ORDINANCE NO. 2018-03

AN ORDINANCE OF THE CITY OF EL CERRITO
AUTHORIZING A TAX ON THE TRANSFER OF REAL PROPERTY LOCATED IN EL CERRITO AND ADDING CHAPTER 4.64 – REAL PROPERTY TRANSFER TAX TO THE EL CERRITO MUNICIPAL CODE

WHEREAS, the City of El Cerrito was incorporated as a general law city in 1917 by residents seeking to manage local affairs; and

WHEREAS, since then, the authority of general law cities has been diminished through State mandates and State law regarding use of local resources; and

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

WHEREAS, becoming a charter city would allow El Cerrito to reclaim more local autonomy and expand the economic and fiscal independence of our city to promote the health, safety, and welfare of all residents; and

WHEREAS, El Cerrito does not have the authority to institute a property transfer tax on commercial property owners, so our residents lose out on millions of dollars in funds that could be used for city services. By becoming a Charter City, El Cerrito can collect our its fair share; and

WHEREAS, establishing El Cerrito as a charter city like Oakland, Alameda, Richmond, Emeryville, Albany, and Berkeley gives us more local control over City affairs and local funding needs, money that cannot be taken by the State; and

WHEREAS, the voters of each charter city get to decide which tools to put in their tool box. Being a charter city allows for more options for funding important local services or capital projects. Potentially, the biggest impact for El Cerrito would be the ability to implement a real property transfer tax like its neighboring cities; and

WHEREAS, because we do not have a real estate property transfer tax, in 2017 El Cerrito lost more than half a million dollars in potential revenue from commercial sales; and

WHEREAS, to address these issues, in November 2017, the City Council created and provided direction to a volunteer Charter Committee to prepare a draft charter for the City Council to consider submitting to the voters of El Cerrito to change El Cerrito to a charter city, which would also empower the voters to approve a real property transfer tax; and

WHEREAS, after five well noticed public meetings, the Charter Committee recommended to the City Council a draft El Cerrito City Charter; and
WHEREAS, the City Council held two noticed public hearings to receive comments from the public and to consider the proposed draft El Cerrito City Charter; and

WHEREAS, at the conclusion of the hearing process, after considering all testimony, evidence, and comments from the public, the City Council directed the preparation of a ballot measure to submit to the voters of El Cerrito the approval of the El Cerrito City Charter and an ordinance that would authorized a real property transfer tax; and

WHEREAS, the measure provides a protected and reliable source of local revenue to maintain critical resident services; and

WHEREAS, revenue from the measure could be used to maintain police, fire protection and emergency medical services, city parks, paths, playfields, and open space, rapid 9-1-1 emergency response times, programs for children, adults, and families, library programs, earthquake and disaster preparedness programs, and create an emergency reserve for natural disasters and emergencies like the recent North Bay fires; and

WHEREAS, the measure requires independent citizen oversight, annual independent financial audits, and yearly reports to the community to ensure that all funds are spent as directed; and

WHEREAS, the proposed Charter would authorize the City to levy a real property transfer tax; and

WHEREAS, the tax to be submitted to the voters, if approved, would authorize a tax on the sale of property. Payment of the tax could be negotiated between buyer and seller. The tax would not be an annual tax on property, only a tax on the sale of property. The tax rate would be twelve dollars ($12.00) per each one thousand dollars ($1,000.00), or fraction thereof, of the consideration paid for real property. The tax would be owed at the time of sale of real property. The tax would collected by the City. Both the El Cerrito City Charter and the tax would be approved if the measure receives at least a simple majority vote of affirmative votes.

THE PEOPLE OF THE CITY OF EL CERRITO DO ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are true and correct and made a part of this Ordinance.

SECTION 2. Amendment of Municipal Code. Chapter 4.64 is hereby added to the El Cerrito Municipal Code to read as follows:
Chapter 4.64 – REAL PROPERTY TRANSFER TAX

4.64.010 Title.
This chapter may be cited as the “Real Property Transfer Tax Ordinance of the City of El Cerrito.”

4.64.020 Purpose and Authority.

A. 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.

B. This ordinance 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 El Cerrito City Charter.

4.64.030 Definitions.

"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 51 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 seismic upgrades and energy and water conservation projects listed in section 4.64.080.

