



CITY OF EAST PALO ALTO
OFFICE OF THE CITY MANAGER
2415 UNIVERSITY AVENUE
EAST PALO ALTO, CA 94303

Public Hearing
Item: #9D

City Council Agenda Report

Date: July 19, 2016
To: Honorable Mayor and Members of the City Council
Via: Carlos Martínez, City Manager *CM*
From: Marc G. Hynes, Interim City Attorney
Valerie J. Armento, Interim City Attorney
Subject: Adoption of an Ordinance Amending Section 5.08.120 of the East Palo Alto Municipal Code to Impose a One and a half percent (1.5%) Business License Tax on Gross Receipts on Owners of Five or More Residential Units, to be Placed on the November 8, 2016 Ballot

Recommendation

- 1) Adopt an Ordinance amending Section 5.08.120 of the East Palo Alto Municipal Code to impose a business license tax on gross receipts on owners of five or more residential units subject to voter approval on the November 8, 2016 ballot;
- 2) Approve the attached Resolution authorizing the question to approve such a measure on the November 8, 2016 election; and
- 3) Appoint a Council Sub-Committee to write the ballot measure argument on behalf of the City Council.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Priority #2: Enhance Economic Vitality
- Priority #6: Create a Healthy and Safe Community

Background

At its June 21, 2016 Council meeting, the City Council directed staff to prepare for consideration for the November election a business license tax on the business of renting residential property as a ballot measure, modeled after the Berkeley ordinance proposed for the upcoming November 8, 2016 election. This direction was motivated in large part by the submission of an initiative by YUCA proposing a 1.25% gross receipts tax on the rental of four or more units, although the Berkeley ordinance proposes a 2.712% gross receipts tax on the rental of five or more rental units. Staff used the model of the Berkeley ordinance, but made some changes following Council members Romero and Abrica recommendations.

On July 5, 2016 the City Council held a public hearing, deliberated and introduced an Ordinance, to be adopted at the July 19, 2016 meeting imposing a one and a half percent (1.5%) Business License Tax on Gross Receipts on Owners of Five or More Residential Units, to be Placed on the November 8, 2016 Ballot. The ordinance contains an exemption for units during the first 10 years after issuance of a certificate of occupancy in order to not discourage the construction of new residential rental units. The tax is a general tax, but the potential use of funds for housing related purposes is emphasized. Use of these funds to pay for administrative and personnel costs associated with running programs related to the uses of the tax revenue is permissible. If approved by the voters, the Ordinance will be effective once the election returns are certified.

The arguments in favor of the Business License Tax ordinance are:

- a. Business license taxes on the rental of residential property may be increased by a vote of the people.
- b. Any increase in this tax cannot be passed on to tenants protected by the City's rent stabilization ordinance and regulations and likely will not be passed on to other renters since landlords typically charge rents to the maximum the market will bear.
- c. Residential rents in East Palo Alto have increased dramatically primarily due to high demand due to East Palo Alto's location in the center of Silicon Valley, and large number of jobs created in the region.
- d. In 1984 the citizens of East Palo Alto passed a strong rent control system that allowed a fair return to landlord investment while not permitting large rent increases to the residents. In 1999 the State legislature weakened East Palo Alto's system by imposing "vacancy decontrol" on rent stabilized apartments, which allows landlords to raise rents without limitation whenever a new renter moves in. Over 85% of East Palo Alto's older rental apartments have now had vacancy increases. Newer buildings are entirely exempt from rent stabilization.
- e. As a result of "vacancy decontrol" and unprecedented market forces, real (inflation-adjusted) rents in East Palo Alto have increased and renters are paying more in rent, over and above the inflation adjustment for what is necessary for a fair return.
- f. Dramatically increased rents transfer income from East Palo Alto residents to landlords of large rental properties, the majority of whom live outside of East Palo Alto. This transfer creates hardships for low and moderate-income tenants, drains the economic health of the community (less money for families to spend on local shopping and services) and increases the need for public services of all kinds, including affordable housing and homelessness prevention.
- g. By increasing the business license tax on high residential rents, this measure will recapture a small part of the rental income stream for the benefit of the entire community.

- h. The increase will only apply to investors who own five or more residential rental units. In addition, those units with historically low rents will be exempt from the increased business license tax.

Analysis

In conjunction with Council member Romero, the Interim City Attorney has continued to work on refining the question to be submitted to the voters for the business license tax measure. By law the ballot question is limited to 75 words. Both the July 5th version and the current recommendation are presented in the two boxes below. Additions are noted in red underline and deletions in red strikethrough. The key changes are to point out that the tax cannot be passed on to tenants and that the tax can be only terminated by the voters, (AB 809 requires the duration of the tax to be specified), and also that money could be used, in addition to preventing homelessness, on programs to prevent residents' displacement.

