

**ASSEMBLY FINANCE COMMITTEE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
Wednesday, September 2, 2020, 7:00 PM.
Zoom Webinar & FB Live Stream**

(webinar: <https://juneau.zoom.us/j/98033819007> or call: 1-346-248-7799 Webinar ID: 980 3381 9007)

I. CALL TO ORDER

II. ROLL CALL

III. APPROVAL OF MINUTES

- a. Wednesday, August 5, 2020

IV. ITEMS FOR ACTION

- a. Ordinances: CBJ and JSD CARES Act FY20 Supplemental Appropriations
- b. School District FY21 CARES Act Funding Request
- c. Ordinance: Mandatory Real Estate Disclosure
- d. Ordinance: Repeal On-Board Sales Tax Exemption
- e. Glory Hall, United Human Services, and Sealaska Project Funding Requests

V. INFORMATION ITEMS

- a. Staff Update on FY20 Financial Closing and Lapse
- b. Staff Update on FY20 Hotel, Liquor, Tobacco, and Marijuana Tax Receipts
- c. Staff Update on FY21 CIP Appropriation for CBJ Phone System
- d. Staff Update on Suspension of Payroll Taxes
- e. Staff Update on Reorganization of Treasury and Sales Tax Divisions
- f. Staff Update on FY20 Investment Performance

VI. SUPPLEMENTAL MATERIALS

- a. JSD FY20/FY21 COVID-Related Supplemental Funding

VII. NEXT MEETING DATE

- a. Wednesday, November 4, 2020

VIII. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city.clerk@juneau.org

DRAFT
City and Borough of Juneau
Minutes - Assembly Finance Committee Meeting
Zoom Webinar & Facebook Live Stream
Wednesday, August 5, 2020

I. CALL TO ORDER

The AFC meeting was called to order at 5:31 PM by Loren Jones, Chair.

II. ROLL CALL

Committee Members Participating Virtually: Mayor Beth Weldon; Loren Jones, Chair; Carole Triem; Alicia Hughes-Skandijs; Wade Bryson; Michelle Bonnet Hale; Marie Gladyszewski; Greg Smith; Rob Edwardson

Committee Members Absent: None

Staff Present Virtually: Rorie Watt, City Manager; Mila Cosgrove, Deputy City Manager; Jeff Rogers, Finance Director; Adrien Speegle, Budget Analyst; Rob Palmer, City Attorney

Others Present Virtually: Linda Thomas, Economic Stabilization Task Force Co-Chair; Lauren MacVay, Economic Stabilization Task Force Member; Joy Lyon, Association for the Education of Young Children (AEYC) Executive Director

III. APPROVAL OF MINUTES

- a. The July 23, 2020 minutes were approved as presented.

IV. INFORMATION ITEMS

- a. **CARES Act Funding Update**

Mr. Rogers presented the updated CARES Act funding pie chart to the Committee. Mr. Rogers stated that current draft legislation in Congress relating to the Coronavirus Relief Fund includes provisions that would allow local governments to allocate up to 25% of their CARES Act funding distribution to replace lost revenue. Mr. Rogers presented a second pie chart showing the impact of allocating 25% of the distribution of funds to revenue replacement for the Assembly's consideration. He explained that if the legislation were to pass in Congress, the Committee could either choose to continue with their current strategy of allocating the funds, or allow for the 25% allocation towards revenue replacement. If the Committee chose the latter, they could still proceed with using the funding for COVID-related programs or costs, but would not be restricted by the expenditure eligibility requirements that are currently in place under the CARES Act.

Minutes - Assembly Finance Committee Meeting Wednesday, August 5, 2020

Mr. Rogers and Mr. Watt responded to committee questions.

b. FY20 Financial Status Update

Mr. Rogers brought the Committee's attention to the memo on packet page 7. Mr. Rogers explained that the lapse in budgeted expenditure authority was more significant than anticipated, close to \$2-2.5 million, further noting that this figure does not reflect the amount of general funds saved or offset with CARES Act funding. Revenue gained from sales tax was better than anticipated.

Mr. Rogers confirmed that CBJ did not receive Supplemental Emergency Medical Transport (SEMT) Medicaid reimbursement for FY20, but that we're on track to receive it in FY21.

Mr. Rogers responded to committee questions.

c. Centennial Hall PERS Past Service Liability

Mr. Rogers presented two draft ordinances relating to the Centennial Hall Public Employees' Retirement System (PERS) past service liability. He explained that in 2018, management of Centennial Hall was transitioned from CBJ to the Juneau Arts and Humanities Council (JAHC). As a result of this transition, five Centennial Hall employees were terminated from PERS. Based on a termination study conducted by the State of Alaska, CBJ is liable for an ongoing indebtedness obligation of approximately \$50,000 per fiscal year until CBJ's PERS unfunded pension liability has been fully paid off, an estimated 30 to 40 years, dependent on market conditions. In an ordinary year, funding for the ongoing indebtedness fees would be provided from hotel bed tax receipts or the Hotel Bed Tax Fund's fund balance. However, the residual balance of the Hotel Bed Tax Fund in FY20 and FY21 has been fully depleted in light of highly diminished hotel bed tax receipts. Mr. Rogers stated that the FY19, FY20, and FY21 payments would be covered with general funds, with the intention of funding all future ongoing indebtedness fees with hotel bed tax receipts.

Mr. Rogers responded to committee questions.

Ms. Cosgrove clarified that the provision is triggered when there is either a classification that is eliminated from the workforce; when over 50% of the employees in a single job classification are terminated; or if a group of employees are removed from a certain status type. In this case, two job classifications specific to Centennial Hall were eliminated, which prompted the termination study.

Minutes - Assembly Finance Committee Meeting Wednesday, August 5, 2020

Motion: by Mayor Weldon to move Ordinance 2019-06(AL) to the full Assembly.

No objection, motion passed unanimously.

Motion: by Mayor Weldon to move Ordinance 2020-09(D) to the full Assembly.

No objection, motion passed unanimously.

V. ITEMS FOR ACTION

a. FY21 AEYC Hearts Program and CARES Childcare Grant Update

Ms. Cosgrove presented a memo to the Committee requesting AEYC be allowed to carryover their unspent FY20 grant award funds for the purpose of developing a training program for a childcare workforce.

Motion: by Mayor Weldon to allow carryover of unspent FY20 grant funds for AEYC to be spent in FY21.

No objections, motion passed unanimously.

Ms. Cosgrove stated that Ms. Lyon, AEYC Executive Director, has provided an update of the distribution of funds thus far under the Emergency Childcare Grant. AEYC is seeking permission to work with staff to come up with a methodology for distributing the remaining funds of the CARES CBJ Emergency Childcare Grant.

Ms. Cosgrove and Ms. Lyon responded to committee questions.

Motion: by Mayor Weldon to authorize the Manager's Office to work on the distribution mechanism of the CBJ CARES Emergency Childcare Grant.

No objections, motion passed unanimously.

b. Ordinance 2020-37: An Ordinance Appropriating up to \$500,000 to the Manager for a COVID-19 Business Safety Program; Funding provided by the CARES Act Special Revenue Fund.

Mr. Rogers explained that this ordinance is intended to provide support to local businesses who incur expenditures for Personal Protective Equipment (PPE) and

Minutes - Assembly Finance Committee Meeting Wednesday, August 5, 2020

workspace modifications. Mr. Rogers asked Ms. MacVay to speak to the intent of the funding.

Ms. MacVay stated that this grant proposal was put together to address the financial gap that businesses are experiencing from investing in PPE which they would not have the opportunity to offset using other avenues.

Ms. MacVay responded to committee questions.

Ms. Triem stated that she would like to withdraw this ordinance from further consideration, as CBJ's mask mandate has achieved the public health goal that these funds were intended to accomplish.

Motion: by Ms. Triem to withdraw Ordinance 2020-37 for the Business Safety Program.

No objections, the motion passed unanimously.

- c. **Ordinance 2020-43: An Ordinance Appropriating up to \$500,000 to the Manager for a COVID-19 Juneau ArtWorks Grant Program; Funding provided by the CARES Act Special Revenue Fund.**

Mr. Rogers explained that the ArtWorks Grant Program is intended to fund the creation of artworks that would become public property. CBJ would commission artists who are disadvantaged as a result of the pandemic. Mr. Rogers asked Ms. Hale if she would speak more on the topic.

Ms. Hale stated that artists are often disadvantaged, even in normal times. They do not pay unemployment benefits so they cannot receive them. The added benefit of this program is that the CBJ and residents will receive actual artworks that will commemorate current times.

Ms. Hale proposed an amendment to the ordinance to change the language in the body of the legislation to reflect the grant award amount as \$300,000 instead of \$500,000, but leave the title intact. This would allow the program to be established using \$300,000, and if additional funding was needed in the future, it would already be appropriated up to \$500,000.

Motion: by Ms. Hale to change the language in the body of Ordinance 2020-43 so that the Manager's Office receives \$300,000 instead of \$500,000.

Objection: by Mr. Bryson, who spoke in favor of the original program amount; his objection was later removed.

Minutes - Assembly Finance Committee Meeting Wednesday, August 5, 2020

No objection, motion passed unanimously.

Motion: by Ms. Hale to move Ordinance 2020-43 as amended to the full Assembly for consideration.

No objections, motion passed unanimously.

VI. ITEMS FOR DISCUSSION

a. Fall/Winter AFC Topics for Consideration

Mr. Rogers presented a memo listing potential AFC topics for consideration for the fall and winter period. These topics have been held over from AFC proceedings prior to the FY21 budget process and COVID-19 pandemic, and included the following: sales tax rates and exemptions, mandatory disclosure of real estate pricing, and Assembly compensation.

Committee members discussed their interest in taking up these topics for consideration, but did not make any final decisions on which topics may be brought back to the Committee for discussion.

VII. NEXT MEETING DATE

a. Wednesday, September 2nd, 2020

VIII. ADJOURNMENT

The meeting was adjourned at 7:25 PM.

Presented by: The Manager
Introduced: September 21, 2020
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-06(AN)

An Ordinance Appropriating to the Manager the Sum of \$8,350,000 as Funding for the City and Borough of Juneau's Fiscal Year 2020 COVID-19 Related Costs; Funding Provided by Federal Revenue and State Revenue.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of \$8,350,000 as funding for the City and Borough of Juneau's fiscal year 2020 COVID-19 related costs.

Section 3. Source of Funds

Federal Revenue	\$ 8,227,587
State Revenue	\$ 122,413
Total Funding	\$ 8,350,000

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this ____ day of _____, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Ordinance 2019-06(AN)
Manager's Report

An Ordinance Appropriating to the Manager the Sum of \$8,350,000 as Funding for the City and Borough of Juneau's Fiscal Year 2020 COVID-19 Related Costs; Funding Provided by Federal Revenue and State Revenue.

This ordinance would appropriate \$8,350,000 for the City and Borough of Juneau's FY2020 COVID-19 related costs. Funding is provided by federal and state revenue. State revenue from the Department of Health and Social Services (DHSS) is provided to cover the Juneau International Airport's COVID-19 screening costs. Federal revenue is comprised of CARES Act and FEMA funding, and is estimated to be allocated as per the following table:

	CBJ CARES	FEMA	Alaska DHSS	Total
Personnel	\$ 7,246,353	\$ 0	\$ 115,330	\$ 7,361,683
Commodities/Services	\$ 588,234	\$ 393,000	\$ 7,083	\$ 988,317
Total	\$ 7,834,587	\$ 393,000	\$ 122,413	\$ 8,350,000

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

Presented by: The Manager
Introduced: September 21, 2020
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-07(B)

An Ordinance Appropriating \$1,015,700 from the Treasury for the Juneau School District's Fiscal Year 2020 COVID-19 Related Costs, Funding Provided by Federal Revenue, State Revenue, and Miscellaneous Donations.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated \$1,015,700 from the Treasury for the Juneau School District's fiscal year 2020 COVID-19 related costs.

Section 3. Source of Funds

Federal Revenue	\$ 392,900
State Revenue	\$ 550,000
Miscellaneous Donations	\$ 72,800
Total Funding	\$ 1,015,700

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this ____ day of _____, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

Ordinance 2019-07(B)
Manager's Report

An Ordinance Appropriating \$1,015,700 from the Treasury for the Juneau School District's Fiscal Year 2020 COVID-19 Related Costs, Funding Provided by Federal Revenue, State Revenue, and Miscellaneous Donations.

This ordinance would appropriate \$1,015,700 for the Juneau School District's FY2020 COVID-19 related costs. Funding is provided by federal revenue, state revenue, and miscellaneous donations. State revenue from the Department of Health and Social Services (DHSS) is provided to cover costs for childcare. Federal revenue is comprised of pass-through funding from the Department of Education and Early Development (DEED) for contact tracing costs, JSD CARES Act funding, and CBJ CARES Act and FEMA funding, estimated to be allocated as per the following table:

	JSD CARES	CBJ CARES/ FEMA	Alaska DEED	Alaska DHSS	Misc. Donations	Total
Personnel	\$ 27,900	\$ 299,700	\$ 2,000	\$ 550,000	\$ 36,600	\$ 916,200
Commodities/Services	\$ 56,800	\$ 6,500	\$ 0	\$ 0	\$ 36,200	\$ 99,500
Total	\$ 84,700	\$ 306,200	\$ 2,000	\$ 550,000	\$ 72,800	\$1,015,700

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

**Administrative Services**

10014 Crazy Horse Drive
Juneau, AK 99801-8529
(907) 523-1771

MEMORANDUM

DATE: August 28, 2020

TO: City and Borough of Juneau Assembly Finance Committee

FROM: Sarah Jahn, Administrative Services Director 

RE: FY21 JSD CARES grant and other COVID-response funding

The School District was awarded \$1,009,857 in CARES Act Education Funding in June. Of that, approximately \$85,000 of that was spent in FY20 leaving approximately \$925,000 for FY21 expenditures.

The District also received \$26,000 from DEED in FY20. Of that \$2,000 was spent on personnel costs in FY20. The remaining \$24,000 will support our Health Team as they work with Public Health to conduct contact tracing as needed in southeast Alaska.

Below is a description of our currently identified needs. Allocations are subject to change as our needs evolve.

JSD CARES Act Grant - Description	Estimated Cost
Technology (devices, filtering, management, support)	\$300,000
Online Curriculum (licenses, training)	208,000
PPE and Facilities Modifications (masks/face coverings, plexiglass barriers, etc.)	125,000
Supplies (textbooks, library, art, etc.)	112,000
Student Support (summer school, SpEd services)	92,000
Blended/Distance Learning Plan (development and preparation)	88,000
Total	\$925,000

DEED Contact Tracing - Description	Estimated Cost
Personnel costs for Health Team support of contact tracing	\$24,000

**SUPERINTENDENT'S OFFICE**

10014 Crazy Horse Drive
Juneau, AK 99801-8529
(907) 523-1700

MEMORANDUM

DATE: August 24, 2020

TO: City and Borough of Juneau Assembly

FROM: Dr. Bridget Weiss, Superintendent *Bridget Weiss*

RE: FY21 CARES funding request

The School District would like to thank CBJ for their continued support through this pandemic. New challenges seem to surface on a regular basis and the District requests additional support to face them.

So far, we have identified the following areas of need. These are estimated costs as we are in the midst of the evaluation process. New needs are surfacing as we launch into the school year. Your consideration is appreciated.

Department	Description	Estimated Cost
Technology	Student devices, content filtering, and other IT support.	\$200,000
RALLY	Sept. - Dec. payroll, enrollment must be kept low due to space and staff limitations. Estimated fee per student is \$310/week without this support; given this support CBJ would be subsidizing child care to families.	\$560,000
Curriculum	Online teaching/learning programs; licenses and training related to each.	\$300,000
Maintenance and Facilities	Additional PPE, barriers and partitions, response to potential changes in industry/CDC recommendations for indoor spaces.	\$200,000
TOTAL		\$1,260,000

MEMORANDUM



DATE: January 6, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

SUBJECT: Mandatory Disclosure of Real Estate Transactions

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

Background

At an Assembly Finance Committee meeting on December 4, 2019, Chair Jones requested that staff research the concept of mandatory disclosure of the sales price of real estate transactions. The State of Alaska does not require mandatory disclosure of the sales price real estate transactions, but it does not restrict or preclude home rule municipalities from an ordinance requiring mandatory disclosure.

Several documents discussing mandatory real estate disclosure are attached. The Alaska Legislative Research Report from 2014 highlights much of the factual information available. As of 2014, at least 39 states and the District of Columbia required mandatory public disclosure of the sales price of real estate transactions. Only six states (Alaska, Idaho, Louisiana, Mississippi, Texas, and Utah) are fully non-disclosure. Five states (Kansas, Missouri, Montana, New Mexico, and Wyoming) have limited disclosure in which prices are required to be reported to government entities, but those prices are not made public.

Generally, government Assessors and their professional associations endorse mandatory disclosure of the sales prices of real estate transactions. In email correspondence, the Alaska State Assessor, Marty McGee commented, "Sales disclosure laws provide assessors, the public, and the office of the State Assessor with the access to reliable information on the sales prices of real and personal property, throughout the entire spectrum of the market. Clearly, this is a substantial benefit to local assessors in the efficient and economical performance of their duties, to the public in having adequate data to formulate an appeal, and for the Office of the State Assessor (OSA) in the Full Value Determination equalization process."

Conversely, real estate industry professionals generally oppose mandatory disclosure. The attached position from the Texas REALTORS is representative of that opposition and it notes that "sales price is not necessary a good indicator of taxable value" and "it's an invasion of privacy."

Discussion

The position from the Texas REALTORS notes that property taxes would increase as a result of mandatory disclosure. The only reason that assessed values would increase as a result of mandatory disclosure is that properties are presently under-valued because of non-disclosure. Such under-valuing of certain properties likely results in inequitable assessments. Lack of information available to the Assessor inevitably results in variable accuracy/equity of assessed values.

The Assessor may under-value or over-value properties in the absence of good sales data, but it is far more likely that lack of information leads to under-valuation. As noted in several of the attachments, buyers more frequently report sale prices voluntarily to the Assessor for lower value residential properties, and they report prices for higher value residential and commercial properties less frequently. Also, buyers are more likely to report their purchase price when it is lower than the current assessment and less likely to report their purchase price when it is higher than the current assessment. These two factors may result in higher price properties being under-valued relative to lower price properties. If higher priced properties are under-valued, relative to lower priced properties,

then the owners of those higher priced properties are not paying their fair of property taxes in comparison to the owners of lower priced properties. In the lengthy attachment from the *St Mary's Law Journal* regarding Texas's non-disclosure law, Nathan Morey writes, "taxpayers are hit with unequal appraisals when their homes are valued at close to one hundred percent of their actual value, while commercial and high-end residential properties are valued at a much lower percentage." He goes on to write, "The taxpayer who lives in a mansion benefits from the local police department that patrols his street and the fire department that protects his house. The taxpayer who owns a commercial or industrial site also benefits from the public schools that prepare his future workforce for employment. Yet these property owners are paying much lower percentages of their property's market value in taxes than their middle-class residential neighbors."

Conclusion

Mandatory disclosure increases the amount of information available to the Assessor and the general public, and increased information certainly leads to more accurate—hence more equitable—property assessments. That said, concerns about privacy should also be considered. In weighing the balance between equitability and privacy, the vast majority of jurisdictions in the United States have opted for mandatory disclosure of sales prices in real estate transactions.

Recommendation

I recommend that the Assembly Finance Committee direct staff to draft an ordinance requiring mandatory disclosure of the sales price of real estate transactions for further consideration by the Assembly Finance Committee and the public at-large.

Presented by:
Presented:
Drafted by:

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2020-_____

An Ordinance Regarding Disclosure of Real Estate Values in Transactions.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Chapter. CBJ 15.05, General Assessment, is amended by adding a new section to read:

CBJC 15.05.105 Transaction Disclosures

(a) **Disclosure Requirement.** When a deed, contract or other document transferring legal or equitable title to real property is presented for recording with the State of Alaska, the grantee shall provide the assessor with a statement under signed oath by the grantee or agent that discloses (1) the names of the grantor and grantee, (2) the date of transfer, (3) the date of sale, (4) a legal description of the property transferred, (5) the actual full amount paid or to be paid for the property, (6) terms of sale, and (7) an estimate of the value of any personal property included in the sale.

(b) **Disclosure Exemptions.** The disclosure required by subsection (a) does not apply to the following:

(1) An instrument that confirms, corrects, modifies or supplements a previously recorded instrument without added consideration;

(2) A transfer pursuant to mergers, consolidations or reorganizations of business entities;

(3) A transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of a subsidiary stock;

(4) A transfer that constitutes a gift of more than one-half (1/2) of the actual value;

(5) A transfer with only nominal consideration between spouses or between a parent and child;

(6) An instrument the effect of which is to transfer the property to the same party; or

(7) A sale for delinquent taxes or assessments or a sale or a transfer pursuant to a foreclosure.

(c) **Disclosure Confidentiality.** The disclosure required by subsection (a) is not a public record and shall be confidential except that the disclosure required by subsection (a) shall be provided to the property owner of record and authorized agents or may be published in any appeal related to the full and true value of the property. Nothing in this subsection prevents the assessor from compiling the disclosures to determine property assessments.

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@akleg.gov

Research Brief

TO:
FROM: Susan Haymes, Legislative Analyst
DATE: July 22, 2014
RE: Disclosure Requirements for Real Estate Transactions
LRS Report 15.005

You asked what makes Alaska a non-disclosure state for the purpose of real estate transactions. Additionally, you asked about disclosure and non-disclosure requirements in other states.

Estimating the value of real property is important for various activities including real estate financing, listing real estate for sale, property assessments and taxation, investment analysis, and property insurance. In most states, documents must be filed with local officials, including the local property tax assessor, after a real estate transaction. In states that have laws requiring full disclosure, the sales price is recorded on the deed, or similar document and/or it is listed on the real estate transfer tax documents, which are then filed with the local assessor's office. At least 39 states and the District of Columbia require public disclosure of this information, which means that when realty is transferred, the sales price is disclosed and made available to the public as a matter of public record.¹ Typically, that information is available to the public from the local or state assessor's web site and/or office.

Alaska is one of six states that do not have a law that requires price information to be provided to a municipal, county or state government taxing entity as part of a real estate sales transaction.² Because of the absence of such a law, these states are known as non-disclosure states. Another five states require that the sales price be given to a government entity, but the information must be kept confidential and is not available to the public. These states are also sometimes referred to as non-disclosure states because they do not mandate public disclosure of real estate sales prices to the public.³

Recognizing that property owners may have an interest in obtaining sales price data from similar properties for the purpose of comparing their property tax assessment, Kansas, Montana, and Wyoming allow property owners a limited opportunity to view market data on such properties.⁴ In Wyoming, property owners who want to appeal their assessment have 30 days to review similar properties that the county assessor used to determine their property values (Wyo. Stat. § 34-1-142). Montana law also allows property owners 30 days to analyze comparable sales data, but the owner must visit the local Department of Revenue office and sign a confidentiality agreement (§ 15-7-308 MCA).⁵

¹ Disclosure laws vary somewhat among the states. Most states require that the sales price is entered on the deed and the information is public. A few states make public the amount of taxes paid on a real estate transaction. Since most transfer taxes are calculated as a percent of sale price, this information can be used to calculate the sales price.

² The six states are Alaska, Idaho, Louisiana, Mississippi, Texas, and Utah.

³ The five states are Kansas, Missouri (some counties), Montana, New Mexico, and Wyoming. In Missouri, certain counties prohibit disclosure of real estate prices. However, St. Louis County and St. Charles County, which account for 70 percent of the state's population, by county ordinance, do require public disclosure. In 2013, North Dakota, switched from a non-disclosure state to a full disclosure state (ch 95, HB 1225). The following article contains additional information, "North Dakota No Longer Clouded in Secrecy," *Bakken Construction News*, September/October 2013, <http://bakkenconstructionnews.com/ArticlePrint/North-Dakota-No-Longer-Clouded-in-Secrecy>.

⁴ We include the relevant laws from the three states as Attachment A.

⁵ Many Montana taxpayers have expressed concerns to legislators and DOR staff about what they consider to be an overly burdensome process to access the valuation of their property. In a recent news article, the Director of the Montana Department of Revenue announced that the department will ask the 2015 Legislature to change the law to allow real estate sales prices to be publicly disclosed. Charles S. Johnson, "Director Says Real Estate Sales Prices Should be Public," *Billings Gazette*, July 16, 2014. The article can be accessed at http://billingsgazette.com/news/state-and-regional/montana/director-says-real-estate-sales-prices-should-be-public/article_c4c795fa-84ef-59f6-be81-93df9f23e64a.html.

Many real estate agents are members of a Multiple Listing Service (MLS), a proprietary network operated by the local board of realtors. Typically, realtors who are MLS members enter the sales price into the system after a real estate transaction. Thus even in non-disclosure states, licensed real estate agents who are MLS members have access to sales prices that are entered into the MLS. However, the MLS only includes real estate transactions that involve a licensed realtor who is a member of the MLS and does not, for example, include private sales, or sales through non-member brokers. In addition, realtors may also opt not to disclose sales data. This is more common after the sale of more expensive properties such as custom-made homes or commercial properties. Additionally, some communities do not have an MLS.

In Alaska, as in other states, local assessors are required to uniformly value all property within their jurisdiction. Under AS 29.45.110, they must ensure that all values on the assessment role represent *full and true value*, which is defined as the “estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer.” According to Ron Brown, Alaska State Assessor, because local and state assessors do not have access to real estate sales data from the deed or some other transfer document, they must rely on other means to collect as much information as possible.⁶ One such method is a letter that is sent to the buyer and seller asking them to voluntarily supply information about the sale. Some people, but not all, supply the requested information. Mr. Brown notes that some buyers and sellers purposefully supply incorrect information, which must be discarded. The assessors also obtain sale prices from realtors and appraisers, and through the appeals process. Alaska assessors are able to collect a fair amount of data on residential sales, but only limited information on commercial sales. Basically, the higher the value of the property, the less likely the assessor is to get it. In practice, this means assessors are less likely to get sale prices on large custom homes and commercial transactions. Because assessors collect less information on commercial property transactions, these properties are often assessed at lower than market value. The lack of sales data makes it difficult for Alaska assessors to always determine an equitable and uniform valuation of all residential and commercial properties. Mr. Brown notes that the lack of access to real estate sales prices is the number one complaint from local assessors. In 2012, the Alaska Municipal League adopted a policy statement that, among other things, supports the “mandatory reporting of real estate transfers to assure more equitable property assessments.”⁷

Proponents of full disclosure argue that making sales price data public enables property owners to compare their property tax assessments to actual sales to better understand their own property valuation; adds confidence in the property valuation system, as assessments can be easily compared to independent sources; enables property owners to determine whether they should appeal their property valuation; and allows for more reliable and equitable appraisals and assessments. On the other hand, the main reason cited for restricting public disclosure of real estate prices is to maintain individual privacy. Given the importance of privacy to Alaskans and many others, Mr. Brown suggests an approach more similar to Kansas, Montana or Wyoming, in which local assessors can obtain real estate price data, but the information is kept confidential with some limited exceptions.⁸

We hope this is helpful. If you have questions or need additional information, please let us know.

⁶ Mr. Brown can be reached at 907.269.4605.

⁷ Alaska Municipal League, “2013 Policy Statement,” adopted November 16, 2012, p.2.

⁸ Jan Buchholz and Tricia Lynn Silva, “Push for Property Sales-Price Disclosure Will Face Stiff Opposition in Texas Legislature,” *San Antonio Business Journal*, December 28, 2012, <http://www.bizjournals.com/sanantonio/print-edition/2012/12/28/push-for-property-sales-price.html>; Laura Hancock, “Wyoming to Remain Real Estate Non-Disclosure State,” *Casper Star Tribune*, June 2, 2014, http://trib.com/news/state-and-regional/govt-and-politics/wyo-to-remain-real-estate-non-disclosure-state/article_7b967577-a1ac-5994-981a-db35ea994516.html; Montana Department of Revenue, “Public Disclosure of Real Estate Sales Price,” August 2010, http://revenue.mt.gov/Portals/9/committees/LocalGovernment_WorkingGroup/Oct13_2010/PublicDiscRealEstateSales.pdf.

K.S.A. § 79-1437f

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** This document is current through the 2013 Supplement ***

*** Annotations current through October 30, 2013 ***

Chapter 79. TAXATION

Article 14. PROPERTY VALUATION, EQUALIZING ASSESSMENTS, APPRAISERS AND ASSESSMENT OF PROPERTY
GENERAL PROVISIONS

K.S.A. § 79-1437f (2013)

79-1437f. Same; disposition and use of contents thereof, to and by whom.

Except as otherwise provided by K.S.A. 79-1460, and amendments thereto, contents of the real estate sales validation questionnaire shall be made available only to the following people for the purposes listed hereafter:

- (a) County officials for cooperating with and assisting the director of property valuation in developing the information as provided for in K.S.A. 79-1487, and amendments thereto;
- (b) any property owner, or the owner's representative, for prosecuting an appeal of the valuation of such owner's property or for determining whether to make such an appeal, but access shall be limited to the contents of those questionnaires concerning the same constitutionally prescribed subclass of property as that of such owner's property;
- (c) the county appraiser and appraisers employed by the county for the appraisal of property located within the county;
- (d) appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., and amendments thereto, for appraisal of property and preparation of appraisal reports;
- (e) financial institutions for conducting appraisals and evaluations as required by federal and state regulators;
- (f) the county appraiser or the appraiser's designee, hearing officers or panels appointed pursuant to K.S.A. 79-1602 or 79-1611, and amendments thereto, and the state court of tax appeals for conducting valuation appeal proceedings;
- (g) the board of county commissioners for conducting any of the board's statutorily prescribed duties;
- (h) the director of property valuation for conducting any of the director's statutorily prescribed duties; and
- (i) a person licensed pursuant to the real estate brokers' and salespersons' act for purposes of fulfilling such person's statutory duties and providing information on market value of property to clients and customers.

History:

L. 1991, ch. 162, § 6; L. 1992, ch. 282, § 19; L. 1999, ch. 123, § 2; L. 2002, ch. 23, § 1; L. 2006, ch. 151, § 3; L. 2007, ch. 63, § 1; L. 2008, ch. 109, § 87; July 1.

15-7-308, MCA

LexisNexis (R) Montana Code Annotated*** This document is current through the 2013 Regular and Special Sessions ***

*** Annotations current through October 30, 2013 ***

TITLE 15 TAXATION
CHAPTER 7 APPRAISAL
PART 3 REALTY TRANSFER ACT

15-7-308, MCA (2013)

15-7-308 Disclosure of information restricted -- exceptions.

(1) Except as provided in subsection (2), the certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

(2) The confidentiality provisions of this section do not apply to the information contained in the water right ownership update form or any other form prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3).

 History:

En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308; amd. Sec. 45, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 167, L. 1997; amd. Sec. 2, Ch. 70, L. 2005; amd. Sec. 1, Ch. 366, L. 2007.

Wyo. Stat. § 34-1-142

Wyoming Statutes Annotated
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* This Document is Current Through the 2014 Budget Session of the Legislature *

Title 34 Property, Conveyances and Security Transactions
Chapter 1 General Provisions
Article 1. In General

Wyo. Stat. § 34-1-142 (2014)

§ 34-1-142. Instrument transferring title to real property; procedure; exceptions; confidentiality.

(a) When a deed, contract or other document transferring legal or equitable title to real property is presented to a county clerk for recording, the instrument shall be accompanied by a statement under oath by the grantee or his agent disclosing the name of the grantor and grantee, the date of transfer, date of sale, a legal description of the property transferred, the actual full amount paid or to be paid for the property, terms of sale and an estimate of the value of any nonreal property included in the sale.

(b) No instrument evidencing a transfer of real property may be accepted for recording until the sworn statement is received by the county clerk. The validity or effectiveness of an instrument as between the parties is not affected by the failure to comply with subsection (a) of this section.

(c) This section does not apply to:

(i) An instrument which confirms, corrects, modifies or supplements a previously recorded instrument without added consideration;

(ii) A transfer pursuant to mergers, consolidations or reorganizations of business entities;

(iii) A transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of a subsidiary stock;

(iv) A transfer which constitutes a gift of more than one-half (1/2) of the actual value;

(v) A transfer between husband and wife or parent and child with only nominal consideration therefor;

(vi) An instrument the effect of which is to transfer the property to the same party;

(vii) A sale for delinquent taxes or assessments or a sale or a transfer pursuant to a foreclosure;

(d) The sworn statements shall be used by the county assessors and the state board of equalization and the department of revenue along with other statements filed only as data in a collection of statistics which shall be used collectively in determining sales-price ratios by county. An individual statement shall not, by itself, be used by

the county assessor to adjust the assessed value of any individual property.

(e) The statement is not a public record and shall be held confidential by the county clerk, county assessor, the state board of equalization the department of revenue and when disclosed under subsection (g) of this section, any person wishing to review or contest his property tax assessment or valuation and the county board of equalization. These statements shall not be subject to discovery in any other county or state proceeding.

(f) Repealed by Laws 1991, ch. 174, § 3.

(g) Any person or his agent who wishes to review his property tax assessment or who contests his property tax assessment or valuation in a timely manner pursuant to W.S. 39-13-109(b)(i) is entitled to review statements of consideration for properties of like use and geographic area available to the county assessor in determining the value of the property at issue as provided under W.S. 39-13-109(b)(i). During a review, the county assessor shall disclose information sufficient to permit identification of the real estate parcels used by the county assessor in determining the value of the property at issue and provide the person or his agent papers of all information, including statements of consideration, the assessor relied upon in determining the property value and including statements of consideration for properties of like use and geographic area which were available to the assessor and are requested by the person or his agent. The county assessor shall, upon request, provide the person or his agent a statement indicating why a certain property was not used in determining the value of the property at issue. The county assessor and the contestant shall disclose those statements of consideration to the county board of equalization in conjunction with any hearing before the board with respect to the value or assessment of that property. As used in W.S. 34-1-142 through 34-1-144:

(i) A "review" is considered the initial meetings between the taxpayer and the county assessor's office pursuant to W.S. 39-13-109(b)(i);

(ii) "Contest" means the filing of a formal appeal pursuant to W.S. 39-13-109(b)(i);

(iii) "Geographic area" may include any area requested by the property owner or his agent within the boundaries of the county in which the subject property is located.

(h) The state board of equalization shall adopt rules and regulations to implement W.S. 34-1-142 and 34-1-143 which shall include forms to be used and which shall be used by county assessors and county clerks.

HISTORY: Laws 1985, ch. 170, § 1; 1986, ch. 9, § 1; 1991, ch. 174, § 3; 1995, ch. 209, § 1; 1996, ch. 92, § 1; 1997, ch. 147, § 1; 1998, ch. 5, § 2; 2009, ch. 141, § 1; 2010, ch. 20, § 1; ch. 82, § 1.

Mary Grant

From: McGee, Marty (CED) <marty.mcgee@alaska.gov>
Sent: Wednesday, November 6, 2019 3:10 PM
To: Mary Grant
Subject: RE: Mandatory Disclosure

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Subject and summary of proposed legislation (include intent and statutory references):

- The intent of this proposal is to amend Title 29 to require the disclosure of the sales prices of real and personal property. According to AS 29.45.110, “the assessor shall assess property at its full and true value...” However, Alaska is also a non-reporting state, meaning that assessors do not have access to the sales prices of taxable real and personal property to properly determine full and true value, as required by law.
- Mandatory sales disclosure is needed to: ascertain market value as required by AS 29.45.110, and conversely to provide sufficient data for property owners to form property tax appeals. Mandatory sales disclosure is also essential to allow for sufficient market data for the Full Value Determination by the Office of the State Assessor (OSA).
- For any market-based appraisal of real estate to occur, an adequate supply of sales information is essential. Currently, assessors rely upon voluntary disclosure to ascertain sales prices which can be highly problematic. Many individuals are hesitant to divulge such information to anyone, much less the local assessor. Typically, the higher the value of the property, the less likely it is that the information will be shared. Notable examples would be properties such as: tracts of vacant land, custom homes and commercial properties.
- Voluntary disclosure of sales information of these types of properties are less common and tend to be less reliable when compared to other segments of the real estate market such as typical single family residences, townhomes or condominiums. This often results in a lack of equity in assessments between groups of properties. In other words, while the supply of sales data for single family residences may allow the assessor to evaluate these properties at close to 100% of market value, commercial properties are often valued at a significantly lesser rate. Such inequity exports a larger share of the tax liability to the owners of single family residences due to the higher level of valuation for such properties.
- Also, given that disclosure is voluntary, the assessor has little means of ascertaining the validity of information that is disclosed. In recent years it has been increasingly noted that a number of sales disclosure requests are returned to the assessor, but with clearly erroneous data. So not only must the local assessor actively solicit such data, but they must carefully screen what data they do receive for reliability.
- And conversely, because this market data is not publicly disclosed, property owners also face equal challenges in gathering the data needed to form a substantiated appeal. Providing this information, either publicly or on an as-needed basis, would provide for sufficient data for more accurate tax assessments, and possibly a correlating decrease in property tax appeals.

- Thirdly, for smaller jurisdictions with smaller real estate markets, the lack of mandated sales disclosure presents an even greater challenge in equalization of Full Value Determination calculations by the Office of the State Assessor across the state. The OSA equalizes full values across the state based upon ratio studies conducted at the local jurisdictional level, which are highly subject to swings in the number of sales within the sales database from year to year. If the number of sales in any given year changes drastically from the next, this can cause significant changes in the ratios that are used for equalization, thus causing unnecessary swings in full value determinations from year to year, particularly for smaller communities. This places them at a distinct disadvantage to larger communities with larger sales databases, whose ratios remain fairly constant due to larger pools of sales information. In summary, non-disclosure contributes to smaller sales sample sets, and thus to varying sample set sizes from year to year which causes unnecessary swings in the Full Value Determinations of smaller communities.
 - Sales disclosure laws provide assessors, the public, and the office of the State Assessor with the access to reliable information on the sales prices of real and personal property, throughout the entire spectrum of the market. Clearly, this is a substantial benefit to local assessors in the efficient and economical performance of their duties, to the public in having adequate data to formulate an appeal, and for the OSA in the Full Value Determination equalization process.
 - Note: Alaska is one of six states that do not require any form of sales disclosure, public or not. See attached report from Legislative Research Services.
-

Mary Grant

From: McGee, Marty (CED) <marty.mcgee@alaska.gov>
Sent: Wednesday, November 6, 2019 3:12 PM
To: Mary Grant
Subject: RE: Mandatory Disclosure

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

List and identify benefits and expected results of the proposal.

- More efficient, economical and equitable valuation of taxable real and personal property.
- A decreased number of appeals due to improved quality of valuations and the correlating decrease in the amount of appeals as the sales prices of all properties are fully known.
- Increased information for the consideration of buyers and sellers of real and personal property when participating in the market.

List and provide explanation of any consequences of not implementing the proposed statutory change.

- Continuation of increased expenses, inequity in valuation for local governments in establishing local property tax rolls and appeals of assessed values.
- Under valuation of property in local jurisdictions will continue causing decreased local funding of schools via the RLC. This creates increased expenditures by the SOA due to the funding formula where the State funds the shortfall.
- Continuation of decreased supply of data for State & local government and the public as to the health and direction of the market for real estate in Alaska.

List supporters of the proposal and provide explanation. Please provide via attachment any back-up that is applicable.

- In the past year, inquiries have been made to the OSA by legislative staff and local governments as to mandatory sales disclosure. In July of 2014, a report was requested and issued by Legislative Research Services on mandatory sales disclosure. A copy of this report and the associated source material is provided.
- Kenai Peninsula Borough passed resolution 2008-083 supporting the adoption of mandatory sales disclosure in the State of Alaska. See attached copy of resolution.
- At various times, local governments such as the Municipality of Anchorage, Matanuska Susitna Borough, Haines Borough have inquired as to whether they could impose mandatory sales disclosure on a local level.
- The Alaska Municipal League has adopted resolution 2009-03 requesting the legislature to enact legislation requiring mandatory sales disclosure. See attached copy.

List and describe any potential negative impacts of this legislation.

- Adoption of such legislation would require an enforcement authority that would ensure adherence. In most states, oversight is relegated to the recorder's office as the submission of the disclosure report is also a requirement for the recording of deeds.

List potential opponents of the proposal and provide detailed explanation of what those objections would be. Please provide via attachment any back-up that is applicable.

- The real estate industry, such as brokers, realtors, appraisers etc. The requirement would impose an additional requirement in closing. As well, mandatory sales disclosure would greatly diminish the value of private sales information databases held by the industry.
- Owners of vacant land, commercial property and other high value real estate.

Which other state departments will be affected by this legislation? Have you discussed the impact with the commissioners of these affected departments, and if so, do they support the proposal?

- The State Recorder's Office will be impacted as they are the logical recipient or point of contact to receive such information when deeds are recorded. Additional staffing and equipment will likely be required as well as a means of "distributing" any data that is collected.

Identify and describe any previous state or federal legislation and/or similar efforts in other states which affect or relate to this proposal.

- See attached report from Legislative Research Services. Additional data is available from the International Association of Assessing Officers – "Property Tax Policies and Administrative Practices. This publication details the sales disclosure laws of all 50 States and the Provinces of Canada. The current report (2010) is 108 pages in total, so copies provided are only of sections pertinent to mandatory disclosure. However the State Assessor's Office a complete copy is available upon demand.

Has this topic been previously introduced or discussed in the legislature, and if so, by whom?

- Mandatory sales disclosure has been discussed (off and on) in the legislature, local governments and the press for many years. However, best information is that no legislation has ever been introduced in the legislature to adopt it. One interesting bit of trivia to note is that Territorial Alaska had mandatory sales disclosure via "Revenue Stamps" for deeds prior to statehood. It is the common belief that this requirement ceased with Statehood.

If so, what was the final outcome?

- N/A

Statutes repealed by the proposal, including reference and description:

- None.