"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 other City official 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 a change in control and ownership of a legal entity that results in a transfer of real property.

"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. 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. By way of example only and without limiting the generality of the foregoing, a transfer of real property that is a gift, with the transferor transferring the real property to the transferee with no compensation and free and clear of liens and encumbrances, is a form of transfer of real property for which the value of consideration is less than the fair market value.

4.64.040 Tax Imposed.

A tax is hereby imposed on each transfer of real property located in the City of El Cerrito, when the value of the consideration exceeds one hundred dollars ($100.00)

4.64.050 Tax Rate.

The rate of the tax imposed pursuant this chapter shall be twelve dollars ($12.00) for each one thousand dollars ($1,000.00) of the value of consideration paid for a transfer of real property, or fractional part of each one thousand dollars ($1,000.00) of the value of consideration.

4.64.060 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.

4.64.070 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 (5) years from the date of such confirmation, approval, or change.

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

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 (1) 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. Transfer of Restricted Affordable Units. The tax imposed pursuant to this chapter shall not apply to transfers of real property if the real property is encumbered by a recorded and enforceable covenant executed in favor of the City restricting the ownership and occupancy of the real property, for a period of no less than thirty (30) years following the date of transfer, to "persons and families of low or moderate income" as defined in California Health and Safety Code Section 50093.

H. 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 (90) days after the recordation of the transfer requiring correction or confirmation.

4.64.080 Rebate Program for Seismic Upgrades and Energy and Water Conservation Projects.

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 or implemented qualifying energy or water conservation projects 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 El Cerrito 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 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 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.


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. Qualifying seismic upgrades or energy or water conservation projects 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.

F. Rebate applications shall be submitted with applications for permits from the Building Division for qualifying seismic upgrades and energy and water conservation projects, 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.
G. 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.

H. 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.

4.64.090 Administration of Tax.

The Tax Administrator shall collect 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 article, as well as necessary forms and receipts.

4.64.100 Due Dates, Delinquencies, Penalties, Interest, Administrative Charges, and Lien Release Recordation Fees.

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 (90) days later. If a transfer of real property is effected but not recorded with the County Recorder within ninety (90) 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
in Section 4.64.060. In the event that the tax is not paid prior to becoming delinquent,
a delinquency penalty of ten percent (10%) 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 (15%)
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 (1%) 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.

4.64.110 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 4.64.060. 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 (3) years after recordation of the
deed, instrument, or writing which transfers such property.
4.64.120 Determination of Deficiency; Petition for Redetermination.

A. If on the basis of such information as the Tax Administrator receives pursuant to Section 6.64.110, 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 6.64.110 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 (3) 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 (60) 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 (60) day period, the determination becomes final at the expiration of the period.

G. If a petition for redetermination is filed within the sixty (60) 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 (10) 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 (30) 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 (90) days of the final date of such redetermination. (California Code of Civil Procedure Section 1094.6.)

4.64.130 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.

4.64.140 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 (1) 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.

4.64.150 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 owned 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 (10) 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 (12%) per annum from the date of recordation to the date of lien.

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.

4.64.160 Annual audit.

Each year, as part of 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.
4.64.170 Amendments. The following amendments to this ordinance 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 ordinance.

Section 3. Adjustment of Appropriations Limit. Pursuant to Article XIIIIB 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 2018-19 and each year thereafter.

Section 4. Compliance with the California Environmental Quality Act. Approval of this ordinance is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines")). The tax authorized by this ordinance is 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 tax 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 such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 6. Effective Date. This ordinance shall take effect 10 days after the City Council declares the results of the vote at the November 6, 2018, election. The tax authorized by the ordinance shall become operative upon the effective date of the Charter of the City of El Cerrito.

The foregoing ordinance was approved by the following vote of the People of the City of El Cerrito at the General Municipal Election on November 6, 2018:

YESES: 6,691

NOES: 5,593
The foregoing ordinance was adopted by the declaration of the vote at the November 6, 2018 General Municipal Election, which the City Council of the City of El Cerrito declared on December 4, 2018 by the following vote:

AYES: Councilmembers Abelson, Fadelli, Lyman, Pardue-Okimoto and Mayor Quinto
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:

[Signature]

Gabriel Quinto, Mayor

ATTEST:

[Signature]

Sherry M. Kelly, Acting City Clerk