As stated, the question succinctly describes what the amount of the tax is, what is being taxed, what the anticipated revenues are, and what types of projects and programs the proceeds might fund.

The resolution to place the item on the ballot reflects the proposed revised language from the second box.

The East Palo Alto Business License Tax on Landlords Measure

Proposed Ballot Measure Language (Version July 5, 2016)

THE EAST PALO ALTO BUSINESS LICENSE TAX ON LANDLORDS	
INCREASE BUSINESS LICENSE TAX ON LANDLORDS. Shall the amount of the business license tax a landlord with five or more residential rental units pays to the City of East Palo Alto be set at 1.5% of gross receipts, and the approximately \$600,000 raised may be used as directed by the City Council including establishing and funding programs to increase the supply of affordable housing and protecting local residents from homelessness, as well as for administrative costs associated with such programs?	YES
	NO

Proposed Ballot Measure Language (Revised for adoption July 19, 2016)

THE EAST PALO ALTO BUSINESS LICENSE TAX ON LANDLORDS	
INCREASE BUSINESS LICENSE TAX ON LANDLORDS. Shall the amount of business license tax a landlord with five or more residential rental units pays to the City of East Palo Alto, which shall not be passed on to tenants, be set at 1.5% of gross receipts, subject to termination by voters, and the approximately \$600,000 raised annually used as directed by the City Council, including funding programs to increase the supply of affordable housing, and protecting local residents from displacement and from becoming homelessness, and for programmatic as well as for administrative costs associated with such programs?	YES
	NO

Two-thirds of the City Council (4 members) are required to vote affirmatively for the business license tax ordinance in order to place it on the ballot.

Ballot Argument

The City Council or a portion thereof, may but is not required to, submit an argument in favor of the measure. Staff recommends the Council appoint a subcommittee to draft an argument and then circulate it among those members interested in signing it. Under the Election Code, allowing rebuttal arguments is optional. Staff suggests that no rebuttals be allowed, since they tend to be repetitive and including rebuttals increases costs.

General Calendar

If the City Council directs staff to proceed with the measure for the November ballot, then the following must occur to meet the scheduled deadlines of the San Mateo County Registrar of Voters:

1. July 19, 2016: Second Reading and adoption of the Business License Gross Receipts Tax Ordinance
 - Approval of Resolution to place the sales tax measure on the ballot for the November 8, 2016 election.
 - Direct City Attorney to draft impartial legal analysis.
 - Appoint City Council Sub-committee to draft ballot arguments.
2. By July 26, 2016: City staff submits signed Resolution to San Mateo County Registrar of Voters.
3. August 3, 2016: City Attorney submits impartial legal analysis to City Clerk for submission to San Mateo County Registrar of Voters.
4. August 10: Ballot arguments for and against are due to City Clerk.
5. August 19: Last day for City Clerk to submit ballot argument to San Mateo County Registrar of Voters.

If approved by the Council and then passed by the voters on November 8, 2016, the tax would become effective once the election returns are certified and implemented for the Calendar Year 2017 Business License renewal process.

State law forbids the City from campaigning in favor of an initiative. The City may only provide voters with legally permissible information and facts related to its policies, including potential ballot measure/s.

The cost of the placing the sales tax measure on the November 8, 2016 ballot assessed by San Mateo County is estimated to be \$6,750. Note that the Council itself has no authority to raise this type of tax and the action of placing this measure on the ballot does not connote support or opposition to the measure, but is simply the act of placing it on the ballot for the voters to decide.

Public Notice

The public was provided notice of this agenda item by posting the City Council agenda on the City's official bulletin board outside City Hall and making the agenda and report available at the City's website and at the San Mateo Co. Library located at 2415 University Avenue, East Palo Alto.

Environmental

The action being considered does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(4), in that "The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment."

Fiscal Impact

Ballot costs are approximately \$6,750 for this measure. If approved by the voters, the tax is estimated to generate \$600,000 annually; actual results will vary from estimates. Staff time and costs in the City Attorney, Finance, and Rent Stabilization departments are anticipated, but unknown.