Estimated impact for Fiscal Year 2017: operating, capital, revenue generation: \$_____

Are there ongoing costs of implementation should this proposal become law: ☒ Yes ☐ No

If so, please explain.

- As noted earlier, sales disclosure would require the submission of reports for each transaction so that the data can be compiled and distributed to those entities deemed eligible have access to it.

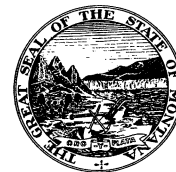
List proposed funding sources.

- A modest recording fee for each transaction should render the program self-funding from the SOA perspective. This is the typical funding mechanism in most states and the provinces of Canada.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

Public Disclosure of Real Estate Sales Price

August 2010

Introduction

At the April 29, 2010 meeting of the Revenue and Transportation Interim Committee (RTIC), the Department of Revenue (DOR) was asked to report on the status of public disclosure of real estate prices in Montana and other states. This report is presented in response to the committee's request.

This brief report is intended to provide background for the RTIC in response to the inquiry and information request at the April meeting. This memorandum is informational in nature and does not constitute a policy recommendation of the Department.

Executive Summary

Across the United States varying levels of government oversee property tax assessment; examples range from Montana (where the property assessment is conducted at the state level) to Connecticut (where individual townships oversee assessment). A result of this assortment is varying degrees and definitions of public disclosure with regard to real estate sales price. For the purpose of this report, public disclosure is defined as **the ability of a citizen or business to readily access realty sales price information, as a matter of public record.**

According to a 2006 article *Chronicles of Data Collection II: Non-Disclosure States*, Zillow Business Development Specialist, Drew Meyers, considered the following twelve states non-disclosure: Alaska, Idaho, Kansas, Louisiana, Mississippi, Missouri (some counties), *Montana*, New Mexico, North Dakota, Texas, Utah, and Wyoming.

Additional research, conducted by DOR, found New Mexico recently allowed public disclosure and within Missouri, both St. Louis County and St. Charles County - accounting for 70% of the state's population - require public disclosure. Additionally, a 2008 survey conducted by the International Association of Assessing Officers (IAAO) Technical Standards Committee found the District of Columbia to provide public disclosure.

This report relies on Zillow's 2006 definition of states with non-disclosure, with the removal of two states, New Mexico and Missouri. This accounting provides that **Montana is one of ten states prohibiting public disclosure of real estate sales price to its citizens**, while forty other states and the District of Columbia allow public access to this information.

What is “Public Disclosure”?

Essentially, public disclosure of real estate sales price means that when realty is transferred, the sales price is disclosed, in some manner, and made available to the public as a matter of public record, enabling citizens or businesses to readily access this information.

Around the country, states have varying degrees and methods of public disclosure ranging from the sales price being recorded on the deed, to the sales price being printed in the local newspapers, to allowing only government full access to the information (like Montana). In some places, laws vary between the different levels of government, as in the case of Missouri where roughly 70% of its citizens are required, by county ordinance, to submit sales price information which is then made available to the public.

Montana code requires the collection of Realty Transfer Certificates (RTC) which includes the sales price and related information but, the county clerk and recorder and the Department of Revenue are required to hold the information confidential, effectively blocking public access to this information.

Current Montana Law

The relevant portion of Montana code is section 15-7-308, MCA, specifically stating the information contained in the Realty Transfer Certificate (RTC) must be held confidential by the county clerk and recorder and by the Department of Revenue (DOR).

15-7-308, MCA. Disclosure of information restricted -- exceptions. (1) Except as provided in subsection (2), the certificate required by this part (realty transfer certificate) and the information contained in the certificate **is not a public record and must be held confidential by the county clerk and recorder and the department.** This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

Who Discloses and Who Doesn't?

As discussed above, forty states and the District of Columbia allow public disclosure (80%) while, ten states, including Montana, do not allow citizens to access this information (20%). A table tabulating real estate public disclosure by state is appended to this memorandum.

Why Not Disclose?

Among the reasons often cited for restricting public disclosure include an individual's right to privacy and maintaining *proprietary* information collected by the Multiple Listing Service (MLS).

As indicated by the second sentence in 15-7-308, MCA, public disclosure of real estate sales information in Montana appears to be seen as a balance of the demands of individual's privacy versus the merits of public disclosure.

Another, often cited, concern of public disclosure is the reduction of the value of information held by the Multiple Listing Service (MLS) and real estate sales and assessment professionals.

Why Disclose?

The most often cited benefit of public disclosure is providing citizens and businesses access to accurate and timely data, in turn, allowing for current property and market information to be analyzed. This leads to related benefits including:

- enabling property owners to compare their property tax assessment to actual sales and to better understand their own property valuation;
- enabling property owners to easily track their properties' appreciation and potentially reducing "sticker shock" when reappraisal occurs;
- adding confidence in the property valuation system, as assessments can be easily compared to independent sources; and
- enabling property owners to determine whether they should exercise their property valuation appeal rights.

Currently in Montana, when a taxpayer receives their assessment and has 30 days to file for a review, their options for analyzing their DOR assessed valuation include:

- comparing their property and assessment to similar property assessments by looking up tax information on the cadastral system (gis.mt.gov);
- looking up information on their county's website, if available (itax.csa-inc.net);
- hiring a professional appraiser, at an estimated cost between \$300 and \$500 per property; and
- visiting their local DOR office to sign a confidentially agreement that allows them access to the confidential comparable sales data used to value their property.

During the 2009 statewide reappraisal process, many Montana taxpayers expressed concerns to legislators and DOR staff about, what they consider to be, an overly burdensome process of receiving the comparable sales information used to access the valuation of their property.

In places allowing public disclosure, it is relatively easy for both professionals and non-professionals alike to directly access actual sales information. For example, **Zillow.com** - an industry leader in collecting, analyzing, and disseminating real estate valuation information - produces a web-based tool providing free access to: recent real estate sales, current valuation estimates, historical trends, and a variety of other related information.

Businesses like Zillow collect information on real estate location, characteristics, and sales price and then analyze this information in a fashion similar to how the DOR conducts assessments. Access to better data (timely and accurate) assists Zillow and other businesses in producing better (more accurate) products.

Similarly, if Montana taxpayers have access to real estate sales information, they too would be able to conduct their own property valuation analysis and potentially be better informed of market trends and changes in their taxes due to property appreciation and depreciation.

How Could Montana's Restriction on Disclosure be Changed?

If the legislature wishes to publically disclose Realty Transfer Certificate information, it could amend the current statute, 15-7-308, MCA, to read:

15-7-308, MCA. Disclosure of information. (1) The certificate required by this part (realty transfer certificate) and the information contained in the certificate, with the exception of social security numbers and FEIN, **is a public record**.

Summary

Montana is one of ten states prohibiting public disclosure of real estate sales prices (please see the attached chart: Real Estate Price Disclosure by State). The applicable statute, 15-7-308, MCA, specifically states, the information contained in the realty transfer certificate must be held confidential by the county clerk and recorder and by the Department of Revenue.

Among the reasons often cited for restricting disclosure include the demands of individual privacy and the ability of real estate professionals to maintain proprietary information.

An unintended consequence of restricting public disclosure is the creation of an artificial monopoly on real estate and market information.

Reasons often cited for public disclosure include: public access to free information, reduction of reappraisal "sticker shock", increased ability to understand and plan for property appreciation and depreciation, increased confidence in the property valuation system, additional transparency of the state's property assessment practice, and empowering property owners with the information to determine whether they should exercise their right to appeal DOR's property valuation.

Real Estate Public Disclosure by State

	<u>Public Disclosure</u>	<u>Prohibit Disclosure</u>
1	Alabama	Alaska
2	Arizona	Idaho
3	Arkansas	Kansas
4	California	Louisiana
5	Colorado	Mississippi
6	Connecticut	Montana
7	Delaware	North Dakota
8	Florida	Texas
9	Georgia	Utah
10	Hawaii	Wyoming
11	Illinois	
12	Indiana	
13	Iowa	
14	Kentucky	
15	Maine	
16	Maryland	
17	Massachusetts	
18	Michigan	
19	Minnesota	
20	Missouri	
21	Nebraska	
22	Nevada	
23	New Hampshire	
24	New Jersey	
25	New Mexico	
26	New York	
27	North Carolina	
28	Ohio	
29	Oklahoma	
30	Oregon	
31	Pennsylvania	
32	Rhode Island	
33	South Carolina	
34	South Dakota	
35	Tennessee	
36	Vermont	
37	Virginia	
38	Washington	
39	West Virginia	
40	Wisconsin	
41	District of Columbia	

Notes and Supplementary Material

1. Zillow Blog: Chronicles of Data Collection II: Non-Disclosure States
<http://www.zillow.com/blog/chronicles-of-data-collection-ii-non-disclosure-states/2006/05/11/>
2. Zillow.com
 - a. An easy to use real estate valuation estimator
 - b. <http://www.zillow.com/wikipages/What-is-a-Zestimate/>
3. Should Home Sale Prices Stay Secret? - MSN Real Estate – Post 2007
 - a. A discussion of asymmetric information, agent's viewpoint, and market efficiency.
 - b. <http://realestate.msn.com/article.aspx?cp-documentid=13107736>
4. Real Estate Sales Information Not Public in All States – Mortgage News Daily - June 7, 2007
 - a. A simple discussion of public real estate information
 - b. http://www.mortgagenewsdaily.com/672007_Real_Estate_Records.asp
5. More Dallas Home Sales Prices Kept Secret - The Dallas Morning News – June 18, 2009
 - a. Discussion surrounding costs and benefits of disclosure and the breakdown of MLS and asymmetric information
 - b. <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/061809dnbusmlsprices.42e728f.html>
6. State and Provincial Ratio Study Practices: Results of 2008 Survey – Technical Standards Committee of the International Association of Assessing Officers – Journal of Property Tax Assessment & Administration, Volume 6, Issue 2 – Post 2008
 - a. The results of a US and Canadian Survey regarding state assessment practices
 - b. http://www.iaao.org/uploads/Ratio_Survey_Article.pdf



Sales Price Disclosure

Issue

Some appraisal districts, cities, and counties argue for full disclosure of all real estate sales prices to establish the value of real property in Texas.

There are numerous problems with basing value, especially taxable value, on the sales price of a real property. In many cases, central appraisal districts (CADs) do not consider seller concessions, which can lead to artificially high tax-appraisal values in the year-of-purchase and beyond.

There is also a problem with subdivisions that feature unequally sized lots or custom-built homes. Another issue concerns farm and ranch properties where improvements like trade fixtures and livestock are included in the sales price.

Additional difficulties arise with commercial properties, which may include a business and/or trade fixtures, value of long-term leases, and properties where mineral rights are included or excluded from the sale.

What does this mean for the real estate industry?

According to conservative estimates, sales-price disclosure will lead to a more than \$250 million property-tax increase for Texas property owners.

High property taxes are already a barrier to homeownership and the relocation of businesses to Texas. Increasing property taxes would be a disincentive to homeownership and enterprise, hurting the real estate market and the Texas economy.

The Texas REALTOR® position

Our association opposes all legislative efforts to require the disclosure of sales-price information because:

- Sales price is not necessarily a good indicator of taxable value
- It's an unnecessary invasion of privacy
- It could pave the way for a new real estate transfer tax in Texas, as most states that require sales-price disclosure use it to compute tax liability for the transfer of real estate

Legislative outlook

Central appraisal districts may seek full sales-price disclosure of all real estate transactions in Texas. This includes residential, commercial, industrial, raw land, and farm and ranch.

The Texas Legislature has consistently stated expanding government intrusion into the private lives of Texans is not an option.

Historical perspective

The appraisal process we know today was created by the Legislature in 1979 and was fully implemented in January 1982. Mandatory sales-price disclosure was part of the debate then and has been ever since. Prior to a central appraisal process, each local taxing jurisdiction valued real property separately. The city could have one value on their books while the county had a completely different value.

Since 1982, real property in Texas has been subject to a local property tax administered at the local-taxing-jurisdiction level. CADs are tasked with appraising real property for *ad valorem* taxation purposes. Many of these appraisal districts have called upon the Legislature to pass sales-price disclosure to enable districts to adequately appraise real property.

In 2006, Gov. Perry created the Texas Task Force on Appraisal Reform (TTFAR), and the final report stated, “Most appraisal districts do not have the internal capacity to analyze complex financial or commercial transactions.”

During the 81st Texas Legislature in 2009, lawmakers passed comprehensive appraisal reform in the form of numerous bills aimed at reforming the process. Specifically, the Legislature passed HB 8, which enacted a Methods and Procedures Audit on all 253 appraisal district in Texas. The comptroller’s office was tasked with implementing the bill and has completed the audits.

In 2009, the 81st Texas Legislature also passed (and voters approved) a constitutional amendment which allows for uniform appraisal standards to be used in all appraisal districts.

The Texas Comptroller of Public Accounts, in the most recent report on appraisal districts and appraisals, stated that all real property in Texas is being valued at 99% of market value. Based on this official report, it can hardly be determined that real property appraisals in Texas are inaccurate.

RECENT DEVELOPMENT

UNEQUAL AND UNFAIR: WHY TEXAS SHOULD REQUIRE MANDATORY SALES PRICE DISCLOSURE TO RECONCILE THE TEXAS PROPERTY TAX CODE WITH THE TEXAS CONSTITUTION

NATHAN MOREY

I. Introduction	554
A. How Much Is a Parking Lot Worth?.....	554
B. In Texas, Nothing Is Certain but Death and Unequal Taxation	556
II. Background	562
A. Market Value	563
1. Market Value Defined	564
2. Market Value Versus Sales Price.....	565
3. Multiple Listing Service	567
B. Before the Texas Property Tax Code	569
C. The Texas Property Tax Code.....	571
1. Appraisal Districts and the Appraisal Process ...	572
2. Protesting an Appraisal.....	574
III. Analysis	577
A. Constitutional Challenge	578
B. New Legislation Requiring Mandatory Sales Price Disclosure	583
IV. Conclusion	591

I. INTRODUCTION

“All real property . . . shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.”¹ “It is not for taxing authorities to decide what property shall escape taxation; that right lies alone with the people in the writing of their Constitution and with the Legislature in the enactment of laws.”² “The legislature has no power to sanction discrimination between taxpayers by taking away defenses.”³ The language quoted above, from the Texas constitution and the Supreme Court of Texas, might lead one to believe that all taxpayers pay the government an equal percentage of their property’s actual value each year. This, however, is not the case in the great State of Texas.

A. *How Much Is a Parking Lot Worth?*

In 2008, the City of Dallas negotiated for the purchase of an 8.34-acre tract of downtown real estate, which at the time was being used as a parking lot. The city agreed to a purchase price of \$42 million; however, that same property was valued at only \$7.3 million by the Dallas Central Appraisal District for tax purposes.⁴ In other words, the city was prepared to pay the owner a figure almost six times greater than that which contemporaneously appeared on the tax rolls. At least four other independent appraisals were conducted on the property, valuing the land from \$29 million to over \$40 million.⁵ Shortly after the city publicly

1. TEX. CONST. art. VIII, § 1(b).

2. *Whelan v. State*, 155 Tex. 14, 22, 282 S.W.2d 378, 382–83 (1955).

3. *Id.* at 23, 282 S.W.2d at 383.

4. Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City’s Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936; Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase: Some Members Worry Flawed Appraisals Have Inflated Price*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429; Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel: Facility Could Give City a Boost in Competing for Conventions*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841; Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840.

5. Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase: Some Members Worry Flawed Appraisals Have Inflated Price*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429; Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel: Facility Could Give City a Boost in Competing for Conventions*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841. The purpose behind this transaction was to acquire land for a city-financed hotel

2010]

RECENT DEVELOPMENT

555

announced the price that it was willing to pay for the small tract, the Appraisal District reappraised the property at \$36.5 million for the new tax year, while also raising the appraised values of many other downtown properties.⁶ This adjustment would not have taken place had the above transaction been between two private parties.⁷ However, because the bargaining process with the city was public information, the Appraisal District had new data on which to base its appraisal; data which otherwise would have been unavailable.

Properties similar to the small Dallas parking lot are not the only types of real estate in Texas that are regularly appraised below the value they actually sell for on the open market. While “mid-range residential” homes are consistently appraised at—or close to—the prices for which they actually sell, “high-end residential” properties are appraised at much lower values when compared with their respective sales prices.⁸ Although the

near the Dallas Convention Center. Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel: Facility Could Give City a Boost in Competing for Conventions*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841. Two of the independent appraisals valued the property at over \$40 million and were used by the city to justify the proposed sales price. *Id.* The other two appraisals of \$29 million and \$33 million were commissioned by the owner of a private hotel, against which the city-financed hotel would compete. Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase: Some Members Worry Flawed Appraisals Have Inflated Price*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429.

6. Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936. Although their values did not increase as dramatically as the land the city wished to buy, several other downtown properties were appraised with an increase of over 50% between their value on the 2007 tax roll and the 2008 tax roll. Rudolph Bush & Kevin Krause, *Why Did This Parking Lot Jump in Appraised Value from \$7.5 Million to \$36.5 M?: City Defends Deal, but Critics Skeptical of New Assessment*, DALLAS MORNING NEWS, May 4, 2008, at 1A, available at 2008 WLNR 8329061.

7. Cf. Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (“Buyers and sellers jealously guard values in hopes of holding down tax liabilities. . . . In Texas, property sales prices are not public information.”).

8. See TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? 2–48 (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (documenting sales price and appraisal data from several appraisal districts throughout Texas and showing the difference between the sales price and appraisal value of “mid-range residential” and “high-end residential” properties); see also Rick Casey, *The Real Property Tax Conspiracy*, HOUSTON CHRON., June 22, 2008, at B1, available at 2008 WLNR 11825437 (“[V]ery expensive houses and commercial properties almost always sell for considerably more than the amount listed on the tax rolls.”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping*

difference between the appraised value and the sales price varies depending on the individual property, some “high-end residential” properties have been appraised as low as thirty percent of the sales price for which they later sold.⁹

*B. In Texas, Nothing Is Certain but Death and Unequal Taxation*¹⁰

The discrepancy between the cash value of a piece of land when it is sold and its appraisal value is not uncommon in Texas.¹¹ Commercial property and high-end residential real estate are often undervalued by appraisal districts throughout the state.¹² Because

College Affordable Among Lawmakers' Goals, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (“[A]ppraisals and tax bills for million-dollar homes and business properties are often artificially low . . .”). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 78–79 (1991) (opining that a tax assessment is “not a good indicator of asking price or market value”).

9. See TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (indicating that a property in Austin County was appraised at \$617,040 in 2006 just before selling for \$2,092,598 that same year); see also Rick Casey, *The Real Property Tax Conspiracy*, HOUSTON CHRON., June 22, 2008, at B1, available at 2008 WLNR 11825437 (explaining that the sales prices of commercial properties and expensive houses are almost always higher than the amount the tax rolls reflect).

10. Cf. Letter from Benjamin Franklin to Jean-Baptiste Leroy (Nov. 13, 1789), reprinted in JOHN BARTLETT, FAMILIAR QUOTATIONS 310 (Justin Kaplan ed., 16th ed. 1992) (“Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes.”).

11. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (pointing out the artificial nature of certain appraisals and tax bills); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (reporting that some taxpayers' properties are valued near market value while other properties are valued far below market value); TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (documenting the gap between property appraisal values and sales prices); see also Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (referring to a study by the Texas Association of Appraisal Districts that estimates there is over \$300 billion worth of taxable property that is not assessed).

12. A recent study estimated that in 2004 all commercial property in Texas was valued at \$178,577,672,798 by local county appraisal districts while the estimated true value was \$297,629,454,663. MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*). The same study found that all single-family residential property state wide

2010]

RECENT DEVELOPMENT

557

Texas counties, cities, and school districts depend on local ad valorem¹³ property taxes for revenue,¹⁴ this widespread problem

was valued at \$638,031,599,296 by appraisal districts, while the estimated true value was \$750,625,410,936. *Id.* Although commercial properties are appraised at approximately 60% of the value that they sell for on an open market, single-family residential properties are valued at 85% of the value that they bring in an open market. *Id.*; see Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 892 (1973) (delineating the results of a 1970 study showing that commercial and industrial property in Houston and Harris County was, by and large, appraised at much lower values than residential property); Rick Casey, *The Real Property Tax Conspiracy*, HOUSTON CHRON., June 22, 2008, at B1, available at 2008 WLNR 11825437 (claiming that high-end homes and commercial real estate “almost always sell for considerably more than the amount listed on the tax rolls”); Jonathan Gurwitz, *Homeowners Paying Up for Commercial Undervaluation*, SAN ANTONIO EXPRESS-NEWS, Sept. 5, 2007, at 09B, available at 2007 WLNR 17325679 (listing several commercial properties in Bexar County that sold for prices far greater than their appraised value for tax purposes); see also Steve Blow, *We Won’t Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (asserting that the chief appraiser of the Dallas Central Appraisal District claimed that “state law tie[d] his hands and works to keep commercial property undervalued”).

13. See BALLENTINE’S LAW DICTIONARY 39 (3d ed. 1969) (defining “ad valorem tax” as “[a] tax of a fixed proportion of the value of the property to be charged, an appraisal being a prerequisite to the determination of the amount of the tax”); BLACK’S LAW DICTIONARY 1496 (8th ed. 2004) (defining “ad valorem tax” as a “tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure”); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 887 (1982) (“Ad valorem is defined as ‘according to value.’”); see also CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 423 (4th ed. 1985) (“Accordingly, ad valorem taxes are taxes which are assessed on real property, the tax being based on the property’s fair market value.”). See generally CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 423 (4th ed. 1985) (“[T]he most fundamental concepts of ad valorem taxation are often questioned.”); *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335 (1958) (arguing that ad valorem taxation is criticized because of its “inefficiencies and inequities”).

14. Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 887 (1982); Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 885 (1973); see CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 424 (4th ed. 1985) (“The bulk of ad valorem taxes are paid at the county and local tax levels.”); SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS’ RIGHTS, REMEDIES AND RESPONSIBILITIES 1 (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (“[P]roperty tax is the largest funding source for local services in Texas.”); see also Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 516–17 (2004) (asserting that Texas’s Robin Hood scheme encourages some appraisal districts to intentionally undervalue property in order for the local independent school district to receive more state funds); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1378 (1962) (advancing that in many states there is an incentive to undervalue property in order for local government to receive more state aid).

of under-appraising properties has led to a growing concern that revenue is being lost and that the tax burden is being unequally shouldered by middle-class homeowners.¹⁵

To illustrate this problem, imagine two properties on opposite sides of a street. The actual value of each property is \$100,000. However, property A is appraised at one hundred percent of its actual value, while property B is appraised at only sixty percent. If a one percent ad valorem property tax is levied on the two properties, then the owner of property A will pay a tax of \$1,000, while the owner of B will pay only \$600. If both property owners consume taxpayer-funded services, then the burden is being unequally shared between them. Imagine then that the owner of property A is a middle-class residential homeowner and the owner of property B is a commercial property owner. In this situation, the homeowner ends up paying more money than the commercial property owner for use of the same public services.

The root cause of this frequent under-appraisal of commercial and high-end residential property is the use of a privately-owned real estate database,¹⁶ the Multiple Listing Service (MLS), by the appraisal districts charged with valuing property for taxation.¹⁷

15. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 ("In Texas, where property taxes are the primary means of taxation, that means commercial property owners are shifting a huge chunk of the tax burden to homeowners."); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (proclaiming that "middle-income homeowners" pay for the difference of artificially low appraisals for "million-dollar homes and business properties" when the tax bill comes due); see also MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) ("Our current system favors owners of commercial and high-end homes over owners of middle to [low-end] homes (typical home owners)."). See generally Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 511 (2004) (proposing that lack of sales disclosure causes "tax revenue leakage").

16. See SHAHRI MASTERS, THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT 3-4 (2006) (explaining that an MLS is used by realtors for the purpose of sharing property listings); Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 510 (2004) (noting that an MLS is privately owned and contains sales data). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 76 (1991) (recognizing that most contemporary realtors use an MLS).

17. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (declaring that an MLS allows residential properties to be appraised at close-to-market value); Rudolph Bush &

2010]

RECENT DEVELOPMENT

559

The Texas Property Tax Code (the Tax Code) defines “market value” and lays out the terms for how an appraisal district should go about valuing property, but it does not give appraisers the ability to obtain sales data on real estate when it is sold.¹⁸ To gain access to sales data, appraisal districts, along with private appraisers and real estate brokers, enlist the help of their local MLS.¹⁹ Because an MLS is more likely to contain sales data on

Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stressing that the Dallas Central Appraisal District “relies heavily on sales prices” from the MLS and that undervaluation of commercial property is due to a lack of information); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (claiming that appraisals are unequal due to the “vast amount of information” readily available concerning residential property, including MLS and real estate advertisements); see also MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) (asserting that there are readily available market data on homes valued under \$250,000). See generally TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 19 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (contending that many appraisers in Texas claim that a lack of sales data keeps them from appraising property accurately).

18. See TEX. TAX CODE ANN. § 22.24(d) (Vernon 2008) (establishing that a taxpayer may, but is not required to, disclose market value when submitting a rendition); Edward Klierer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 890 (1982) (claiming that prior to the adoption of the Tax Code, a property owner was required to disclose the value of taxable property and that after adoption of the Code the disclosure of the value of property was optional); Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (reiterating that “property sales prices are not public information” in Texas); see also Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 890 (1973) (suggesting that although rendition of property was required under state law prior to the Tax Code, many tax assessors likely ignored the rendition procedure because of limited resources, the inability to subpoena a taxpayers records, and the enormity of the task).

19. See Tex. Att'y Gen. OR99-0420 (1999) (unpublished informal letter ruling), available at <http://www.oag.state.tx.us/opinions/openrecords/49cornyn/orl/1999/htm/or199900420.htm> (discussing Comal County's status on the New Braunfels/Canyon Lake Area Board of Realtors' MLS as it pertained to the Open Records Act); see also Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (noting that an MLS enables appraisal districts to value residential properties close to market value); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stating that the Dallas Central Appraisal District “relies heavily on sales prices that it obtains through an agreement with the Multiple Listing Service”). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE

middle-class residential properties than it is to contain similar data for commercial properties or high-end residential properties, appraisal districts are more likely to appraise the former at close to market value, while a lack of probative data leads to the under-appraisal of the latter.²⁰

Although the Texas constitution allows for the taxation of all property,²¹ this Recent Development will focus on the taxation of

PROFIT 25 (1991) (claiming that MLSs are “in use across the nation”).

20. See Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (“[C]ommercial sales information is rarely made public in Texas.”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (reporting that State Representative Mike Villarreal, Democrat-San Antonio, maintains that “appraisers do not have access to price information for commercial and high-end residential properties”); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (stating that appraisal districts have access to a “vast amount” of data concerning residential property but that data concerning commercial property are “scant”); MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) (proposing that the cause of the appraisal disparity between commercial and residential property is attributed to the lack of available data on “commercial, multi-family, industrial, offices, retail and land for development”).

21. See TEX. CONST. art. VIII, § 1(b) (declaring that all real and tangible personal property “shall be taxed in proportion to its value”); TEX. TAX CODE ANN. § 11.01(a) (Vernon 2008) (“All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.”); *City of Arlington v. Cannon*, 153 Tex. 566, 570, 271 S.W.2d 414, 416 (1954) (“The deliberate adoption of a plan for the omission from the tax rolls of a large volume of property, personal or real, is in direct contravention of constitutional and statutory provisions for equality and uniformity of taxation.”); *Norris v. City of Waco*, 57 Tex. 635, 642 (1882) (opining that “there can be but little question” that all property, except that made exempt by the legislature, “must be taxed in proportion to its value”); see also *Parker County v. Spindletop Oil & Gas Co.*, 628 S.W.2d 765, 768 (Tex. 1982) (holding a tax plan invalid because it assessed oil and gas rights at a different rate than other property); *Whelan v. State*, 155 Tex. 14, 20–21, 282 S.W.2d 378, 382 (1955) (explaining that despite “the practical difficulties and problems to be encountered,” holding that bank deposits are not taxable would “fly in the very face of the Constitution and the Statutes of this state” and further noting that the legislature has specifically included bank deposits within the definition of “property”); *Sam Bassett Lumber Co. v. City of Houston*, 145 Tex. 492, 494, 198 S.W.2d 879, 880 (1947) (stating that just because the City of Houston failed to tax similar property elsewhere, does not, by itself, prove that the taxation of “goods, wares and merchandise” is excessive); *Briscoe Ranches, Inc. v. Eagle Pass Indep. Sch. Dist.*, 439 S.W.2d 118, 122 (Tex. Civ. App.—San Antonio 1969, writ ref'd n.r.e.) (indicating that the appellant introduced evidence in the district court of more than \$9 million in deposits held by two banks located within the district and that the tax assessor had attempted to discover those deposits, but that the banks refused to furnish information about the deposits, claiming that the law required confidentiality); *Bergert v. Alexander*, 297 S.W.2d 895, 898 (Tex. Civ. App.—Amarillo 1957, writ ref'd n.r.e.)

2010]

RECENT DEVELOPMENT

561

real property.²² Specifically, this Recent Development will explore the weaknesses of the Tax Code to show why discrepancies occur between middle-class residential and other types of real estate, and why the Code is unable to correct those discrepancies.

Not only must taxing units²³ operate within the boundaries of the Tax Code, but they are first and foremost bound by the equality and uniformity requirements of article VIII of the Texas constitution.²⁴ This Recent Development will examine why Texas courts are unable to adequately remedy these unequal appraisals and discuss recent attempts in the Texas Legislature to reform the ongoing problem of unequal appraisals by requiring mandatory sales price disclosure to appraisal districts.²⁵

(recognizing that the equality and uniformity provisions of the Texas constitution are violated when personal property and improvements on land are excluded or assessed without regard to value). *See generally* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 889 (1973) (acknowledging the impossibility of discovering all taxable personal property and that attempting to do so would be politically and socially offensive).

22. *See* TEX. TAX CODE ANN. § 1.04(2) (Vernon 2008) (defining “real property” as land, improvements to land, mines and quarries, minerals, timber, and various security interests).

23. *See id.* § 1.04(12) (defining a “taxing unit” as an entity “that is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs” and listing several examples such as cities, counties, school districts, and hospital districts).

24. TEX. CONST. art. VIII, § 1; *Spindletop*, 628 S.W.2d at 767; *Dallas County v. Dallas Nat’l Bank*, 142 Tex. 439, 441, 179 S.W.2d 288, 289 (1944); *Lively v. Mo., K. & T. Ry. Co. of Tex.*, 102 Tex. 545, 558–59, 120 S.W. 852, 856 (1909); *see Cannon*, 153 Tex. at 570, 271 S.W.2d at 416 (“[T]he deliberate adoption of a plan for the omission from the tax rolls of a large volume of property, personal or real, is in direct contravention of constitutional and statutory provisions for equality and uniformity of taxation.”).

25. *See* Jonathan Gurwitz, *As Property Taxes Climb, Don’t Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, *available at* 2007 WLNR 17148824 (reiterating that legislation requiring mandatory sales price disclosure was introduced but not passed during Texas’s 80th legislative session); Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, *available at* 2008 WLNR 11429840 (discussing the efforts of the City of Dallas in lobbying the legislature to approve mandatory sales price disclosure). *See generally* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 886 (1973) (describing some of the criticisms of the taxation of property, including claims that it “cast[s] a disproportionate burden on those who are least able to pay,” undermines necessary public works, and is no longer a viable source of revenue).

II. BACKGROUND

Article VIII, section 1(a) of the Texas constitution mandates that “[t]axation shall be equal and uniform.”²⁶ Section 1(b) requires that “[a]ll real property and tangible personal property in this State . . . shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.”²⁷

In *Harris County Appraisal District v. United Investors Realty Trust*,²⁸ the Fourteenth Court of Appeals in Houston ruled that “it is unfair, and constitutionally prohibited, to require one taxpayer to pay a tax based on market values if other taxpayers are paying a rate that is lower than the market value of their properties.”²⁹ The court addressed the tension between the two constitutional requirements of article VIII and resolved the conflict in favor of equality and uniformity.³⁰ The Fourteenth Court of Appeals was not, however, in uncharted territory. Nearly eighty years earlier, the United States Supreme Court³¹ handed down a similar ruling

26. TEX. CONST. art. VIII, § 1(a). *But see Whelan*, 155 Tex. at 18, 282 S.W.2d at 380 (“Exact uniformity and equality of taxation is an unattainable ideal.” (citing *Rosenburg v. Weekes*, 67 Tex. 578, 586, 4 S.W. 899, 901 (1877))); *Norris*, 57 Tex. at 642 (stating that while taxation must be equal, the benefit received from the government resulting from the same taxation need not be equal).

27. TEX. CONST. art. VIII, § 1(b); *see* TEX. TAX CODE ANN. § 11.01 (Vernon 2008) (“All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.”); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 887–88 (1982) (contending that unless excluded by statute, all property is valued and taxed according to market value). *See generally* Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1377–78 (1962) (arguing that the equality requirement and the market value requirement are “closely intertwined” and together intended to promote equality in taxation).

28. *Harris County Appraisal Dist. v. United Investors Realty Trust*, 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

29. *Id.* at 654.

30. *Id.*; *see also* *Lively v. Mo., K. & T. Ry. Co. of Tex.*, 102 Tex. 545, 558, 120 S.W. 852, 856 (1909) (“[T]axation cannot be in the same proportion to the value of the property, unless the value of all property is ascertained by the same standard.”).

31. The Supreme Court of Texas has noted the similarity between the Fourteenth Amendment to the United States Constitution and section 1 of article VIII of the Texas constitution. *See* U.S. CONST. amend. XIV, § 1, cl. 4 (mandating that states give all persons “equal protection of the laws”); TEX. CONST. art. VIII, § 1 (requiring equality and uniformity in taxation); *Lively*, 102 Tex. at 558–59, 120 S.W. at 856 (asserting that the Fourteenth Amendment of the United States Constitution, section 1 of article VIII of the Texas constitution, and other similar provisions in other state constitutions have the same application); Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 909 (1973) (stating that both the federal and Texas constitutions are

2010]

RECENT DEVELOPMENT

563

in *Sioux City Bridge Co. v. Dakota County*.³² The court held that “where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”³³

A. Market Value

At the center of this taxation conundrum is the difficulty of establishing market value.³⁴ When multiple professional appraisers examine a single piece of property, they often use different valuation methods and arrive at different conclusions as to the property’s value.³⁵ These different conclusions and their

violated by “the omission of property from the tax rolls, the unequal treatment of different classes of property within the same taxing jurisdiction, and the unequal treatment of like property within the state”); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1375 (1962) (noting the commonality between equality and uniformity provisions of state constitutions and the Equal Protection Clause of the Fourteenth Amendment). The United States Supreme Court has ruled on equality and uniformity in taxation on several occasions. See *Nordlinger v. Hahn*, 505 U.S. 1, 10, 18 (1992) (stating that state legislation may discriminate in cases where it furthers a “legitimate state interest” and that a California provision allowing seniors’ homes to be appraised at lower values advanced such an interest (citing *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439–41 (1985))); *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946) (stating that the Equal Protection Clause “protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class”); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446 (1923) (holding that a property owner who has been taxed at a higher percentage is entitled to a reduction to the lower percentage that other property owners enjoy). But see *Nashville, Chattanooga & St. Louis Ry. v. Browning*, 310 U.S. 362, 368 (1940) (holding that a state may classify property types and tax different classes at different rates).

32. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

33. *Id.* at 446. In *Sioux City Bridge*, the owner of a railroad bridge objected to the appraisal of the bridge at 100% of its market value while other property in the district was only valued at 55% of its market value. *Id.* at 443–44. The Court held that the Fourteenth Amendment of the United States Constitution required the railroad bridge to be reappraised at the lower rate. *Id.* at 446–47.

34. See *Whelan v. State*, 155 Tex. 14, 18, 282 S.W.2d 378, 380 (1955) (“Exact uniformity and equality of taxation is an unattainable ideal.” (citing *Rosenburg v. Weekes*, 67 Tex. 578, 586, 4 S.W. 899, 901 (1877))); Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (emphasizing the wide variances in the valuations of real estate in downtown Dallas); see also *Whelan*, 155 Tex. at 20–21, 282 S.W.2d at 382 (bemoaning the difficulty in taxing bank deposits).

35. See Steve Brown, *How Much Is It Worth?: Land Costs Vary from Block to Block, Sometimes Dramatically*, DALLAS MORNING NEWS, May 3, 2008, at 1D, available at 2008 WLNR 8328998 (stating that litigation makes buyers and sellers reluctant to disclose information pertaining to real estate transactions and that appraisals vary as a result);

respective methods are frequently left for the courts to sort out.³⁶

1. Market Value Defined

The true market value of a property is difficult to establish and is often controversial.³⁷ Section 1.04(7) of the Tax Code defines “market value” as:

the price at which a property would transfer for cash or its equivalent under prevailing market conditions if: (A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser; (B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.³⁸

Dave Levinthal & Rudolph Bush, *Council Delays Vote on Land Purchase*, DALLAS MORNING NEWS, Apr. 24, 2008, at 1B, available at 2008 WLNR 7621429 (referring to two private appraisals, one for \$29 million and the other for \$33 million, conducted on the same piece of Dallas real estate on which the city intended to build a hotel); Dave Levinthal & Suzanne Marta, *Vote Planned on Parcel for Convention Hotel*, DALLAS MORNING NEWS, Feb. 9, 2008, at 1D, available at 2008 WLNR 2554841 (referring to three different valuations on the same piece of Dallas real estate on which the city intended to build a hotel: one by the Dallas Central Appraisal District for \$7.5 million and two independent appraisals valuing the property at over \$40 million). See generally Silas J. Ely, *Applied Techniques of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 30-1, 30-4 (Robert Irwin ed., 1984) (listing four different methods of appraising real estate: the market comparison method, the allocation or abstraction method, the development method, and the land residual method); *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 344-47 (1958) (discussing various types of assessment techniques).

36. See *City of Harlingen v. Sharboneau*, 48 S.W.3d 177, 182 (Tex. 2001) (Baker, J., concurring) (stating that the “subdivision development” method of appraisal is not among the appraisal methods recognized by Texas law and should not be admissible in a condemnation proceeding); *Houston R.E. Income Props. XV, Ltd. v. Waller County Appraisal Dist.*, 123 S.W.3d 859, 864 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (stating that a court may rely on both the market data method and the income method in appraising a property).

37. See *Whelan*, 155 Tex. at 18, 282 S.W.2d at 380 (“Exact uniformity and equality of taxation is an unattainable ideal.” (citing *Rosenburg*, 67 Tex. at 586, 4 S.W. at 901)). See generally CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 423 (4th ed. 1985) (“[T]he most fundamental concepts of *ad valorem* taxation are often questioned.”).

38. TEX. TAX CODE ANN. § 1.04(7) (Vernon 2008); see also *Sharboneau*, 48 S.W.3d at 182 (defining “market value” as “the price the property will bring when offered for sale by one who desires to sell, but is not obliged to sell, and is bought by one who desires to buy, but is under no necessity of buying” (quoting *State v. Carpenter*, 126 Tex. 604, 606, 89 S.W.2d 979, 980 (1936))). See generally BALLENTINE’S LAW DICTIONARY 778 (3d ed.

2010]

RECENT DEVELOPMENT

565

Market value is typically determined by using any combination of three traditional methods: the market approach, the cost approach, and the income approach.³⁹ The market approach compares a particular property with other properties for which sales data are available.⁴⁰ The cost approach calculates value by estimating the cost of identical vacant land and improvements.⁴¹ Finally, the income approach is used to value commercial and industrial real estate by considering the income and expenses that a property generates when compared to other investments.⁴²

2. Market Value Versus Sales Price

Market value should not be confused with the sales price of real property.⁴³ While the sales price in a routine transaction is often the result of the type of bargaining described in section 1.04(7) of the Code, it is not an absolute indication of market value.⁴⁴

1969) (defining “market value” as “[t]he price for which an article is bought and sold in the ordinary course of business” and “[o]f real estate:—the highest price obtainable in the open market for cash”); BLACK’S LAW DICTIONARY 1587 (8th ed. 2004) (defining “fair market value” as “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s-length transaction; the point at which supply and demand intersect”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 73 (1991) (defining “fair market value” as “the closing price, the highest price a ready, willing, and able buyer will pay and the lowest price a ready, willing, and able seller will accept” (emphasis omitted)).

39. Silas J. Ely, *Principles of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 28-12 (Robert Irwin ed., 1984).

40. *Id.*; see also *id.* at 28-1 (claiming that the market approach is the most direct and important approach in valuing property).

41. *Id.* at 28-13; see also *id.* (stating that the cost approach is normally limited to the appraisal of new buildings and public properties).

42. Silas J. Ely, *Principles of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 28-13–28-14 (Robert Irwin ed., 1984).

43. See *id.* at 28-3 (pointing out the difference between market price and market value by stating that market price is “simply the amount actually paid” while market value is the “highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale”); see also BLACK’S LAW DICTIONARY 1226 (8th ed. 2004) (defining “price” as “[t]he amount of money or other consideration asked for or given in exchange for something else; the cost at which something is bought or sold”); BLACK’S LAW DICTIONARY 1586 (8th ed. 2004) (defining “value” as “[t]he significance, desirability, or utility of something”).

44. See TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that sales price alone is inadequate to establish market value).

Depending on the circumstances of the transaction—such as whether it involved a forced sale, condemnation by the government, or sale at auction following a foreclosure—the actual sales price of the property might be much lower than market value.⁴⁵ In some instances where property is purchased through financing, the sales price might be higher depending on the interest rate obtained by the buyer.⁴⁶ Nonetheless, sales price is one of a few tools that appraisers use to determine the value of real property.⁴⁷

Sales price may be introduced as evidence of market value either before an appraisal review board or a reviewing district court during an appraisal protest.⁴⁸ In *Bailey County Appraisal District v. Smallwood*,⁴⁹ a property owner appealed an appraisal review board's finding that his property was worth \$55,000 for tax purposes.⁵⁰ A jury found in favor of the property owner, who based his claim solely on the property's purchase price of \$25,000.⁵¹ The Appraisal District appealed, but the Seventh Court of Appeals in Amarillo upheld the trial court's ruling that purchase price alone is probative evidence "tending to support the

45. See Silas J. Ely, *Applied Techniques of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 30-1, 30-4 (Robert Irwin ed., 1984) (stating that the terms of the sale affect the price).

