer of real property subject to the tax imposed by this chapter and any person to whom such a transfer is made shall be jointly and severally liable for payment of the tax. The transferor and transferee may apportion the tax among themselves.

3.16.060 Exceptions and exemptions.

- A. Government Entities. A transfer of real property shall be exempt from any tax imposed pursuant to this chapter if the transferor or transferee is the United States or any political subdivision thereof, the State of California, any city, county, city and county, district or any other political subdivision of the State of California.
- B. Writings that Secure a Debt. Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.
- C. Transfers of Real Property to Effectuate a Plan of Reorganization. Any tax imposed pursuant to this chapter shall not apply to the making, delivery, or filing of conveyances to make effective any plan of reorganization or adjustment:
 - 1. Confirmed under the Federal Bankruptcy Act, as amended;
 - 2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended;
 - 3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended; or
 - 4. Whereby a mere change in identity, form, or place of organization is effected.Subsections (1) to (4), above, shall only apply if the making, delivery, or filing of instruments of transfer or conveyance occurs within five years from the date of such confirmation, approval, or change.
- D. Orders of the Securities and Exchange Commission. Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if:
 - 1. The order of the Securities and Exchange Commission in obedience to which such conveyance is made is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
 - 2. Such order specifies the property which is ordered to be conveyed; and
 - 3. Such conveyance is made in obedience to such order.
- E. Transfer of Certain Partnership Property.
 - 1. In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no tax shall be imposed pursuant to this chapter by reason of any transfer of an interest in the partnership or other entity or otherwise, if both of the following occur:

- a. The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.
 - b. The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.
 2. If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this chapter, the partnership or other entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value (including the value of any lien or encumbrance remaining thereon), all realty held by the partnership or other entity at the time of the termination.
 3. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection (2) of this section, and any transfer pursuant thereto, with respect to the realty held by a partnership or other entity treated as a partnership at the time of the termination.
 4. No tax shall be imposed pursuant to this chapter by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.
- F. Deed in Lieu of Foreclosure. Any tax imposed pursuant to this chapter shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount, and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument, or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.
- G. Transfers Between Spouses and Domestic Partners.
1. Any transfer made during the term of a marriage or domestic partnership between spouses or domestic partners shall be exempt from the tax imposed pursuant to this chapter.
 2. Any transfer of property from one spouse or domestic partner to the other in accordance with the terms of a decree of dissolution or legal separation or in fulfillment of a property settlement incident thereto shall be exempt from the tax imposed pursuant to this chapter. This exemption shall apply only to property that was acquired by the spouses or domestic partners prior to the final decree of dissolution. This exemption shall not apply to a transfer of property to a third party, despite the existence of a valid court order or settlement agreement.
 - a. For domestic partners, the two parties to the transfer must have on file a valid domestic partnership registration (a) under existing law and procedures for the State of California domestic partnership registry, or (b) with a governmental agency of a jurisdiction that recognizes domestic partnership registration.

- b. If domestic partners do not own, as joint tenants, the property that is the subject of their dissolution agreement, they must demonstrate that they were living together at the location of the real property in question either at least six months prior to the dissolution of the domestic partners relationship or the entire period of ownership of the transferring partner, whichever is more.
 - c. To qualify for this exemption, domestic partners must provide that portion of their dissolution and property settlement agreement pertaining to the division or transfer of property, which shall be filed with the office of the city clerk. The copy of the settlement agreement shall be accompanied by an affidavit with verifiable signatures or proof of identity, that the copy is an accurate and authentic reproduction of the final settlement agreement between the parties.
- I. Transfers that Confirm or Correct a Recorded Deed. A transfer of real property without consideration that confirms or corrects a deed shall be exempt from the tax imposed pursuant to this chapter. The correcting or confirming transfer must be recorded no later than ninety days after the recordation of the transfer requiring correction or confirmation.