Attachments

1. Proposed Resolution
2. Proposed Ordinance

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
CALLING AND ORDERING THE SUBMISSION TO THE QUALIFIED
ELECTORS OF THE CITY OF EAST PALO ALTO A MEASURE RELATING TO
A PROPOSED ORDINANCE IMPOSING A BUSINESS LICENSE TAX EQUAL TO
ONE AND A HALF PERCENT (1.5 %) OF GROSS RECEIPTS ON OWNERS OF
FIVE OR MORE RESIDENTIAL RENTAL UNITS AND PROHIBITING THE
PASS-THROUGH OF THE TAX TO TENANTS**

WHEREAS, business license taxes for the rental of residential property may be increased by a vote of the people, and

WHEREAS, residential rents in East Palo Alto have increased dramatically primarily due to high demand due to East Palo Alto's location in the center of Silicon Valley, and large number of jobs created nearby, and

WHEREAS, in 1984 the citizens of East Palo Alto passed a strong rent control system which allowed a fair return to owner investment while not permitting large increases to the residents but changes in state law in 1999 weakened East Palo Alto's system by imposing "vacancy decontrol" on rent stabilized apartments, allowing landlords to raise rents without limitation whenever a new renter moves in, and

WHEREAS, as a result of "vacancy decontrol" and unprecedented market forces, real (inflation-adjusted) rents in East Palo Alto have increased and renters are paying more in rent, over and above the inflation adjustment for what is necessary for a fair return, and

WHEREAS, dramatically increased rents transfer income from East Palo Alto residents to landlords of large rental properties, the majority of whom live outside of East Palo Alto, creating hardships for low and moderate-income tenants, draining the economic health of the community and increasing the need for public services of all kinds, including affordable housing and homelessness prevention, and

WHEREAS, by increasing the business license tax on high residential rents, and applying the increase only to investors who own five or more residential rental units, this measure will recapture a small part of the rental income stream for the benefit of the entire community, and

WHEREAS, a Consolidated General Municipal Election on Tuesday, November 8, 2016 has been called by Resolution Nos. 4750 and 4751, adopted on July 5, 2016,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO THAT:

SECTION 1. The City Council pursuant to its right and authority, does order to be submitted to the voters at a General Municipal election the following question:

THE EAST PALO ALTO BUSINESS LICENSE TAX ON LANDLORDS	
INCREASE BUSINESS LICENSE TAX ON LANDLORDS. Shall the amount of business license tax a landlord with five or more residential rental units pays the City, which shall not be passed on to tenants, be set at 1.5% of gross receipts, subject to termination by voters, and the approximately \$600,000 raised annually used as directed by the City Council, including funding programs to increase affordable housing, protect local residents from displacement and from becoming homeless, and for programmatic administrative costs?	YES
	NO

SECTION 2. The full text of the proposed measure submitted to the voters is attached as Exhibit A to this Resolution, which is incorporated herein by this reference.

SECTION 3. The City Council hereby requests the San Mateo County Registrar of Voters to provide all services necessary to conduct the Election and to conduct and canvass the results of the Election. The City will reimburse San Mateo County for the actual cost incurred in conducting the election when the work is completed and upon receipt of a bill stating the amount due as determined by the elections official.

SECTION 4. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, for and a manner as required by law. The hours during which the polling places for the Election shall be open shall be the hours established for the Consolidated Municipal Election.

SECTION 6. The City Clerk is hereby directed to do all things required by law to effectuate the Consolidated General Municipal Election, and to present the measure submitted herein to the electorate, including, but not limited to, required publications, postings, noticing and filings.

SECTION 7. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of this resolution to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within fifteen (15) days of the adoption of this Resolution.

SECTION 8. Arguments for and against, not to exceed 300 words in length may be filed consistent with Elections Code Section 9282 requirements. The City Council declines, pursuant to the provisions of Section 9285 of the Elections Code to permit rebuttal arguments.

SECTION 9. The City Clerk is hereby directed to file a certified copy of this Resolution with the San Mateo County Board of Supervisors and the San Mateo County Registrar of Voters.

ADOPTED this 19th day of July 2016, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:**

SIGNED:

Donna Rutherford, Mayor

ATTEST:

APPROVED AS TO FORM:

Terrie Gillen, Deputy City Clerk

Marc G. Hynes, Interim City Attorney

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
IMPOSING A BUSINESS LICENSE TAX EQUAL TO ONE AND A HALF
PERCENT (1.5 %) OF GROSS RECEIPTS ON OWNERS OF FIVE OR MORE
RESIDENTIAL RENTAL UNITS AND PROHIBITING THE PASS-THROUGH OF
THE TAX TO TENANTS**

THE PEOPLE OF THE CITY OF EAST PALO ALTO ORDAIN AS FOLLOWS:

Section 1. Findings and declarations.