46. See TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (stating that lower interest rates and less buyer liability often result in higher sales prices).

47. See Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 891 (1973) (claiming that assessors often appraise the property of large businesses by negotiating because an accurate valuation is too difficult); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1393 (1962) (stating that recent sales are not always representative if statistical sampling is not employed); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf ("Sales price disclosure alone does not provide the information an appraisal district needs to establish a market value.").

48. See TEX. TAX CODE ANN. § 41.44 (Vernon 2008) (permitting a property owner to present evidence in front of an appraisal review board); SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS' RIGHTS, REMEDIES AND RESPONSIBILITIES 6 (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (describing to a taxpayer how to protest).

49. *Bailey County Appraisal Dist. v. Smallwood*, 848 S.W.2d 822 (Tex. App.—Amarillo 1993, no writ).

50. *Id.* at 823.

51. *Id.* at 823–24.

2010]

RECENT DEVELOPMENT

567

jury finding on fair market value.”⁵²

3. Multiple Listing Service

An MLS is a resource that subscribing members, usually real estate agents and private appraisers, use to gain access to information concerning a specific housing market, thereby allowing real estate brokers to instantly analyze all listed properties for sale in a general area by location and sales data.⁵³ Most importantly, an MLS allows appraisers to verify the actual sales price and date of a particular real estate transaction brokered by a member for the purpose of appraising similar real estate.⁵⁴ Due to the nature of the real estate market, sales data are more readily available for some types of property than others. The vast majority of properties listed on an MLS are middle-class single-

52. *Id.* at 825; see *Sagemont Plaza Shopping v. Harris County Appraisal Dist.*, 30 S.W.3d 425, 427 (Tex. App.—Corpus Christi 2000, pet. denied) (holding that the most recent purchase price of a property was sufficient evidence to establish market value). *But see City of Harlingen v. Sharboneau*, 48 S.W.3d 177, 186 (Tex. 2001) (finding that the price a buyer “could hypothetically afford to pay” and still make a profit upon resale is not necessarily what a buyer “would pay in the competitive, risk-filled marketplace of the real world”). See generally CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 73 (1991) (defining “fair market value” as “the closing price, the highest price a ready, willing, and able buyer will pay and the lowest price a ready, willing, and able seller will accept” (emphasis omitted)).

53. See CHARLES J. JACOBUS, *TEXAS REAL ESTATE LAW* 550 (4th ed. 1985) (defining “multiple listing” as “an agreement among brokers who belong to the Multiple Listing Service that all listings will be placed on a mutually available list, that all brokers may sell any property on the list, and that the commission will be split in a predetermined fashion”); SHAHRI MASTERS, *THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT* 4 (2006) (“An MLS is an organization that’s formed for the purpose of sharing listings, which you’ll likely find to be internet based.”); SHAHRI MASTERS, *THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT* 153 (2006) (detailing the information usually available on an MLS); see also CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 13 (1991) (describing the relationship among realtors who are members of an MLS). See generally *id.* at 76 (contending that “[e]very competent real estate office keeps records” of the sales prices of comparable properties).

54. See SHAHRI MASTERS, *THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT* 153 (2006) (relating that while each MLS system is somewhat unique, most of them have the common features of “sales price, the date sold, the type of financing that was used, and who sold it” in addition to how many days it has been on the market). See generally CAROLYN JANIK, *HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT* 5 (1991) (proclaiming that realtors allow their colleagues to access the properties that they are selling through an MLS); *id.* at 13 (asserting that when a property is sold on an MLS, the commission is usually split down the middle between the agent who posted the property and the agent who sold it via the MLS).

family houses.⁵⁵ Many appraisal districts have joined with local real estate agents and private appraisers in local MLS boards to gain access to this data.⁵⁶ Because middle-class homes are likely to be listed on an MLS,⁵⁷ the market data method is usually the easiest and most likely choice of appraisal method in valuing these

55. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (referring to statements by Texas State Representative Mike Villarreal, Democrat-San Antonio, who claims that sales data on most homes valued under \$300,000 can be found on a local MLS, while sales data of commercial real estate and more expensive residential properties are largely unavailable); REAL ESTATE CTR. AT TEX. A&M UNIV., REAL ESTATE MARKET OVERVIEW 2008 DALLAS-FORT WORTH-ARLINGTON 26 (2008), <http://recenter.tamu.edu/mreports/DallasFWAr1.pdf> (showing that throughout different regions of the Dallas/Fort Worth/Arlington area, the number of homes that sold on an MLS for over half a million dollars was never more than 8% of all homes sold in the area during 2007).

56. See Tex. Att'y Gen. OR99-0420 (1999) (unpublished informal letter ruling), available at <http://www.oag.state.tx.us/opinions/openrecords/49cornyn/orl/1999/html/or199900420.htm> (recounting a scenario in Comal County where homeowners filed an open records request to gain access to sales figures through the local appraisal district—which was a member of the local MLS—but were denied the disclosure based on the district's contention that the data are property of the local MLS and not the government); Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (stating that data from an MLS allows appraisal districts to keep residential properties valued at close to market value); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stating that the Dallas Central Appraisal District “relies heavily on sales prices that it obtains through an agreement with the Multiple Listing Service”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (claiming that because of listings in the MLS, Bexar County appraisers have access to 95% of residential properties under \$300,000); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (“A vast amount of information is available to appraisers with regard to residential home sales from the Multiple Listing Service . . .”).

57. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (noting that most homes worth less than \$300,000 in Bexar County are listed on the local MLS); REAL ESTATE CTR. AT TEX. A&M UNIV., REAL ESTATE MARKET OVERVIEW 2008 DALLAS-FORT WORTH-ARLINGTON 26 (2008), <http://recenter.tamu.edu/mreports/2008/DallasFWAr1.pdf> (showing that throughout different regions of the Dallas/Fort Worth/Arlington area, the number of homes that sold on an MLS for over half a million dollars was never more than 8% of all homes sold in the area during 2007). See generally CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 166 (1991) (arguing that the MLS is the most widely used database by real estate brokers and that if a seller wants maximum market exposure for a property, it should be listed on an MLS).

2010]

RECENT DEVELOPMENT

569

properties.⁵⁸ Meanwhile, because less data are available on an MLS concerning the sales prices of commercial properties, the income method is more likely to be used in the appraisal of those properties.⁵⁹

Under the Tax Code, a property owner must file a rendition with the appraisal district where the property is located.⁶⁰ A rendition is a statement that identifies taxable property within an appraisal district.⁶¹ However, the property owner is not required to disclose the market value of his or her property when submitting that rendition.⁶² There is a growing belief that renditions in Texas should include more information—specifically, the most recent sales price.⁶³

B. *Before the Texas Property Tax Code*

Prior to 1982, taxing units maintained their own tax rolls.⁶⁴

58. See TEX. TAX CODE ANN. § 23.013 (Vernon 2008) (“If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.”).

59. See *id.* § 23.012 (outlining the requirements for “income method” appraisals); Silas J. Ely, *Principles of Appraisal*, in THE MCGRAW-HILL REAL ESTATE HANDBOOK 28-13–28-14 (Robert Irwin ed., 1984) (describing the income approach and the circumstances under which it is ideal).

60. See Edward Klier III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 889–90 (1982) (discussing renditions and stating that disclosing market value or sales price is optional under the Tax Code).

61. *Id.* at 890.

62. See TEX. TAX CODE ANN. § 22.01(b) (Vernon 2008) (requiring a person to submit a rendition of any “taxable property that he owns or that he manages and controls as a fiduciary on January 1”); *id.* § 22.24(d) (establishing that a property owner is not required to disclose a “good faith estimate of the market value of the property”); Edward Klier III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 890 (1982) (emphasizing that the Tax Code requires a taxpayer to file a rendition prior to May 1 and that disclosing market value is optional).

63. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers’ Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (reporting on pending legislation requiring mandatory sales disclosure); Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840 (reporting on the City of Dallas’s efforts to lobby the legislature for mandatory sales disclosure).

64. See Edward Klier III & Scott E. Breen, *The New Property Tax Code and*

Cities, counties, and school districts redundantly valued the same properties within their overlapping territories.⁶⁵ Each taxing unit maintained its own board of equalization, which heard disputes concerning the appraised value of taxable property within the unit's jurisdiction.⁶⁶ Under this system, taxing units acted as the appraiser of value, the initial arbiter of disputes, and the collector of taxes.⁶⁷

Before the adoption of the Tax Code, to avoid falling victim to an unfair tax scheme, a taxpayer had to prove that a tax scheme was "discriminatory, arbitrary, that there was omitted property or that the property was valued in excess of its market value."⁶⁸ "[A] mere difference in judgment" about a property's value or "isolated instances" of other property being valued at disproportionate values was insufficient grounds on which a property owner could prevail.⁶⁹ To obtain relief, a property owner had to show

Perfecting the Appeal: The Taxpayer's Perspective, 13 ST. MARY'S L.J. 887, 889 (1982) (noting that before the Tax Code "there were approximately 3,000 different taxing jurisdictions" in Texas that maintained tax offices); *see also* *Aycock v. Travis County*, 255 S.W.2d 910, 911–12 (Tex. Civ. App.—Austin 1953, writ ref'd) (recognizing in the statement of facts that Travis County used prior assessments made by the City of Austin, where much of the taxable property in Travis County is located, in formulating its own assessments).

65. *See* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 894 (1973) (indicating that Texas used to have overlapping taxing units); *see also* *Aycock*, 255 S.W.2d at 911–12 (noting Travis County's use of assessments made by the City of Austin).

66. *See* Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 891 (1982) (stating that prior to the Tax Code, each taxing unit had its own board of equalization); *see also* *City of Arlington v. Cannon*, 153 Tex. 566, 568, 271 S.W.2d 414, 415 (1954) (noting that the City of Arlington had its own board of equalization); *Dallas County v. Dallas Nat'l Bank*, 142 Tex. 439, 440, 179 S.W.2d 288, 289 (1944) (indicating that the Dallas County Commissioners Court also served as a board of equalization for Dallas County); *State v. Houser*, 138 Tex. 28, 30, 156 S.W.2d 968, 969 (1941) (noting that Lamar County and the Paris Independent School District shared both a taxing unit and a board of equalization); Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 892 n.47 (1973) (stating that "[e]very type of taxing district is entitled to have its own board of equalization" to correct unequal assessments).

67. *See* Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 892–93 (1973) (accusing county boards of equalization of abusing the system and creating "rampant inequalities" in violation of constitutional and statutory requirements).

68. Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 897 (1982).

69. *Dallas Nat'l Bank*, 142 Tex. at 441, 179 S.W.2d at 289; *see* *State v. Whittenburg*,

2010]

RECENT DEVELOPMENT

571

substantial injury.⁷⁰ Substantial injury was established when a taxpayer could prove his taxes would have been substantially lower had other property in the district been appraised at market value.⁷¹ Property owners could fight the government's attempt to collect a tax that was unequal or excessive, even during a delinquency proceeding.⁷²

C. The Texas Property Tax Code

The Texas Property Tax Code⁷³ was adopted by the state legislature in 1979 and became effective January 1, 1982.⁷⁴ The Tax Code established independent appraisal districts as subdivisions of the state in all counties within Texas.⁷⁵ The

153 Tex. 205, 210, 265 S.W.2d 569, 573 (1954) (stating that “mere errors in judgment” or a mere disagreement between the finder of fact and a board of equalization is an insufficient basis for relief); *Houser*, 138 Tex. at 33, 156 S.W.2d at 971 (finding that the trial court and the board of equalization had a “difference in judgment or opinion” and that the trial court erred in voiding the assessment of the board of equalization); *Exps. & Traders Compress & Warehouse Co. v. City of Marlin*, 130 S.W.2d 860, 862 (Tex. Civ. App.—Waco 1939, writ dism'd judgm't cor.) (stating that a court may not void an assessment just because a jury finds a property to be worth a different amount than the board of equalization found).

70. *Whelan v. State*, 155 Tex. 14, 22–23, 282 S.W.2d 378, 383 (1955); *Cannon*, 153 Tex. at 570, 271 S.W.2d at 417; *Whittenburg*, 153 Tex. at 210, 265 S.W.2d at 573; *Bynum v. Alto Indep. Sch. Dist.*, 521 S.W.2d 656, 659 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.); *Warren Indep. Sch. Dist. v. S. Neches Corp.*, 405 S.W.2d 100, 103 (Tex. Civ. App.—Beaumont 1965, writ ref'd n.r.e.).

71. *Whelan*, 155 Tex. at 22–23, 282 S.W.2d at 383; *Whittenburg*, 153 Tex. at 214, 265 S.W.2d at 575; *Bynum*, 521 S.W.2d at 660; *see also Bynum*, 521 S.W.2d at 660 (holding that there was no substantial injury when the appellant could not establish that his taxes would have been lower if other properties were appraised at market value).

72. *Bynum*, 521 S.W.2d at 659; *see also Whelan*, 155 Tex. at 22–23, 282 S.W.2d at 383 (noting that a taxpayer must prove substantial injury if he waits until an unequal plan of taxation is put into effect).

73. *See TEX. TAX CODE ANN.* § 1.01 (Vernon 2008) (“This title may be cited as the Property Tax Code.”).

74. Act of May 26, 1979, 66th Leg., R.S., ch. 841, §§ 1.01–63.339, 1979 Tex. Gen. Laws 2217, 2217–332 (amended 2009) (current version at *TEX. TAX CODE ANN.* §§ 1–43 (Vernon Supp. 2009)); CHARLES J. JACOBUS, *TEXAS REAL ESTATE LAW* 424 (4th ed. 1985); Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 888 (1982).

75. *TEX. TAX CODE ANN.* § 6.01 (Vernon 2008); *see also id.* § 6.02(a) (defining the boundaries of an appraisal district as identical with the boundaries of the county in which the district is located). Though appraisal review boards replaced boards of equalization after 1982, their functions were basically the same: ensure fair market valuation as well as equal and uniform taxation. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 891–

purpose of the appraisal district is to value all taxable property within its jurisdictional limits so that multiple taxing units within a county (school districts, water districts, municipalities, etc.) can levy an ad valorem property tax based on a single valuation.⁷⁶ In addition to article VIII, section 1(b) of the Texas constitution, which requires property to “be taxed in proportion to its value,” section 23.01, requires appraisal districts to appraise property at market value.⁷⁷ Furthermore, the Tax Code strictly outlines the procedures and remedies for property owners who wish to challenge their appraisals.⁷⁸

1. Appraisal Districts and the Appraisal Process

The Tax Code established appraisal districts to determine the value of taxable property in Texas.⁷⁹ Appraisal districts are overseen by a board of directors⁸⁰ who appoint both a chief

92 (1982); *see also* CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 424 (4th ed. 1985) (stating that the Tax Code was adopted to “clarify some of the conflicts we had in the law prior to the Property Tax Code being passed”).

76. *See* TEX. TAX CODE ANN. § 6.01(b) (Vernon 2008) (“[An appraisal] district is responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.”); CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 425 (4th ed. 1985) (recognizing that appraisal districts were created to standardize the appraisal process and to “require[] all school districts, levee districts, water districts, and other taxing authorities to use the same appraised value on the property”).

77. TEX. CONST. art. VIII, § 1(b); TEX. TAX CODE ANN. § 23.01(a) (Vernon Supp. 2009).

78. *See* TEX. TAX CODE ANN. § 41.44 (Vernon 2008) (stating the amount of time allowed to file a notice of protest); *id.* § 41.47 (setting forth the parameters within which an appraisal review board must operate in a protest hearing); *id.* § 42.01 (granting a property owner the right of appeal to a district court in the event an appraisal review board issues an adverse ruling); *id.* § 42.09 (stating that the Tax Code’s remedies are exclusive); *id.* § 42.23 (defining the scope of judicial review for the appeal of a protest); TEX. TAX CODE ANN. § 42.26 (Vernon 2008) (listing the remedies for unequal appraisal).

79. TEX. TAX CODE ANN. § 6.01(b) (Vernon 2008); Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 889 (1982). *But see Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 340–41 (1958) (commenting that reforms attempting to consolidate the appraisal process have been “sporadic” and have had “dubious success”).

80. TEX. TAX CODE ANN. § 6.03(a) (Vernon 2008); *see also* CHARLES J. JACOBUS, TEXAS REAL ESTATE LAW 425 (4th ed. 1985) (recognizing that appraisal districts are overseen by a board of directors comprised of at least five members, each serving a term of two years).

2010]

RECENT DEVELOPMENT

573

appraiser⁸¹ and the members of the appraisal review board.⁸² The chief appraiser and his subordinates set the initial valuation of taxable property,⁸³ while the appraisal review board hears disputes initiated by property owners and taxing units.⁸⁴

Although the taxing units located within a county appoint the board of directors of that county's appraisal district, the legislature laid the foundation for a more independent appraisal process in the Tax Code.⁸⁵ Section 1.15 prohibits a taxing unit from employing appraisers for the purpose of taxation,⁸⁶ while section 6.412 prohibits employees, officers, and elected officials of taxing units from serving on an appraisal review board.⁸⁷

Section 23.01 of the Tax Code requires that property be appraised "at its market value as of January 1"⁸⁸ and that "each property shall be appraised based upon the individual characteristics that affect the property's market value."⁸⁹ The Tax Code allows the chief appraiser to base the appraisal on "cost data obtained from generally accepted sources,"⁹⁰ the potential of the

81. TEX. TAX CODE ANN. § 6.05(c) (Vernon 2008).

82. *Id.* § 6.41(d).

83. *See id.* § 6.05(d) (authorizing the chief appraiser to maintain a staff of "professional, clerical, and other personnel"); *id.* § 6.05(e) (allowing the chief appraiser to delegate duties to employees).

84. *Id.* § 41.01(a)(1), (2).

85. *See* TEX. TAX CODE ANN. § 6.03(a) (Vernon 2008) (limiting the circumstances in which employees and officers of taxing units are eligible to serve on the board of directors of an appraisal district). *See generally* SHAHRI MASTERS, THE EVERYTHING GUIDE TO BEING A REAL ESTATE AGENT 28 (2006) (suggesting that an appraiser who works for a real estate broker would operate under a cloud of impropriety).

86. TEX. TAX CODE ANN. § 1.15 (Vernon 2008). The Tax Code provides for one exception—an appraisal district may contract out appraisal duties to a taxing unit. *Id.* §§ 1.15, 6.05(b). If such a contract is entered into, then the chief appraiser of the appraisal district shall be the assessor for the taxing unit. *Id.* § 6.05(c); *see also id.* § 6.03(a) (forbidding a county assessor-collector from serving on the board of directors of an appraisal district if "the board enters into a contract under Section 6.05(b) or if the commissioners court of the county enters into a contract under Section 6.24(b)").

87. *Id.* § 6.412(c). *But see* TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 15 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (opining that the current system is still "at risk of being tilted" in favor of taxing units because they are the very entities that appoint the appraisal district's board of directors who, in turn, appoint both the chief appraiser and the appraisal review board).

88. TEX. TAX CODE ANN. § 23.01(a) (Vernon Supp. 2009).

89. *Id.* § 23.01(b).

90. *Id.* § 23.011 (Vernon 2008); *see* BALLENTINE'S LAW DICTIONARY 277 (3d ed. 1969) (defining "cost" as "[t]he amount of money, services, or property required to obtain

property to generate current and future income,⁹¹ and the “comparable sales data” of other properties.⁹² Appraisal districts value property based on its individual characteristics using the most appropriate method, which varies depending on the property.⁹³

2. Protesting an Appraisal

Under the Tax Code, a property owner may still challenge an appraisal based on excessive or unequal valuation,⁹⁴ but there are many statutory requirements that the owner, the appraisal review board, and the courts must abide for the property owner to obtain relief. The Tax Code defines when a protest can be made, what

a thing or to build a structure”); BLACK’S LAW DICTIONARY 373 (8th ed. 2004) (defining “cost approach” as “[a] method of appraising real property, based on the cost of building a new structure with the same utility, assuming that an informed buyer would pay no more for the property than it would cost to build a new structure having the same usefulness”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 77 (1991) (suggesting that calculating the replacement cost can be achieved by taking some measurements of the foundation and square footage of residential property and then obtaining a construction estimate from a local home builder).

91. TEX. TAX CODE ANN. § 23.012 (Vernon 2008). *See generally* BLACK’S LAW DICTIONARY 779 (8th ed. 2004) (defining “income approach” as “appraising real property based on capitalization of the income that the property is expected to generate”).

92. TEX. TAX CODE ANN. § 23.013 (Vernon 2008); *see* Rudolph Bush & Kevin Krause, *Why Did This Parking Lot Jump in Appraised Value from \$7.5 Million to \$36.5 M?: City Defends Deal, But Critics Skeptical of New Assessment*, DALLAS MORNING NEWS, May 4, 2008, at 1A, available at 2008 WLNR 8329061 (noting that the Dallas Central Appraisal District used the sales data from eleven properties to appraise one downtown property); *see also* CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 78 (1991) (claiming that tax assessments can be a useful tool in appraising a property if they are assessed at 100% and if properties in the neighborhood have been recently sold). *See generally* BLACK’S LAW DICTIONARY 990 (8th ed. 2004) (defining “market approach” as “appraising real property, by surveying the market and comparing the property to similar pieces of property that have been recently sold, and making appropriate adjustments for differences between the properties, including location, size of the property, and the dates of sale”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE ’90S WITH LESS STRESS AND MORE PROFIT 75–76 (1991) (stating that appraisers use the market-data method of evaluation by keeping records of sales prices of comparable properties).

93. *See* TEX. TAX CODE ANN. § 23.0101 (Vernon 2008) (requiring a chief appraiser to “consider the cost, income, and market data comparison methods” when determining the value of property); *see also* Houston R.E. Income Props. XV, Ltd. v. Waller County Appraisal Dist., 123 S.W.3d 859, 864 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (providing that a court may rely on both the market data method and the income method in appraising a property).

94. TEX. TAX CODE ANN. § 41.41(a) (Vernon 2008).

2010]

RECENT DEVELOPMENT

575

the owner must prove to be granted relief, the scope of review for a district court reviewing the decision of an appraisal review board, and possible remedies that a district court may grant if an owner proves that he has been subjected to an excessive or unequal appraisal.⁹⁵

In a hearing before the appraisal review board, the appraisal district must establish “the value of the property by a preponderance of the evidence.”⁹⁶ If it fails to do so, the board shall rule in favor of the protesting property owner.⁹⁷ If the board determines that there are errors in the appraisal records, then it is authorized to make changes “that are necessary to conform the records to the requirements of law.”⁹⁸

In the event of an adverse ruling by the appraisal review board, a property owner may appeal to a district court.⁹⁹ “Review is by

95. See *id.* § 41.44 (stating the amount of time allowed to file a notice of protest); *id.* § 41.47 (stating the parameters within which an appraisal review board must operate in a protest hearing); *id.* § 42.01 (granting a property owner the right of appeal to a district court in the event an appraisal review board hands down an adverse ruling); *id.* § 42.09 (stating that the Tax Code’s remedies are exclusive); TEX. TAX CODE ANN. § 42.23 (Vernon 2008) (defining the scope of judicial review for the appeal of a protest); *id.* § 42.26 (listing the remedies for unequal appraisal); see also SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS’ RIGHTS, REMEDIES AND RESPONSIBILITIES 5 (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (“Most appraisal districts will informally review your protest with you to try to resolve your concerns.”).

96. TEX. TAX CODE ANN. § 41.43(a) (Vernon 2008); see also Warren Indep. Sch. Dist. v. S. Neches Corp., 405 S.W.2d 100, 104–05 (Tex. Civ. App.—Beaumont 1965, writ ref’d n.r.e.) (holding that a taxpayer had been denied due process of law when a board of equalization did not allow the taxpayer to cross-examine witnesses and stating that despite the informal nature of a taxpayer protest in front of the board, a taxpayer “must be giv[en] a reasonable opportunity to develop the facts upon which the protest is based”); Bergert v. Alexander, 297 S.W.2d 895, 898 (Tex. Civ. App.—Amarillo 1957, writ ref’d) (stating that boards of equalization (the predecessors to current appraisal review boards) are quasi-judicial in nature and holding a tax assessment invalid when a board of equalization did not allow a protesting taxpayer the opportunity to present evidence).

97. TEX. TAX CODE ANN. § 41.43(a) (Vernon 2008); see also Bergert, 297 S.W.2d at 898 (holding that a board of equalization’s actions in not allowing a property owner to present evidence as to his true property value was unconstitutional). But see TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 15 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that appraisal review boards often do not abide by the law and rule in favor of an appraisal district without requiring it to meet the statutory burden of proof).

98. TEX. TAX CODE ANN. § 41.47(b) (Vernon 2008).

99. *Id.* § 42.01(1)(A).

trial de novo”¹⁰⁰ and “[a]ny party is entitled to trial by jury on demand.”¹⁰¹ Section 42.26(a) of the Tax Code allows a district court to grant relief to a plaintiff who can establish that the appraisal ratio¹⁰² of his property “exceeds by at least ten percent the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district” or “the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.”¹⁰³ In doing so, the Tax Code has placed a statutory minimum on the traditional substantial injury requirement.¹⁰⁴

The Tax Code has also restricted property owners from challenging a taxing unit during the tax collection process.¹⁰⁵ In other words, prior to the adoption of the Tax Code, a property owner could challenge a taxing unit after he had received a tax bill,¹⁰⁶ while under the Tax Code, a property owner is required to challenge the actions of the appraisal district within a specified window of time¹⁰⁷ and must prove that the property is overvalued

100. *Id.* § 42.23(a).

101. *Id.* § 42.23(b).

102. See SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, THE PROPERTY VALUE STUDY AND HOW TO PROTEST iv (2008), <http://www.window.state.tx.us/taxinfo/proptax/protest07/96-304-07.pdf> (defining “appraisal ratio” as the “ratio of an individual property’s appraised value shown on the appraisal roll to its market value”).

103. TEX. TAX CODE ANN. § 42.26(a)(1) (Vernon 2008).

104. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer’s Perspective*, 13 ST. MARY’S L.J. 887, 898 (1982).

105. TEX. TAX CODE ANN. § 42.09(a)(2) (Vernon 2008).

106. See Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 903–04 (1973) (stating that a taxpayer may attack an assessment during the collection process or as a defense to a suit for delinquent taxes and that “Texas courts have not imposed any uniform procedural penalty on taxpayers who delay in attacking their assessments”).

107. See TEX. TAX CODE ANN. § 41.44(a) (Vernon 2008) (requiring a notice of protest to be filed “before May 1 or not later than the 30th day after the date the notice to the property owner was delivered” in cases where the property is a homestead and “before June 1 or not later than the 30th day after the date that notice was delivered to the property owner” for most other properties); see also Steve Brown, *Tax Appraisals Are a Hot Topic*, DALLAS MORNING NEWS, May 12, 2006, at 3D, available at http://www.dallasnews.com/sharedcontent/dws/bus/columnists/sbrown/stories/DN-recol_12bus.ART.State.Edition1.22ceb9d9.html (stating that taxpayers must protest by May 31 and describing the chaotic scene in the Dallas Central Appraisal District’s office during this time).

2010]

RECENT DEVELOPMENT

577

by a certain percentage.¹⁰⁸

III. ANALYSIS

The problem in Texas is simple: the state's constitution sets a standard that its statutory provisions cannot satisfy. On one hand, the Texas constitution requires equality in taxation,¹⁰⁹ while on the other, the Tax Code does not give appraisal districts the necessary tools to achieve that result.¹¹⁰ While the constitution requires property to be appraised according to value,¹¹¹ real world transactions indicate that this is not happening.¹¹²

If appraisal districts are, in fact, appraising commercial and high-end residential property as accurately as the existing Tax Code permits, then reform must come from either the courts or the legislature. While an attack on the constitutionality of the appraisal process and the Tax Code might seem appealing, such an action would be difficult to maintain due to the language of the Tax Code itself, which places the source of these unequal appraisals—lack of commercial and high-end residential sales

108. See TEX. TAX CODE ANN. § 42.26(a) (Vernon 2008) (requiring a protesting property owner to prove that the property value under dispute is at least 10% greater than “a reasonable and representative sample of other properties in the appraisal district”).

109. TEX. CONST. art. VIII, § 1(a).

110. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (reporting that Ken Nolan, Chief Appraiser for the Dallas Central Appraisal District, claimed that “state law ties his hands”); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (suggesting that taxpayers blame inadequate statutory provisions—rather than appraisal districts—for unequal appraisals). See generally *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 384 (1958) (claiming that “[r]eal estate taxation has long suffered from the legislatures' abdication of their responsibilities” and that courts and appraisal districts “manipulate empty statutory intonations on ‘value’ in order to implement policies of their own selection”).

111. TEX. CONST. art. VIII, § 1(b).

112. See TEX. ASS'N OF APPRAISAL DIST., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? 1–48 (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (showing data from several Texas counties that establish unequal appraisals); see also *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 339 (1958) (“Hence that well-intended commonplace—the statutory or constitutional requirement that every assessment be made at a uniform proportion of the realty's ‘full value.’ Despite adjurations of this sort, local assessors habitually disregard the prescribed proportion of ‘full value’ and assign lower values to most property.”).

data—beyond the reach of both courts and appraisal districts.¹¹³ The legislature has designated the remedies within the Tax Code as exclusive, an indication that it intends to constrain the courts' participation in the appraisal process, limiting their remedial action to the specific provisions of the Tax Code.¹¹⁴ Because such an attack on the Tax Code is so problematic, the surest way to bring about equality and uniformity to ad valorem taxation is to pass new legislation requiring mandatory sales price disclosure in Texas.

A. *Constitutional Challenge*

“The Legislature may not authorize that which the Constitution prohibits.”¹¹⁵ In the case of the Tax Code, the statutory provisions are facially constitutional, but the results they produce plainly offend the equality and uniformity clauses. The Code's deficiencies hit middle-class taxpayers twice. First, taxpayers are hit with unequal appraisals when their homes are valued at close to one hundred percent of their actual value, while commercial and high-end residential properties are valued at a much lower percentage.¹¹⁶ Second, as disadvantaged as appraisal districts are in valuing various types of property, the average tax-paying homeowner is even less sophisticated in property appraisal and has

113. See *infra* Section A (discussing the problematic aspects of a lawsuit challenging the constitutionality of the Tax Code provisions).

114. Cf. TEX. TAX CODE ANN. § 41.44(a)(1) (Vernon 2008) (requiring a filing of protest before May 1 or within thirty days after the property owner receives notice of an appraisal increase); *id.* § 42.26(a) (delineating the available remedies for the victim of an unequal appraisal); *id.* § 42.09 (stating that the remedies of the Tax Code are exclusive and denying taxpayers the ability to use protest as a defense to a taxing unit's collection of delinquent taxes).

115. *Maheer v. Lasater*, 163 Tex. 356, 354 S.W.2d 923, 925 (1962).

116. See Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840 (noting Dallas County Chief Appraiser Ken Nolan's concession that a disparity exists between residential and commercial appraisals); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (noting Bexar County Chief Appraiser Michael Amezcuita's claim that commercial property is appraised below market value).

2010]

RECENT DEVELOPMENT

579

even fewer tools at his or her disposal to mount a *meaningful* protest.¹¹⁷

A litigant may challenge a statute as unconstitutional with either a facial challenge or an as-applied challenge.¹¹⁸ Under a facial challenge, a taxpayer must show that the statute in question always operates in an unconstitutional manner.¹¹⁹ Because the substance of the Tax Code basically echoes article VIII of the Texas constitution, a facial challenge against any statute within the Code is not likely to succeed. Section 23.01 of the Tax Code has the same essential requirements as the constitution in that they both require taxation of property according to value.¹²⁰ Otherwise stated, the constitution requires the equal taxation of property according to value, while the Tax Code requires *all* property to be appraised at one hundred percent of its *market* value. Certainly there are plenty of instances where the Tax Code and its appraisal process work perfectly—namely the appraisal of middle-class residential property.

An as-applied challenge requires a court to consider the statute as it “operates in practice against [a] particular plaintiff.”¹²¹ A plaintiff attacking a statute must overcome a presumption that “the Legislature intended for the law to comply with the United States and Texas Constitutions, to achieve a just and reasonable result, and to advance a public rather than a private interest.”¹²²

117. Of course, it is not impossible to protest the appraised value of residential property. A study by the Texas Association of Appraisal Districts indicates that even among middle-class residential properties, there is some variation in the appraised value versus the market value, which would qualify a taxpayer for relief under section 42.26(a). TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (publishing sales prices, appraised values, and appraisal ratios of a sample of properties throughout several Texas counties). However, the data a taxpayer would need to challenge the unequal appraisal of commercial real estate in his county are largely elusive.

118. See *Kareney v. State*, 281 S.W.3d 428, 435 (Tex. Crim. App. 2009) (Cochran, J., concurring) (summarizing the difference between facial and as-applied challenges).

119. *Wilson v. Andrews*, 10 S.W.3d 663, 670 (Tex. 1999).

120. Compare TEX. TAX CODE ANN. § 23.01(a) (Vernon 2008 & Supp. 2009) (“[A]ll taxable property is appraised at its market value.”), with TEX. CONST. art. VIII, § 1(b) (“All real property . . . shall be taxed in proportion to its value.”).

121. *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 381 (Tex. 2002).

122. *Id.*

The first hurdle for a taxpayer bringing an as-applied challenge against the Tax Code is section 42.09, which states that the remedies outlined in the Tax Code are exclusive.¹²³ This provision seems to indicate a legislative intent to limit a taxpayer's ability to protest an appraisal and streamline the ad valorem tax process from property appraisal to tax collection. Furthermore, it could be argued that the Tax Code's specific protest procedures and remedies are a legislative effort to prevent courts from creating their own remedies for unequal appraisals. Specifically, the pre-Tax Code case law allowed a taxpayer to challenge an unequal appraisal as late as a delinquency proceeding, while the Tax Code requires a protest to be initiated soon after the appraisal, specifies the administrative and judicial remedies, and states that those remedies are exclusive.¹²⁴

If the Eleventh Court of Appeals's decision in *Brooks v. Bachus*¹²⁵ serves as any indication, the Tax Code should be able to withstand constitutional scrutiny.¹²⁶ In *Brooks*, the appellant attempted to enjoin the Erath County Appraisal Review Board from certifying the tax rolls after he failed to exhaust his administrative remedies under the Tax Code.¹²⁷ Brooks argued that the Tax Code arbitrarily deprived him of his right to judicial review.¹²⁸ The Eleventh Court of Appeals in Eastland held that

123. TEX. TAX CODE ANN. § 42.09 (Vernon 2008).

124. Compare TEX. TAX CODE ANN. § 41.44(a)(1) (Vernon 2008) (requiring a residential property owner to file notice of protest before May 1 or within thirty days of receiving notice of an appraisal increase), *id.* § 42.26(a) (specifying the remedies for unequal appraisal), and *id.* § 42.09 (designating the remedies of the Code as exclusive and generally prohibiting taxpayers from using a protest as a defense to a taxing unit's attempt to collect delinquent taxes), with *Whelan v. State*, 155 Tex. 14, 17, 282 S.W.2d 378, 379 (1955) (providing a pre-Tax Code example where the Supreme Court of Texas allowed a taxpayer to protest during a delinquency proceeding). See generally Edward Kliever III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 898 (1982) (referring to the remedies in the Tax Code as an "attempt[] to define what was previously an undefined injury").

125. *Brooks v. Bachus*, 661 S.W.2d 288 (Tex. App.—Eastland 1983, writ ref'd n.r.e.).

126. In *Robstown Independent School District v. Anderson*, the Supreme Court of Texas seemed to endorse the Eastland Court of Appeals's conclusion that a protesting taxpayer is limited to the provisions of the Tax Code. See *Robstown Indep. Sch. Dist. v. Anderson*, 706 S.W.2d 952, 953 (Tex. 1986) ("Any assessment after the effective date of the code must be protested before the appraisal review board or the defense of non-ownership is waived." (citing *Brooks*, 661 S.W.2d 288)).

127. *Bachus*, 661 S.W.2d at 289.

128. *Id.*

2010]

RECENT DEVELOPMENT

581

the Tax Code, “by its detailed provisions, meets the challenged requirement of due process.”¹²⁹ Other courts of appeals have followed the Eleventh Court of Appeals’s lead and held that a taxpayer wishing to challenge an unequal appraisal must abide by the provisions of the Tax Code if he desires relief.¹³⁰

Even if a taxpayer follows the provisions of the Tax Code through the administrative process and into a district court, the average protestor would have a difficult time basing a protest on under appraised commercial property. In *Harris County Appraisal District v. United Investors Realty Trust*,¹³¹ the Fourteenth Court of Appeals examined a district court’s ability to grant a taxpayer relief under section 42.26.¹³² The court observed that while section 42.26(a) required an independent appraisal by the protestor,¹³³ section 42.26(d)¹³⁴ did not require an independent appraisal.¹³⁵ In arriving at this conclusion, the court held that the equality of an appraisal was more important than whether that appraisal reflected market value.¹³⁶

While *United Investors Realty Trust* seems to be a victory for the protesting taxpayer, it does nothing to address the problem of unequal appraisals of commercial and high-end residential real estate. The Fourteenth Court of Appeals was able to grant relief because an inequality existed *within* the Harris County tax rolls, whereas the problem of unequal appraisals is based on data *not*

129. *Id.* at 290.

130. See *Watson v. Robertson County Appraisal Review Bd.*, 795 S.W.2d 307, 311 (Tex. App.—Waco 1990, no writ) (“The courts have regularly held that failure to follow Tax Code procedures will result in loss of the right to challenge the administrative decision in district court.” (citing *Bachus*, 661 S.W.2d at 290; *Dallas County Appraisal Dist. v. Lal*, 701 S.W.2d 44, 46 (Tex. App.—Dallas 1985, writ ref’d n.r.e.); *Rockdale Indep. Sch. Dist. v. Thorndale Indep. Sch. Dist.*, 681 S.W.2d 225, 227 (Tex. App.—Austin 1984, writ ref’d n.r.e.); *Poly-America v. Dallas County Appraisal Dist.*, 704 S.W.2d 936, 937 (Tex. App.—Waco 1986, no writ))).

131. *Harris County Appraisal Dist. v. United Investors Realty Trust*, 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, no pet.).

132. *Id.* at 649.

133. *Id.* at 653.

134. This provision is now located in section 42.26(a)(3). See TEX. TAX CODE ANN. § 42.26(a)(3) (Vernon 2008) (“[T]he appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.”).

135. *United Investors*, 47 S.W.3d at 653.

136. *Id.* at 654.

located in the tax rolls. Accordingly, if a taxpayer wanted to protest the undervaluation of commercial property in his district, he would have to conduct an independent appraisal of commercial property within the district. And if appraisal districts cannot accurately value commercial property, how is a less sophisticated homeowner to do the same?

Unfortunately, the pre-Tax Code case law does not provide any additional help. *Whelan v. State*¹³⁷ provides a good illustration of the pre-Tax Code remedies but also demonstrates why those remedies, while more favorable to the protesting taxpayer, still do not adequately address the contemporary concern with unequal appraisals. In *Whelan*, the Supreme Court of Texas announced that taxing authorities may not decide what property is included on tax rolls.¹³⁸ The suit was initiated by the State of Texas and “other taxing units” for delinquent and unpaid taxes.¹³⁹ *Whelan* asserted as a defense that oil and gas leases and cattle were assessed arbitrarily.¹⁴⁰ Additionally, *Whelan* attempted to introduce the absence of bank deposits on the government’s tax rolls as evidence; however, the district court prevented him from doing so.¹⁴¹ On appeal, the Government did not deny the presence of those bank deposits within its jurisdiction.¹⁴² The court stated that regardless of the “practical difficulties and problems” in taxing property such as a bank deposit, “to hold that they are not taxable would require us to fly in the very face of the Constitution and the Statutes of this state” and “[t]his no court is at liberty to do.”¹⁴³ The supreme court ordered a retrial with these instructions:

If the answers of the jury show that the assessed valuation of petitioners’ properties is grossly excessive, or if the answers to the other issues satisfy the court that petitioners have suffered substantial injury by reason of the other actions of the taxing

137. *Whelan v. State*, 155 Tex. 14, 282 S.W.2d 378 (1955).

138. *Id.* at 22, 282 S.W.2d at 382–83 (“It is not for taxing authorities to decide what property shall escape taxation; that right lies alone with the people in the writing of their Constitution.”).

139. *Id.* at 17, 282 S.W.2d at 379.

140. *Id.* at 17–18, 282 S.W.2d at 379.

141. *Id.* at 20, 282 S.W.2d at 381–82.

142. *Whelan*, 155 Tex. at 20, 282 S.W.2d at 382.

143. *Id.* at 20–21, 282 S.W.2d at 382.

authorities complained of, the assessments of petitioners' properties of the years 1950, 1951 and 1952 should be cancelled without prejudice to the right of taxing authorities to accept petitioners' taxes on the basis of the valuations at which petitioners rendered their properties or to proceed under the [law].¹⁴⁴

While *Whelan* demonstrates the pre-Tax Code era's flexibility in allowing a taxpayer to assert a constitutional defense against a taxing entity's attempt to collect delinquent taxes, it also shows why the legislature more precisely defined a taxpayer's remedies in the current Tax Code. If courts did "cancel[] without prejudice" a taxing authority's attempt to collect a delinquent tax based on a series of unequal appraisals, appraisal districts would be forced to go back to square one and reappraise the same properties with the same tools that led to the unequal appraisal in the first place.

B. *New Legislation Requiring Mandatory Sales Price Disclosure*

The equality and value requirements of article VIII of the Texas constitution and the market value statutory requirements of the Tax Code are hardly unique in the United States.¹⁴⁵ Texas,

144. *Id.* at 26, 282 S.W.2d at 385; *see* *Aycock v. Travis County*, 255 S.W.2d 910, 914 (Tex. Civ. App.—Austin 1953, writ ref'd) (stating that the district court should have enjoined Travis County from collecting taxes when it used assessments that were largely based on the city of Austin's tax rolls but valued other property under a different basis).