3.16.070 Rebate program for qualifying work.

- A. For any transfer of real property subject to the tax imposed pursuant to this chapter, a portion of the tax paid may be rebated, upon an application showing that transferor or transferee made qualifying seismic upgrades to, implemented qualifying energy or water conservation projects on, or repaired the sewer lateral on the transferred real property within the timeframes specified in this section.
- B. The maximum rebate shall be one-third of the tax paid for a transfer of real property. Multiple applications may be submitted for a rebate of the tax paid for a transfer of real property, but the total rebate for all applications shall not exceed the maximum.
- C. Seismic upgrades to transferred real property that may qualify for a partial rebate of the tax paid pursuant to this chapter include any of the following:
 - 1. Work on residential structures that would qualify for the California Earthquake Bolt and Brace program, or other similar programs that the city council may identify by resolution.
 - 2. Corrective work on buildings that are listed on the City of Pinole inventory of potentially hazardous, unreinforced masonry buildings, if the work is necessary to meet city standards or requirements applicable to such buildings. Qualifying work must be performed pursuant to a plan prepared by a structural engineer and approved by the building official or designee.
 - 3. Any other work found by the building official to substantially increase the capability of structures on the property to withstand destruction or damage in the event of an earthquake, including but not limited to such work on buildings that use soft-story construction. Qualifying work must be performed pursuant to a plan prepared by a structural engineer and approved by the building official or designee.

- D. Energy and water conservation projects that may qualify for a partial rebate of the tax paid pursuant to this chapter include the following:
1. Installation of electric vehicle supply equipment ("EVSE") or electric vehicle charging stations.
 2. Installation of rooftop solar energy systems.
 3. Voluntary measures listed in Appendix A4 or Appendix A5 of the California Green Building Standards Code for Energy Efficiency, Water Efficiency and Conservation, or Water Reuse.
 4. Upgrades to residential, multifamily, and commercial properties that would qualify for the Bay Area Regional Energy Network program ("BayREN"), or other similar programs that the city council may identify by resolution.
 5. Installation of stormwater retention systems that comply with the California Plumbing Code.
- E. Sewer later repair projects that may qualify for a partial rebate of the tax paid pursuant to this chapter consists of the repairs and work necessary to bring a sewer lateral that is in defective condition into compliance with the requirements of Chapter 13.20 of this Code, as that ordinance may be amended from time to time.
- F. Qualifying work shall be completed either up to one year prior to the transfer of real property or within one year after the transfer. If the work qualifying for a rebate is completed prior to the transfer of the real property, the transferor and transferee may decide who may apply for and receive the rebate.
- G. Rebate applications shall be submitted with applications for permits from the building division for qualifying work, if the work is to be performed after the transfer of real property. If the rebate is for work performed prior to the transfer of real property, the applicant shall submit records identified on the application form sufficient to inform the building official of the nature and cost of the work. The building official shall review the cost of the qualifying work and that the work will be completed within one year of the transfer of the real property or was completed no more than a year before the transfer of the real property. Upon completion of the work or a determination that the work was performed and certification by the building official as to the cost of the work, the city manager or designee may issue a rebate to the applicant, up to the maximum specified in Subsection B. of this section. Any remaining tax shall be retained by the city.
- H. If the qualifying work is not completed at the end of one year from the date of the transfer of the real property, the applicant may qualify for a rebate based upon the cost of that portion of the work that has been completed. The applicant must submit a verification form and substantiating documentation, as required by the building division, showing the dollar value of work completed up to that date. Any remaining tax shall be retained by the city.
- I. Prior to the expiration of the one-year period to apply for a rebate under this section, an applicant may request, and the city manager or designee may approve, an extension of up to one year. The city manager or designee may grant such an extension only for good cause.

The decision of the city manager or designee shall be entirely within his or her discretion and shall be final.

1. "Good cause" includes (a) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor, or other service provider whose services are necessary for the qualifying work; (b) unforeseen and unforeseeable circumstances such as a significant change in the scope of the qualifying work as a result of circumstances identified during city review of the application or in the field that could not reasonably have been known earlier; (c) serious illness, extraordinary events, or unforeseeable circumstances that prevented the timely commencement or completion of the qualifying work; or the applicant has submitted permit applications for qualifying seismic upgrades or energy or water conservation projects that the applicant has demonstrated to the satisfaction of the city manager or designee may require more than one year to complete.
2. "Good cause" does not include (a) ignorance of the applicable city ordinances or regulations concerning the rebate provided in this chapter or state or local laws relating to the standards with which qualifying work must comply; or (b) any delays that were within the control or responsibility of the applicant.

