

**Agenda Item # 16:****Review Measure O Ballot Tax for Consideration of Conversion to Unit Tax. (DISCUSSION AND POSSIBLE ACTION)**

Currently, only single-family homes pay the on-going flat fee *parcel* tax for Measure O and not for each single apartment *unit*. In other words, Measure O does not uniformly apply the tax for Fire and EMS services to every individual household within the RHFD.

The district has within its scope the ability to modify Measure O to charge its current flat fee *parcel* tax, instead, to a per *unit* tax for each unit within a multi-unit apartment building. In other words, an updated Measure O tax measure for the November 5<sup>th</sup> 2024 election would propose a change in Measure O to charge the fire/EMS tax from a parcel tax to a tax for each and every one of the multiple individual *apartment units*. Charging a per unit tax on a parcel is *not* prohibited

To charge the tax per unit would amend the calculation method, and would require a ballot measure approved by the voters.

If the Board were so inclined, and presumably after professional analysis, the Board could initiate a ballot measure to amend the calculation method of Measure O to one that is similar, in intention of *uniformity*, to the tax measure that was charged by the Alameda Unified School District for their Measure A. In a recent appeals court case, Leland Traiman v. Alameda Unified, the court overturned an April 2022 decision by Alameda County Superior Court Judge Julia Spain, who ruled that “Measure A violated a state law that requires parcel taxes be set at a uniform rate”.

Locally, with several large-scale new developments being established in Hercules in the former redevelopment district near to the waterfront, the Measure O *parcel* tax no longer applies uniformly to all residences within the Rodeo-Hercules Fire District. In Leland Traiman, the appeals court ruled that Measure A satisfied the legal requirement that a parcel tax should be applied uniformly for all classes of taxpayers (with no distinction between residential and commercial properties or between homes and apartments). In the case of an updated Measure O unit tax (versus RHFD’s current parcel tax), it would be applied uniformly for all classes of taxpayers, homeowners and apartment dwellers, alike, thus apparently satisfying the legal uniformity requirement.

Therefore, the method to remedy the *non-uniform application* of Measure O is to set taxes at a uniform rate for all residences and that would be as a *per unit tax* (as opposed to a parcel tax). As it currently stands, Rodeo-Hercules single-family households are subsidizing fire and EMS services for apartment residents and/or apartment building owners. Under an updated Measure O, accessory dwelling units (ADUs) would also be assessed for a unit tax.

Note also that recent State and local governmental policies, in fact, encourage the increased rate of construction of large multi-unit apartments, especially in the Bay Area. Note that multi-storied apartment building that require expensive 100-foot ladder trucks and each apartment can have hundreds of separate units.

**IMPORTANT NOTES:**

- 1) We would need a *consultant* to change Measure O.
- 2) If the measure was not passed, that Measure O would remain *intact*.
- 3) The last day to place a measure on the ballot is on August 9, 2024

**Financials:**

The cost for the ballot measure would be \$2.50-\$4.00 per voter in the district. Currently, RHFPD has 22,734 active voters within the district (according to Candidate Services at the Contra Costa County Elections division). The cost for a ballot measure to update Measure O would be in the vicinity of \$75,000.

The potential revenue generated yearly in an updated Measure O unit tax measure:

Aventine 147; The Grand 231; Exchange 172; Blocks MPO (Ground has been broken) 287  
(Existing Total: 837 units = ~ \$210,000/ year immediately)

Future apartments units near to the Hercules waterfront (note that these financial figures are very approximate and are likely overstated because of various development considerations):

Blocks ABCD (“The Bowl”) 461  
Hilltown 598  
Bayfront Blvd 305  
(Future Total: 1364 units = ~ \$340,000/ year – future/ projected construction)

Total ~ \$550,000 / year (for current and future apartment developments)

Therefore, a unit tax would raise between \$200 thousand initially and potentially, one-half million dollars per year for RHFD. Furthermore, the cost of an updated Measure O ballot measure is minor as compared to the County’s administrative cost for doing the measure in November.

**Legal Ruling (answer with legal references provided by Microsoft Bing/ChatGPT):  
Leland Traiman v. Alameda Unified School District:**

The case of Leland Traiman v. Alameda Unified School District involved a dispute over Measure A, a tax approved by voters in the Alameda Unified School District in 2020. The tax was levied on improved parcels at a rate of \$0.265 per building square foot, not exceeding \$7,999 per parcel.<sup>(1,2)</sup> In April 2022, Alameda County Superior Court Judge Julia Spain ruled that the tax was not applied uniformly and invalidated it.<sup>(1,2)</sup> However, this decision was overturned by the California Court of Appeals, First District, Fifth Division on August 3, 2023.

The appeals court ruled that Measure A satisfied the legal requirement that a parcel tax should be applied uniformly for all classes of taxpayers, with no distinction between residential and

commercial properties or between homes and apartments. (2) This ruling gives school districts and community colleges more latitude to design a parcel tax. (2) The court’s decision is precedent-setting and binding across the state on any Superior Court that considered a similar challenge to another tax,(2) This ruling provides districts with flexibility and clarity2. The plaintiff, Leland Traiman, was awarded \$374,960 in attorney fees pursuant to Code of Civil Procedure section 1021.51. The District appealed this decision. (1,2)

- 1) Traiman v. Alameda Unified Sch. Dist. From Case text: Smarter Legal Research. <https://casetext.com/case/traiman-v-alameda-unified-sch-dist>
- 2) Appeals court upholds parcel taxes based on square footage with a ceiling. Decision for Alameda Unified gives districts more options to design a parcel tax. <https://edsources.org/2023/appeals-court-upholds-parcel-taxes-based-on-square-footage-with-a-ceiling/695289>
- 3) CERTIFIED FOR PUBLICATION: IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT; DIVISION FIVE **LELAND TRAIMAN, Plaintiff and Respondent, v. ALAMEDA UNIFIED SCHOOL DISTRICT, Defendant and Appellant.** Filed 8/3/23. (A164935, A166022; Alameda County Super. Ct. No. RG20061550). <https://cases.justia.com/california/court-of-appeal/2023-a164935.pdf?ts=1691103661>

Elections Services; Candidate Services; Contra Costa County Elections  
<https://www.contracostavote.gov/> Phone: 925-335-7800

Candidate Nomination Period	July 15, 2024 – August 9, 2024
Last day to place a measure on the ballot	August 9, 2024
Local measure letter assigned	August 12, 2024
Randomized alphabet drawing for ballot placement	August 15, 2024
Deadline for Primary Arguments For/Against	August 21, 2024
Deadline for Rebuttal Arguments	August 26, 2024
Vote by Mail Mailing	October 7, 2024
Voter Registration Deadline	October 21, 2024
Last Day to Request Vote by Mail Ballot	October 29, 2024

Election Day	November 5, 2024
Certification Deadline	December 5, 2024