145. *See* ARK. CONST. art. XVI, § 5(a) (requiring property to be taxed "according to its value" and that taxation be "equal and uniform throughout the State"); CAL. CONST. art. XIII, § 1 (stating that "[a]ll property is taxable and shall be assessed at the same percentage of" its "full" and "fair market value"); FLA. CONST. art. VII, § 2 ("All ad valorem taxation shall be at a uniform rate within each taxing unit."); KAN. CONST. art. XI, § 1(b) (requiring a "uniform and equal basis of valuation and rate of taxation of all property subject to taxation"); LA. CONST. art. VII, § 18(a) (stating that ad valorem taxation shall be assessed at "a percentage of its fair market value" and "shall be uniform throughout the state"); ME. CONST. art. IX, § 8 ("All taxes upon real and personal estate, assessed by authority of this State, shall be apportioned and assessed equally according to the just value thereof."); N.M. CONST. art. VIII, § 1(a) (requiring that property taxes "shall be in proportion to the value thereof" and "shall be equal and uniform upon subjects of taxation of the same class"); OKLA. CONST. art. X, § 5(B) ("Taxes shall be uniform upon the same class of subjects."); TEX. CONST. art. VIII, § 1 (requiring taxation to be "equal and uniform" and "in proportion to its value"); WASH. CONST. art. VII, § 1 (stating that "[a]ll taxes shall be uniform upon the same class of property" and "[a]ll real estate shall constitute one class"); Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1375 (1962) ("All states require that real property . . . be assessed equally, that is, at full value or a uniform percentage thereof.").

however, is among a minority of states that levy an ad valorem tax but do not require the disclosure of the sales price to the appraisal district or any of the local taxing authorities at the time of the sale.¹⁴⁶

Each state typically requires different levels of disclosure.¹⁴⁷ Some states, such as Louisiana,¹⁴⁸ grant extensive powers to their assessors, allowing them to look into not only the transactional history of the property, but also the property owner's books and insurance records.¹⁴⁹ Not only would an appraiser operating under Louisiana's statutory regime have more access to sales price documentation, but he would have information to appraise the value of commercial property using the income approach to valuation.

Other states, such as Arkansas,¹⁵⁰ do not require actual disclosure of the sales price, but do allow an assessor access to real

146. See Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 510 (2004) (considering Kansas, Mississippi, Texas, Utah, and Wyoming as nondisclosure states); Jeremy Smoot & Paul Welcome, *Reap the Rewards from Sales Price Disclosure*, ASSESSMENT J., Summer 2003, at 5, 6 (claiming that twelve states, including Texas, do not require sales price disclosure); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (stating that Texas is "one of few states left" that does not require disclosure of sales prices); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that thirty-five states, as of 2007, require sales price disclosure, but only half of those use the disclosed price for ad valorem tax assessment).

147. TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (claiming that some states require disclosure for ad valorem tax valuations, while others collect only a one-time tax at the time the real estate transaction is made).

148. See generally LA. CONST. art. VII, § 18(a) (stating that ad valorem taxation shall be assessed at "a percentage of its fair market value" and "shall be uniform throughout the state").

149. See LA. REV. STAT. ANN. § 47:1957(C) (2008) (granting an assessor the right to inspect the books, accounts, and amount insured of the property owner); *id.* § 47:1958(B) (stating that an assessor shall "inquire into the purchase price paid for real property" and "acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessments then being made").

150. See generally ARK. CONST. art. XVI, § 5(a) (requiring property to be taxed "according to its value" and that taxation be "equal and uniform throughout the State").

2010]

RECENT DEVELOPMENT

585

property transfer tax records.¹⁵¹ Rather than being levied periodically like Texas's ad valorem property tax, a real property transfer tax is assessed at the time of transfer and is usually based on a percentage of the full consideration or sales price paid for the property.¹⁵² If an assessor has access to both the percentage and the amount paid under the real property transfer tax, then the sales price can be determined.¹⁵³ In other words, if a transfer tax is five percent of the sales price and the transfer tax collected was \$5,000, then the sales price of the property in question would be \$100,000.

There have been at least three attempts—three house bills and three senate bills—in recent years to enact legislation that would require sales price disclosure.¹⁵⁴ Although there has been some variation in the complexity and language of the proposed bills, the basic disclosure requirement has remained consistent.¹⁵⁵ The

151. See ARK. CODE ANN. § 26-60-106 (2008) (requiring the levy of a real estate transfer tax based on the “full consideration” paid for the real estate); *id.* § 26-60-108(b)(2) (giving county assessors and the public access to information concerning the real estate transfer tax).

152. See TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (stating that some states collect one-time “transfer fees” during the sale).

153. Arkansas law requires the levy of two real property transfer taxes under section 26-60-105 of title 26 of the Arkansas Code: a general tax of \$1.10 per every \$1,000 of purchase price and a special tax of \$2.20 for every \$1,000 of purchase price for parks, preservation of natural resources, and tourism. ARK. CODE ANN. §§ 26-60-105, 15-12-103 (2008). The tax is assessed at the time the property is sold and is based on the transaction's “full consideration.” *Id.* § 26-60-106. The buyer of the real property is required to complete an affidavit indicating the parties to the transaction, the sales price or “full consideration,” and the date of the sale. *Id.* § 26-60-107(a)(2)(A)(v). The information on the affidavit then becomes accessible by both the public and county tax assessors. *Id.* §§ 26-60-107(d)(1)(B)(ii), 26-60-108(b)(2).

154. Tex. S.B. 444, 81st Leg., R.S. (2009); Tex. H.B. 133, 81st Leg., R.S. (2009); Tex. S.B. 270, 80th Leg., R.S. (2007); Tex. H.B. 133, 80th Leg., R.S. (2007); Tex. S.B. 243, 79th Leg., R.S. (2005); Tex. H.B. 399, 79th Leg., R.S. (2005).

155. See Tex. S.B. 444, 81st Leg., R.S., § 1 (2009) (proposing to add section 12.0012(a) to the Property Code: “A person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property”); Tex. S.B. 270, 80th Leg., R.S., § 1 (2007) (proposing to add section 12.0011(a) to the Property Code: “A person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property”); Tex. S.B. 243, 79th Leg., R.S., § 2 (2005) (proposing to add section 22.61 to the Tax Code: “Not later than the 10th business day after the date of closing on the

most recent senate bill from the regular session of the 81st Legislature offered the simplest proposal: "A person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument discloses the sales price of the property."¹⁵⁶ The companion bill in the house attempted the same result; however, instead of requiring that the sales price appear on the actual instrument of conveyance, the disclosure would be contained on an attached "sales price disclosure form."¹⁵⁷ Additionally, the house bill would also give the purchaser the option of disclosing additional information surrounding the sale, such as whether the sale was financed or whether the sale of real property was a component of a larger transaction.¹⁵⁸

conveyance of real property, the transferee or a person acting on behalf of a transferee shall file a real property conveyance report as provided by this subchapter disclosing information regarding the conveyance of the property"); Tex. S.B. 243, 79th Leg., R.S., § 2 (2005) (proposing to add section 22.65(a)(6) to the Tax Code which would require a transferee to include purchase price on the real property conveyance report section described in section 22.61); Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.001 to the Property Code: "Except as provided by this section, a person may not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument is attached to a sales price disclosure form as described by this chapter"); Tex. H.B. 133, 80th Leg., R.S., § 2 (2007) (proposing to add section 22.61(a) to the Tax Code: "[T]he purchaser or grantee of real property under a recorded deed conveying an interest in the real property shall file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located"); Tex. H.B. 399, 79th Leg., R.S., § 3 (2005) (proposing to add section 22.61(a) to the Tax Code: "Except as provided by Subsection (d), on the sale of real property the purchaser of the property or a person acting on behalf of the purchaser shall file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located").

156. Tex. S.B. 444, 81st Leg., R.S. (2009).

157. Tex. H.B. 133, 81st Leg., R.S. (2009).

158. The complete list of relevant information that a purchaser could optionally include under this bill is:

- (1) the method used to finance the sale, including cash, seller financing, and third-party financing;
- (2) whether the sale involved property other than real property and the type of property involved in the sale, whether tangible or intangible, and if so, the portion of the sales price allocated between real property and other property;
- (3) whether the sale involved property located in more than one county and if so, the portion of the sales price or other consideration allocated to the portion of the property located in each county;

2010]

RECENT DEVELOPMENT

587

Critics of mandatory sales price disclosure¹⁵⁹ emphasize that sales price is not always the most accurate way to establish the market value of a piece of real property.¹⁶⁰ But if this is so, why are appraisal districts regularly using an MLS to obtain sales data on properties for market comparison? The fact that private appraisers and real estate brokers use an MLS as a tool to determine the market value of real estate is a testament to the effectiveness of sales price as an appraisal tool.¹⁶¹ Also apparent

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- (4) whether the sale was part of a combined sale of real property investments and, if so, the portion of the combined sales price allocated to the property subject to Section 12A.001;
 - (5) whether the sale involved a tax deferred exchange under Section 1031, Internal Revenue Code of 1986 (26 U.S.C. Sec. 1031), and applicable regulations;
 - (6) whether the sale was a sale of an entire business or business unit;
 - (7) a statement that the sales price is provisional and a correct sales price will be submitted in an amended sales price disclosure form on or before the first anniversary of the date the initial sales price disclosure form is filed; and
 - (8) a description of any unusual or extraordinary terms of the sale or transfer that affected the amount of the sales price.

Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.002(b) to the Property Code).

159. A prominent critic of sales price disclosure is the Texas Association of Realtors. See TEX. ASS'N OF REALTORS, 2009 PUBLIC POLICY STATEMENTS: LEGISLATIVE PRIORITIES FOR THE 81ST TEXAS LEGISLATURE 12 (2009), <http://recenter.tamu.edu/speeches/TM040709S1095.pdf> ("The Texas Association of Realtors opposes all efforts to require the disclosure of sales-price information.").

160. See TEX. CONSERVATIVE COAL. RESEARCH INST., SALES PRICE DISCLOSURE: A \$250 MILLION TAX HIKE ON HOMEOWNERS (2006), http://www.txccri.org/publications/Sales_Price_Disclosure_LP.pdf (claiming that sales price disclosure actually limits an appraisal district's ability to value property); TEX. ASS'N OF REALTORS, 2009 PUBLIC POLICY STATEMENTS: LEGISLATIVE PRIORITIES FOR THE 81ST TEXAS LEGISLATURE 12 (2009), <http://recenter.tamu.edu/speeches/TM040709S1095.pdf> (arguing that Florida repealed its disclosure law because it did not lead to accurate appraisals); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 20 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (embracing mandatory sales price disclosure but warning that "[s]ales price disclosure alone does not provide the information an appraisal district needs to establish a market value").

161. See Steve Blow, *We Won't Go Far Carrying This Tax Load*, DALLAS MORNING NEWS, Apr. 20, 2008, at 1B, available at 2008 WLNR 7377010 (opining that data from an MLS allows appraisal districts to keep residential properties valued at close to market value); Rudolph Bush & Kevin Krause, *Value of Hotel Site Jumps: Assessment of \$36.5 Million More in Line with City's Offer*, DALLAS MORNING NEWS, May 2, 2008, at 1A, available at 2008 WLNR 8285936 (reporting that the Dallas Central Appraisal District "relies heavily on sales price[s] that it obtains through an agreement with the Multiple

is the fact that the properties for which appraisers have the most sales price data are the same properties that appraisers most accurately value, while the properties for which appraisal districts lack sales data—commercial and high-end residential—are the properties that are more often undervalued.¹⁶²

The most recent house bill would have taken at least one step to ease the fears of those who believe that sales data alone are insufficient to appraise real property. The house bill provides that “sales data disclosed under this chapter may not be used as the sole basis by the chief appraiser for increasing the appraised value of real property described in a sales price disclosure form.”¹⁶³ This provision would have two consequences: (1) appraisal districts would have to base the appraisal on more than one factor, and (2) in the event of a protest, an appraisal district would be required to support its appraisal with evidence in addition to the disclosed sales price.¹⁶⁴ Another element in the recent house bill that would have eased the fear of basing appraisals only on sales price is a list of eight optional factors that the purchaser could include on the disclosure form.¹⁶⁵ In the event that a purchaser obtained the property under circumstances in which the sales price did not adequately reflect the actual value, he would have the

Listing Service”); Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (claiming that Bexar County appraisers have access to 95% of all residential properties valued under \$300,000 because they are listed in the MLS); Jonathan Gurwitz, *As Property Taxes Climb, Don't Blame Appraiser*, SAN ANTONIO EXPRESS-NEWS, Sept. 2, 2007, at 03H, available at 2007 WLNR 17148824 (stating that a “vast amount of information is available to appraisers with regard to residential home sales from the Multiple Listing Service”).

162. See Terrence Stutz, *State Senate Hearing: Price Disclosure on Real Estate Is Urged: Dallas Officials Say Rule Would Aid Appraisals, Tax Collection*, DALLAS MORNING NEWS, June 17, 2008, at 6B, available at 2008 WLNR 11429840 (citing a study by the Texas Association of Appraisal Districts finding that commercial property was undervalued by 40% while residential property was undervalued by only 15%).

163. Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.006 to the Property Code).

164. See Tex. H.B. 133, 81st Leg., R.S., § 1 (2009) (proposing to add section 12A.007(b) to the Property Code which would give a district court the authority to “order the appraisal district to comply with the applicable law” in the event a protester brings suit under section 12A.007(a)).

165. For the complete list of optional information, see *supra* note 158.

2010]

RECENT DEVELOPMENT

589

opportunity to give the appraisal district notice of such circumstances.

Another argument against mandatory sales price disclosure is that it intrudes on the privacy of the property owner.¹⁶⁶ While this argument might have merit under certain circumstances, it has relatively little merit in Texas, because most appraisal districts have public records that allow any person with a computer to access the appraised value of all property on the tax rolls.¹⁶⁷ It would be an odd proposition indeed to claim that publication of the sales price was a violation of privacy while publication of the appraised value was not.

Louisiana's requirements, as described above, might cause a property owner some reasonable apprehension, given that Louisiana's statute gives appraisers considerable access to information that otherwise would be private, specifically the taxpayer's "books and accounts" and the property's "insured value."¹⁶⁸ However, none of the proposed house or senate bills would grant an appraisal district in Texas such broad access to this information.

Finally, sales price disclosure opponents claim that reform will cause a tax hike.¹⁶⁹ The most obvious response to this criticism is that appraisal districts do not tax; that authority is left to school districts, municipalities, counties, and their various subdivi-

166. Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 510 (2004) ("The most basic defense of real estate price nondisclosure lies in common-law privacy arguments.").

167. For examples of how appraisal districts publish the appraised value of property within their jurisdiction, see the following websites: Dallas Central Appraisal District, Find Property by Name, <http://www.dallascad.org/SearchOwner.aspx> (last visited Feb. 28, 2010); Bexar County Appraisal District, Search Options, <http://www.bcad.org/ClientDB/PropertySearch.aspx?cid=1> (last visited Feb. 28, 2010); Harris County Appraisal District, Real Property Record Search, <http://www.hcad.org/records/real/default.asp> (last visited Apr. 16, 2010).

168. See LA. REV. STAT. ANN. § 47:1957(C) (2008) (granting an assessor the right to inspect the books, accounts, and amount insured of the property owner); *id.* § 47:1958(B) (stating that an assessor shall "inquire into the purchase price paid for real property" and "acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessments then being made").

169. TEX. CONSERVATIVE COAL. RESEARCH INST., SALES PRICE DISCLOSURE: A \$250 MILLION TAX HIKE ON HOMEOWNERS 2-3 (2006), http://www.txccri.org/publications/Sales_Price_Disclosure_LP.pdf.

sions.¹⁷⁰ These taxing units answer to the voters within their respective boundaries. To suggest that merely giving appraisal districts better tools to more accurately appraise property would lead to a tax increase is disingenuous because it fails to account for the fact that the elected representatives of taxing units raise and levy taxes regardless of the fairness (or unfairness) of the appraisals on which those taxes are based.

Furthermore, the purpose of this Recent Development is neither to engage in economic speculation as to exactly how sales price disclosure would affect the amount of tax revenue collected by Texas nor to advocate for or against a particular economic policy towards taxation. The purpose of this Recent Development is to examine the best way to reconcile the Tax Code with the Texas constitution. Certainly the legislature can figure out better ways to use the Tax Code to incentivize business and economic growth than to allow the ad valorem tax to be administered in such a non-uniform and unequal manner. That being said, it seems clear that such reform would, at the very least, cause a shift in the tax burden from the middle-class homeowners to the commercial and high-end residential owners.¹⁷¹

Without sales price data, appraisers face a tough challenge in accurately assessing the fair market value of all property in a district.¹⁷² Robert P. Berrens of the University of New Mexico

170. See TEX. TAX CODE ANN. § 26.05(a) (Vernon 2008) (“The governing body of each taxing unit . . . shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted.”).

171. See Janet Elliott, *The Legislature: Tuition Freeze One Priority for '09 Session: Keeping College Affordable Among Lawmakers' Goals*, HOUSTON CHRON., Nov. 11, 2008, at B2, available at 2008 WLNR 21557632 (reporting on Texas State Representative Mike Villarreal’s push for sales price disclosure as a way to prevent unequal taxation between “middle-income homeowners” and the owners of “million-dollar homes and business properties”).

172. See Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 889 (1973) (noting the difficulty from the perspective of an appraiser of accurately valuing property because the taxpayer is “generally under no practical compulsion to reveal the full extent of his holdings”); TEX. TASK FORCE ON APPRAISAL REFORM, FINDINGS AND RECOMMENDATIONS 19 (2007), http://wayback.archive-it.org/414/20080822024454/http://www.governor.state.tx.us/priorities/appraisal_reform/files/report.pdf (noting testimony from appraisal districts claiming that they could do a better job of valuing property with more information). But see *Tax Assessments of Real Property: A Proposal for Legislative Reform*, 68 YALE L.J. 335, 336–37 (1958) (“The local officials who are responsible for making assessments often occupy positions of unique

2010]

RECENT DEVELOPMENT

591

and Michael McKee of the University of Tennessee argue that sales price disclosure has an added benefit to the tax-paying public. Sales price disclosure reduces an appraisal district's administrative burden since homeowners are more likely to challenge their appraisals in a climate where there is consistent undervaluing and overvaluing and inequality.¹⁷³ As further evidence, appraisal offices in Kansas have seen a steady decline in protests and appeals since instituting a version of sales price disclosure.¹⁷⁴

Realistically, no single method ensures an accurate appraisal; instead, data must be collected from a variety of different sources depending on the type of property being assessed.¹⁷⁵ The more tools that appraisers have at their disposal, the more accurately they can value any given piece of property.¹⁷⁶

IV. CONCLUSION

The taxpayer who lives in a mansion benefits from the local police department that patrols his street and the fire department that protects his house. The taxpayer who owns a commercial or industrial site also benefits from the public schools that prepare his future workforce for employment. Yet these property owners are paying much lower percentages of their property's market value in taxes than their middle-class residential neighbors.

autonomy, partly because they may enjoy political independence from local spending authorities, and partly because they invariably function under imprecise state legislation which leaves them free to devise their own valuation standards.”).

173. Robert P. Berrens & Michael McKee, *What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices*, 85 SOC. SCI. Q. 509, 511–12 (2004).

174. Jeremy Smoot & Paul Welcome, *Reap the Rewards from Sales Price Disclosure*, ASSESSMENT J., Summer 2003, at 5, 6.

175. See Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1394 (1962) (“If statistically sound sampling techniques are employed, care taken to keep the data up to date, efforts made to discover actual market prices through use of questionnaires and other methods, and sample appraisals added in areas lacking a significant annual turnover of property, the sale-ratio method can, at a relatively modest cost, fulfill a state's obligation to provide an adequate indication of prevailing assessment levels.”); CAROLYN JANIK, HOW TO SELL YOUR HOME IN THE '90S WITH LESS STRESS AND MORE PROFIT 73 (1991) (defining “fair market value” as “the closing price, the highest price a ready, willing, and able buyer will pay and the lowest price a ready, willing, and able seller will accept” (emphasis omitted)).

176. See TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (concluding that more access to sales data will allow appraisals to more accurately reflect true value).

One of the most basic functions of government in the United States is the protection of life, liberty, and property.¹⁷⁷ Because liberty is not easily quantifiable and because all taxpayers presumably have only one life, the only thing that truly differentiates citizens is the amount of property they own. Thus, a person who owns more property benefits from more government protection and therefore should pay a greater portion of the tax pie. When a person wealthy in property does not pay his or her fair share of taxes to the government to protect that property interest, it follows *a fortiori* that that person is handing his or her tax burden over to the rest of society at large.

It is clear that appraisal districts and taxing units in Texas are implementing a system of taxation that is unequal and unfair and that this implementation is occurring on a statewide basis. Middle-class homeowners in Texas are shouldering a disproportionate tax burden when compared with that carried by commercial and high-end residential property owners. With no state income tax and a state and local sales tax capped at 8.25%, Texas depends heavily on local ad valorem property taxes to fund the capital improvements and operations of counties, municipalities, and school districts.¹⁷⁸ When the Dallas Central Appraisal District reappraised several pieces of downtown commercial real estate in the aftermath of the city's negotiations to buy an expensive downtown parking lot, that reappraisal shed light on the ugly reality that property owners in the central business district were receiving the benefit of government services without paying their fair share of the bill.

The procedural requirements and remedies outlined in the

177. See U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”); TEX. CONST. art. I, § 19 (“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”).

178. Edward Kliewer III & Scott E. Breen, *The New Property Tax Code and Perfecting the Appeal: The Taxpayer's Perspective*, 13 ST. MARY'S L.J. 887, 887 (1982); see also Mark G. Yudof, *The Property Tax in Texas Under State and Federal Law*, 51 TEX. L. REV. 885, 885 (1973) (“Most communities across the country rely substantially on the property tax to support public services including police and fire protection, sewage disposal, roads, hospitals, and public schools.”); SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TAXPAYERS' RIGHTS, REMEDIES AND RESPONSIBILITIES (2008), <http://www.window.state.tx.us/taxinfo/proptax/remedy08/96-295-08.pdf> (stating that the “property tax is the largest funding source for local services in Texas”).

2010]

RECENT DEVELOPMENT

593

Texas Property Tax Code appear to be inadequate when viewed against the backdrop of multiple studies that indicate the regular inequality of appraisals.¹⁷⁹ While the Tax Code has made substantial improvements in the creation of more independent, accountable appraisal districts, it has failed to deal with the true problem—the extraordinarily difficult task of determining the value of property. For the most part, appraisal districts are no better at the job of valuing property than their pre-Tax Code predecessors. A stark and obvious exception to this is the ability of an appraisal district, with the help of an MLS, to accurately appraise a middle-class residential property. The benefit of using sales price data to appraise homes is most convincing when one considers that the properties most accurately valued are the same for which sales data are most easily accessed by appraisal districts.

One thing is abundantly clear: the State of Texas must equip appraisal districts with the necessary tools to discover the market data sorely needed to equalize appraisals throughout the state. As it stands, many homeowners are stuck between a rock and a hard place or, perhaps better said, between an unequal appraisal and an inadequate Tax Code.

179. See MICHAEL A. AMEZQUITA, BEXAR APPRAISAL DIST., RECOMMENDATIONS FROM BEXAR APPRAISAL DISTRICT (on file with the *St. Mary's Law Journal*) (indicating the unequal appraisals of commercial and residential real estate); TEX. ASS'N OF APPRAISAL DISTS., WHY DO WE NEED MANDATORY SALES DISCLOSURE IN TEXAS? (2007), <http://www.taad.org/Need%20for%20Mandatory%20Sales%20Disclosure.pdf> (indicating the unequal appraisals of high-end and middle-class real estate). See generally Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1384 (1962) (claiming that the protest and appeal process is the “weakest spot in the whole property tax structure”).

Presented by:
Presented:
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2020-_____

An Ordinance Amending the Uniform Sales Tax Code to Repeal a Tax Exemption for the Sale of Goods Aboard Cruise Ships.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 69.05.040 Exemptions, is amended to read:

69.05.040 Exemptions.

The tax levied under this chapter shall not apply to the following transactions:

...

(4) ~~Reserved. Sales of goods which are transported into the City and Borough on a cruise ship, which do not leave the cruise ship, and where the entire transaction, both payment and delivery, take place on board the cruise ship, and sales of services where the entire transaction, both payment and performance of the service, take place on board the cruise ship. For purposes of this exemption, "cruise ship" means a commercial passenger vessel that carries passengers, but does not include any vessels:~~

~~(a) — Authorized to carry fewer than twenty passengers;~~

~~(b) — That do not provide overnight transportation for at least twenty passengers for hire; or~~

~~(c) — That are operated by the United States, State of Alaska, or a foreign government.~~

...

Section 3. Effective Date. This ordinance shall be effective on January 1, 2022.

Adopted this _____ day of _____, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk

MEMORANDUM



DATE: August 28, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

SUBJECT: Pending Community Project Funding Requests

In recent months, the Assembly has received a number of requests to fund community infrastructure projects, including:

- \$2.3 million request from The Glory Hall for its planned sheltering facility in the Mendenhall Valley
- \$1.1 million request from United Human Services of Southeast Alaska for its planned shared human services facility in the Mendenhall Valley
- \$1.5 million request from Sealaska Heritage Institute for its planned arts campus project downtown

On each of these projects, the Assembly has at least four options:

1. Deny the request
2. Act affirmatively with an appropriation for the requested amount
3. Act affirmatively with an appropriation for a portion of the requested amount
4. Defer action to a later date, and if so:
 - a. What additional information is needed?
 - b. What is the timeline for consideration?

The Assembly's consideration and potential action is backgrounded by an exceptionally high level of financial uncertainty. This includes uncertainty about reimbursement of school bond debt, federal economic stimulus payments to individuals and businesses, federal support to local governments, vaccines/therapies that would allow normalization of the economy, and shifting expectations for the 2021 summer cruise season.

It is possible to take a pessimistic view. That view might expect 0% reimbursement of school bond debt, nothing in new federal stimulus and local government support, low efficacy of vaccines/therapies that results in continued economic struggle, and a highly diminished summer 2021 cruise season (fewer than 500,000 visitors). Under this view, CBJ's financial future looks dire. Without considerable expenditure reductions, CBJ would face significant deficits that would fully deplete all available restricted and unrestricted fund balances within just a few years.

It is also possible to take a more optimistic view. That view might expect 50-100% state reimbursement of school bond debt, substantial new federal stimulus and local government support, very effective vaccines/therapies that promote rapid economic recovery, and a fair summer 2021 cruise season (more than 1,000,000 visitors). Under this view, CBJ's financial future is challenged but not dire. CBJ would still likely face deficits, but those deficits would not substantially deplete CBJ's current restricted and unrestricted fund balances. This view is closer to what the Assembly Finance Committee contemplated when it completed its work on the FY2021 budget.

Some areas of uncertainty will diminish in the coming months—federal action on stimulus/support will likely be known and the potential efficacy of vaccines/therapies will be better understood. Other areas of uncertainty will be persistent—cruise visitation will be hard to predict for the next several years and the level of school bond debt reimbursement is subject to the annual state budget process each year. There is no perfect timing for big funding decisions, but the present moment is a very challenging time for forecasting CBJ's financial future. This is a tough decision where the Assembly must weigh the opposing forces of economic stimulus and fiscal restraint. The economy would surely benefit from additional construction activity and the projects are good long-term community efforts; but balancing the FY2022 and FY2023 budgets will most likely be exceedingly challenging.

THE GLORY HALL

247 S. Franklin St Juneau, AK 99801
(907) 957-2885 info@feedjuneau.org www.feedjuneau.org

July 15, 2020

Mayor Beth Weldon
Mr. Loren Jones, CBJ Assembly Finance Committee Chair

RE: New TGH Project

Mayor Weldon and Finance Committee Chair Jones,

Established in 1981, the Glory Hall (TGH) is an emergency shelter, soup kitchen, and care center and is an essential part of the Juneau Housing and Homelessness Continuum of Care, social safety net, and public safety system. We are writing to request \$2.3 million for the construction of the new Glory Hall facility to be located at Teal Street and co-located with the nonprofit center.

In addition to day shelter, night shelter, and food, TGH provides showers, laundry, short term case management, transportation assistance, social service referrals, job search assistance, clothing, basic sanitary supplies, and other services based on individual patron needs. TGH is one of the key partners in the Juneau Medical Respite Program, a partnership developed to accommodate people who are not ill enough to stay in the hospital but not well enough to be discharged to the streets. Additionally, TGH provides staffing and coordination to the Juneau Housing First Collaborative Project, a facility containing 64 units of permanent supportive housing. Phase 2 will come online in the 3rd week of August.

Prior to the pandemic, TGH was able to provide over 45,000-60,000 meals and between 9,000-11,000 safe shelter nights to people in need annually. Since the Covid pandemic, TGH capacity has been reduced by two thirds. Instead of being able to accommodate 40 people and potential overflow in the emergency shelter, we can sleep 16 individuals in accordance with CDC guidelines. Instead of being able to accommodate over 100 people in our building for Day Shelter and meals, only 23 patrons at a time can be inside. We are serving a similar number of meals as before, however, an adequate place to eat or to receive day shelter from elements, for all who need it, is not available, causing suffering and creating severe risk of exposure and hunger. The new Glory Hall facility, which can be completed within 9 months from the start of construction, would provide 40 individual sleeping spaces with potential for 12-person overflow and ability to feed individuals appropriately both inside and outside on TGH property. Space to isolate individuals and provide an opportunity to see medical and other service providers will be available.

The current TGH shelter is not accessible. People with mobility issues cannot get up to the 3rd floor. There is not a single space in the existing building that can safely accommodate current social distancing mandates. The kitchen and pantry are too small. There is not an office there a patron can meet with staff and be 6 feet away. There is not an office where staff can be within 6 feet away from one another. There is not an adequate number of showers and washing sinks. This is particularly unacceptable during the time of the pandemic. Due to design and location, the current building has significant and adverse impact on the neighborhood and on

THE GLORY HALL

247 S. Franklin St Juneau, AK 99801
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downtown activities. We do not have the ability to maintain our outdoor space thus failing to provide safety for our patrons and staff.

The new Glory Hall project and social services campus has broad community support. Over \$480,000 was raised for the purchase of land, with contributions ranging from \$5-\$75,000. The project obtained conditional use permit on July 14. Additionally, during these trying economic times, the new Glory Hall and non-profit center project would not only make sure that people have access to food and shelter but would also create construction and development jobs and needed economic stimulus, as described by a study graciously completed by Raincoast Data project, pro-bono. The additional jobs and economic activity during the time when Juneau's economy needs a boost are another benefit not to be overlooked.

Concerns have been raised about relocating TGH out of Downtown to the valley. TGH has completed multiple surveys with patrons and heard repeatedly that a private sleeping space and secure belonging storage far outweighs the preference for being downtown. The approximately 8.5-mile difference between existing TGH and the new location is less important than safety and privacy.

The total cost of the new TGH building and sitework/preparation is \$4.75 million. The cost of the land has already been raised and the land purchase. The cost of the land is not reflected in the \$4.75 million figure. We have been in conversations with donors and are confident that \$2.4 million can be raised after CBJ's contribution of \$2.35 million. However, funders are hesitant to provide funding until the project has secured a significant budgetary foundation, such as the CBJ contribution.

A year around emergency shelter with space and access to robust supportive services is essential to City's ability to properly respond to emergencies. This has never been more obvious than during this pandemic. As the future looks less certain and more people may come to rely on and need social services the time to build these projects is now.

TGH is looking forward to continuing carrying out our mission of providing food, shelter, and compassion to those most in need together with our partners.

Thank you for your consideration and we are looking forward to hearing back from you.

Sincerely,

Mariya Lovishchuk

Mariya Lovishchuk, Executive Director

CC: CBJ Assembly, CBJ Manager, CBJ Finance Director, United Human Services Board of Director, TGH Board of Directors , Juneau Economic Stabilization Taskforce

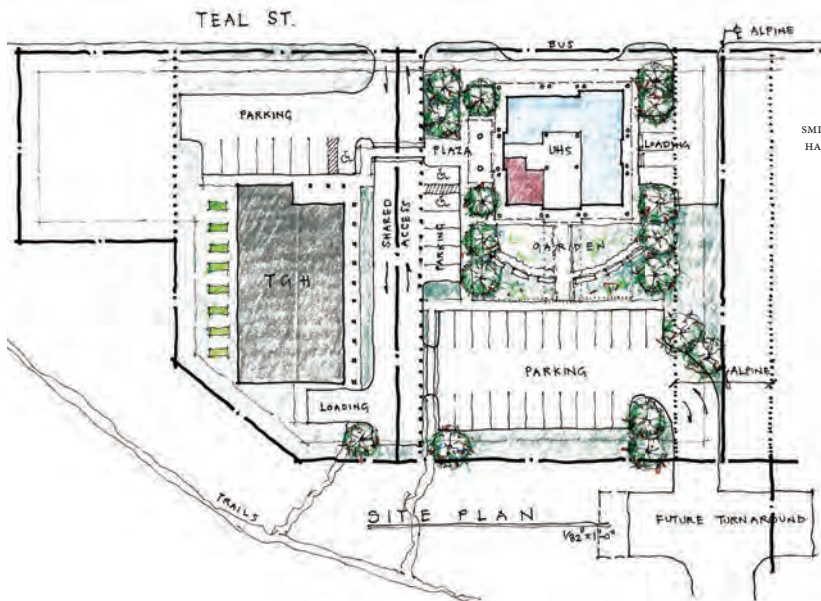
ATTACHMENTS:

1. TGH/UHS Campus Concept (page 4)
2. New TGH Construction and Development Progress (page 6)
3. Raincoast Data Study (page 8)
4. Joint Letter to CBJ from emergency shelter providers TGH, AWARE, SVdP, Family Promise with Endorsement from Juneau Coalition on Housing and Homelessness (page 30)
5. Juneau Coalition on Housing and Homelessness Letter of Support and Prioritization (page 37)

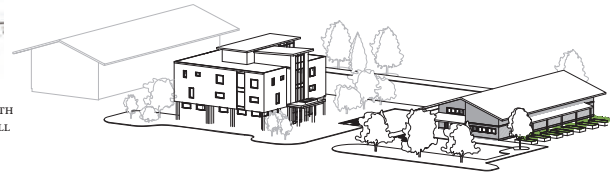
1. TGH/UHS Campus Concept

Southeast Community Services Campus

Stronger Together



Conceptual Site Plan for SE Community Services Campus



Conceptual- Site Relationship



*Conceptual- Entry Elevation
SE Community Services Center*

A coalition of community nonprofits, in coordination with the Glory Hall (TGH), plans to develop a new social services campus adjacent to Jordan Creek and near the Juneau Airport, in the Mendenhall Valley.

The nonprofit shared building, the Southeast Community Services Center, will include individual offices for each social service agency, as well as flexible meeting and gathering spaces, also available to the community. TGH will construct a shelter, care center, and meal distribution facility.

Working together, we will have the greatest collective positive impact on the lives of elders, youth, low-income community members and people experiencing disabilities. The Southeast Community Services Center will serve our community with enhanced program coordination that is accessible, collaborative and sustainable.

The Center & new TGH facility are designed to be uplifting- a place of dignity for both our beneficiaries and employees. The campus buildings will be sited to maximize natural light, views, green space, gardens, bus access, and safe pedestrian links. The campus is ideally located in close proximity to existing resources such as Juneau Youth Services, and St. Vincent de Paul's transitional and supportive housing programs.

The Southeast Community Services Center will facilitate greater ease with on-site referrals to other social service nonprofit agencies, both in-house and campus wide. The one stop model will help more people access the services they need, increase the options available to them and result in stronger outcomes. Co-location allows the nonprofits to capitalize on individual and collective strengths, freeing up more time and resources to focus on our collective mission.

*Together,
we have the greatest
collective, positive impact
on the lives
of the people
we serve.*

2. Budget Estimate and Progress

COST

		Notes
development/design/construction admin	190,000	architectural, engineering, construction admin
construction	4,042,500	350 per square foot, 11,000sqf, 5% contingency
accounting	20,000	estimated based on Housing First project
special inspections, permitting, surveys	55,000	estimated based on Housing First project
site prep, utilities to site, fill	420,000	
land acquisition	complete	land acquired
	4,727,500	

PROGRESS TO DATE

- Land acquired
- Contractor selected
- Architectural and Structural Design complete
- Electrical Design (90%)
- Mechanical Design (70%)
- Civil Engineering (complete on 9/14)
- GMP provided
- Conditional use permit in place
- Rasmuson Foundation Commitment (based on CBJ commitment)
- Alaska Mental Health Trust Commitment (based on CBJ commitment)
- Remaining funding identified
- Over \$500,000 in local contributions raised from over 200 donors
- Site prep scheduled to begin by the end of September
- Project completion scheduled for Spring 2021

3. RAINCOAST DATA STUDY

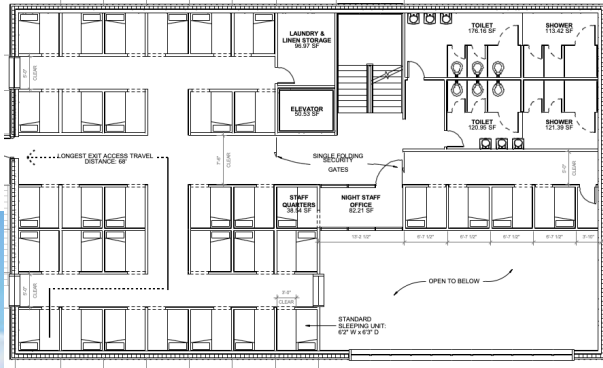
Rain Coast Data Technical Memo

February 2020

Cost Benefit Analysis of the Proposed New Juneau Glory Hall Homeless Shelter Facility

Economic Impact Analysis.....	1
Project Description	1
Analysis Summary.....	2
Summary of Impacts.....	3
Potential Sale of 247 S. Franklin Street Building Impact.....	4
<i>Property Tax Collection Potential</i>	<i>5</i>
Reduced Impact on Hospital Care Services	6
Utility and Maintenance Costs	8
<i>Utility Costs</i>	<i>8</i>
<i>Avoided Maintenance Expenditures</i>	<i>9</i>
Financing	10
Glory Hall Construction Multiplier Effect	12
<i>Project Costs.....</i>	<i>12</i>
<i>Direct Spending Impacts.....</i>	<i>12</i>
<i>Secondary Effects</i>	<i>13</i>
Options for Current Building if Move Takes Place	14
<i>Option 1: Rent old facility</i>	<i>14</i>
<i>Option 2: Sell old facility.....</i>	<i>14</i>
<i>Option 3: Trade old facility</i>	<i>15</i>
<i>Option 4: Continue to use old facility</i>	<i>15</i>
Social Impacts of a New Glory Hall in Juneau	16
Current Limitations that will be Addressed by New Facility	16
<i>Building Accessibility</i>	<i>16</i>
<i>Beds, Mobility Limitations, and Privacy</i>	<i>16</i>
<i>Storage Space</i>	<i>17</i>
<i>Bathrooms.....</i>	<i>17</i>
<i>Safety</i>	<i>17</i>
<i>Outdoor Space and Parking</i>	<i>17</i>
<i>Creation of Coordinated Transitional Care Campus</i>	<i>19</i>

Economic Impact Analysis



New Glory Hall Facility:
Artistic rendering and drawing of proposed new facility.



Project Description

The Glory Hall is an emergency shelter, soup kitchen, and care center established in 1982. The mission of the Glory Hall is to provide food, shelter, and compassion to those in need to help achieve well being. The Glory Hall provides more than 55,000 meals and over 11,000 safe shelter nights annually. The Glory Hall provides its patrons transportation assistance, social services referrals, limited case management, assistance with housing searches, laundry, showers, and other assistance.

The Glory Hall has operated out of its current 247 S. Franklin Street location since the early 1990s, a location that has become increasingly limited in its ability to fully serve those experiencing homelessness and hunger in Juneau. The three-story structure, built in 1991, is 5,633 square feet and located on a 3,196 square foot lot. In order to better meet the needs of its patrons, the Glory Hall board is exploring a move out of downtown Juneau. The proposed new facility would be located near the intersection of Teal Street and Alpine Avenue between the Nugget Mall and the Juneau Airport. The plan is to construct a new building that is approximately 10,000 square feet on a lot that is just over 25,000 square feet.

Analysis Summary

The economic impact analysis for this project was prepared by Rain Coast Data. This analysis considers most reasonable project costs, monetizable benefits, along with social benefits. Table 1 summarizes the costs and benefits.

The fully loaded costs of land acquisition, building construction, moving, and year one of operating costs are estimated at \$5 million dollars. This includes a land acquisition cost of \$400,000, \$3.7 million in construction, \$853,000 in estimated additional building/land/furnishings/moving costs, and annual facility costs (maintenance, utilities) of \$57,000.

The most significant impacts of this project are its positive social impacts, for which it is more difficult to calculate a dollar value. Patrons will be served by a significantly larger facility equipped with individual micro-rooms, rather than shared, crowded dorm rooms with bunk beds and no storage space. Single level beds and an elevator will make the facility accessible for those with disabilities (which it currently is not). The number of toilets will increase by 75%. A landscaped outdoor area, complete with a garden, will allow patrons a safe, welcoming environment outside the facility; along with parking for those donating food, supplies, or services. Significantly, the planned location — along with planned moves by other social service organizations — will create an extensive Coordinated Transitional Care Campus. The shelter would join 50 existing transitional housing and low-income senior housing units operated by St. Vincent De Paul, along with many existing services like transitional services, cold weather shelter, and more. The proposed location is a block away from a bus stop.

The potential sale or lease price for the current building are unknown at this time. A full valuation has not been developed to fully understand the real estate value. The cost of renovating the building to be attractive to a tenant or a buyer could be significant.