3.16.080 Administration of tax.

The tax administrator shall collect or cause to have collected the tax imposed pursuant to this chapter and shall otherwise administer this chapter. The tax administrator may make such rules and regulations, not inconsistent with this chapter, as they may deem reasonably necessary or desirable to administer this chapter, as well as necessary forms and receipts.

3.16.090 Due dates, delinquencies, penalties, interest, and administrative charges.

The tax imposed pursuant to this chapter is due and payable at the time the deed, instrument, or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid ninety days later. If a transfer of real property is effected but not recorded with the county recorder within ninety days of the date on which the deed, instrument, or writing was delivered, all statutes of limitations regarding liability for the tax imposed pursuant to this chapter shall be tolled until the city has actual knowledge of the transfer, at which time the tax on the unrecorded transfer shall relate back to the date on which the deed, instrument, or writing was delivered. Penalties and interest shall be deemed to have begun accruing on the date the deed, instrument, or writing was delivered, and shall be the joint and several liability of the persons referred to in Section 3.16.050. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of the tax due shall accrue. In the event only a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the unpaid portion. An additional penalty of fifteen percent of the amount of tax due shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one percent per month or fraction thereof, on the amount of the tax, inclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalties shall become part of the tax. An administrative charge and a release of lien filing fee equal to the amount charged by the county recorder shall be added to the amount owed for each property approved for a tax lien by the city council.

3.16.100 Declaration may be required.

- A. The tax imposed by this chapter shall be paid to the tax administrator by the persons referred to in Section 3.16.050. The tax administrator shall have the authority, pursuant to this chapter and any promulgated rules and regulations, to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by their duly authorized agent. If a declaration is required, it shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which a purchaser or transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument, or writing effecting the transfer for which the tax is being paid. The tax administrator may require delivery of a copy of such deed, instrument, or writing whenever they deem such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The tax administrator may but is not required to rely on the declaration as to the amount of the tax due.
- B. Whenever the tax administrator has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, they may, by notice served upon any person liable for the tax, require them to furnish a true copy of their records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument, or writing which transfers such property.

3.16.110 Determination of deficiency; petition for redetermination.

- A. If on the basis of such information as the tax administrator receives pursuant to Section 3.16.100, or on the basis of such other relevant information that comes into their possession, they determine that the amount of tax due as set forth in the declaration, or as paid, is insufficient, he or she may re-compute the tax due on the basis of such information.
- B. If the declaration referenced in Section 3.16.10 is not submitted, the tax administrator may make an estimate of the value of the consideration for the property transferred and determine the amount of tax to be paid on the basis of any information in their possession or that may come into his or her possession.
- C. More than one deficiency determinations may be made of the amount due with respect to any single transfer of real property.
- D. The tax administrator shall give written notice to a person liable for payment of the tax imposed pursuant this chapter of a deficiency determination made under this section. Such notice shall be given within three years after the recordation of the deed, instrument, or writing effecting the transfer on which the tax deficiency determination was made.

- E. Any notice required to be given by the tax administrator under this chapter may be served personally or by mail. If service is made by mail, it shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at the address as it appears in the records of the city or as ascertained by the tax administrator. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.
- F. Any person against whom a deficiency determination is made under this chapter or any person directly interested may petition the tax administrator for a redetermination within sixty days after service upon the person of notice thereof. If a petition for redetermination is not filed in writing with the tax administrator within the sixty day period, the determination becomes final at the expiration of the period.
- G. If a petition for redetermination is filed within the sixty day period, the tax administrator shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing, and shall give them ten days' notice of the time and place of the hearing. The tax administrator may designate a hearing officer for the purpose of conducting hearings. A hearing on a tax deficiency redetermination may be continued from time to time as may be necessary.
- H. As part of a redetermination hearing, the tax administrator may decrease or increase the amount of the tax owed before a redetermination decision becomes final, but the amount may be increased only if the tax administrator asserts a claim for the increase at or before the hearing.
- I. The order or decision of the tax administrator upon a petition for redetermination becomes final thirty days after service of notice thereof upon the petitioner or at the time of hearing of redetermination. There is no administrative appeal to the city council of the tax administrator's decision on a petition for redetermination. Writs challenging the tax administrator's decision must be filed with the appropriate court within ninety days of the final date of such redetermination. (California Code of Civil Procedure Section 1094.6.)