The People of East Palo Alto find and declare as follows:

- a. Business license taxes for the rental of residential property may be increased by a vote of the people.
- b. Any increase in this tax cannot be passed on to tenants protected by the City's rent ordinances and regulations and likely will not be passed on to other renters since landlords already typically charge rents to the maximum the market will bear.
- c. Residential rents in East Palo Alto have increased *dramatically* primarily due to high demand due to East Palo Alto's location in the center of Silicon Valley, and large number of jobs created nearby.
- d. In 1984 the citizens of East Palo Alto passed a strong rent control system that allowed a fair return to landlord investment while not permitting large increases to the residents. In 1999 the State legislature weakened East Palo Alto's system by imposing "vacancy decontrol" on rent stabilized apartments, which allows landlords to raise rents without limitation whenever a new renter moves in. Over 85% of East Palo Alto's older rental apartments have now had vacancy increases. Newer buildings are entirely exempt from rent stabilization.
- e. As a result of "vacancy decontrol" and unprecedented market forces, real (inflation-adjusted) rents in East Palo Alto have increased and renters are paying more in rent, over and above the inflation adjustment for what is necessary for a fair return.
- f. Dramatically increased rents transfer income from East Palo Alto residents to landlords of large rental properties, the majority of whom live outside of East Palo Alto. This transfer creates hardships for low and moderate-income tenants, drains the economic health of the community (less money for families to spend on local shopping and services) and increases the need for public services of all kinds, including affordable housing and homelessness prevention.

- g. By increasing the business license tax on high residential rents, this measure will recapture a small part of the rental income stream for the benefit of the entire community.
- h. The increase will only apply to investors who own five or more residential rental units. In addition, those units with historically low rents will be exempt from the increased business license tax.

Section 2. Section 5.08120 of the East Palo Alto Municipal Code is amended to read as follows:

5.08.120 — Rental of real property

Every person or entity engaged in the business of renting or letting a building, structure or other property, or a portion of such building, structure or property, within the city for any purpose, except for those engaged in the business of renting or letting five or more residential units within the city, shall pay an annual license fee as provided in the fee schedule established by the city.

Section 3. A new Section 5.08.125 is added to the East Palo Alto Municipal Code to read as follows:

5.08.125 Rental of five or more units of residential real property.

- 1) Notwithstanding Section 5.08.120, this Section shall govern the taxation of gross receipts from the rental of five or more residential rental units in the city of East Palo Alto.
- 2) Every person or entity engaged, directly or indirectly, including through an interest in another entity, in the business of renting or leasing five or more dwelling units in the City of East Palo Alto shall pay an annual tax of 1.5% of gross receipts.
- 3) Gross receipts from the following categories of dwelling units shall not be subject to this Section, but shall be subject to section 5.08.120:
 - a) Dwelling units owned by a nonprofit corporation whose primary purpose is the provision of affordable housing;
 - b) Dwelling units whose rents are controlled under state or federal law, deed restrictions, or agreements with public agencies, at rental rates that are affordable to households earning no more than 80% of AMI and whose tenants must be income-qualified;

- c) Units occupied by tenants receiving monthly rental assistance (such as Section 8 vouchers or Shelter + Care) from the County of San Mateo Department of Housing; and
 - d) Any dwelling unit during the first 10 years after the issuance of a certificate of occupancy.
- 4) Any person or entity otherwise subject to the tax imposed under this Section may seek a one year hardship exemption due to exceptional circumstances. The Rent Stabilization Administrator may approve such applications for good cause, such good cause being determined in accordance with standards set out in the City Rent Stabilization and Just Cause for Eviction Ordinance, Chapter 14.04 of the East Palo Alto Municipal Code. Such approvals shall be in writing and specifically state the factors that constitute good cause. Any hardship exemption shall be effective for one tax year only, after which it will expire. Taxpayers who seek hardship exemptions must reapply every year.
 - 5) The City Council may reduce the tax rate set forth in this Section for rental of five or more dwelling units, and may terminate any such reductions, without further voter approval.
 - 6) The tax imposed by this chapter shall not be passed on to existing tenants in the form of rent increases or in any manner, including reduction in services or added charges for services, unless such pass through is constitutionally required.
 - 7) The City Council may use the funds generated for any purposes deemed necessary and appropriate for the benefit of the citizens of East Palo Alto. Periodically, Council shall review housing policy, housing programs, and related issues to determine how and to what extent the City should establish and fund such programs, if any, to increase the supply of affordable housing and protect residents from displacement and homelessness, in light of the City's budget cycle and other relevant funding cycles.

Section 5. Conflicting Measures.

This measure is intended to be comprehensive and fully address and occupy the field of taxation of receipts from the rental of dwelling units, and real property and buildings in general. It is the intent of the people of the City of East Palo Alto that in the event this measure and any other measure relating to taxation of receipts from the rental of dwelling units, or real property and buildings in general, appear on the same ballot, the provisions of the other measure shall be deemed in their entirety to be in conflict with this measure. If this measure receives a greater number of affirmative votes than any conflicting measure or measures, this measure shall prevail in its entirety, and all provisions of such other measure or measures shall be null and void in their entirety. If this measure is approved by the voters but does not receive a greater number of affirmative votes than any other measure(s) appearing on the same ballot relating to taxation of receipts from the rental of dwelling

units, or real property and buildings in general, then this measure shall take effect to the extent not in conflict with said other measure(s).

Section 6. Severability.

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