Should the building be sold, the City and Borough of Juneau (CBJ) would likely bring in an estimated \$8,300 annually in new property tax dollars — assuming the building is sold to a for-profit organization or private owner — as the Glory Hall property is exempt from these taxes. A move to the new building would also likely save the CBJ at least \$175,500 annually in hospital stays and recuperative costs, as homeless individuals will be able to return to the shelter to recuperate, rather than continuing to stay at the hospital or moving to a municipally funded hotel room.

The total economic impacts from construction spending, including multiplier effects, would add \$5.4 million to the Juneau economy. This aggregate, one-time impact during the construction phase includes a projected \$2.2 million in earnings associated with 43 jobs (directly and indirectly) generated by the project.

Summary of Impacts

The costs and benefits analyzed in this paper are summarized below. Each impact is discussed at greater length in the document.

Table 1:
Summary of Estimate Costs/Benefits Associated with Moving to New Glory Hall Facility

NEW GLORY HALL PROJECT ELEMENTS		ESTIMATED COSTS
Land Acquisition Costs		\$400,000
Construction Costs		\$3,700,000
Additional Costs Associated with the Move/New Building		(unknown, estimated at 23%) \$853,000
Annual Facility Costs (maintenance, utilities)		unknown, estimated \$57,000
Total Costs		\$5.0 million
CURRENT BUILDING COSTS		ANNUAL COSTS
Annual Facility Costs (Note: will be similar in new building)		\$56,700
POTENTIAL ECONOMIC IMPACTS OF MOVE		PROJECTED SAVINGS/IMPACTS
SAVINGS TO THE CITY AND BOROUGH OF JUNEAU		POTENTIAL ANNUAL BENEFIT TO CITY
Ability to collect property tax on 247 S Franklin		estimated \$8,300
Reduction of hospital stay days		estimated, at least \$175,500
Total CBJ Annual Benefit of Move		\$183,800
BENEFIT TO COMMUNITY OF JUNEAU OF CONSTRUCTION		MULTIPLIER EFFECT OF CONSTRUCTION PERIOD
Direct and indirect jobs created during construction		43
Direct and indirect wages created during construction		\$2.23 million
Total Economic Impact of Construction Phase		\$5.4 million
SOCIAL IMPACTS OF PROJECT	Description of planned changes in new facility	
Building and bed accessibility	Single level beds and elevator for those with mobility challenges. Beds in current building are up stairs and in bunks.	
Privacy	40 private micro-rooms replace crowded dorms, allowing the shelter to better serve special populations, including youth and those with physical or mental health conditions.	
Sufficient bathrooms	Toilets increase by 75% (8 to 14)	
Secure storage	Storage space included in new building. Current building has none.	
Outdoor space and parking	Ample area to enjoy garden and outdoors. Convenient parking.	
Safety	Staff and patrons face threats directly outside the current building. New building will have secure outside space. Building will meet all safety codes.	
Coordinated Transitional Care Campus created	Shelter will be adjacent to emergency cold weather shelter, transitional & senior housing, homeless support services, SAIL, United Human Services, St. Vincent de Paul, Alaska Legal Services, Disability Law Center, transportation. More additions/services are being discussed.	

Potential Sale of 247 S. Franklin Street Building Impact

The Glory Hall owns the current homeless shelter at 247 South Franklin Street. If that building is sold the proceeds would accrue back to the Glory Hall and can be applied to operation costs of the organization. Because the property is property tax exempt, there has been no assessment to determine its value.

The Glory Hall building, constructed in 1991, is 5,633 square feet and sits on a 3,196 square foot lot.¹ A sales valuation is needed to determine the correct value. The structure is currently insured for \$1.5 million. In lieu of a building valuation, this figure is often used as a proxy. Another method to look at similar buildings located in close proximity. The Filipino Community Hall is located next to the Glory Hall. The Filipino Hall was renovated and largely rebuilt in 1983 and is assessed at \$1.87 million. It is larger at 8,616 square feet and the lot is significantly larger, at 12,831 square feet. On the other side of the Glory Hall is the Decker Building. Is is 4,800 square feet, and assessed at \$1.27 million. If these assessment values were recalculated to apply to the Glory Hall, the result would be significantly lower than the insured replacement value.²

There are other factors that can be considered when estimating building value. Because the property is closely located near the disembarkation of several cruise ship docks, and cruise ship tourism has been growing significantly in recent years, there may be a willingness to spend more to purchase the property. On the other hand, a well maintained similarly sized property on Seward Street has now been on the market for more than 1,400 days (as of November 11th, 2019) and is priced at \$650,000.³ Glory Hall administrators should also prepare for the potential that a viable sale might not occur quickly.

¹ Juneau Assessor Database

² Other buildings of a similar size in the area have a much higher value. The building at 383 S Franklin was built in 1998, and has a similar number of square feet, but triple the lot size. It is assessed at \$2.8 million. But it has been developed to maximize retail sales to tourists. The current homeless shelter would have to be completely remodeled to have a similar appeal. The Elks Club at 109 Franklin is currently for sale. Using the parameters of that listed price, and applied to The Glory Hall, the price would be much lower than the estimate developed here. However, this is a 1908 building - although, unlike the Glory Hall, it does have an elevator.

³ A 16,000 square foot building on Franklin has been on the market for nearly 500 days, and is listed for \$1.56 million.

Property Tax Collection Potential

If 247 South Franklin is sold, in addition to generating money to defray costs of operating a new Glory Hall, CBJ will be able to collect property tax on this location. The building could bring in an estimated \$8,300 in its first year in with a private owner. Applying the Anchorage CPI to the property value and the current CBJ mill rate, in 20 years CBJ will potentially collect \$206,648 in property tax if the current Glory Hall building is sold to a tax payer.⁴

Table 2: Projected Property Tax Rent Advantage: 2023 to 2042

Year new Glory Hall is Completed	Year	Annual Property Tax Revenues from 247 South Franklin Property
1	2023	\$8,300
2	2024	\$8,498
3	2025	\$8,700
4	2026	\$8,908
5	2027	\$9,120
6	2028	\$9,337
7	2029	\$9,560
8	2030	\$9,788
9	2031	\$10,021
10	2032	\$10,260
11	2033	\$10,504
12	2034	\$10,754
13	2035	\$11,011
14	2036	\$11,273
15	2037	\$11,542
16	2038	\$11,817
17	2039	\$12,098
18	2040	\$12,386
19	2041	\$12,682
20	2042	\$12,984
20 year total	Total	\$209,541

⁴ This assumes the value of the property continues to increase over time.

Reduced Impact on Hospital Care Services

One of the most significant economic impacts of the change of facility will be reduced costs for Bartlett Regional Hospital. In 2019, Bartlett Hospital provided inpatient services to approximately 100 homeless individuals.⁵

Because the current set up of the Glory Hall includes shared dormitories and bunk beds located on the upper floors of the facility, without elevator access, and limited parking options, it is not a location that is conducive to medical respite. According to Glory Hall Director Mariya Lovishchuck, she frequently receives calls from the hospital asking if a patron can recover at the shelter. While she has always said no in the past, the new facility will permit her to take in patrons who can recover from medical issues in an accessible private room.

In the past, the hospital has had two choices: send the patient to stay at a hotel through a Juneau respite program administered by the Juneau Economic Development Council (JEDC), or keep the individual in the hospital for several days longer. There are various factors that impact the choice between these two scenarios, but in both cases the City and Borough of Juneau (CBJ) is responsible for the costs (the hospital is municipally run).

The Juneau Medical Respite Program is administered by JEDC and operated by the Glory Hall (TGH) and Bartlett Regional Hospital (BRH). The BRH staff assesses the individual, refers to the program, makes arrangements for them by booking a taxi and finding and booking a hotel room, which sometimes is not available. Staff time is spent making these arrangements. BRH staff coordinates with TGH and JEDC staff. JEDC pays the hotel, taxi, and provides accounting and reporting on the funds.

The last full year of data is 2018, which shows that this program provided 62 nights of lodging at cost of \$4,500. Only a portion of homeless patrons are able to make use of this option. Hospital officials do not always feel comfortable releasing a patient on their own to a hotel room, where they could be too isolated, or, conversely, have too much company. Jeanette Lacey, Director of Case Management Bartlett Regional Hospital says, “We will be able make more referrals to the Glory Hall than we can to the hotels with the space more regulated than the hotel.”

While the hospital does track “potentially avoidable days” it has not, historically, linked these to homelessness. It is therefore difficult to estimate the total savings the CBJ would see by the change to the new facility, but several assumptions can be made:

⁵ Personal communication with Jeanette Lacey, Director of Case Management Bartlett Regional Hospital: “We identified 91 inpatients with the homeless code attached January 1- November 15, 2019.”

- The typical cost associated with a day long stay at Bartlett is between \$3,000 and \$4,000.⁶ So for every patient that stays a day longer than they would if they had a place to go, Bartlett is potentially absorbing \$3,500 in non-recoverable costs.
- National studies show that homeless individuals remain in the hospital for four days longer than the non-homeless.⁷
- According to Ms. Lovishchuck, she is receiving at least one to two calls a month making this request.⁸

Assuming that this means 19 calls per year, using the \$3,000 cost level, and assuming patients stayed an extra three days, that is an estimated \$171,000 annually in addition to the respite costs that the CBJ currently is absorbing that will no longer be necessary in the future.⁹

There are also several costs that accrue to the Glory Hall for this respite care program beyond the estimate above. The Glory Hall staff help with transport between the hospital and the hotel, if they can, and bring two to three meals per day to the person in medical respite. The Glory Hall staff checks up on individuals in hotel respite, and notify Bartlett Regional Hospital case management if something is not going well. The the costs for meals, transportation, and staff time that would be save by the Glory Hall directly were not analyzed as part of this study, according to Glory Hall Director Mariya Lovishchuck, “It would be a lot simpler and cost effective if the person was just discharged to the Glory Hall.” The new Glory Hall building would make this possible.

⁶ Personal communication with Jeanette Lacey.

⁷ Personal communication with Glory Hall Director Mariya Lovishchuck

⁸ Hospitals tackling homelessness to bring down costs. Health Care Dive. 2018. <https://www.healthcaredive.com/news/hospitals-tackling-homelessness-to-bring-down-costs/510631/>

⁹ This is a conservative approach. Multiplying the 100 known homeless to have hospital stays this year, multiplied by average four day extra stay, multiplied by the \$3,500 average day rate is \$1.4 million annually.

Utility and Maintenance Costs

One of the considerations of constructing a new Glory Hall building is that it will be more cost-effective to maintain, saving the homeless shelter money over the long run. Energy efficiency measures in a new building would reduce energy and other utilities costs per square foot. However, because the new building will be significantly larger than the current Glory Hall building, total costs will not decrease due to these efficiencies, but remain relatively stable. The table below examines the current costs per square foot of the existing Glory Hall structure and compares them with the projected costs for energy, utilities, and maintenance/repair costs.

Table 3:
Estimated Facility Costs: Current Glory Hall Versus New Glory Hall¹⁰

Description	Current Glory Hall Costs 2018	Current Glory Hall Costs per Square Foot	New Glory Hall Estimated Costs Year One	New Glory Hall Estimated Costs per Square Foot
Propane	\$1,714	\$0.30	\$1,714	\$0.17
Electricity	\$17,603	\$3.13	\$19,700	\$1.97
Water/Sewer	\$17,659	\$3.13	\$17,659	\$1.77
Garbage	\$6,722	\$1.19	\$6,000	\$0.60
Maintenance/Repairs	\$13,000	\$2.31	\$12,000	\$1.20
Annual Operating Cost	\$56,697	\$10.07	\$57,072	\$5.71

Utility Costs

According to the estimates in the above table, the per square foot energy costs are expected to decrease by 37% over the existing Glory Hall. However, since the new building will be significantly larger, total energy costs will increase by nearly \$2,100 in the first year of the project. Water, sewage, and garbage¹¹ costs are expected to remain relatively flat in the new space, as these are metered costs. Total usage of these items is not expected to change with a larger building as it will be serving a similar number of individuals. As a whole these costs are expected to decrease by 43% per square foot in a new Glory Hall building, in contrast to the current Glory Hall.¹²

¹⁰ The utility costs per square foot are taken from estimates developed for the proposed new city hall, and the existing Glory Hall usage.

¹¹ Garbage costs could decrease, as the Glory Hall plans to compost more waste for use in the planned garden.

¹² The total operating cost of the Glory Hall is approximately \$675,000 annually. This cost is expected to be the same in both locations.

Avoided Maintenance Expenditures

It is tricky to estimate the maintenance costs that will be avoided by moving from a 30-year-old structure into a brand new building. Based on the size of the current building, and heavy use of the structure, the maintenance costs should be approximately \$7 per square foot. However, the Glory Hall is currently spending less than that.¹³ In other words, the homeless shelter should be spending approximately \$40,000 annually on maintenance. “We have not had a lot of recent upgrades in the last four years, unfortunately.” notes Glory Hall Director Mariya Lovishchuck, although extensive work was done on the building in the years prior to that, she said:

In 2009 bathrooms in the dorms and the kitchen were remodeled. in 2010, TGH got a new 25 year roof. In 2009, 2010, and 2011 work occurred to stabilize the sliding hillside in the back of the Glory Hall and resolve issues with water seeping into the building. About 2012, the entire building was resided, weatherized/insulated, the boiler was replaced to all electric, windows and doors were replaced, as well as other weatherization improvements took place, such as new electrical panel and a service upgrade. Appliances are switched out about every 3-5 years depending on use. In 2015 a flood caused by a frozen pipe occurred and the building was torn down to the studs and rebuilt. This included all new lighting, sprinkler system, alarm system, Sheetrock, insulation, flooring etc. The facility is periodically repainted, with patron labor and often donated paint.

On one hand, the Glory Hall is not currently spending a significant number of dollars on maintenance, so the savings of moving to a building that will require less upkeep will be minimal. On the other hand, necessary maintenance can only be deferred for so long before repairs become absolutely necessary, and funds must be allocated.¹⁴

¹³ Maintenance costs for the current CBJ city hall are used to estimate needed maintenance per square foot.

¹⁴ Assuming that deferred maintenance costs accumulate at a rate of \$20,000 per year in the current building (above and beyond what would be needed in new building, due to it being a new construction), after 20 years, the organization would have to pay an additional \$672,885 into the current building (adjusted for projected inflation).

Financing

While financing for a new building usually includes a detailed bond amortization schedule, along with the interest on the bond debt service costs, in this case the Glory Hall leadership has made it clear that carrying any financing costs will be very difficult, due to the cash poor position of the non-profit.

According to Glory Hall Director Mariya Lovishchuck:

The Glory Hall does not have the ability to borrow money. The Glory Hall relies on grants and donations from the public to operate. Every year, the Glory Hall collects just enough or less than enough revenue to actually operate and in the last three years, we have been covering the difference between revenue and expense by dipping into the reserves. TGH used to have 9 months of operating reserves and we are not down to about four months. In light of this, there is no way that TGH can feel comfortable making any kind of regular loan payments and interest. There is no realistic pro-forma we can come up with in which revenues cover the additional cost of making payments on anything we borrow and the interest.¹⁵

While there are disadvantages to not being able to finance a new building and having to rely fully on cash on hand through charitable contributions and grants to pay for the structure — it also represents an opportunity for savings. The scenario on the following page explores a loan with a 3.92% interest rate for 100% of the building cost of \$3.7 million in construction and materials, and an additional \$853K in building related costs (excluding land costs). If the loan were to repaid over 20 years, the fully loaded cost of a financed project under this scenario, would cost \$6.56 million, including payment of interest.

In other words, by not choosing to finance, the shelter will achieve a “savings” of approximately \$2 million in interest under this scenario — \$100,700 in annual interest payments — that it will not have to raise at a later date.

Finally, it is demonstrably easier for nonprofits like homeless shelters to fund raise for capital costs, such as a new building, rather than operating costs — or the costs involved in paying off a loan — not least of which is the fact that capital costs can qualify for more, and larger, grant opportunities.

¹⁵ Personal communication, November 5th, 2019.

Table 4: The Cost of Financing 2023 to 2042

Year new Glory Hall is Completed	Year	Annual financing payments at an interest rate of 3.92%
1	2023	\$327,396
2	2024	\$327,396
3	2025	\$327,396
4	2026	\$327,396
5	2027	\$327,396
6	2028	\$327,396
7	2029	\$327,396
8	2030	\$327,396
9	2031	\$327,396
10	2032	\$327,396
11	2033	\$327,396
12	2034	\$327,396
13	2035	\$327,396
14	2036	\$327,396
15	2037	\$327,396
16	2038	\$327,396
17	2039	\$327,396
18	2040	\$327,396
19	2041	\$327,396
20	2042	\$327,396
20 year total	Total	\$6,547,920
Cost of Financing /Interest		\$2,014,074

Glory Hall Construction Multiplier Effect¹⁶

The new Glory Hall will begin to have a local economic impact as soon as work on the building begins. One way to calculate a cost-benefit analysis is to look only at direct costs and savings, and to compare these over an extended period. Another is to consider short-term spending and multiplier effects expected during design and construction of a project. The infusion of a project of this size into the local economy will have significant secondary benefits during development and construction. The project is expected to create 43 full-time jobs with \$2.2 million in associated payroll during the construction phase of the municipal facility. This includes direct, indirect, and induced jobs.

Project Costs

The fully loaded project cost to develop the new Glory Hall is budgeted at \$4.5 million.

Table 5: New City Hall Construction Cost Estimates¹⁷

Cost Category	Cost
Construction Costs Expended Locally (direct, estimated)	\$3,700,000
Additional Local Costs: Design Services, Overhead and Management, Contingency, Connection Fees (AEL&P, Telecommunications), moving costs, Inspections, Permits, Equipment, etc.	\$853,846
Total Dollars to be Spent Locally	\$4,533,846

Direct Spending Impacts

Based on the final-demand RIMS II modeling, the construction process will generate 27 direct full time jobs. These workers are expected to earn \$1.65 million in wages during the construction and pre-construction period. Generally, these will be highly paid jobs. An additional \$2.2 million in direct output will be created by the spending of project dollars in the community.

¹⁶ The project will generate the following types of economic benefits in the regional economy: **Direct Effects.** Direct benefits relate to: a) the short-term business activity of general contractors involved in the project construction, and b) the ongoing business activity of retailers and other firms involved in the development of the project. **Secondary Effects,** including indirect and induced effects: **Indirect Effects.** Indirect effects will result when local firms directly benefiting from the project in turn purchase materials, supplies or services from other firms. **Induced Effects.** Induced benefits relate to the consumption spending of employees of firms that are directly or indirectly affected by the project. These would include all of the goods and services normally associated with household consumption (e.g., housing, retail purchases, local services, etc.). The analysis quantifies the above benefits in terms of the following measures: **Total industry output** – the increase in gross industry receipts, representing the total economic activity generated by the project; **Employment** – Expressed as new full-time equivalent (FTE) jobs; and **Labor Income** – Payroll and benefits associated with the created jobs, along with additional proprietor income (payments received by self-employed individuals and unincorporated business owners).

¹⁷ The estimated 23% in additional local costs include design services, special inspections, construction management, permits, AELP, ACS, and GCI connection fees, furnishings and equipment, project contingency, moving expenses, landscaping, etc. These costs are often 30% of construction costs. A lower percentage was estimated for the purposes of this project.

Secondary Effects

A total of 16 secondary (induced and indirect) jobs with employment earnings of \$572,000 will be created during the project's construction and design phases. Spending in Juneau would increase by nearly one million as the construction-related dollars circulate through the community.

**Table 6: The Economic Impact of Locally Spent Dollars
for a New City Hall Construction Project in Juneau**

Cost Category	Direct Effects	Secondary Effects	Total Effects
Employment Impact	27 jobs	16 jobs	43 jobs
Total Wages Impact (in millions)	\$1.65	\$0.572	\$2.23
Additional Local Spending Impact (in millions)	\$2.2	\$0.96	\$3.2
Total Economic Impact of Funds Spent in Juneau (in millions)	\$3.85	\$1.53	\$5.39

Source: Bureau of Economic Analysis Type II RIMS multipliers for Juneau. Produced by the Regional Product Division. Analysis by Rain Coast Data.

Options for Current Building if Move Takes Place

Should the Glory Hall move to a new location, four options will exist for managing the existing structure: sell, rent, trade, or continue to use. These options are explored below.

Option 1: Rent old facility

South Franklin Street is located within the heart of Juneau's tourist district. With 1.4 million cruise ship tourists expected to move through Juneau's downtown shopping corridor next summer, there may be interest in renting the 247 S Franklin property. While high quality gift shop type facilities can expect to receive approximately \$2.50 per square foot for rent near that location, the building is not currently optimized as a gift shop. Moreover, this type of tenant would likely be only interested in the first floor. It would be a very unusual tenant who would want to rent the entire structure as is. This means The Glory Hall would have to invest a significant money into the structure to update and subdivide the property into a rental of the upper floors and a street level unit, and even then it might be difficult to find a tenant. The Decker building gift shop rentals, that are located next to the existing Glory Hall, remained vacant last summer. The Triangle Building, which used to house Hearthside Books and Annie Kale's, is now completely without tenants. Moreover, the Archipelago property that is currently being upgraded (next to the library) will include new, high-quality rental units designed as tourist retail establishments, which could make it more difficult to compete for potential tenants. Finally, the cost of maintaining the building to the level required to charge a market rental rate is likely to absorb a significant amount of any revenue stream the building would generate.

- **Cost to upgrade building to prepare for the rental market:** unknown, but significant.
- **Cost to maintain building to the standards of the rental market:** Unknown, but assume at least \$40,000 annually.
- **Potential annual rent after upgrades:** First floor, \$4,500 per month (in the summer), upper floors, unknown. If the entire building were successfully rented seven months of the year, the total annual revenue could be \$45,500 annually.¹⁸

Option 2: Sell old facility

A second option is to sell the old facility. While an official valuation has not been completed, an assessed value could range from three-quarters of a million upwards, and a sales price could be even higher. However, it is unclear how long it would take to sell at that price given that the building is not optimized for use the visitor retail establishment. A similar sized structure at a similar price on Seward Street has been on the market for more than four years. However, given that South Franklin is closer to the heart of Juneau's cruise ship foot traffic, it could be a more desirable opportunity in the short term. The Glory Hall could be expected to make

¹⁸ Analysis assumes first floor is rented at top market rate value, with a much lower rate for the upper two floors.

improvements and/or changes to the building as a condition of the sale, which would decrease the total dollars being returned to The Glory Hall.

- **Cost to upgrade building to prepare for sale:** unknown.
- **Potential sales value:** unknown

Option 3: Trade old facility

Because The Glory Hall does not plan to finance the new building, this opens up several interesting opportunities for the organization. While it is difficult to raise funds for operating costs, capital costs are easier, thanks to more grant opportunities and other factors. Because of this, The Glory Hall can use the current building to barter for future operating costs. For example, if the building was “traded” to the City and Borough of Juneau, The Glory Hall could request an increase in the utility waiver as well as other operating assistance (an equivalent trade). There are likely other creative scenarios that The Glory Hall board can and should consider.

Option 4: Continue to use old facility

The final option would be to continue to use the old facility, following the move to the new location. This appears to be the least financially feasible opportunity. The Glory Hall would not benefit from a sale, a trade, or a rental income, but would still be saddled with meeting the operating cost requirements of the older building, in addition to the new facility.

Social Impacts of a New Glory Hall in Juneau

Not all of the considerations to move the Glory Hall to a new space are financial ones. The most significant benefits of the new facility are more difficult to measure on an economic scale. Because the building will be nearly twice as large as the current facility and designed to meet the needs of the population it will serve, the New Glory Hall will be able to provide better, more efficient services for homeless individuals. The new building will include improvements such as private sleeping areas, secure storage, space for patrons to meet with service providers, and safe access to the outdoors. The mission of the Glory Hall is to provide food, shelter, and compassion to those in need to help achieve well-being. Building improvements that will improve well-being are explored below.

Current Limitations that will be Addressed by New Facility

Building Accessibility

The downtown emergency shelter is located on the third floor and is not accessible by an elevator. Individuals with mobility issues cannot access this level of the shelter and are accommodated on the second floor, which presents challenges. A steep narrow outdoor staircase has been used to move those in need of medical assistance out of the facility, but it is not considered safe. The new building will be handicap accessible and accommodate patrons across the mobility spectrum.



Glory Hall entry and staircase

Beds, Mobility Limitations, and Privacy

Despite limited space, the current shelter is equipped with 40 beds, which are organized in bunks, as seen in the photo on the right. There are 20 bottom bunk spaces. When the shelter is full or over capacity, individuals with varying levels of disability must decide who will sleep on the bottom bunk. The new building will have 40 individual sleeping rooms with single level beds, all of which are accessible, and will provide privacy and additional security at night. The private rooms will also allow younger homeless a safe emergency shelter option. The Juneau Youth Service youth emergency shelter closed in 2019, leaving no sheltering options for homeless youth. Finally, individuals who have PTSD, such as veterans, or individuals with other mental health conditions that require privacy will have their sheltering needs met.



Glory Hall bunkbeds in shared room
Photo by Michael Penn

Storage Space

The square footage of the current Glory Hall building is fully utilized for sleeping and eating, leaving no room for storage of patrons' belongings or for program belongings. Despite often being in transitional situations, individuals must bring their belongings with them as they conduct their activities outside the center. The new facility will offer storage space for both patrons and for staff. While unmeasured in this analysis, there is a financial impact to not having storage. Without storage, patrons "are constantly losing their ID, medications, warm clothes, shoes, other necessary items," says Glory Hall Director Mariya Lovishchuck, and these items must be replaced at a cost.

Bathrooms

The current Glory Hall has six bathrooms and eight total toilets, which are not adequate for serving the overnight and walk-in population the facility when it is at capacity. Nor are all existing toilets accessible. The new facility will have 14 toilets.

Safety

There is no space around the perimeter of the current building to support patron and staff security. Once a shelter patron steps outside, they are immediately in public space of Franklin Street, an environment often not conducive to recovery or well-being. Glory Hall staff and patrons have seen an increasing number of physical threats made towards them directly outside the current building.

Moreover, the new building will meet all code requirements, improving the facility safety for patrons. According to Lovishchuck, "We are currently barely complying with code on the 3rd floor."



Street view of the Glory Hall

Outdoor Space and Parking

The lot of the current Glory Hall only accommodates the footprint of the current building and is 3,196 square feet. The new shelter will have a lot that is more than 25,000 square feet - approximately eight times larger than the lot of the current facility.

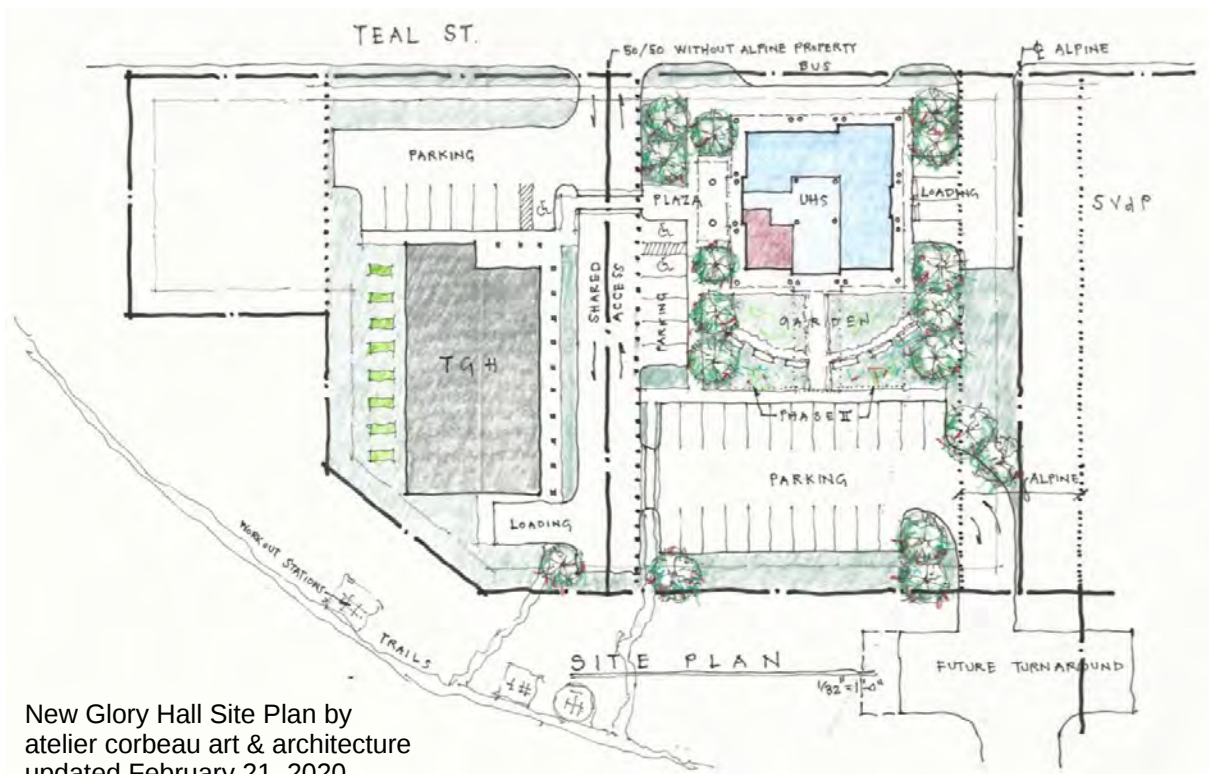


Artistic rendering of new Glory Hall by Northwind Architects

This will provide patrons access to a large secure outdoor area. The new facility concept includes a covered area for outdoor recreation, as well as dedicated parking for the facility. Currently it is not very convenient for supporters of the Glory Hall to deliver food donations, or provide transportation for patrons with mobility issues.



In addition to providing patrons safe, comfortable access to the outdoors, the new location will have a garden. “There is space for a wonderful garden, which will provide training and employment opportunities, and possibly extra income through a working herb farm model. We want to grow herbs for the Rookery and the Amalga Distillery,” says Glory Hall Director Lovishchuck.



New Glory Hall Site Plan by
atelier corbeau art & architecture
updated February 21, 2020

Creation of Coordinated Transitional Care Campus

Perhaps the most valuable benefit of the move is the ability to cluster services for Juneau's most vulnerable population in a single location.



Juneau's envisioned new Coordinated Transitional Care Campus

The proposed new site is located in the valley next to St. Vincent de Paul. Both organizations serve clients with similar or related needs, meaning the benefit of colocation will benefit the patrons of both organizations. Moreover, two other nonprofits — Southeast Alaska Independent Living and United Human Services — have committed to also moving to the campus and developing their own projects. Two additional organizations, Alaska Legal Services and the Disability Law Center, are also considering moves to the campus. The location is located one block away from a bus stop, and many of the organizations planning the share the campus have vans to assist their patrons with transportation.

Existing and planned services and activities on the campus are as follows:

Juneau Cold Weather Emergency Shelter — The cold weather emergency shelter is now operated by St. Vincent de Paul near the proposed location of the new Glory Hall. The shelter is open on nights 32 degrees or below and shuttle transportation is provided.

Transitional Housing Facility — St. Vincent de Paul operates a transitional housing complex with 26 units for individuals and families transitioning from homelessness.

Smith Hall — St. Vincent De Paul runs a senior supportive housing projects with 24 rent-supported one-bedroom apartments for low-income seniors. Tenancy is restricted to persons 62 years of age or older, earning less than 50% of Area Median Income.

Transitional Support Services Center - St. Vincent de Paul operates a transitional support services at this location, including providing food, laundry, donations, and counseling services:

Second-Hand Item Depot - St. Vincent de Paul's second-hand depot is specifically for clients who are homeless, elderly, or experiencing disabilities. Items are available at no cost. Items available include interview clothing, cold-weather clothing, and household items.

Community Navigators - St. Vincent de Paul employs five Community Navigators funded by the Juneau Community Foundation. Community Navigators serve those experiencing homelessness and near homelessness or who are otherwise in distress (including the elderly, individuals and families, and those with disabilities) in order to help them find permanent housing, and other services.

United Human Services — United Human Services is also purchasing a property connected to the new Glory Hall location. Their goal is to help all people access needed social services by placing nonprofits in one place, providing essential one-stop service in a defined community hub. Its many partners include United Way, National Alliance on Mental Illness, Disability Law Center of Alaska, and others.

Southeast Alaska Independent Living (SAIL) — SAIL has also committed to colocating on an adjacent property. SAIL serves people of all ages and disabilities including, but not limited to physical, cognitive, neurological and mental health disabilities through a wide variety of programs and services. ORCA (Outdoor Recreation and Community Access) is the adaptive sports and recreation program of SAIL, and will also be housed at this location.

Alaska Legal Services — Alaska Legal Services Corporation (ALSC) offers free civil legal services to low income and disadvantaged people to protect their safety, their health, and promote family stability. They are dedicated to bridging the gap between those who need civil legal help and those who are able to get it.

Disability Law Center — The Disability Law Center will also be colocated on the campus. It assists individuals with disabilities with the following: Social Security applications and some higher-level appeals; Disability-related employment discrimination; Medicaid/Medicare appeals; Disability-related housing discrimination; Disability-related financial exploitation; Access to appropriate Special Education programs; Physical barriers/access to businesses or services; Complaints about the Division of Vocational Rehabilitation (DVR) or an Independent Living Center; and Access to voting.

4. Joint TGH, AWARE, St. Vincent dePaul, Family Promise Letter to TGH and JCHH Endorsement

June 18, 2020

Packet Page 109 of 163

City and Borough of Juneau
155 South Franklin St.
Juneau AK, 99801

Dear CBJ Managers Office and Assembly,

Established in 1977, 2016, 1984, and 1982 respectively, AWARE, Family Promise of Juneau (FPJ), St. Vincent de Paul Society Diocesan Council of Southeast Alaska (SVdP), and Juneau Cooperative Christian Ministry dba the Glory Hall (TGH), have been aiding individuals in danger of or experiencing homelessness, hunger, violence, trauma, and poverty. In addition to providing emergency shelter, AWARE, SVdP, and TGH administer over 176 units of transitional, permanent, and permanent supportive housing units. All of these units were developed and constructed through the work of our organizations, independent of large outside developers, fueling Juneau's economy, developing meaningful infrastructure, and providing jobs, with over 60 permanent positions operating our projects. Together, our four organizations are the foundation of the housing and homelessness continuum of care system in Juneau.

While our work is always difficult and dynamic, the recent past has delivered extra challenges. The untimely passing of St. Vincent de Paul's long term general manager and prolific affordable housing developer Dan Austin, the COVID 19 pandemic, and political changes involving policy and funding have added complexity, and at times real barriers, to our work.

After much collective soul searching and adjusting, we affirm several basic and fundamental facts about our work and collaborations: We are stronger together. The needs of our clients, community, and partners demand our strong and supportive partnership. And as we show up for this community, we also recognize we need each other. Who can better understand this shifting landscape and help shoulder our unique burdens than our closest partners?

The City and Borough of Juneau has played an important role in all the work that we do. To this end, we look toward the future of assisting our community and respectfully request the following:

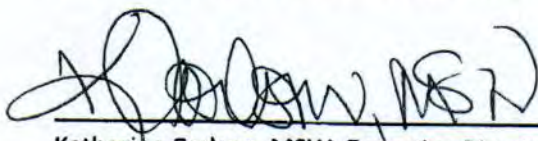
- **In order to chart the best course forward for our city, all four organizations must be involved in the discussion and the planning process for emergency shelter provision in Juneau.**
While we understand that there are many challenges facing our community, and the CBJ Housing and Homelessness office has many responsibilities, we believe it is worth the time and effort to share information and coordinate services. We freely acknowledge that we do not always agree with each other or the CBJ Housing Office. Passionate advocacy is the cornerstone of quality social services, but does not often offer an easy or quick path forward. However, we are committed to faithfully representing the folks we serve and to finding solutions that make the most of our collective resources.
- **Our organizations view the new Glory Hall facility and United Human Services campus as a priority project for our Continuum of Care in Juneau.**
The current Glory Hall building is not adequate to provide basic emergency shelter and care services. Co-location of the new facility with United Human Services center and proximity to

SVdP services offers a phenomenal opportunity for people experiencing homelessness to truly make improvements to their lives. Bringing services and the people most in need of services together is a remarkable opportunity for improving the health of our community. The community and CBJ have affirmed support for this project for years; now is the time for action. We request that the CBJ continue to provide guidance, resources and collaboration in order to realize the remarkable potential inherent in this project as quickly as practicable.

- **We urge support of the Juneau Cares Project Food Program.** This program will work with all our agencies, further strengthening our collaborative efforts, to provide a safe and viable program for providing nutritious food to people in need during the pandemic. Additionally, the program provides economic benefits for small businesses and food service workers. We know that unemployment is the number one driver of poverty and homelessness, and this project aims to prevent further losses in Juneau.
- **We urge collaborative planning to determine the best short and long term plans for The Warming Shelter.** This emergency, low barrier shelter option has become an important part of our continuum of care. We request that the CBJ work with all shelter providers to determine the goals of the Warming Shelter program, and ensure they fit within our community's goals of providing adequate emergency services while simultaneously increasing permanent housing options to functionally end homelessness.

We believe homelessness and food insecurity is likely to increase due to consequences of this pandemic. We do not believe emergency shelters are a primary solution for most people who are experiencing or are in danger of experiencing homelessness. The Juneau Coalition on Housing and Homelessness in 2017 urged the CBJ to recognize that while emergency shelters can be a life-saving strategy in our efforts to end homelessness, it is important to direct our efforts and resources to expand rapid re-housing, permanent supportive housing, and other types of tenant assistance. Multiple strategies, short and long term concurrent planning, and participant-centered input is vital to ending homelessness. Housing and homelessness services providers are the critical link to understanding the needs of homeless persons and evaluating the effectiveness of our strategies. Please make the most of our resources and expertise.

Thank you for considering these important requests that are designed to strengthen our collaborative efforts, both within provider networks and with the CBJ, as we all work to end homelessness in Juneau.



Katherine Carlson, MSW, Executive Director Family Promise of Juneau

6-19-2020

Date



Mandy Cole, Executive Director, AWARE, Inc.

6/19/20

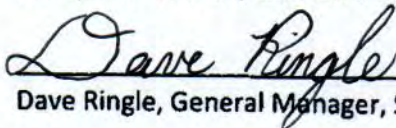
Date

Mariya Lovishchuk

Mariya Lovishchuk, Executive Director, The Glory Hall

6-19-2020

Date



Dave Ringle, General Manager, St. Vincent de Paul

6/19/20

Date



June 18, 2020

Re: Shelter Providers Request to CBJ

Dear CBJ City Manager & CBJ Assembly Members,

The Juneau Coalition on Housing and Homelessness (JCHH) exists to create vital connections between providers who are serving people at risk of homelessness or who are currently experiencing homelessness. Our work has always been centered on the needs of our clients, and they consistently affirm the need for providers to collaborate to make services accessible and meaningful.

To that end, the JCHH recently reviewed a statement of collaboration from Juneau's shelter providers that makes several requests for collaboration with the CBJ. The JCHH heartily endorses this statement and these requests. This letter outlines the ways strong partnerships shape effective interventions, and increase safety and security for our most vulnerable individuals and families.

We appreciate the need for creative thinking as we face new challenges. We appreciate the CBJ's Housing Office efforts to continuously address novel barriers. We urge collaboration as an integral part of our community's strategies to end homelessness.

Thank you for your time and consideration of these important requests. They represent the concerns of shelter providers, but also of the interconnected providers of the JCHH.

Warmly,

A handwritten signature in blue ink, appearing to read "Gus Marx".

A handwritten signature in blue ink, appearing to read "Hazel LaCount".

Gus Marx and Hazel LaCount

Co-Chairs of the Juneau Coalition on Housing and Homelessness

5. Juneau Coalition on Housing and Homelessness
Support for new TGH and UHS projects as priority



June 8, 2020

RE: Social Services Campus (Nonprofit Center and new TGH facility) Support

Dear City and Borough Assembly Members, Planning Commission, and Manager Rorie Watt:

The Juneau Coalition on Housing and Homelessness (JCHH) is writing in unwavering and enthusiastic support of the Nonprofit Center and new Glory Hall Facility project.

JCHH is a partnership of local agencies and organizations who serve those experiencing or in danger of homelessness in Juneau. These organizations participate in the Juneau Continuum of Care by providing emergency, transitional, permanent-supportive, and supportive services to clients. We individually and collectively work together to develop solutions.

The Glory Hall is one of the founding members of JCHH, and the work that they do, in collaboration with a myriad of partners is critical to our community. The Housing First Project, the Navigator Program, food delivery to those most in need, are some of the important community projects in which the Glory Hall has a critical role. Annually, the Glory Hall provides over 55,000 meals and over 11,000 safe emergency shelter beds. This number is going to be reduced due to the inadequate design of their facility during the Covid-19 pandemic. The disruption to the Glory Hall's services is detrimental to our community's ability to serve those most in need.

The nonprofit center, envisioned by United Human Services and coordinated largely by Southeast Alaska Independent Living, another founding member of this coalition, is a project that will transform the way services are delivered in Juneau. Co-location of nonprofits in the same building will ensure efficiency and convenience for service recipients and will inevitably improve outcomes for consumers. Having an accessible, shared space for service delivery will reinvigorate our system. Locating the project next to the Glory Hall and St. Vincent DePaul, another founding member of this coalition, will transform access to services for those who need them the most.

The Juneau Coalition on Housing and Homelessness urges City and Borough of Juneau to do everything in your power to work with SAIL, United Human Services, and the Glory Hall to make this project a reality. The Glory Hall is in critical need of the new building. Those without housing in Juneau deserve an accessible, safe, and dignified space. The nonprofits who do great work in Juneau are scattered all throughout town, making it extremely challenging to make progress in the lives of those who need help. Your

support of this project will make true, lasting, and meaningful difference in our community for generations to come.