3.16.120 Tax a debt.

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debt owed to the city. Any person owing money to the city under the provisions of this chapter shall be liable in an action brought in the name of the city for the recovery of such amount, plus the city's costs of bringing the action, including attorneys' fees and litigation costs. The provisions of this section shall not be deemed a limitation upon the right of the city to bring any other action, whether criminal, legal, or equitable, based upon the failure to pay the tax, penalty, or interest imposed by this chapter or the failure to comply with any of the provisions hereof.

3.16.130 Refunds.

Whenever the amount of any tax, penalty, or interest has been overpaid, or paid more than once, or has been erroneously collected or received by the city under this chapter, it may be refunded as provided in this section. The person who paid the tax must file with the tax administrator a written claim stating under penalty of perjury the specific grounds on which the refund is claimed. A refund claim must be filed within one year of the date of payment. The claim shall be submitted on forms furnished by the tax administrator. The tax administrator may make such refund if they are satisfied that the claimant is entitled to the refund under the provisions of this chapter. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto.

3.16.140 Tax a lien or assessment against transferred real property.

- A. The amount of tax, penalty, and interest imposed under the provisions of this chapter is assessed against the real property upon the transfer of which the tax is imposed. If the tax, penalties, or interest are not paid when due, they may be recorded as a lien against or a special assessment on the real property transferred. Any lien against the transferred real property shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.
- B. The tax administrator shall file with the city manager a written notice of liens and special assessments that the tax administrator believes should be recorded to collect the tax, penalties, or interest owed pursuant to this chapter. Upon the receipt of such notice, the city manager shall present the same to the city council, and the city council shall forthwith, by resolution, fix a time and place for a public hearing on such notice.
- C. The tax administrator shall cause a copy of such resolution and notice to be served upon the persons responsible for the tax, penalties, or interest owed. Notice shall be provided not less than ten days prior to the time fixed for the hearing. Service shall be made by mailing a copy of the resolution and notice to the transferor and transferee of real property at their last known addresses. Service shall be deemed complete at the time of deposit in the United States mail.
- D. Following the hearing, if the city council determines that tax, penalties, or interest are owed pursuant to this chapter, it may authorize the imposition of a lien against the transferred real property and may order that any delinquent taxes, penalties, or interest that remain unpaid by the transferor or transferee shall constitute a special assessment against the transferred real property. If the city council orders the imposition of a special assessment against the transferred real property, the special assessment shall be collected at such time as is established by the county assessor for inclusion in the next property tax assessment.
- E. The tax administrator shall turn over to the county assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent charges consisting of the delinquent taxes, penalties, and interest at the rate of twelve percent per annum from the date of recordation to the date of lien.

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- F. Thereafter, the authorized special assessment may be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent property taxes. The assessment lien previously imposed upon the property is paramount to all other liens except for those of state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the special assessment and all interest and charges due and payable thereon are paid. All taxes applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to said special assessments.

3.16.150 Annual audit.

Each year, as part of the audit of the city's financial statements, the city's independent auditors shall complete a report reviewing the collection, management, and expenditure of revenue from the tax levied by this chapter. The report shall be reviewed by the financial advisory board or successor agency designated by the city council as part of its review of the annual audit.

3.16.160 Amendments.

The following amendments to this chapter must be approved by the voters of the city: increasing the tax rate or revising the methodology for calculating the tax such that a tax-increase would result; imposing the tax on persons not previously subject to the tax; or extending the tax. The city council may otherwise amend this chapter without submitting the amendment to the voters for approval. The city council may establish rules that are necessary and desirable for implementation of this chapter.

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**CITY COUNCIL
REPORT****10B**

DATE: JUNE 7, 2022

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: ERIC S. CASHER, CITY ATTORNEY

COPY: ANDREW MURRAY, CITY MANAGER

**SUBJECT: CONDUCT FIRST PUBLIC HEARING REGARDING PROPOSAL FOR
THE CITY OF PINOLE TO BECOME A CHARTER CITY AND REVIEW
THE CONTENT OF PROPOSED CHARTER**

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing regarding the proposal for the City of Pinole to become a charter city, review the content of the proposed charter, and provide any related direction to staff.