In the time of Covid-19, multiple organizations being available in one place will reduce the amount of trips high-risk individuals need to make to access much needed services, adding to the already critical list of reasons to support this project.

Your support of this project will make a true, lasting, and meaningful difference in our community for generations to come.

Thank you very much for your service. We look forward to working with you and to continuing discussions about this and other issues. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gus Marx". The signature is fluid and cursive, with the first name "Gus" written in a larger, more prominent script than the last name "Marx".

Gus Marx, Co-Chair
Chair

A handwritten signature in blue ink, appearing to read "Hazel Lecount". The signature is fluid and cursive, with the first name "Hazel" written in a larger, more prominent script than the last name "Lecount".

Hazel Lecount, Co-



United Human Services
of Southeast Alaska
3225 Hospital Drive, Suite 301
Juneau, AK 99801

July 15, 2020

Mayor Beth Weldon
Mr. Loren Jones, CBJ Assembly Finance Committee Chair

RE: United Human Services Multi-Tenant Nonprofit Center Funding Request

Dear Mayor Weldon and Mr. Jones,

United Human Services of SE Alaska (UHS) was established in 2009 with support from the Alaska Mental Health Trust Authority (Trust) and Rasmuson Foundation. UHS achieves our mission: *Stronger Together, Social Service Nonprofits Working Together for a Healthier Community*, through co-locating agencies to create efficiencies that save money, increase sustainability, and build strong working relationships. Most importantly, where rubber meets the road—for our neighbors and community members in need of services—the one stop model decreases transportation barriers, improves resource connections, and ultimately, improves outcomes.

According to the Nonprofit Center Network (NCN), a consulting, training and research organization, there are approximately 570 Nonprofit Centers in Canada and the United States. In 2019, the NCN published their third study on the model (please see Appendix). The Executive Summary concludes:

Addressing nonprofit space needs through sharing positively impacts both mission and finances. Organizations see improvements in staff morale, retention and productivity, increased programming and additional opportunities for collaboration. Most organizations also see financial savings that are reinvested in their programming. Nonprofit centers themselves are stable financial organizations, with 81% of centers breaking-even or generating a surplus. Overall, nonprofit center revenues increased while continuing to generate financial savings, primarily from reduced rental rates for tenant organizations. In addition to rent savings, sharing resources equates to time savings when tenant organizations have more of what they need at their fingertips. These financial benefits reflect how nonprofit centers enable tenant organizations to operate more efficiently and effectively, to better fulfill their missions and serve local communities.

Over the last several years, UHS has contracted with both NCN and the McDowell Group to provide studies specifically for Juneau. These studies fortified our resolve to move forward with this project and are available upon request.

To further prove the model here in Juneau, an experiment: UHS took the master lease for a half-dozen social service nonprofits under one roof, a multi-tenant nonprofit

center (MTNPC), in 2013. Over the last seven years, the experiment proved the model sound. Unfortunately, the current facility has critical limitations. We know we can do better. Toward that end, UHS vetted many alternative sites before learning the Glory Hall (TGH) was planning to move out of their inaccessible and wholly inadequate building downtown. Negotiations ensued and in December 2019, Southeast Alaska Independent Living (SAIL), on behalf of UHS, partnered with TGH to purchase property from and adjacent to St. Vincent de Paul. Our plan is to subdivide the lot and create two separate and complimentary buildings.

With that backdrop, UHS is excited to introduce the Southeast Community Services Center, an innovative MTPNPC designed to forever change how services are delivered in Juneau. The new site will form a ‘campus’ with the new TGH shelter next door and adjacent Smith Hall and St. Vincent de Paul senior and transitional housing, housing navigators, and Juneau Youth Services and Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA) in close proximity. The Southeast Community Services Center will provide critical services in the heart of a high need population.

We are confident the new Community Services Center will strengthen our community’s ability to address homelessness, while serving the needs of people experiencing disabilities, seniors and at-risk youth throughout Juneau. Numerous national studies identify locating comprehensive services in close proximity to shelters and low-income housing as a best practice. For example, in 2010 HUD published, ‘Access to Benefits-Strategies for Improving Homeless People’s Access to Mainstream Benefit and Services’. The study cites structural barriers as obstacles, such as where programs are located, and goes on to recommend co-locating mainstream eligibility workers in homeless assistance programs, creating “one-stop” centers; and improving communications among homeless assistance staff and other social services organizations. The Southeast Community Services Center does exactly this.

The Southeast Community Service Center has broad community support. UHS has secured 10-year commitments from Alaska Legal Services; Big Brothers Big Sisters; Disability Law Center; NAMI Juneau; SAIL; and United Way of SE Alaska. Our planned facility also includes a ‘Resource Room’ to be staffed by rotating service providers, i.e., employment services to be provided by the Division of Vocational Rehabilitation. We’ve attached a sampling of support letters from community leaders in the Appendix.

Our partner organizations serve a range of community members- including those who experience disabilities, at-risk youth, seniors, veterans and low-income families. In the current fiscal climate, many nonprofits are struggling and cutting important services. The Southeast Community Services Center will provide monetary relief through efficiencies, i.e., shared reception, board/class/break room, custodial, copy/production, and IT. Tenants save money so less is spent on operating and more is available to focus on mission—improving service delivery to those in need.

Additionally, during these trying economic times, the Southeast Community Services Center and the new Glory Hall will not only make sure that people have access to food, shelter, and critical services, but will also create construction and development jobs to provide needed economic stimulus. The additional jobs and economic activity during this time when Juneau’s economy needs a boost are another benefit of both projects. Rain Coast Data conducted a study, published in February 2020, on the impact of the new Glory Hall. On page 3 of the report:

BENEFIT TO COMMUNITY OF JUNEAU OF CONSTRUCTION	MULTIPLIER EFFECT OF CONSTRUCTION PERIOD
Direct and indirect jobs created during construction	43
Direct and indirect wages created during construction	\$2.23 million

The cost estimate used in the study cited \$400K for land acquisition and \$3.7M for construction. Extrapolating the data for our \$5.6M project, we project 59 direct and indirect jobs will be created during construction and direct and indirect wages created during construction to be \$3.046 million.

The property for the Southeast Services Center has been purchased outright. Additionally, the Trust and the Juneau Community Foundation have provided approximately \$175,000 in Pre-Development funding. The project obtained a conditional use permit with unanimous support from the Planning Commission on July 14.

The total cost of the UHS building is currently estimated at \$5.6 million dollars. We respectfully request a \$1.1 million contribution from CBJ. This contribution will leverage the balance of funds we need to make the Southeast Community Services Center a reality. Support from CBJ is the significant budgetary foundation and local community investment imperative to leveraging additional funding from private foundations and other government sources. We are confident that, with your help, we will be able to raise the balance of funding needed to bring this project to fruition.

Likely the future will bring even more need for social services. And that's exactly why your investment in our project, a project that will bring solutions, resources, and economic development to big problems throughout Juneau, is more critical and timelier than ever.

Thank you for your consideration. We look forward to working with you.

Sincerely,



Joan O'Keefe, Executive Director

CC: CBJ Assembly; CBJ Manager; CBJ Finance Director; Economic Stabilization Task Force; UHS and SAIL Board of Directors



United Human Services
of Southeast Alaska
3225 Hospital Drive, Suite 301
Juneau, AK 99801

APPENDIX

Overview of Southeast Community Campus Concept

Budget

Juneau Empire My Turn

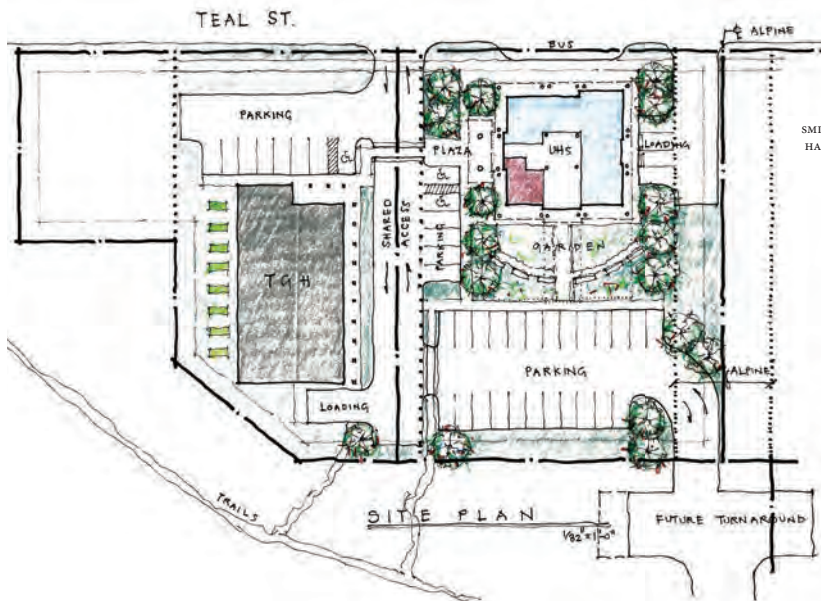
Sample Letters of Support

United Way of SE Alaska
Alaska Legal Services
Faulkner Banfield
Central Council Tlingit and Haida Indian Tribes of Alaska
Juneau Youth Services
Juneau Coalition on Housing and Homelessness

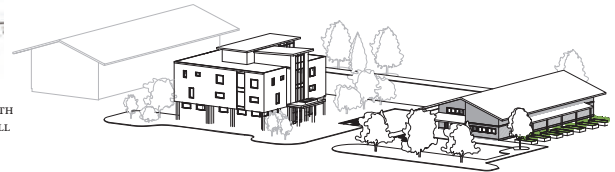
Nonprofit Center Network: State of the Shared Space Sector, 2019

Southeast Community Services Campus

Stronger Together



Conceptual Site Plan for SE Community Services Campus



Conceptual- Site Relationship



*Conceptual- Entry Elevation
SE Community Services Center*

A coalition of community nonprofits, in coordination with the Glory Hall (TGH), plans to develop a new social services campus adjacent to Jordan Creek and near the Juneau Airport, in the Mendenhall Valley.

The nonprofit shared building, the Southeast Community Services Center, will include individual offices for each social service agency, as well as flexible meeting and gathering spaces, also available to the community. TGH will construct a shelter, care center, and meal distribution facility.

Working together, we will have the greatest collective positive impact on the lives of elders, youth, low-income community members and people experiencing disabilities. The Southeast Community Services Center will serve our community with enhanced program coordination that is accessible, collaborative and sustainable.

The Center & new TGH facility are designed to be uplifting- a place of dignity for both our beneficiaries and employees. The campus buildings will be sited to maximize natural light, views, green space, gardens, bus access, and safe pedestrian links. The campus is ideally located in close proximity to existing resources such as Juneau Youth Services, and St. Vincent de Paul's transitional and supportive housing programs.

The Southeast Community Services Center will facilitate greater ease with on-site referrals to other social service nonprofit agencies, both in-house and campus wide. The one stop model will help more people access the services they need, increase the options available to them and result in stronger outcomes. Co-location allows the nonprofits to capitalize on individual and collective strengths, freeing up more time and resources to focus on our collective mission.

*Together,
we have the greatest
collective, positive impact
on the lives
of the people
we serve.*

Collective Social Services



The Southeast Community Services Center will be owned and operated by United Human Services of SE Alaska (UHS) a 501(c)(3) nonprofit dedicated to creating efficiencies to maximize organizational resources, build strong synergistic working relationships among tenants, and improve access & efficiency for people seeking services.

Our nonprofit partners include: Southeast Alaska Independent Living SAIL/ORCA), Disability Law Center of Alaska, National Alliance on Mental Illness (NAMI), Alaska Legal Services, Big Brothers Big Sisters of Alaska, and United Way of Southeast Alaska. Together, these agencies provide diverse and comprehensive services for all ages and abilities within our community, and throughout Southeast Alaska.

For more information on the Southeast Community Services Center, please contact:

Joan O'Keefe, UHS Executive Director @ 907-523-4430.



The Glory Hall



The Glory Hall (TGH) provides food, shelter, and compassion to those most in need.

The current downtown facility is not physically accessible to patrons with disabilities and has a number of significant building issues. To best meet the needs of our community members experiencing homelessness, it is critical that the new shelter be built as soon as possible. The proximity to supportive services is ideal, establishing efficient access for a successful transition from homelessness.

The new facility will feature a secure entry and Day Room, space to store private belongings, an outside garden, and a secured outside space for patrons, staff and visitors to relax and connect with nature.

For more information on Juneau's emergency shelter needs and transitioning from homelessness, please contact:
Mariya Lovishchuk @ 907-957-2885.



Join us !!!

The Southeast Community Services Center planning committee is recruiting volunteers to lend expertise and enthusiasm toward this exciting project.

Can you help with funding, time, or advocacy?

For more information contact:

Joan O'Keefe, c/o SAIL @ 907-523-4430



OVERALL PROJECT BUDGET PROJECT NAME: SOUTHEAST COMMUNITY SERVICES CENTER PROJECT NO: 1903 DESIGN MANAGER: Sherri von Wolfe, Architect CONSTRUCTION MANAGER: J Travis Miller CLIENT AGENCY: United Human Services/SAIL CONTACT: Joan O'Keefe, Project Manager		Date Budget Prepared: 7/14/20 Budget Revision No.: 03 Client Concurrence: _____ (initials)
STAGE OF PROJECT: ____ Programming ☒ Conceptual Design ____ Schematic Design ____ Design Development ____ Construction Document ____ Bid Period ____ Award ____ Construction (% Complete) ____ Closeout		
DESIGN PHASE:	BUDGET	COMMENTS:
Conceptual Design	\$21,000	Estimate
Schematic Design	\$42,000	Estimate
Design Development	\$94,500	Estimate
Construction Documents	\$168,000	Estimate
Design Administration for Bldg	\$20,000	UHS Project Manager
Additional Services		
Contracts	\$5,000	UHS Project Manager
Regulatory Reviews		
State Fire Marshal	\$0	
Local Reviews	\$25,500	JNU Plan Review
Bidding Assistance	\$10,400	Estimate
Contingency	\$11,592	3% Design Phase Contingency
Land	\$382,000	Teal/Alpine Property
DESIGN PHASE TOTAL	\$779,992	
PDA PROGRAMMED AMNT.	\$780,000	
PROJECTED SURPLUS/(DEFICIT)	\$8	
BUDGET APPROVED : _____ (Project Manager's Signature)		
CONSTRUCTION PHASE:	BUDGET	COMMENTS:
Construction Contract	\$3,990,000	Assume 12500 SF x \$329/SF, includes site development
Add Alt. #1 -	\$90,000	Design to 100%
Add Alt #2 -	\$30,000	Design to 100%
Site Development	\$275,000	Parking Lot, 1/2 Entrance Drive, Walks & Plaza
Subtotal	\$4,385,000	Includes Building Permit Fees
Change Order Reserve	\$263,100	6% of Construction Contract/Add Alts/Site
Total Construction	\$4,648,100	
Construction Assistance	\$63,000	Estimate
Project Administration	\$40,000	UHS Construction Admin
IBC Req'd Special Inspections	\$21,000	Estimate
Legal	\$0	
Internal Services		
Closeout	\$5,000	UHS Project Manager
Contingency	\$95,542	2% of Total Construction Phase
CONSTRUCTION TOTAL	\$4,872,642	
PDA PROGRAMMED AMNT.	\$4,875,000	
PROJECTED SURPLUS/(DEFICIT)	\$2,358	
BUDGET APPROVED : _____ (Project Manager's Signature)		
GRAND TOTALS CURRENT CFA AMOUNT PROJECTED SURPLUS/(DEFICIT)		\$5,652,634 \$5,655,000 \$2,366 Project No.: 1903 File No.: 004

JUNEAU EMPIRE

Opinion: Southeast Community Services Center Strengthens Juneau The need for improved services in Juneau is real.

Monday, July 6, 2020

For more than 25 years, Southeast Alaska Independent Living (SAIL) has been working with seniors and people who experience disabilities to help them realize their full potential and live with dignity and independence in the setting of their choice. Far from telling someone what to do, SAIL is committed to empowering every person we work with by connecting them to the information and tools they need to successfully control their lives.

For many, accessing useful resources for things like secure housing, food stability and affordable healthcare can be a complex, involved and frustrating process that necessitates coordination between nonprofit, state, tribal and federal entities, medical providers, and more. It takes time, patience and persistence.

At SAIL we know that improving access to Juneau's safety net will make our community stronger and more resilient. A decade ago, SAIL joined a coalition effort to co-locate nonprofit organizations that serve Juneau's most vulnerable community members by creating a shared nonprofit center. Today we are closer than ever to realizing our vision of a community services center where collaboration creates cost efficiencies and supports the independence and empowerment needed to transform the lives of the people we serve.

The Southeast Community Services Center will house a variety of nonprofits that serve youth, seniors, people with disabilities and low-income families. In addition to SAIL, the Center will include Alaska Legal Services, United Way, the National Alliance on Mental Illness, Big Brothers Big Sisters, the Disability Law Center and United Human Services.

The Southeast Community Services Center will create an accessible, welcoming home where our community can more easily access and coordinate services. The need for improved services in Juneau is real. More than 3,000 residents experience a disability, approximately 4,000 residents are seniors 65 or older and more than 2,000 community members live in poverty. Our agencies are scattered throughout Juneau, and often those in need are unsure of where to turn. The Center's "one stop shop" model has seen success in communities around the country, leading to the innovations and outcomes that make communities healthier and more resilient. We are confident it will work in Juneau, and we're excited to have well-established partners to bring the project to fruition.

We are collaborating with The Glory Hall, which plans to build a separate facility adjacent to the Community Services Center. The short-term shelter will improve homeless services with accessible sleeping quarters that adhere to social distancing guidelines, secure private storage, room for safe meal delivery and a secure place for outdoor congregating.

Co-locating our projects will help people experiencing homelessness to exit into stable housing by connecting them to supports and resources nearby.

Currently SAIL and The Glory Hall co-own the property, and it will be subdivided for separate ownership in the near future. We looked at many possibilities around Juneau and chose this property because it is centrally located, flat, zoned appropriately for our projects and situated close to community partners like St. Vincent de Paul, Smith Hall senior housing, Juneau Youth Services and Central Council Tlingit and Haida Indian Tribes of Alaska.

COVID-19 has illustrated to us how fragile the social safety nets are for many of the people we serve and how important it is to design our services to be safe and accessible. The Southeast Community Services Center will position SAIL and our partners to better serve the needs of our community by creating a centralized nonprofit hub so our patrons won't need to take unnecessary risks by entering multiple buildings or trudging around town for paperwork. Those in need will be able to find solutions safely.

One of SAIL's core values is Collaboration. We believe that we are stronger when we work together. The Southeast Community Services Center will embody the spirit of collaboration to improve outcomes for those we serve and strengthen our community for many years to come. We still have planning and fundraising ahead of us to complete the project. Your support will be needed and deeply appreciated and your ideas and feedback welcome. Please email me at info@sailinc.org or call our office at 586-4920 if you'd like to initiate a conversation.

###

Joan O'Keefe is Executive Director of Southeast Alaska Independent Living (SAIL), which serves more than 1,200 seniors and people living with disabilities throughout Southeast Alaska. She also leads United Human Services of SE Alaska, the local nonprofit formed to maximize organizational effectiveness by co-locating Juneau social services nonprofits in a shared office building. For more information on the Southeast Community Services Center, visit www.unitedhumanservices.org

United Way of Southeast Alaska

3225 Hospital Drive, Suite 106
Juneau, Alaska 99801
tel 907.463.5530

unitedwayseak.org

July 10, 2020

Planning Commission
Community Development Department
City and Borough of Juneau
155 S. Seward St.
Juneau, AK 99801



Dear Commission Members,

United Way of Southeast Alaska is writing to express their strong support of the proposed emergency shelter and social services building before you as a part of the Conditional Use Permit USE2020 0008. United Way of Southeast Alaska has been a part of this proposed concept since its inception in 2004. Jodi Kilcup, our President/CEO at that time introduced the idea for a joint use facility and over the ensuing sixteen years our organization has continued to support and assist in the development of the concept.

The nonprofit center as envisioned and presented as the plan before you is a project that will transform the way that services are delivered in Juneau. Colocation of nonprofits in the same building will ensure efficiency and convenience for service recipients and will inevitably improve outcomes for consumers. Having an accessible, shared space for service delivery will reinvigorate our system. Locating the project next to the Glory Hall and St Vincent DePaul will transform access to services for those who need them the most.

While we believe this as an ideal location for the center, we acknowledge the concerns being raised by neighbors. No matter where the two facilities would be proposed to be built, there will always be those who think it should be somewhere better. It is our firm belief that this is the best location and with the joint services component to the facility we believe that the services provided and the conditions proposed by the development department will ameliorate those concerns. We are committed to being good neighbors and working to make this facility one that the community will be proud to point to as a model for cooperation amongst agencies.

The shared services facility will include a common use boardroom, classroom, an employee break room, production room and bathrooms but each tenant will have their own secure office space. This concept allows for us to avoid having duplicates facilities in different locations. The facility will allow a one-stop shop for citizens looking for social service help. Additionally, the facility will be designed to allow other nonprofit organizations access to meeting facilities for those who do not have their own meeting space.

On behalf of our organization we thank you for your thoughtful attention and careful consideration of this Conditional Use Permit (CUP) application. We look forward to your approval of the CUP, allowing us to move forward with the completion of this long awaited community facility.

Yours in service,

A handwritten signature in blue ink, appearing to read "Wayne A. Stevens", is written over a horizontal line.

Wayne A. Stevens
President/CEO



ALASKA LEGAL SERVICES CORPORATION
JUNEAU OFFICE

8800 GLACIER HIGHWAY, SUITE 228
JUNEAU, ALASKA 99801-1096
TELEPHONE (907) 586-6425
FAX (907) 586-2449
www.alsc-law.org

June 10, 2020

Juneau Planning Commission
Attn: Irene M. Gallion
City and Borough of Juneau
Senior Planner

Emailed to Irene.Gallion@juneau.org

To Whom it May Concern:

We at Alaska Legal Services Corporation are writing to indicate our support for the proposed United Human Services and Glory Hall campus. We believe a multi-tenant, non-profit social service hub and campus will be of enormous benefit to the Juneau community at large, and have requested to be a tenant in this project. As we provide free legal services to low-income clients and elderly residents, with a priority for serving the most vulnerable populations in the community, we believe that our participation in this unique, wrap-around facility in Juneau would help us best meet the needs of our client population.

For over 50 years, Alaska Legal Services has offered legal aid to assist clients who are facing critical civil legal issues ranging from consumer law, family law, housing problems, public benefits, health care, and other areas specific to veterans or the elderly. In our office and throughout the state, we focus on serving vulnerable populations, including survivors of domestic violence, and those at risk of losing housing, health care, or family stability.

Coupling housing and shelter supports with strategic services is compelling and fills a significant need for the Juneau community and for our client population. We believe our clients and others will benefit from the opportunity to obtain comprehensive services. We believe there will be a collective benefit to social service agencies and providers, as well: we think this hub will create an environment that not only strengthens inter-agency relationships and organizational networks, but also maximizes efficiency.

We have attended informational meetings regarding the proposed center, and have informed UHS staff regarding our interest in leasing space in this center. We are excited about the concept of the multi-tenant, non-profit social service hub at the Teal Street campus. Please accept this letter of support as indication of our enthusiasm in the project. We strongly believe that this project will be of benefit to the Juneau community at large.

Sincerely,

A handwritten signature in black ink, appearing to read "Nikole Nelson".

Nikole Nelson
Executive Director

A handwritten signature in blue ink, appearing to read "Heather Parker".

Heather Parker
Southeast Supervising Attorney

ALSC BOARD OF DIRECTORS

RESOLUTION 19-04

December 7, 2019

A resolution of Alaska Legal Services Corporation supporting a prospective lease of Juneau office space from United Human Services of Southeast Alaska, Inc.

WHEREAS, the Juneau office of ALSC will be at the end of its five year lease with Jordan Creek Center in October 2020 and will be considering lease options at that time; and

WHEREAS, United Human Services of Southeast Alaska, Inc. (UHS) is a non-profit agency organized in 2009 to develop a multi-tenant nonprofit center in Juneau; and

WHEREAS, UHS was created under the guidance of the Rasmuson Foundation, the Denali Commission, and the Alaska Mental Health Trust Authority in response to a 2008 McDowell Group study finding a need for the center, and identifying significant benefits such as offering "one-stop shopping" for people in need of social services, delivering fiscal benefits through economies of scale, and creating an environment that encourages innovation and strengthens inter-agency relationships and organizational networks; and

WHEREAS, UHS is seeking to establish non-profit tenant rent at \$2 per square foot or less, and the Juneau office rent in 2020 will be \$2.20 per square foot; and

WHEREAS, UHS is in the process of purchasing land to construct a new building now, and estimates construction to take place in 2022; and

WHEREAS, UHS is seeking tenant commitments now to ensure the viability of this project, and to design the new building in accordance with tenant needs; and

WHEREAS, after education about the center and attendance at informational meetings, the staff of ALSC's Juneau office supports inclusion of ALSC in the new multi-tenant nonprofit center for the convenience of our clients and coordination with partner agencies including SAIL, Inc., United Way of Southeast Alaska, and potentially the Disability Law Center of Alaska.

NOW, THEREFORE BE IT RESOLVED: That the Board of Directors of Alaska Legal Services Corporation hereby authorizes and encourages ALSC to commit to being a part of the UHS multi-tenant nonprofit center in Juneau, working with UHS to design space appropriate to ALSC's Juneau office staff, working with the UHS capital campaign to support funding for the project, and to lease such space from UHS on a long-term basis upon completion of the new building.

FAULKNER BANFIELD

A PROFESSIONAL CORPORATION

8420 AIRPORT BLVD., SUITE 101 • JUNEAU, ALASKA 99801-6924

PHONE: (907) 586-2210 • FAX: (907) 586-8090

BETHANN BOUDAH CHAPMAN

Direct Phone: 907.523.6147

bchapman@faulknerbanfield.com

July 12, 2020

Planning Commission
City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801
Via email only

Re: USE2020 0008

Dear Members of the Planning Commission,

I am writing on behalf of Faulkner Banfield, PC to support a conditional use permit for an emergency shelter and social services office building. Faulkner Banfield's office is located a few blocks from the proposed construction site. We believe that locating the Glory Hall shelter and the nonprofit office building in the area will not only benefit the community but will improve the area. The area is mostly commercial buildings and the location of St. Vincent De Paul transitional housing. The Glory Hall will not alter the nature of the area and we believe will improve the area. the non-profit center would permit several related non-profit organizations to occupy one building at overall lower costs and allow individuals needing services to travel to one location. The planned construction would incorporate well designed buildings into the area and will not only provide essential services but will beautify the area. We understand the concerns that a homeless shelter may result in increased crime, but we are confident that the Glory Hall will continue their mission of providing the needed services and being a good neighbor.

We believe that our community must provide our fellow residents the services they need in a safe and humane environment and the proposed shelter and social services office building will meet that need.

Sincerely,



BethAnn Boudah Chapman



CENTRAL COUNCIL

Tlingit and Haida Indian Tribes of Alaska

Office of the President • Edward K. Thomas Building
9097 Glacier Highway • Juneau, Alaska 99801

June 2, 2020

City and Borough of Juneau
Permit Center
230 S Franklin Street
Juneau, AK 99801

RE: Support for The Glory Hall Emergency Shelter and Non-Profit Service Center Permit

To Whom it May Concern:

Many who live and work in the Juneau Borough understand the important service the Glory Hall has provided to those in need. It is also understood that the need for these services have risen dramatically over the years and is likely to increase further as a result of the economic impact Covid-19 has had on the economy. The current Glory Hall has limited space and storage. Building a new shelter, along with a non-profit service center, would greatly enhance resources for Juneau's population experiencing homelessness.

Central Council Tlingit & Haida Indian Tribes of Alaska (Tlingit & Haida) understands that 35%-45% of the people utilizing the Glory Hall are Alaska Native. The Glory Hall has provided emergency shelter for many of our tribal citizens, as well access to healthy meals. In addition, there is an undeniable link between homelessness, substance use disorders and incarceration. This is of great concern to the tribe, as we are committed to addressing high recidivism rates and promoting recovery from addiction, in our Reentry & Recovery department.

A new building and location for the Glory Hall and service center will enable providers to create more effective programming. As a neighbor to the proposed project, Tlingit & Haida's sees this development as an improvement to the community and a way to further support and lift people up, which remains one of our most important traditional values.

For these reasons, as well as the right for all people to have access to safe housing, Tlingit & Haida supports the Glory Hall's proposed new emergency shelter and non-profit service center and appreciates their willingness to address this vital community need.

Gunalchéesh, Háw'aa,

Richard J. Peterson
President



2075 Jordan Ave.
Juneau, AK 99801

Phone: 907.789.7610
Fax: 907.789.2106

June 26, 2020

RE: Social Services Campus Project

Dear Members of the Planning Commission,

Please find this letter in support of development of the new social services campus project on Teal Street. Juneau Youth Services is a close neighbor of the lot on which this development is proposed, and we enthusiastically look forward to the even greater collaborative opportunities that the campus will provide, helping all of our agencies to better serve the community.

Established in 1961, Juneau Youth Services (JYS) is a comprehensive behavioral health provider for children and youth, and their families. Nearly sixty years ago, Juneau Youth Services (then called the Juneau Receiving Home) met the needs of runaway, homeless, and at-risk youth. JYS provides an array of residential and community-based programs, including both mental health and chemical dependency services in the most-normative and least-restrictive settings. In addition, Juneau Youth Services is a proud member of the Juneau Coalition on Housing and Homelessness.

The proposed project will add vibrancy to the neighborhood already serving Juneau's vulnerable populations, with attractive structures and increased occupancy potential. More importantly, the campus will enhance the area by providing robust support from a variety of service providers in one accessible location, close to the bus line and to other supports. We strongly encourage the Planning Commission to approve the campus's conditional-use service application.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gus Marx".

Gus Marx, Grants Director



June 8, 2020

RE: Social Services Campus (Nonprofit Center and new TGH facility) Support

Dear City and Borough Assembly Members, Planning Commission, and Manager Rorie Watt:

The Juneau Coalition on Housing and Homelessness (JCHH) is writing in unwavering and enthusiastic support of the Nonprofit Center and new Glory Hall Facility project.

JCHH is a partnership of local agencies and organizations who serve those experiencing or in danger of homelessness in Juneau. These organizations participate in the Juneau Continuum of Care by providing emergency, transitional, permanent-supportive, and supportive services to clients. We individually and collectively work together to develop solutions.

The Glory Hall is one of the founding members of JCHH, and the work that they do, in collaboration with a myriad of partners is critical to our community. The Housing First Project, the Navigator Program, food delivery to those most in need, are some of the important community projects in which the Glory Hall has a critical role. Annually, the Glory Hall provides over 55,000 meals and over 11,000 safe emergency shelter beds. This number is going to be reduced due to the inadequate design of their facility during the Covid-19 pandemic. The disruption to the Glory Hall's services is detrimental to our community's ability to serve those most in need.

The nonprofit center, envisioned by United Human Services and coordinated largely by Southeast Alaska Independent Living, another founding member of this coalition, is a project that will transform the way services are delivered in Juneau. Co-location of nonprofits in the same building will ensure efficiency and convenience for service recipients and will inevitably improve outcomes for consumers. Having an accessible, shared space for service delivery will reinvigorate our system. Locating the project next to the Glory Hall and St. Vincent DePaul, another founding member of this coalition, will transform access to services for those who need them the most.

The Juneau Coalition on Housing and Homelessness urges City and Borough of Juneau to do everything in your power to work with SAIL, United Human Services, and the Glory Hall to make this project a reality. The Glory Hall is in critical need of the new building. Those without housing in Juneau deserve an accessible, safe, and dignified space. The nonprofits who do great work in Juneau are scattered all throughout town, making it extremely challenging to make progress in the lives of those who need help. Your

support of this project will make true, lasting, and meaningful difference in our community for generations to come.

In the time of Covid-19, multiple organizations being available in one place will reduce the amount of trips high-risk individuals need to make to access much needed services, adding to the already critical list of reasons to support this project.

Your support of this project will make a true, lasting, and meaningful difference in our community for generations to come.

Thank you very much for your service. We look forward to working with you and to continuing discussions about this and other issues. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gus Marx". The signature is fluid and cursive, with a large, sweeping initial "G".

Gus Marx, Co-Chair
Chair

A handwritten signature in blue ink, appearing to read "Hazel Lecount". The signature is cursive and somewhat stylized, with a prominent "H" and "L".

Hazel Lecount, Co-

State of the

SHARED SPACE SECTOR 2019 Report



THE NONPROFIT CENTERS | NETWORK

The State of the Sector 2019

Executive Summary

Authors / Contributors:

Leena Waite, Jackie Cefola, Saul Ettlin, Sydney Moore

Over nearly ten years, The Nonprofit Centers Network (NCN) has seen the rapid growth of nonprofit centers across the United States and Canada. Falling under the umbrella of social purpose real estate, hundreds of nonprofit centers are meeting the needs of organizations by providing high quality workspace, improving programming and operations and providing the infrastructure to achieve greater community impact.

In 2019, NCN implemented the third “State of the Shared Space Sector” survey, collecting information from 102 open North American nonprofit centers. The purpose of the survey was both to update existing data about how centers are doing and to also raise awareness and advocacy for shared space as a solution to the challenges in the nonprofit sector. Increasingly, nonprofit organizations struggle to find quality spaces that meet their needs in the communities they serve and not be displaced by rising rental costs. As survey results indicate, nonprofit centers continue to support the needs of organizations, individuals and communities.

Addressing nonprofit space needs through sharing positively impacts both mission and finances. Organizations see improvements in staff morale, retention and productivity, increased programming and additional opportunities for collaboration. Most organizations also see financial savings that are reinvested in their programming. Nonprofit centers themselves are stable financial organizations, with 81% of centers breaking-even or generating a surplus. Overall, nonprofit center revenues increased while continuing to generate financial savings, primarily from reduced rental rates for tenant organizations. In addition to rent savings, sharing resources equates to time savings when tenant organizations have more of what they need at their fingertips. These financial benefits reflect how nonprofit centers enable tenant organizations to operate more efficiently and effectively, to better fulfill their missions and serve local communities.

Given the results of the survey, NCN confidently concludes that the state of the shared space sector in 2019 is strong. This report outlines the findings to demonstrate the similarities and differences in how nonprofit centers operate, how centers meet tenant organizations’ needs and how centers are planning for the future. The hope is that this provides the reader with the information and guidance needed to better understand the nonprofit center model and how this strategy has the potential to benefit organizations and communities across North America.

THE NONPROFIT CENTERS | NETWORK

1536 Wynkoop Street, Suite 103 Denver, CO 80202
www.nonprofitcenters.org | info@nonprofitcenters.org

Findings

Sector Overview

The number of nonprofit centers continues to grow. There are approximately 570 known nonprofit centers in 2019, up from 393 in 2015 and 211 in 2011.¹ Of the 570 centers, 79% are in the United States, 19% are in Canada and 1% are in other countries.²

NCN estimates that collectively the sector occupies about 19 million square feet, housing 8,500 organizations that employ nearly 35,000 employees.

Typical Nonprofit Center in US and Canada

As was the case in 2015, nonprofit centers in the United States and Canada remain similar in size, scope and revenue, but the typical nonprofit center data has changed in the past four years. The chart below outlines the data for the two countries, comparing 2015 and 2019. The biggest changes are in gross revenues and management staff, even when accounting for inflation. The number of tenants has risen slightly, but there are fewer overall employees. This may be due to more larger centers/campuses filling out the survey in 2015. That said, the median square footage for both countries remains consistent.

Years	2019		2015	
Country	USA	CANADA	USA	CANADA
Square Footage	35,500	32,000	35,000	33,000
Number of Tenants	15	15	12	13
Total Employees in the Building	61	63	70	78
Gross Revenues	\$692,000 ³	\$671,000	\$500,000	\$480,000
Management Staff	4	4	2	2

Center Typology

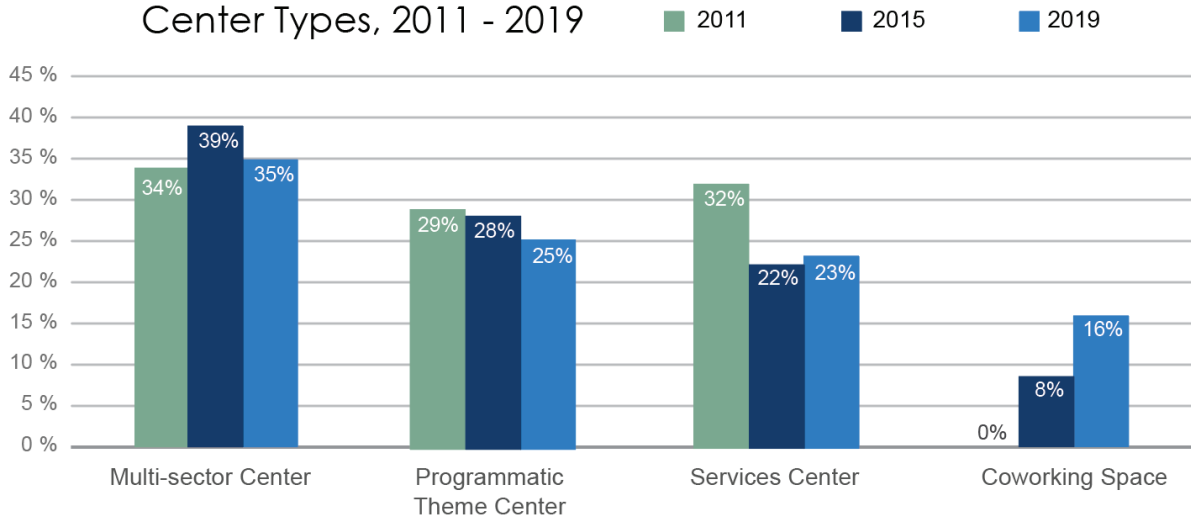
Although no two nonprofit centers are exactly alike, NCN typically classifies centers as either multi-sector, programmatic theme or service centers. Multi-sector centers are predominantly focused on providing affordable office space for nonprofits and social impact organizations. These spaces are commonly found in rural areas and in major cities with expensive real estate markets. Programmatic theme centers unite nonprofits with a common mission and often focus on collaborative efforts. Service centers bring together nonprofits that serve a specific client population, like youth or people experiencing homelessness. In 2019, our sample included 35% multi-sector centers, 25% theme centers and 23% service centers. Some multi-sector centers also include nonprofit incubation for the benefit of getting nonprofits started but not providing permanent tenancy.

¹ The first survey data was captured in our report, *Measuring Collaboration: The Benefits and Impacts of Shared Spaces*, which can be found here: <https://www.nonprofitcenters.org/research-and-publications/>

² There are nonprofit centers in other countries, but NCN has historically served and tracked those in US and Canada. NCN continues to update the map of known centers here: www.nonprofitcenters.org/nonprofit-centers-locations-map/

³ Even when accounting for inflation, the difference is about \$140,000 USD from 2015 to 2019.

Center Types, 2011 - 2019



Voices from the Field: Coworking

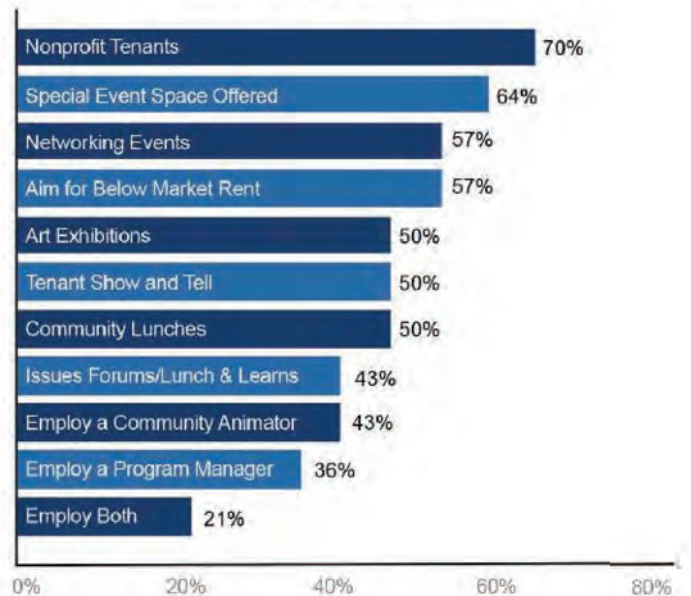
“Overall coworking space has allowed me to gain exposure to programmatic resources I wouldn’t otherwise have. For example, I can easily meet with my clients who are also tenants of my organization. This allows me to build genuine relationships and be accessible to their needs.”

Notably, 16% of nonprofit centers identify as coworking spaces, a significant increase from previous years.⁴ Coworking is a growing trend around the world, typically with for-profit entities providing flexible office spaces, desks in an open-floor plan and/or meeting rooms. In contrast, nonprofit center coworking spaces report that they are designed to create a mission-driven, collaborative environment for the purpose of greater social impact, as evidenced by their make-up, staffing and community offerings below. The majority of these coworking spaces have nonprofit tenants as over 75% of their constituency. Many coworking spaces also include government agencies, individual entrepreneurs or remote staff of off-site organizations.

Nonprofit center coworking tenants get more than just a desk and a place to work. Coworking centers report a mission focus in hosting community-oriented offerings, offering reduced rent and staffing of a community animator,⁵ program manager or both.

In addition to the nonprofit centers that identify as coworking spaces, another 16% of multi-sector, programmatic and service centers offer coworking space as a part of their buildings. When asked about future plans, an additional 10% of centers say they plan to add a coworking membership program.

Coworking Offerings



⁴ Up from 8% in 2015

⁵ This position has also been titled community catalyzer and in some aspects could fall under a program manager. The main role is to cultivate a culture of community through events and collaborative endeavors, as well as making sure physical and technical resources are functioning to support the community. NCN provides job descriptions, submitted by centers, as a member resource. www.nonprofitcenters.org/become-a-member

Who Owns Shared Spaces

Those developing nonprofit centers commonly ask NCN, “Who should own the space? Should it be the organization exploring the concept, a new nonprofit, perhaps in conjunction with other nonprofit tenants or a separate entity?” The answer is that each nonprofit center is designed, operated and governed in a customized way to meet the needs of the participating organizations, the people the organizations serve and the local community.⁶

While nonprofit centers have a variety of ownership models, ownership by a single nonprofit is the most popular in the US (52%). In some cases, this nonprofit was created to own and operate a shared space, and in others, the shared space is a program of an existing nonprofit.

Who’s In Shared Space

Nonprofit centers have a variety of tenancy strategies to include organizations and individuals from all economic sectors. As expected, the majority of tenants in nonprofit centers are nonprofit or charitable organizations, accounting for 81% of tenants in nonprofit centers. As seen in the chart below showing the average tenant mix, nonprofit centers continue to diversify their community in similar ways to prior years.⁷

While nonprofits are the dominant presence, 38% of centers house for-profit entities, 27% house government entities and 26% house individuals. The presence of individuals is likely connected to the use of coworking in more centers.

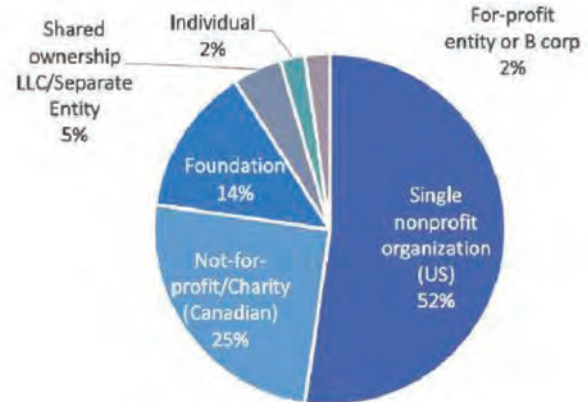
Workspaces Offered By Centers

To be expected, office space (private or demised) and desks/workstations are the most popular workspaces offered in nonprofit centers, with coworking options next in line. The high percentage of centers (88%) that offer private office space options should be noted to those who are interested in an open concept design. While open concept shared spaces allow for more interaction, private or demised space is still in high demand.

⁶ NCN’s online course, [Virtual Boot Camp \(https://sharedspacebootcamp.org/\)](https://sharedspacebootcamp.org/), provides tools to help answer ownership and governance questions.

⁷ 2015’s mix looked like: Nonprofit (86%), For-Profit (5%), Government (4%), Individuals (4%), Other (1%)

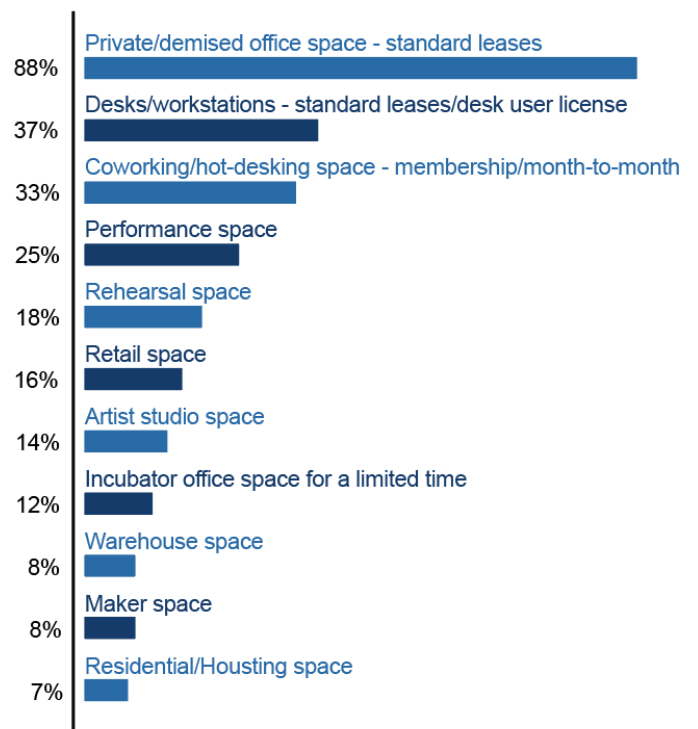
Entities That Own Nonprofit Centers



Typical Tenant Mix of a Nonprofit Center

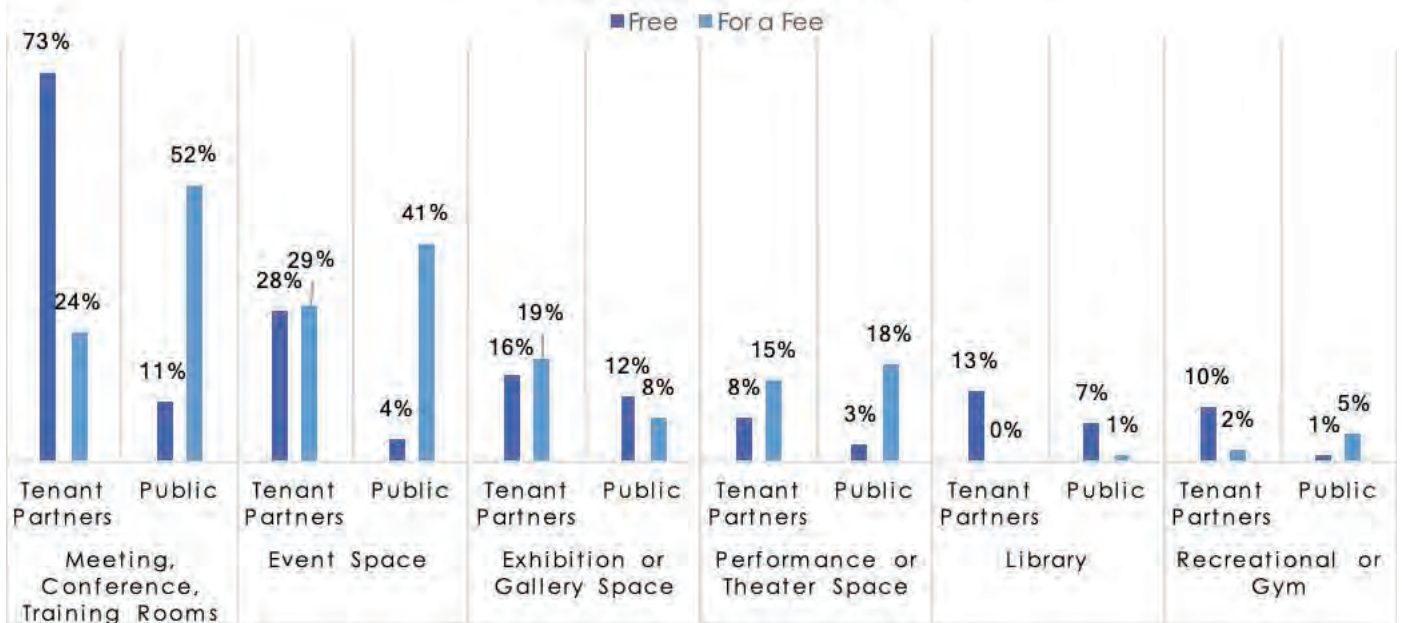


Workspaces Offered by Centers



As the number of nonprofit centers in North America continues to grow so do the types of workspace offerings. Maker spaces,⁸ a collaborative workspace for creating and inventing projects, are a recent addition to many spaces. Additionally, with the high cost of living in some areas, some nonprofit centers, such as arts spaces, are offering a live/work arrangement for artists to continue to create and live where they want to be.⁹

Spaces Available To Tenants Or Public, Free Or For A Fee



Availability of Spaces to Tenants and Public

An often-cited benefit to nonprofit centers is the meeting, conference, event and other shared spaces accessible to tenant organizations. Whether these additional spaces are included in rent or available at an additional cost, having these amenities in your building saves valuable time. Meeting, conference and training rooms continue to be the most popular free offering to tenants. Eleven percent of nonprofit centers offer these spaces for free to the public as well. Event space is the second most popular amenity. It also serves as an additional revenue stream, as 41% of centers offer it to the public for a fee. For tenants, many centers offer an allocation of event space use per year for free, and if an organization has additional needs, a fee may apply. The additional offerings depend on the theme of the center, clientele, size or other factors but may include larger spaces such as a gallery, theater, library or gym.

Shared Services Offered

NCN is hearing from more nonprofit centers that are interested in offering shared back-office services as a feature of their shared space or as an offering to tenants and other local nonprofit organizations.¹⁰ Many of this year's survey responders indicated

Voices from the Field: Space

"Being able to bounce ideas off fellow arts organizations and seek advice on different topics is invaluable. It's also extremely helpful having the rehearsal space downstairs and our offices in the building so we can take care of business-related issues that might pop up during a rehearsal."

⁸ These can include 3D printers, software, electronics, craft, hardware supplies and more. Source - <https://oedb.org/ilibrarian/a-a-librarians-guide-to-makerspaces/>

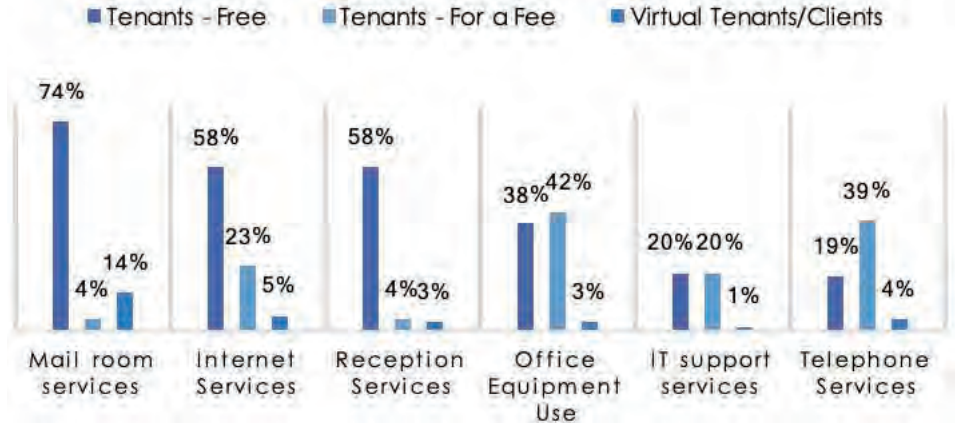
⁹ A select few centers offer housing for vulnerable populations as well.

¹⁰ See NCN's 2019 publication and course, Rethinking Overhead, for various ways of implementing shared services. A free preview can be found at www.rethinkingoverhead.org. Want more support to figure out what's right for you? Head to <https://www.nonprofitcenters.org/consulting/>

Shared Services Offered (Low Risk)

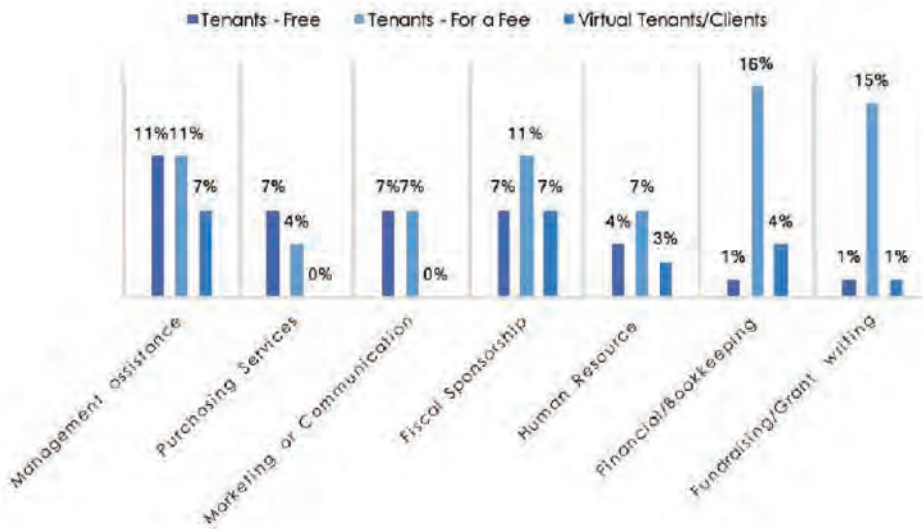
that they are utilizing back office services as another tool to improve nonprofits' organizational capacity.

The top four shared services included in nonprofit centers are mail room, reception, internet and office equipment. Some bundle these services in rent or common area maintenance charges, while other centers charge a fee. Twenty-three percent of centers charge tenants for internet and 42% charge for office equipment use. Other shared services are available for a fee including telephone services and IT support. This category of shared services is frequently low-risk and needed by a wide number of tenants.



A smaller percentage of centers offer additional administrative or management-type services. These services require significant planning and organizational buy-in but greatly benefit organizations with expertise in areas such as fiscal sponsorship, management assistance, marketing and HR. Given that 17% of nonprofit centers plan to start a shared services program in the future, NCN looks forward to seeing how these service offerings evolve and contribute to organizational efficiency.

Additional Shared Services Offered



Impact

Since NCN's first survey in 2011, nonprofit centers have continued to create strong positive impacts on many facets of an organization's operations, including staff productivity and morale, access and quality of services to clients, programming

Voices from the Field: Mission Impact

"Overall, having a shared space has had a positive effect on my knowledge of the organization & the field, has allowed me to engage my relationship building skills, and lets me find the space I need to be productive when I need a change of scenery. I really enjoy working in a shared space that's made available to multiple tenants."

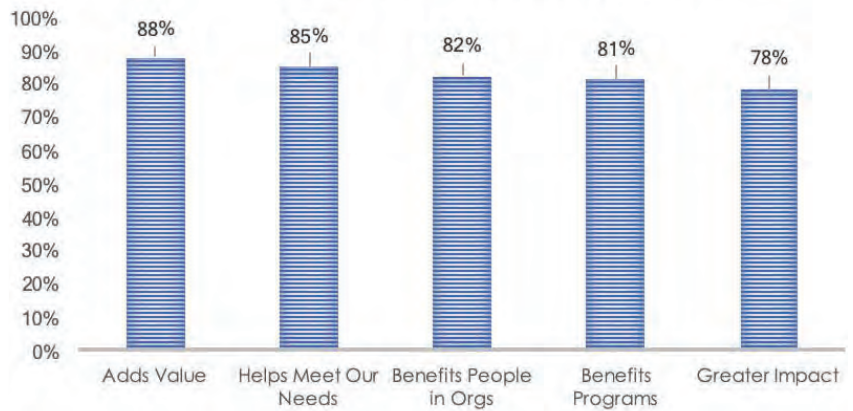
"Our mission is to amplify hope. We are better able to accomplish our mission because we rub shoulders with tenants who are also committed to improving the lives of those they serve."

"Having access to other agencies at the same location is very helpful for the population we serve. Some of our consumers are on budgets and have limited transportation."

improvements and collaboration. With these impacts in mind, nonprofit centers continue to prove to be more than just buildings.

Nonprofit center tenants responded that being in their building affected various aspects of their organization. The top five overall effects are charted below. Almost equally important (ranked 70-78% for improvement) were organizational efficiency and effectiveness and interacting with other building tenants.

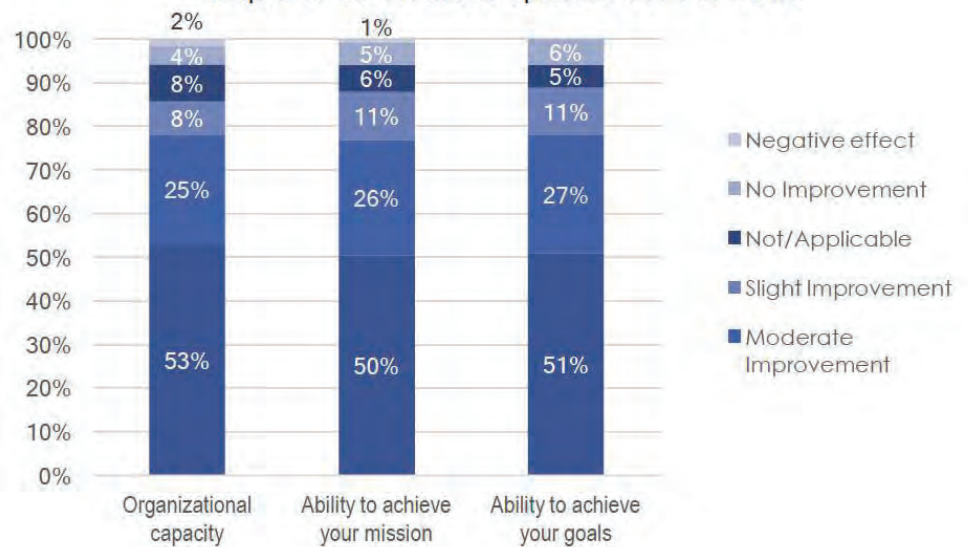
Top 5 Overall Effects Of Nonprofit Center On Organization



Tenant Organizations and Staff

Nonprofit center tenants reported significant organizational benefits because of tenancy: 86% report improvement in overall organizational capacity; 88% report improvement in achieving their mission; and 89% report improvement in achieving their goals. Fifty-one percent report improvement with staff recruitment and retention, and 80% and 78% report improvements in productivity and morale. Tenants cite the quality of office space, access to amenities, affordability, increased efficiency and opportunities for collaboration as having an effect in each of these areas.

Impact of Shared Space on Tenants

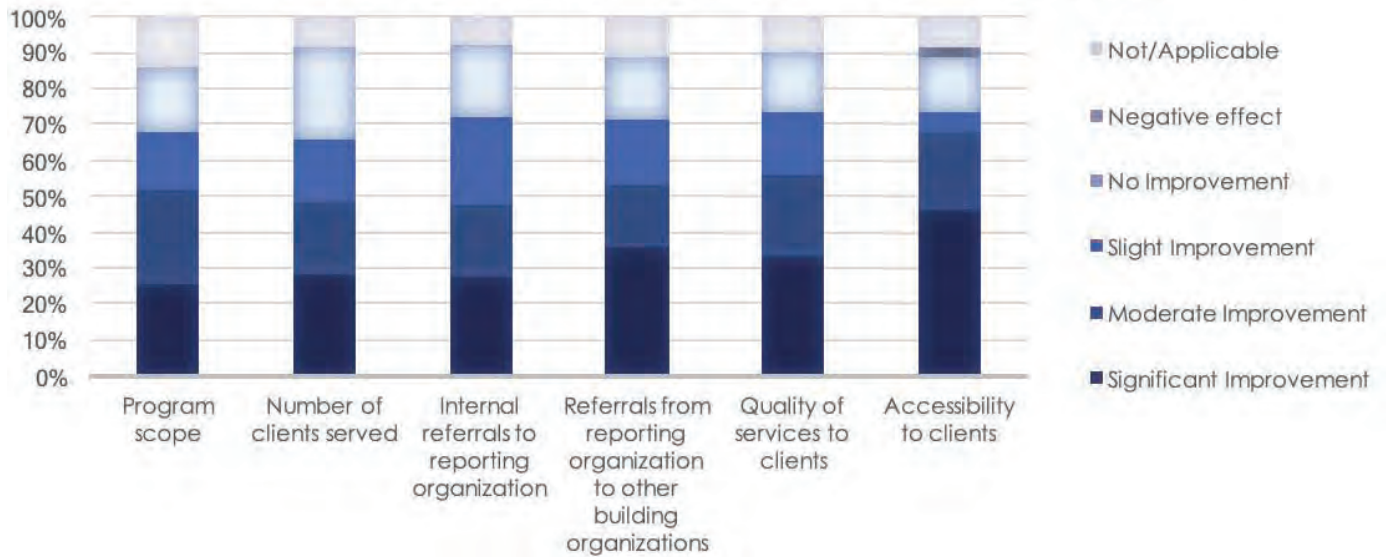


Nonprofit center tenants also reported strong improvement in organizational sustainability (83%), strategic partnerships (85%) and public/community awareness (85%).

Programming

These organizational impacts create greater efficiencies for tenants, allowing them to focus more energy towards programming. This is apparent by the program related impacts charted below. The offerings, number of people served, quality of service and accessibility to clients improve. Additionally, organizations state that they see increases in referrals from other organizations in the building.

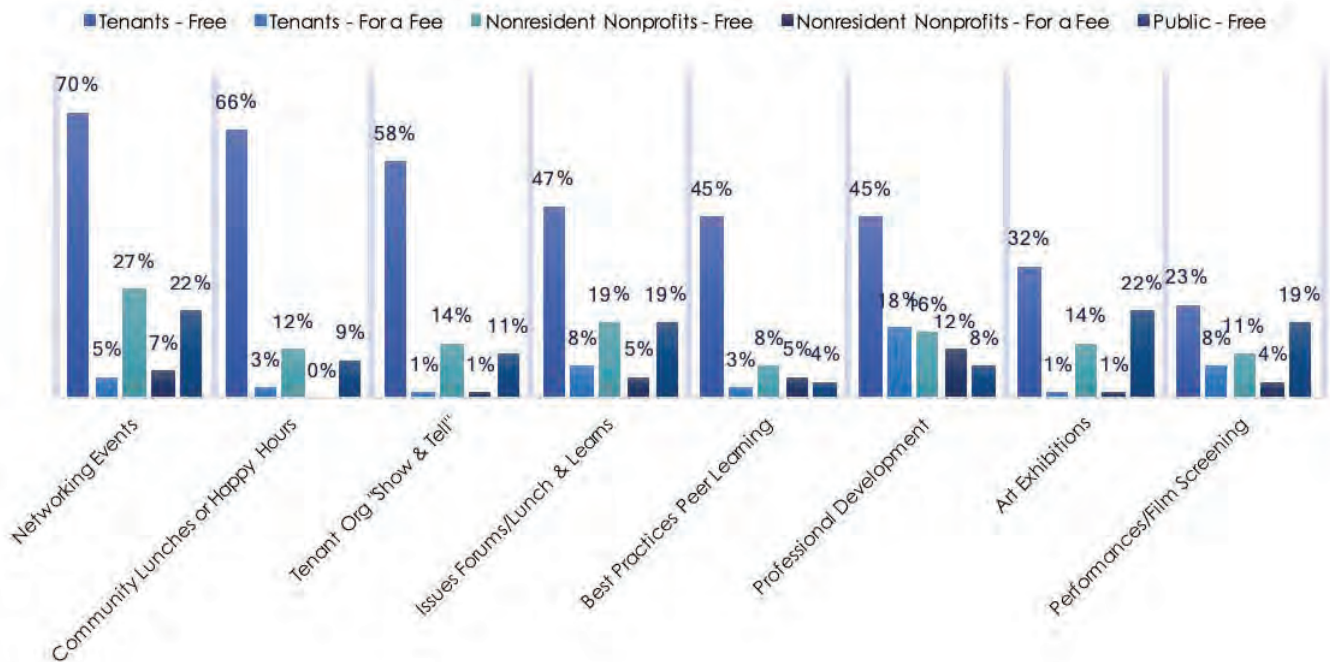
Program Related Impacts Of Shared Space



Center Program Offerings

The types of programs offered by centers is another tangible benefit to tenants and helps strengthen community and collaboration. It is important to create a culture of trust to foster programmatic collaboration. The following graph depicts common program offerings within nonprofit centers.

Center Program Offerings



Cost Savings

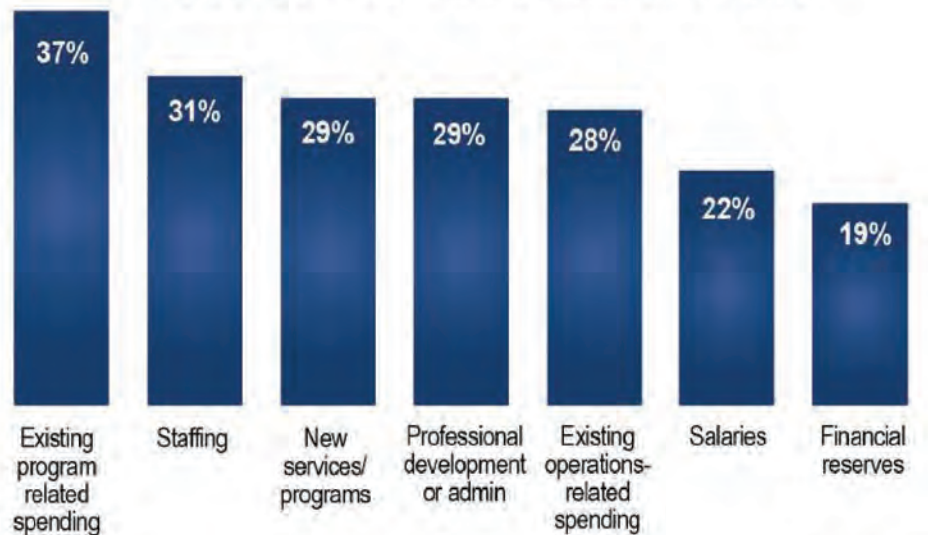
Beyond the programmatic and mission benefits, most tenants save on costs when they are housed in a nonprofit center. Based on the 2019 data, the average annual cost savings for tenants is \$15,500.¹¹

¹¹ It is important to note two things regarding cost savings: In 2015, NCN asked for specific numbers or estimates in the tenant question around cost savings. In 2019, tenants were given answer options in ranges: Under \$5000, \$5000 - \$14,999, continuing in \$14,999 increments until \$74,999, \$24,999 increments until \$99,999, and finishing with \$100,000 and above. The 2015 responses were also a different cross section of tenants, which included centers that are given free rent by a California foundation. In this scenario, the foundation provides tenants a written record of exact amount of annual cost savings, which are significant in that particular rental market.

There was no direct correlation from organizations' budget range to their savings range, but the average budget for the 102 tenants responding to this question was \$1,363,000. It is also important to note the included amenities and time savings that equate to cost savings, whether that's executive directors being able to focus on their priorities and not on troubleshooting IT issues, finding off-site meeting room space, ordering printing paper or other similarly distracting tasks.

These savings are typically reallocated to programming, either for existing programs, increased staffing or developing new programs or services. Professional development is also on par with new programs and services. This data continues to prove that investing in a nonprofit center is an investment in the growth of many organizations.

Cost Savings Redistribution Areas



Voices from the Field: Cost Savings

"Our goal is not to make a profit off of our tenants. We only charge what is necessary."

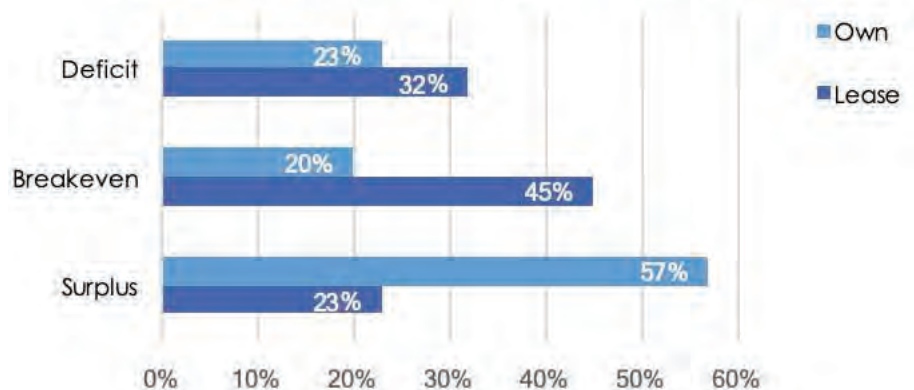
"We need more rent-able square footage to bring costs down per square foot and increase revenue."

"There is a lot of common area so we charge a flat rate rather than triple-net...It is hard to charge more as the clients cannot pay more and yet the costs of operations (repairs, maintenance) are going up."

Financial Sustainability

From NCN's data collection in 2011 to now, mission-driven nonprofit centers continue to be viable financial operations with 81% of centers meeting or exceeding their expenses. Those centers running a deficit has decreased from 23% in 2015 to 19%. At the same time, a larger number of centers have gone from having a surplus to being at a breakeven point. The responses also show that it can be more financially challenging to run a space that is leased than one that is owned, although, arguably, easier

Financial Sustainability in Lease vs Own



to get started due to the lower initial capital investment of not having to buy a building.

Owning a center demonstrates a strong indicator for having a financial surplus with 57% of centers reporting as such. Leasing tends to lead more towards a breakeven scenario (45%). Clearly other factors play a role and neither leasing nor owning a building will dictate financial sustainability alone. That said, 60% of centers report owning their building verses 40% that lease.

Center Profitability

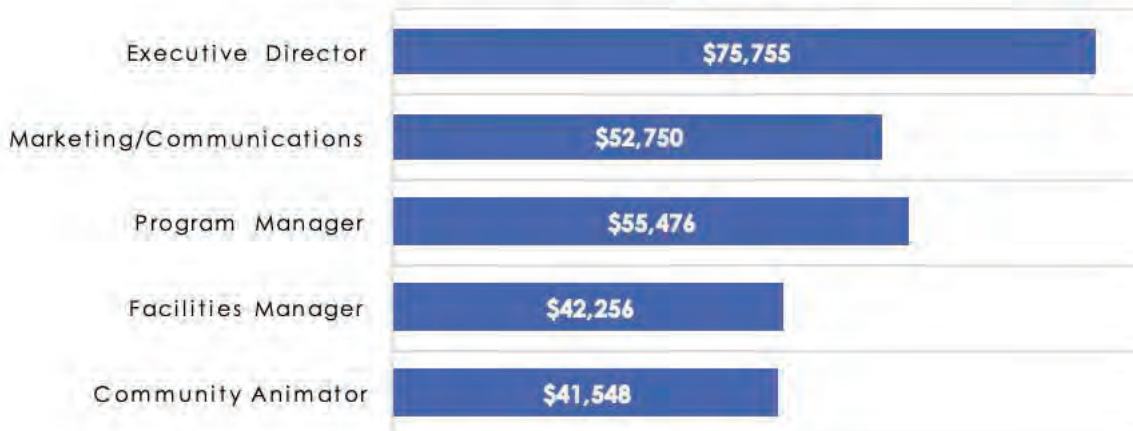


Demand in nonprofit centers continues to be high with 79% of nonprofits having a 10% or less vacancy rate, including 46% with zero vacancies and the average vacancy being 8%.

Typical Staffing Positions and Salaries

Both Canadian and US centers have about 4 full-time equivalent staff to manage a center. These positions typically include a combination of an executive director, marketing or communications, facility manager, program manager and/or community animator. This will fluctuate based on each market area but gives communities an idea for staffing costs to effectively run a center. On average, staff salaries account for 33% of reporting budgets. Position specific average salaries are shown below.

Center Staff Average Salaries



Collaboration and Success

In 2016, a cohort of organizations worked with NCN to define collaboration and formulate action steps on how to accomplish it. The resulting definition stated, “Two or more tenants that work together, informally or formally, toward a common, mutually beneficial goal.” In this 2019 survey, many centers shared a similarly worded answer. For some, the simple fact of co-locating enables this to happen, while for others it is more intentional. The exchange of ideas can occur through hall conversations, center led programming/events or by community needs and interest driving tenants towards programming.

Voices from the Field: Collaboration

Some centers create a culture of collaboration through their tenant selection process, a formal membership agreement between agencies, sharing back office services or tenants partnering for programming. As demonstrated in the voices from the field, some centers work to be the catalyst, understanding that it cannot be forced, but that they can provide the spark for relationship building that leads to greater impact.

Next Steps

What's Next for Centers

Centers are continually looking for ways to evolve to better support their tenants. Seventy-two centers shared their future plans, and many are looking to tackle more than one area - 13% want to tackle at least 6 items and only 17% of centers want to pursue one item.

Programming and collaboration are at the top, followed by measuring impact and capital improvement projects.¹²

"It's important to us to create the conditions in which collaboration can occur...What collaboration can be is really defined by the tenants."

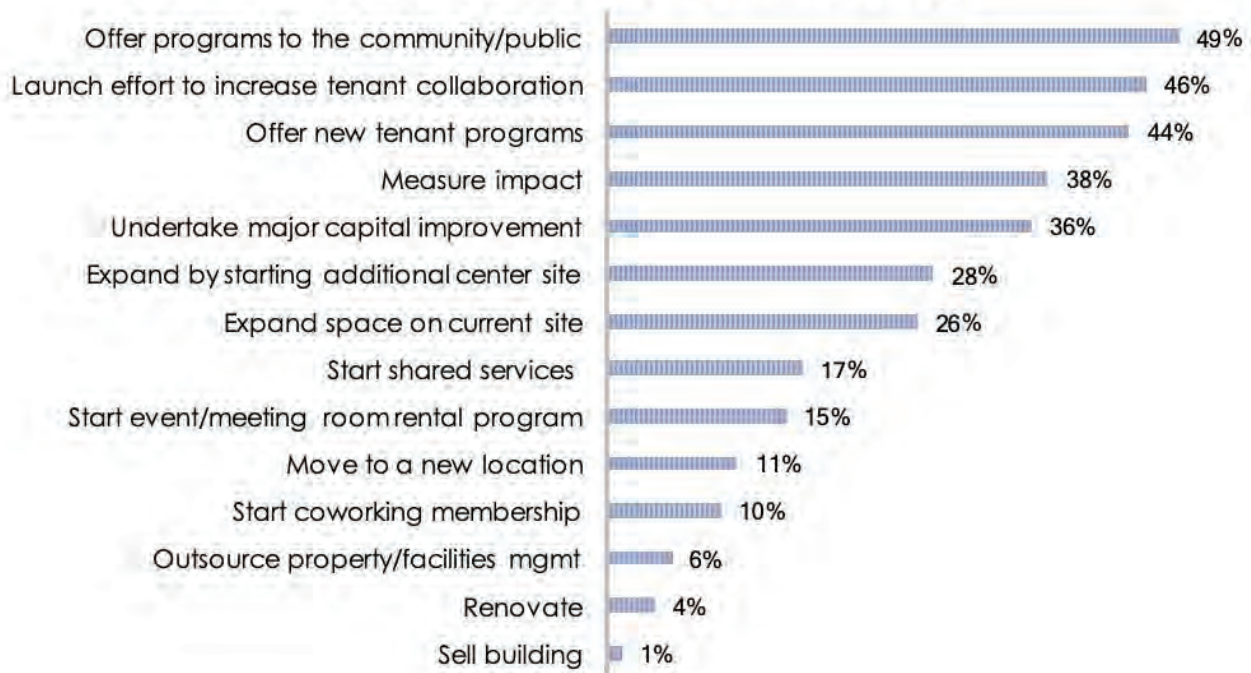
"Our environment is intentionally non-competitive...and a common table ethos."

"This effort only works with collaboration as a core operating assumption."

"We are relationship builders and dot connectors. Collaboration is a mindset."

"Formal membership agreements with 6 agencies for which we fundraise, market and strategic plan together."

Future Plans or Offerings



Clearly many centers are seeing success and finding ways to put their resources into the areas they feel will make a greater impact.

¹² NCN's consulting practice can help you realize your future plans. Email info@nonprofitcenters.org to find out more.

What Does Success Look Like?

How centers define and measure success varies based on mission, but there are tangible aspects that stood out above the rest: occupancy and retention, tenant success/satisfaction and tenant engagement. How centers measure success ranges from tenant surveys, specific software tools and collecting stories, formally and informally. These outputs indicate deeper outcomes like greater social impact, collaboration and mission alignment.

Voices from the Field: Success Means...

“Being able to support a diverse range of cultural undertakings and being able to offer a safe, productive and enjoyable artist residency experience.”

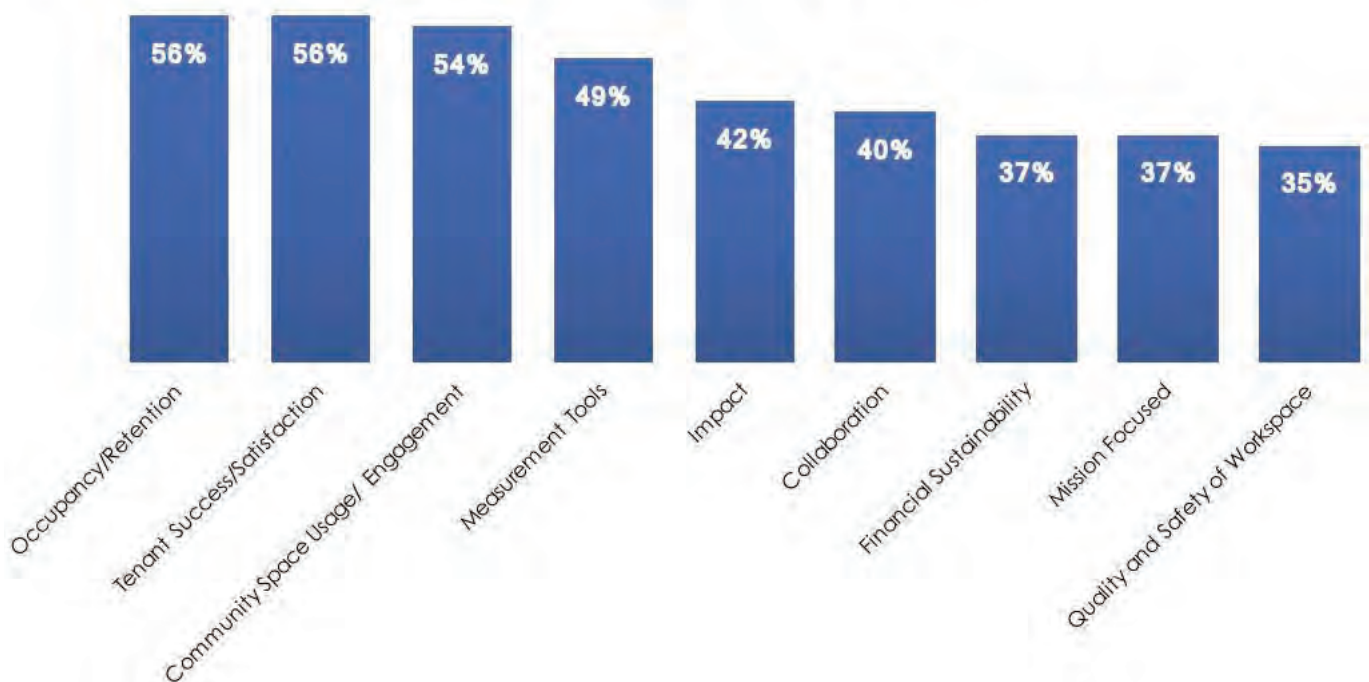
“At the core, success is allowing our tenant organizations to do more of their critical work toward a world of shared prosperity and social justice through their savings from officing (here).”

“Programs collaboratively provide needed services to vulnerable populations.”

“Success is based on our progress towards our strategic goals in the three following strategic areas: convene, connect, catalyze.”

“When we are viewed as the place where people meet to solve problems and make the city and the world a better place.”

Factors by Which Success Is Measured



Conclusion

Nonprofits are finding solutions to challenges around space, resources, collaboration and cost savings by co-locating in one building. With three surveys and accompanying reports in the past 9 years, it is evident that nonprofit centers are addressing the obstacles of higher rents, potential displacement, varying space needs and the many tasks that can distract organizations from their missions. While a nonprofit organization might only be looking to address one or two of these challenges, the benefits of sharing with other organizations often meets these initial challenges and much more.

No two centers are identical, because each addresses the unique needs of their area; yet, there is ample data and overlap to show how this model can work for nonprofits in cities of all types. The growth of this model across the US and Canada demonstrates this success and provides many examples for future organizations and communities to consider.

Methodology

For the purpose of this study, the definition of “nonprofit center” is a physical facility that intentionally houses more than one nonprofit organization with a social purpose.

In February 2019, The Nonprofit Centers Network sent an e-mail survey with 71 questions to 540 either known or potential nonprofit centers. NCN maintains a database and map of intentionally created nonprofit which combined contains 570 nonprofit centers. Accounting for bounce backs, unknown contacts and bad e-mail addresses, a total of 482 individuals received the survey. Of that number, 108 centers responded for a response rate of 22%; 76% were from the United States and 24% were from Canada. Six centers are in development and of the 102 remaining responses, 12% are new centers that have been open for less than 2 years and 88% have been open for more than 2 years.

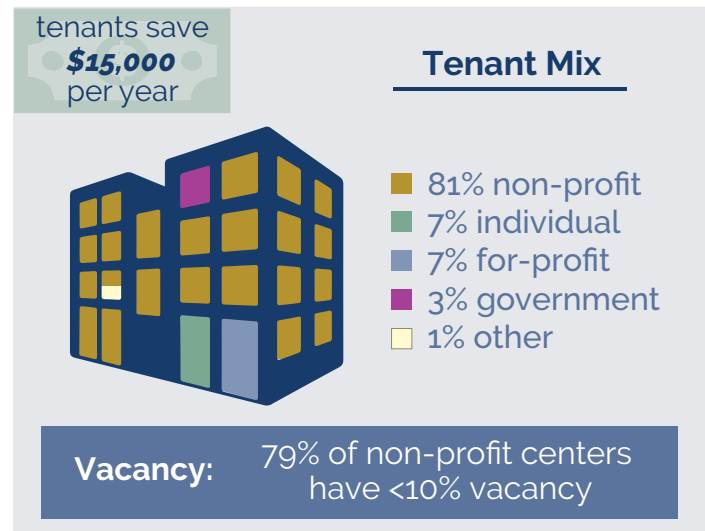
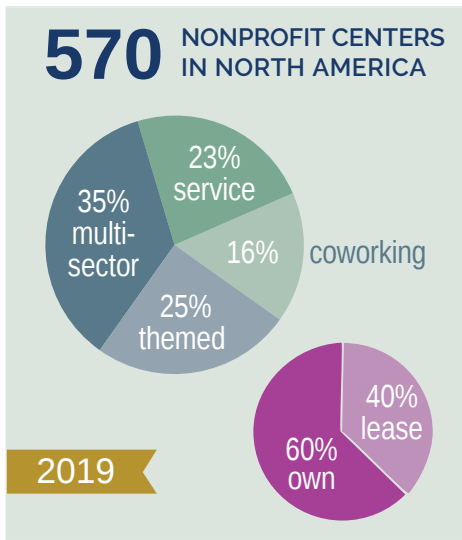
Additionally, a 21-question survey was provided to the executive directors of tenants within 19 nonprofit centers representing a broad cross-section of buildings both in the US and Canada. This sample included a total of 442 executive directors, of whom 124 responded to the survey for a 28% response rate.