BACKGROUND

Cities in California are organized as either general law cities or charter cities. General law cities derive their powers from general laws enacted by the Legislature, while charter cities derive their powers from the California Constitution and their own charters. Thus, general law cities are bound by the state's general laws. In contrast, the "home rule provision" of the California Constitution provides that charter cities have full authority over municipal affairs, and are only subject to laws regarding matters of statewide concern, unless otherwise limited by their charters. The City of Pinole is currently a general law city.

A significant authority possessed by charter cities is the authority to impose a real property transfer tax ("RPTT") at an increased rate. Becoming a charter city requires approval by a majority of voters, as does any increase in the RPTT.

The City Council has discussed the possibility of becoming a charter city at multiple City Council meetings. At its February 15, 2022 meeting, the City Council directed staff to prepare a draft charter for consideration at the future Council Meeting and to conduct polling on this topic. The results of that polling were presented to the City Council at a Special Meeting on May 31, 2022 for review.

DISCUSSION

A. Charter City vs. General Law City

A general law city has the authority to act locally, but its acts must be consistent with all general laws adopted by the Legislature. In contrast, a charter city is only required to act consistent with state laws regarding matters of statewide concern. A charter city may use its “home rule” authority to adopt laws regarding “municipal affairs” that vary from state laws. A city’s charter defines the structure of the city’s government and the scope of a city’s authority over municipal affairs. Some cities have very detailed charters allowing the city to authorize a broad range of powers, while other cities have charters that are limited in scope with only narrow powers. A city’s charter must be approved by the voters, as must any amendment to the charter.

There is no constitutional or statutory “list” of municipal affairs. Areas that the courts have said constitute municipal affairs include: the form of city government; local elections, including qualifications for office and public funding of campaigns; some aspects of zoning and land use; the process of contracting for public works; and the scope of authority related to fines, taxes and assessments.

A significant authority possessed by charter cities is the authority to impose a RPTT at an increased rate. A RPTT is a tax imposed on the deed, instrument, or writing by which interests in real property are transferred. Under the California Revenue and Taxation Code, general law cities may impose a RPTT of no more than \$0.55 per \$1,000 of value on the property. Pinole currently has a RPTT of the maximum rate allowed for general law cities. The RPTT is only collected when a property is sold and is not an annual tax.

Charter cities are not subject to state law regarding a RPTT because RPTTs are deemed municipal affairs. As a result, charter cities may impose RPTTs at a rate higher than the maximum statutory rate of \$0.55 per \$1,000.

Below is a chart of the base RPTT rates applied in neighboring charter cities.

City	Tax (per thousand dollars)
Alameda	\$12.00
Albany	\$15.00
Berkeley	\$15.00
El Cerrito	\$12.00
Emeryville	\$12.00
Oakland	\$15.00
Piedmont	\$13.00
Richmond	\$7.00
San Leandro	\$11.00
Median	\$12.00

Because the RPTT is based on property sales, which can be volatile, the revenue generated from the RPTT can differ significantly from year to year. Below is a chart of the RPTT the City of Pinole has received over the last 10 years:

FY	RPTT Revenue
2011-2012	\$51,630
2012-2013	\$75,542
2013-2014	\$94,992
2014-2015	\$84,136
2015-2016	\$79,181
2016-2017	\$98,593
2017-2018	\$90,328
2018-2019	\$91,954
2019-2020	\$70,764
2020-2021	\$119,254

Based on trends, staff believes that \$100,000 is a reasonable estimate of the amount of revenue the City will receive from the existing RPTT each year for the next few years. Using this estimate, increasing the current RPTT to \$8 per \$1,000 (0.8%) will result in annual revenue of approximately \$1.45 million. Increasing the RPTT to \$12 per \$1,000 (1.2%) will result in annual revenue of approximately \$2.18 million. If the City adopts an increased RPTT, the County will charge a 1-3% administrative fee in order to collect the tax on behalf of the City. Under state law and the California Constitution, cities cannot impose, increase or extend any tax unless the tax is approved by the voters. Accordingly, the increased RPTT would require a vote of the electorate.

B. Process of Becoming Charter City

Becoming a charter city requires approval by a majority of voters. The City Council may, on its own motion, propose a new charter and submit it directly to the voters for approval at the next established statewide general election. The City Council must vote to submit the proposed charter to the voters at least eighty eight (88) days before the election.

Prior to approving submission of the charter to the voters, the City Council must hold at least two (2) public hearings on the proposal of the charter and the content of the charter. The content of the charter should be finalized by the end of the second public hearing. The public hearings must be at least thirty (30) days apart, and there are other timing requirements for other steps in the process. Based on these requirements, below is a summary of the last dates for the Council to take the statutorily required procedural steps to add a Charter Measure to the Ballot:

First Public Hearing on Proposed Charter:	June 7, 2022
Second Public Hearing on Proposed Charter:	July 12, 2022

Council action to place Charter Measure on Ballot: August 2, 2022

A proposed RPTT and charter could be submitted to the voters as one ballot measure. If the proposed RPTT is structured as a general tax, the measure would require approval from a simple majority (50%+1) of voters in order to pass. However, a four-fifths (4/5) vote of the City Council is required to place a charter measure on the ballot.

C. Draft Charter

The proposed charter for the City of Pinole is included below as Attachment 1, and is described in more detail below. If adopted, the only new power the City will have under the proposed charter is the power to enact an increased RPTT. The proposed charter will prohibit the City from exercising any other powers.

i. Continuation of Form of Government.

The proposed charter maintains the City's existing Council-Manager form of government. Under a Council-Manager form of government, the City Council appoints the city manager as the chief administrative officer of the City. The city manager is responsible for appointing all department heads, except the city attorney and city clerk, who are appointed directly by the City Council.

This is Pinole's current form of government, and it is incorporated into the proposed charter. The proposed charter does not create any new power or authority for the City Council to change this form of government. Any future change in the Pinole's form of government would require approval by a majority of the voters.

ii. Continuation of Existing Laws.

Under the proposed charter, the City's existing Municipal Code, and all other ordinances, codes, resolutions, regulations and rules will remain in full force and effect if the Charter is adopted. The City will continue to be governed by these laws and regulations unless they are amended or repealed in the future. The City Council would be able to amend or repeal portions of the Municipal Code or any other existing laws in the same manner as is currently permitted.

iii. Compliance with Law Applicable to General Law Cities.

The proposed charter specifies that the City will comply with all state law governing municipal affairs (except for the enactment of an RPTT discussed further below). This means that the City will comply with all laws applicable to general law cities, which is the case now. The City will have no authority deviate from compliance with these laws absent an amendment to the charter approved by the voters.

iv. Real Property Transfer Tax.

The proposed charter provides that the only power of a charter city that Pinole may exercise is the power to enact an enhanced RPTT. Charter cities are not subject to state law regarding RPTTs because RPTTs are deemed municipal affairs. Under state law and the California Constitution, cities cannot impose, increase or extend any tax unless the tax is approved by the voters.

The proposed charter does not itself enact an RPTT. Rather, the RPTT will be enacted by a separate ordinance that will be approved by the voters. If the City Council decides to move forward with the process to become a charter city, the draft ordinance enacting the RPTT will be presented for review at the Second Public hearing to consider the draft charter.

D. Education and Outreach

The City can, if it desires, engage in limited education and outreach activities related to the possible transition to becoming a charter city and enacting an RPTT. These activities are strictly educational and may not advocate for a potential ballot measure. Examples of education and outreach activities include social media posts, newsletters mailed to residents, and information on the City's website. These activities could provide information and answer frequently asked questions about the status of the City's budget, how an real property transfer tax works, and what powers a charter city has. The City's consultant, LEG, could assist staff in preparing these materials. Any potential educational materials will be closely reviewed by the City Attorney's Office to ensure compliance with applicable laws.

E. Council Direction

At the June 7, 2022 City Council meeting, staff will seek direction from the City Council on the following issues:

1. Whether to move forward with the process of becoming a charter city by holding a second public hearing and preparing an RPTT ordinance;
2. Whether to commence education and outreach activities;
3. The content of the Draft Charter; and
4. The applicable rate for the proposed RPTT.

FISCAL IMPACT

There is no direct fiscal impact from conducting this public hearing. If the City Council decides to proceed with pursuing a ballot measure to become a charter city, there will be a fiscal impact related to placing the measure on the ballot. If an increased RPTT is approved by the voters as part of a charter city measure, the additional revenue from the first year of the increased RPTT will greatly exceed these costs. However, it is uncertain whether voters will approve an increased RPTT.

ATTACHMENTS

A. Draft Charter