WHY NONPROFIT CENTERS MATTER TO COMMUNITIES

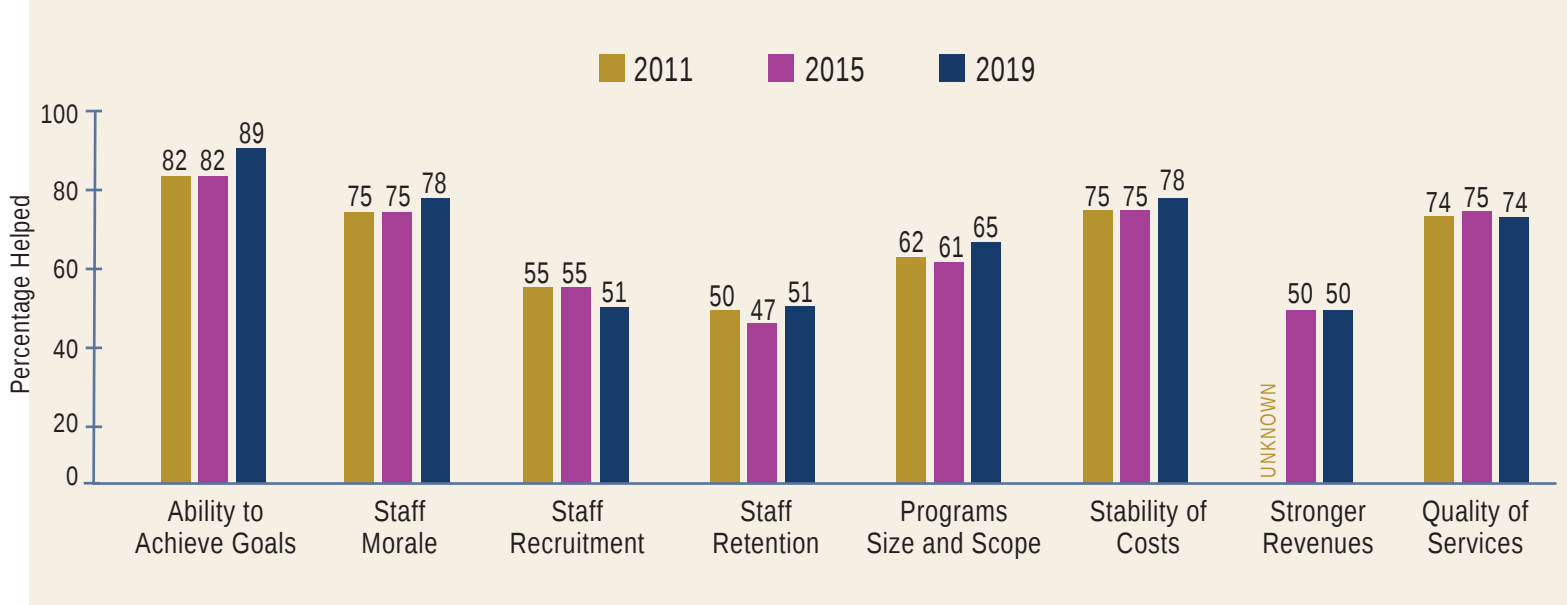
Packet Page 146 of 169

SOCIAL PURPOSE REAL ESTATE

spaces that serve the common good



COMMUNITY ORGANIZATIONS REPORT NONPROFIT CENTERS IMPROVE...



JOIN US IN SUPPORTING NONPROFIT CENTERS

THE NONPROFIT CENTERS | NETWORK

Nonprofit Centers Network is an international leader in the field of social purpose real estate. They work to increase the effectiveness of the nonprofit sector by supporting nonprofit centers.

*Survey of over 100 nonprofit centers conducted by NCN in 2019

More info and sources: www.nonprofitcenters.org/sector2019



August 26, 2020

Mayor Beth Weldon
The City and Borough of Juneau Assembly Members
155 S. Seward Street
Juneau, Alaska 99801

Re: Sealaska Heritage Institute Arts Campus

Honorable Mayor and Assembly Members,

SHI has been keeping Rorie Watt, CBJ Manager informed as to the progress, project updates, needs, etc. of the Arts Campus. We have successfully raised approximately \$10,400,000 to date with another \$2.5 million to raise.

We understood that CBJ supported the construction of the Arts Campus and were hopeful that CBJ would ultimately make a financial contribution perhaps by this fall or at the latest in the spring or summer of 2021. We began construction with this assumption, perhaps naively so, that CBJ would make a financial contribution.

SHI felt it important to move forward with construction as the facility is designed to provide e-learning instructional programming that has become increasingly critical with the closure of schools and move to virtual education. We were also aware that the construction would provide for immediate jobs/economic impacts (55 jobs and \$10 million economic impact per a McDowell Group study) that will provide benefits for our community needs. Further was the consideration that the Arts Campus might provide a glimmer of hope and inspiration in these challenging times not to mention that a delay would result in near 5% increase in cost with inflation.

With the full funding not in hand, we will be required to delay construction of major components of the Campus---including such features as the canopies, the large gathering awning that would be used for performing arts, the pavers in the large courtyard, two upper classroom spaces, as well as other smaller elements. Without the external features, the Campus will definitely not be as aesthetically pleasing or public/visitor friendly. This would be unfortunate as it could serve to diminish visitorship and public use of the performance and classroom areas.

Despite a very successful 2020 Virtual Celebration, our Board of Trustees decided that our community and Juneau would benefit---socially, culturally and financially---from an in-person Celebration that will be held in late summer of 2021. We had hoped that the Campus would be completed for Celebration 2021, which would also be an opportune time for a grand ceremony for the opening of the Arts Campus that the Mayor and Assembly could attend. During this period of public discourse and consciousness focused on social and racial equity, it would send a powerful message to our community that CBJ supports its minority and diverse population with a CBJ contribution to the Arts Campus.

We are respectfully requesting your financial support to allow us to complete the construction of the Arts Campus.

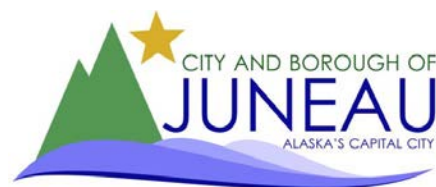
Sincerely,

A handwritten signature in black ink, appearing to read "Rosita Worl".

Rosita Kaahani Worl, Ph.D.
President



MEMORANDUM



DATE: August 28, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

SUBJECT: FY2020 Financial Closing and Expenditure Authority Lapse

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

CBJ's FY2020 financial closing and final budgetary lapse of general funds remains highly uncertain. Additional information received in the coming months may shift current estimates. However, based on current calculations that varied from budgetary estimates, we are projecting to close FY2020 better than anticipated at the end of the spring budget process, with an estimated \$900,000 surplus instead of an estimated \$1.4M draw from combined unrestricted fund balance. Known factors indicate a year-end total restricted and unrestricted fund balance of \$36.0M, with a range of uncertainty from \$34M to \$38M.

	General Fund	Sales Tax	Total
FY20 Beginning Fund Balance	<u>\$ 8,334,600</u>	<u>\$ 10,155,200</u>	<u>\$ 18,489,800</u>
FY20 Budgeted Surplus (Draw), as presented in MBT	<u>\$ 2,479,600</u>	<u>\$ (3,842,900)</u>	<u>\$ (1,363,300)</u>
Temporarily Unavailable for Small Business Loans	\$ (3,000,000)	\$ -	\$ (3,000,000)
4th Quarter Sales Tax (above estimates)	\$ -	\$ 2,400,000	\$ 2,400,000
Transit CARES Grant (covering operations)	\$ 900,000	\$ -	\$ 900,000
Investment Income (above estimates)	\$ 1,000,000	\$ -	\$ 1,000,000
Additional GF Departmental Lapse	<u>\$ 1,000,000</u>	<u>\$ -</u>	<u>\$ 1,000,000</u>
Estimated Surplus (Draw)	<u>\$ 2,379,600</u>	<u>\$ (1,442,900)</u>	<u>\$ 936,700</u>
FY20 Ending Available Fund Balance	<u>\$ 10,714,200</u>	<u>\$ 8,712,300</u>	<u>\$ 19,426,500</u>
FY20 Restricted Budget Reserve	<u>\$ 16,600,000</u>	<u>\$ -</u>	<u>\$ 16,600,000</u>
Mid-Range Total Available/Restricted Fund Balance	<u>\$ 27,314,200</u>	<u>\$ 8,712,300</u>	<u>\$ 36,026,500</u>
Estimated Range, Low	<u>\$ 25,814,200</u>	<u>\$ 8,212,300</u>	<u>\$ 34,026,500</u>
Estimated Range, High	<u>\$ 28,814,200</u>	<u>\$ 9,212,300</u>	<u>\$ 38,026,500</u>

Finance will provide further update at the November 4 Assembly Finance Committee Meeting.

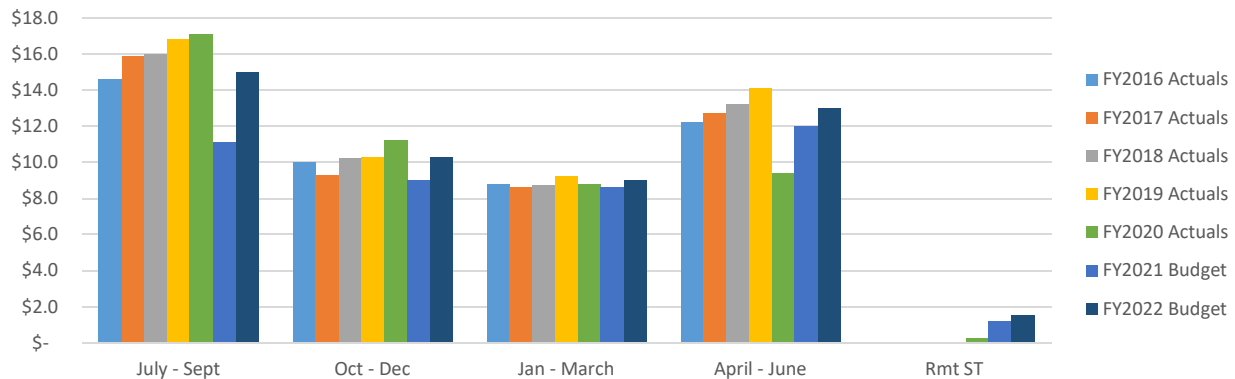
Sales Tax	Q1 July - Sept \$\$ %↑		Q2 Oct - Dec \$\$ %↑		Q3 Jan - March \$\$ %↑		Q4 April - June \$\$ %↑		Annual Rmt ST \$\$	Total \$\$ %↑
FY2016 Actuals	\$ 14.6		\$ 10.0		\$ 8.8		\$ 12.2		\$ -	\$ 45.6
FY2017 Actuals	\$ 15.9	8.9%	\$ 9.3	-7.0%	\$ 8.6	-2.3%	\$ 12.7	4.1%	\$ -	\$ 46.5 2.0%
FY2018 Actuals	\$ 16.0	0.6%	\$ 10.2	9.7%	\$ 8.7	1.2%	\$ 13.2	3.9%	\$ -	\$ 48.1 3.4%
FY2019 Actuals	\$ 16.8	5.0%	\$ 10.3	1.0%	\$ 9.2	5.7%	\$ 14.1	6.8%	\$ -	\$ 50.4 4.8%
FY2020 Projected	\$ 17.1	1.8%	\$ 11.2	8.7%	\$ 7.5	-18.5%	\$ 7.0	-50.4%	\$ 0.2	\$ 43.0 -14.7%
FY2020 Actuals	\$ 17.1	1.8%	\$ 11.2	8.7%	\$ 8.8	-4.3%	\$ 9.4	-33.3%	\$ 0.3	\$ 46.8 -7.2%
Over/(Under) Proj	\$ -		\$ -		\$ 1.3		\$ 2.4		\$ 0.1	\$ 3.8
FY2021 Budget	\$ 11.1	-35.1%	\$ 9.0	-19.6%	\$ 8.6	-2.3%	\$ 12.0	27.7%	\$ 1.2	\$ 41.9 -10.4%
FY2022 Budget	\$ 15.0	35.1%	\$ 10.3	14.4%	\$ 9.0	4.7%	\$ 13.0	8.3%	\$ 1.5	\$ 48.8 16.5%

FY2020 Remote Sales Tax

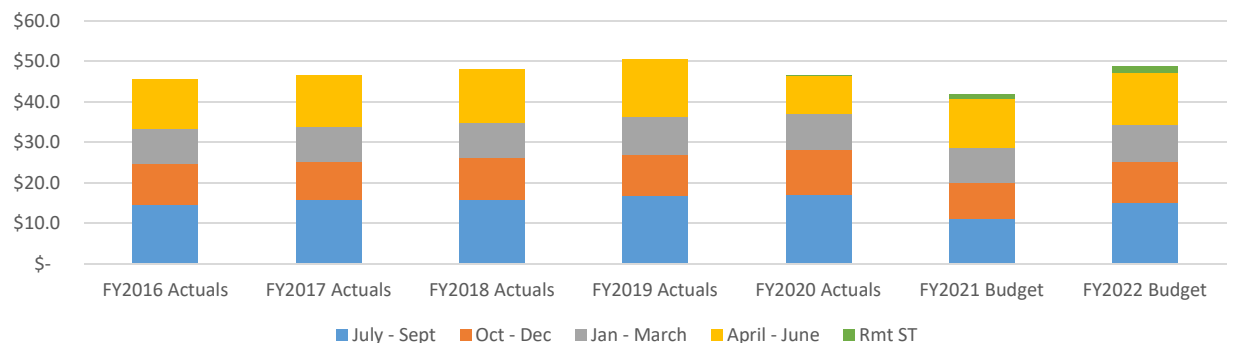
FY20 Q3	March	\$	11,740
	April	\$	73,699
FY20 Q4	May	\$	76,586
	June	\$	93,288

Total FY2020 Remote Sales Tax \$ 255,313

Sales Tax Revenue - by Quarter
 Actuals (FY16-20) and Budgeted (FY21-22)



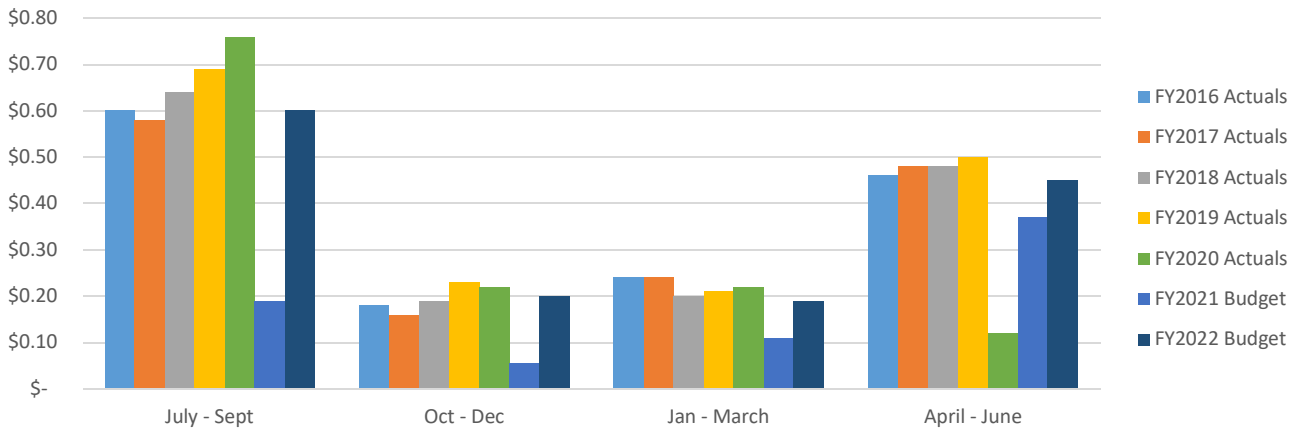
Sales Tax Revenue - by Fiscal Year
 Actuals (FY16-20) and Budgeted (FY21-22)



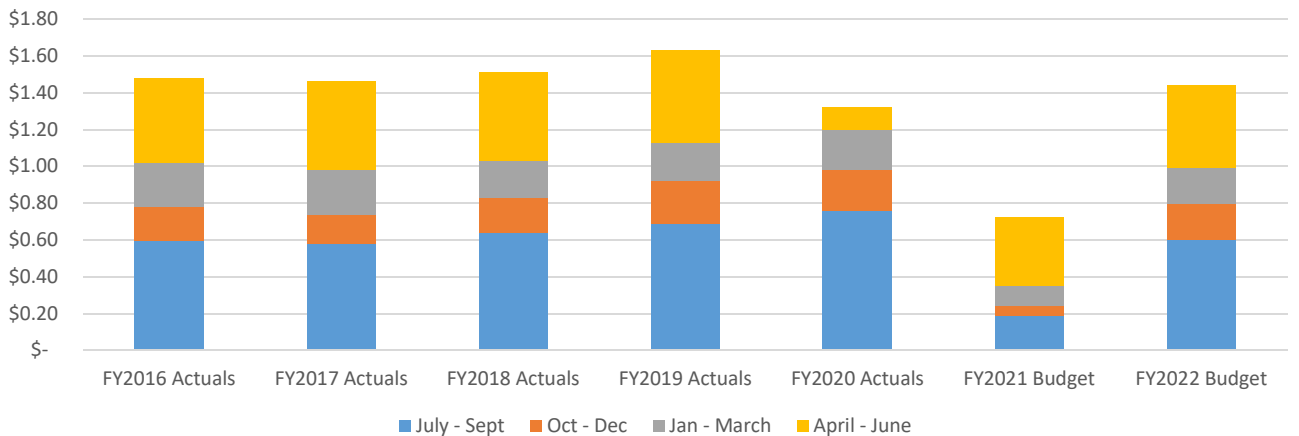
Hotel Tax Actuals and Projections
Updated 8.20.2020

Hotel Tax	Q1 July - Sept		Q2 Oct - Dec		Q3 Jan - March		Q4 April - June		Total	
	\$\$	%↑	\$\$	%↑	\$\$	%↑	\$\$	%↑	\$\$	%↑
FY2016 Actuals	\$ 0.60		\$ 0.18		\$ 0.24		\$ 0.46		\$ 1.48	
FY2017 Actuals	\$ 0.58	-3.3%	\$ 0.16	-11.1%	\$ 0.24	0.0%	\$ 0.48	4.3%	\$ 1.46	-1.4%
FY2018 Actuals	\$ 0.64	10.3%	\$ 0.19	18.8%	\$ 0.20	-16.7%	\$ 0.48	0.0%	\$ 1.51	3.4%
FY2019 Actuals	\$ 0.69	7.8%	\$ 0.23	21.1%	\$ 0.21	5.0%	\$ 0.50	4.2%	\$ 1.63	7.9%
FY2020 Projected	\$ 0.76	10.1%	\$ 0.22	-4.3%	\$ 0.17	-19.0%	\$ 0.13	-74.0%	\$ 1.28	-21.5%
FY2020 Actuals	\$ 0.76	10.1%	\$ 0.22	-4.3%	\$ 0.22	4.8%	\$ 0.12	-76.0%	\$ 1.32	-19.0%
Over/(Under) Proj	\$ -		\$ -		\$ 0.05		\$ (0.01)		\$ 0.04	
FY2021 Budget	\$ 0.19	-75.0%	\$ 0.06	-75.0%	\$ 0.11	-50.0%	\$ 0.37	208.3%	\$ 0.73	-45.1%
FY2022 Budget	\$ 0.60	215.8%	\$ 0.20	263.6%	\$ 0.19	72.7%	\$ 0.45	21.6%	\$ 1.44	98.6%

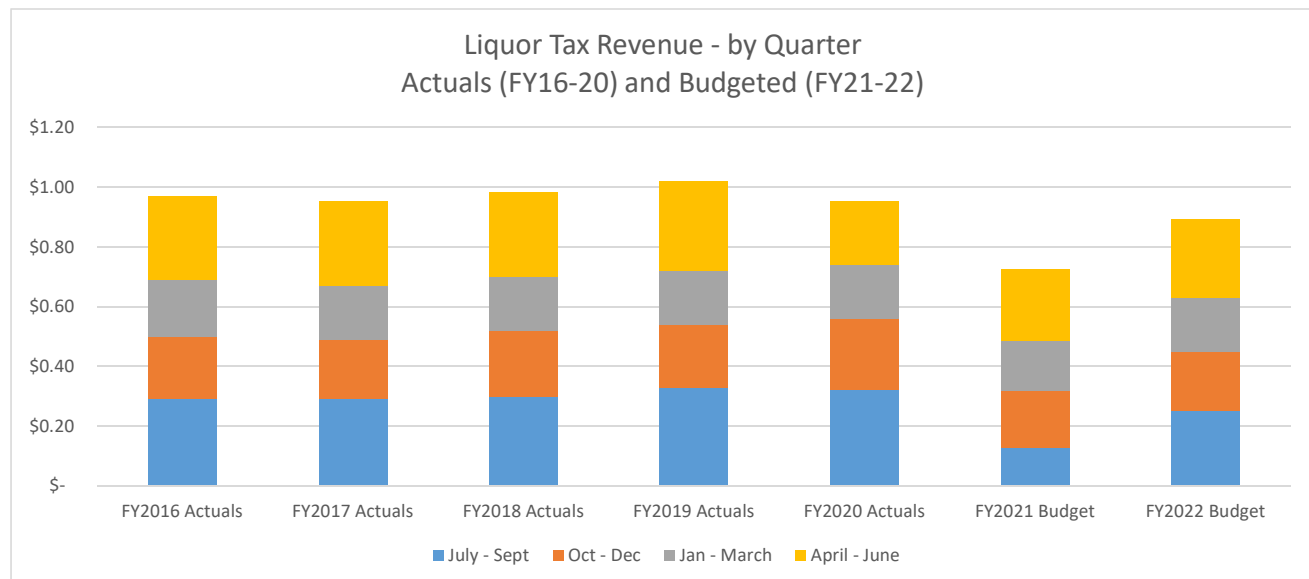
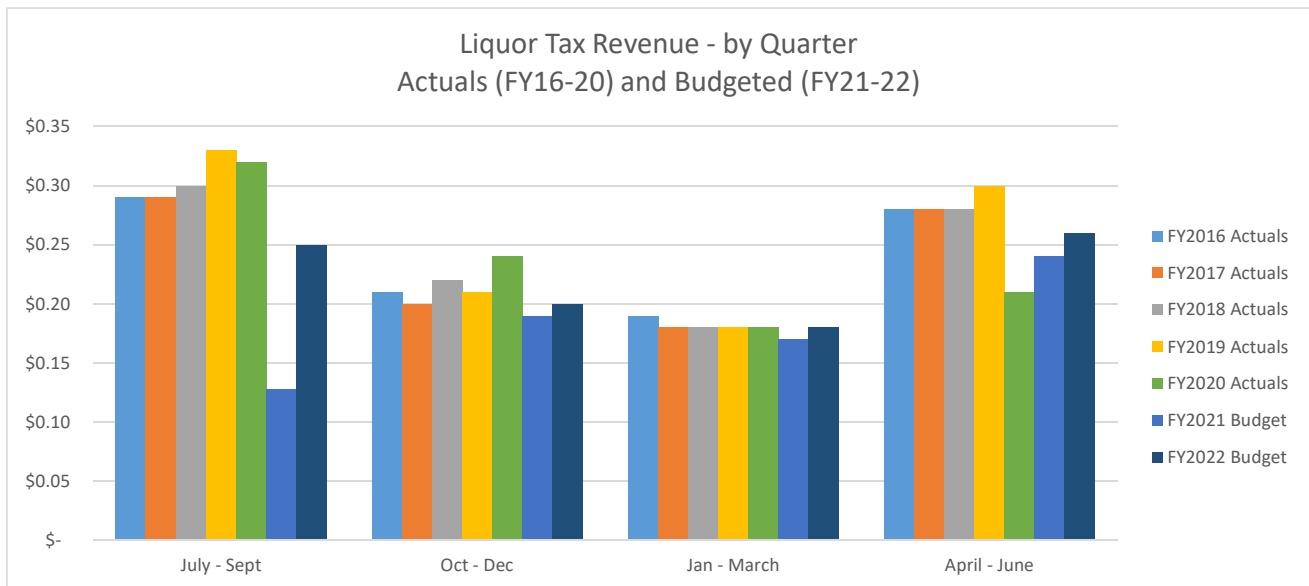
Hotel Tax Revenue - by Quarter
Actuals (FY16-20) and Budgeted (FY21-22)



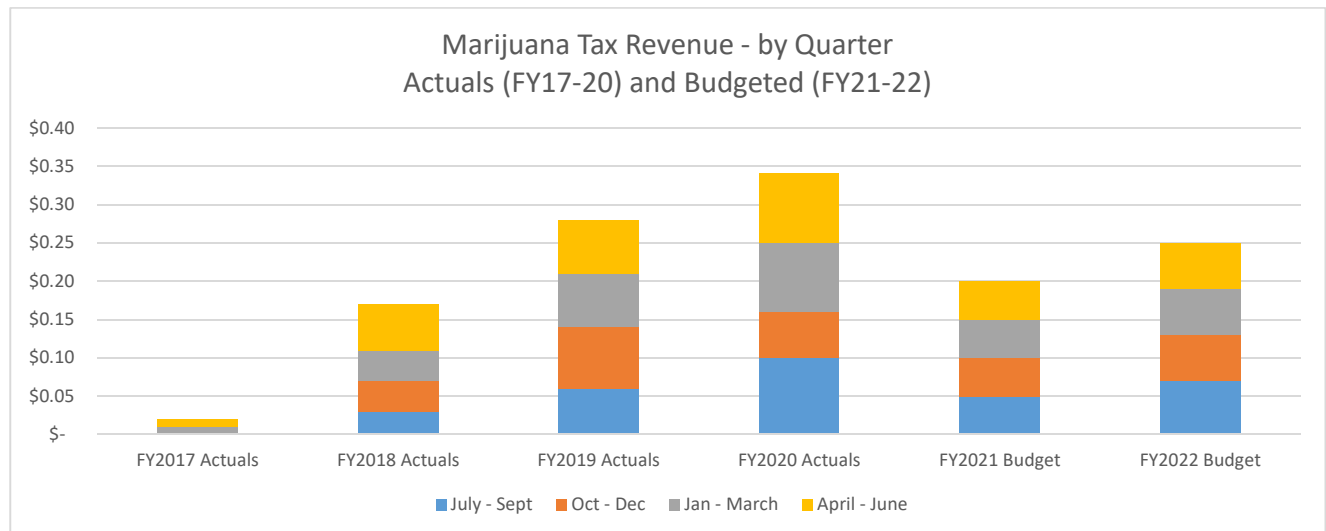
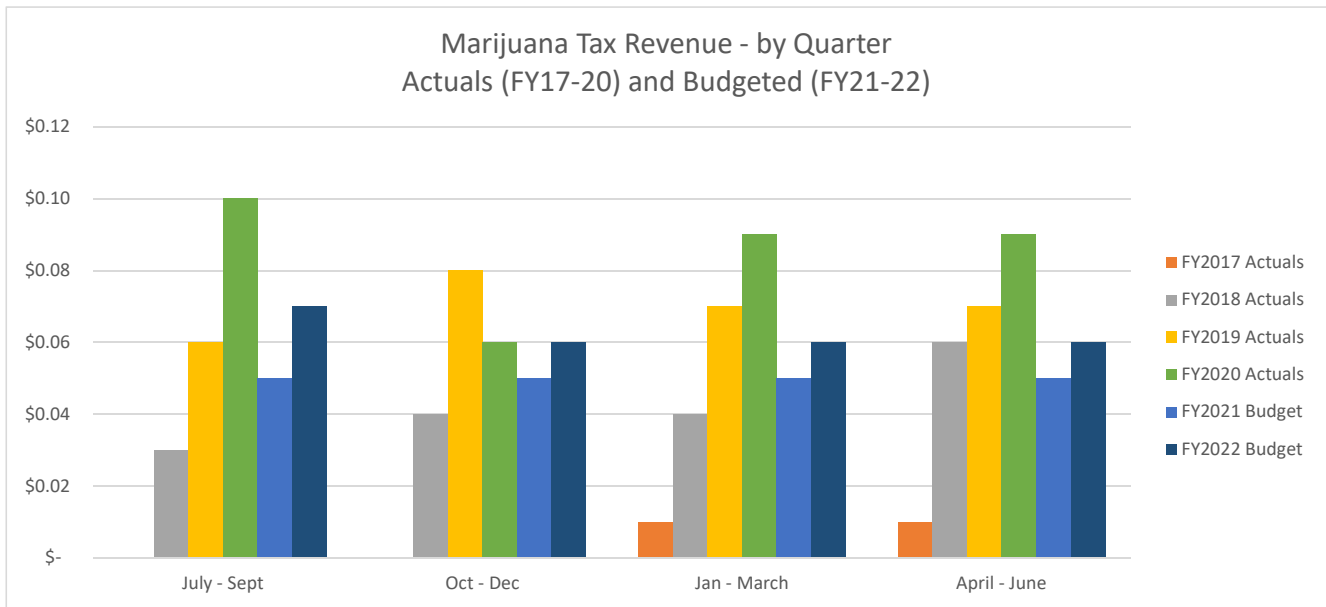
Hotel Tax Revenue - by Fiscal Year
Actuals (FY16-20) and Budgeted (FY21-22)



Liquor Tax	Q1		Q2		Q3		Q4		Total	
	July - Sept		Oct - Dec		Jan - March		April - June			
	\$\$	%↑	\$\$	%↑	\$\$	%↑	\$\$	%↑	\$\$	%↑
FY2016 Actuals	\$ 0.29		\$ 0.21		\$ 0.19		\$ 0.28		\$ 0.97	
FY2017 Actuals	\$ 0.29	0.0%	\$ 0.20	-4.8%	\$ 0.18	-5.3%	\$ 0.28	0.0%	\$ 0.95	-2.1%
FY2018 Actuals	\$ 0.30	3.4%	\$ 0.22	10.0%	\$ 0.18	0.0%	\$ 0.28	0.0%	\$ 0.98	3.2%
FY2019 Actuals	\$ 0.33	10.0%	\$ 0.21	-4.5%	\$ 0.18	0.0%	\$ 0.30	7.1%	\$ 1.02	4.1%
FY2020 Projected	\$ 0.32	-3.0%	\$ 0.24	14.3%	\$ 0.18	0.0%	\$ 0.12	-60.0%	\$ 0.86	-15.7%
FY2020 Actuals	\$ 0.32	-3.0%	\$ 0.24	14.3%	\$ 0.18	0.0%	\$ 0.21	-30.0%	\$ 0.95	-6.9%
Over/(Under) Proj	\$ -		\$ -		\$ -		\$ 0.09		\$ 0.09	
FY2021 Budget	\$ 0.13	-60.0%	\$ 0.19	-20.8%	\$ 0.17	-5.6%	\$ 0.24	14.3%	\$ 0.73	-23.4%
FY2022 Budget	\$ 0.25	95.3%	\$ 0.20	5.3%	\$ 0.18	5.9%	\$ 0.26	8.3%	\$ 0.89	22.3%

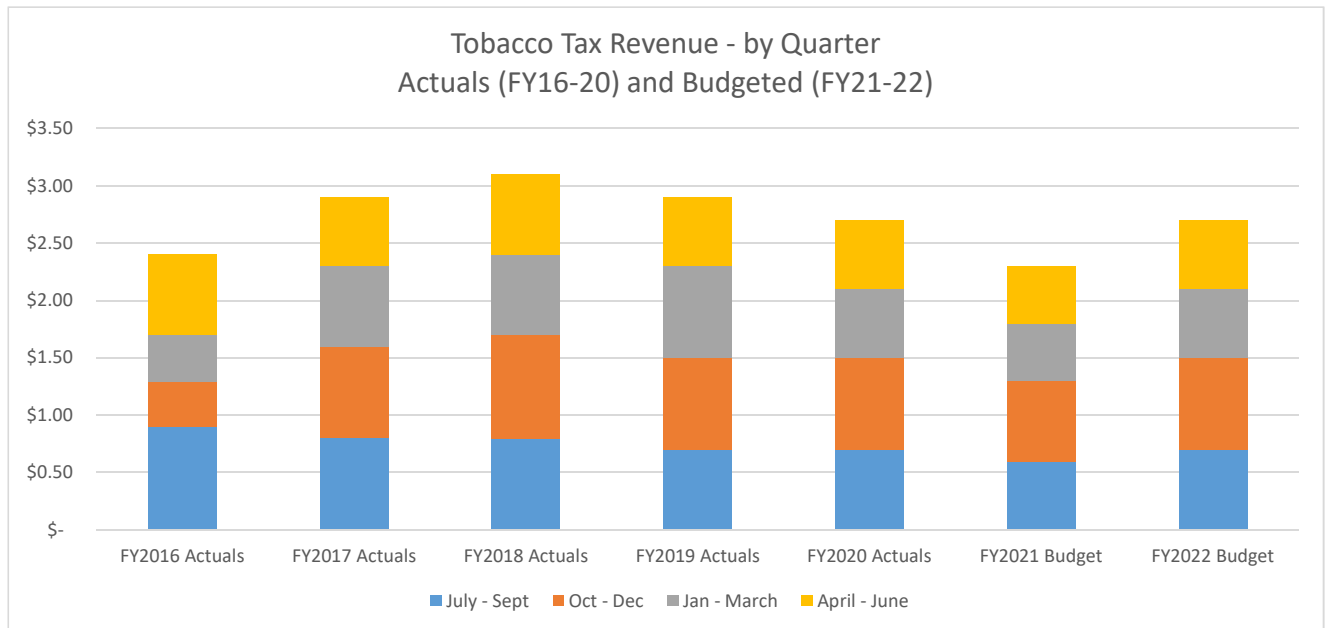
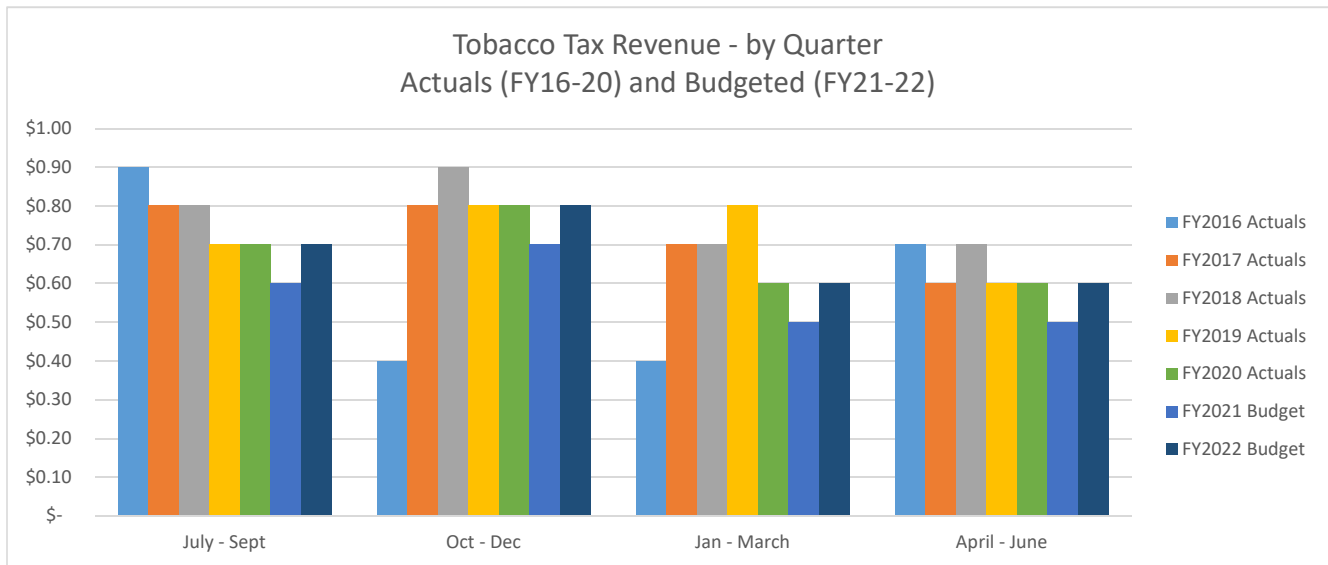


Marijuana Tax	Q1 July - Sept		Q2 Oct - Dec		Q3 Jan - March		Q4 April - June		Total	
	\$\$	%↑	\$\$	%↑	\$\$	%↑	\$\$	%↑	\$\$	%↑
FY2016 Actuals	\$ -		\$ -		\$ -		\$ -		\$ -	
FY2017 Actuals	\$ -		\$ -		\$ 0.01		\$ 0.01		\$ 0.02	
FY2018 Actuals	\$ 0.03		\$ 0.04		\$ 0.04	300.0%	\$ 0.06	500.0%	\$ 0.17	750.0%
FY2019 Actuals	\$ 0.06	100.0%	\$ 0.08	100.0%	\$ 0.07	75.0%	\$ 0.07	16.7%	\$ 0.28	64.7%
FY2020 Projected	\$ 0.10	66.7%	\$ 0.06	-25.0%	\$ 0.05	-28.6%	\$ 0.04	-42.9%	\$ 0.25	-10.7%
FY2020 Actuals	\$ 0.10	66.7%	\$ 0.06	-25.0%	\$ 0.09	28.6%	\$ 0.09	28.6%	\$ 0.34	21.4%
Over/(Under) Proj	\$ -		\$ -		\$ 0.04		\$ 0.05		\$ 0.09	
FY2021 Budget	\$ 0.05	-50.0%	\$ 0.05	-16.7%	\$ 0.05	-44.4%	\$ 0.05	-44.4%	\$ 0.20	-41.2%
FY2022 Budget	\$ 0.07	40.0%	\$ 0.06	20.0%	\$ 0.06	20.0%	\$ 0.06	20.0%	\$ 0.25	25.0%



Tobacco Tax Actuals and Projections
Updated 8.20.2020

Tobacco Tax	Q1		Q2		Q3		Q4		Total	
	July - Sept		Oct - Dec		Jan - March		April - June			
	\$	%	\$	%	\$	%	\$	%	\$	%
FY2016 Actuals	\$ 0.90		\$ 0.40		\$ 0.40		\$ 0.70		\$ 2.40	
FY2017 Actuals	\$ 0.80	-11.1%	\$ 0.80	100.0%	\$ 0.70	75.0%	\$ 0.60	-14.3%	\$ 2.90	20.8%
FY2018 Actuals	\$ 0.80	0.0%	\$ 0.90	12.5%	\$ 0.70	0.0%	\$ 0.70	16.7%	\$ 3.10	6.9%
FY2019 Actuals	\$ 0.70	-12.5%	\$ 0.80	-11.1%	\$ 0.80	14.3%	\$ 0.60	-14.3%	\$ 2.90	-6.5%
FY2020 Projected	\$ 0.70	0.0%	\$ 0.80	0.0%	\$ 0.60	-25.0%	\$ 0.60	0.0%	\$ 2.70	-6.9%
FY2020 Actuals	\$ 0.70	0.0%	\$ 0.80	0.0%	\$ 0.60	-25.0%	\$ 0.60	0.0%	\$ 2.70	-6.9%
Over/(Under) Proj	\$ -		\$ -		\$ -		\$ -		\$ -	
FY2021 Budget	\$ 0.60	-14.3%	\$ 0.70	-12.5%	\$ 0.50	-16.7%	\$ 0.50	-16.7%	\$ 2.30	-14.8%
FY2022 Budget	\$ 0.70	16.7%	\$ 0.80	14.3%	\$ 0.60	20.0%	\$ 0.60	20.0%	\$ 2.70	17.4%



Presented by: The Manager
Introduced: August 24, 2020
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2020-09(G)

An Ordinance Appropriating to the Manager the Sum of \$600,000 as Funding for the Voice-over-Internet-Protocol (VoIP) Phone System Replacement Capital Improvement Project; Funding Provided by the Fleet Fund's Fund Balance.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Appropriation. There is appropriated to the Manager the sum of \$600,000 as funding for the Voice-over-Internet-Protocol (VoIP) Phone System Replacement Capital Improvement Project.

Section 3. Source of Funds

Fleet Fund's Fund Balance	\$600,000
---------------------------	-----------

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this _____ day of _____, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth A. McEwen, Municipal Clerk

MEMORANDUM



DATE: August 28, 2020

TO: Assembly Finance Committee

FROM: Jeff Rogers, Finance Director

SUBJECT: Executive Memorandum on Payroll Taxes

155 Municipal Way
Juneau, AK 99801
Phone: (907) 586-5215
Fax: (907) 586-0358

On August 8, 2020, President Trump issued an executive memorandum “deferring payroll tax obligations in light of the ongoing COVID-19 disaster.”

This executive memorandum would defer payroll taxes for the period from September 1, 2020 to December 31, 2020. As this would be a *deferral*, employee-paid payroll taxes owed during this period would accrue and employees would owe payment of those taxes after the end of the deferral period.

Payroll taxes are distinct from income taxes. The President’s executive memorandum took no action on income taxes. Payroll taxes are the federal levies that support Social Security and Medicare programs. Payroll taxes are 7.65% total—6.2% for Social Security and 1.45% for Medicare—however, the President’s memo only applies to the Social Security portion of 6.2%. This amount is regularly withheld from employee pay and remitted to the federal government. Employers are required to match this amount dollar-for-dollar, but the employer-paid portion of payroll taxes are not deferred by the President’s executive memorandum.

Payroll administration companies across the United States have raised concerns about the timing and potential implementation of this change. See attached letter from the National Payroll Reporting Consortium and the American Payroll Association requesting clarification from the US Treasury and Internal Revenue Service. Currently, CBJ’s payroll systems lack the functional capacity to implement this kind of tax deferral. The companies involved are consulting with the Internal Revenue Service and are working toward functional improvements that would allow the deferral.

Additionally, CBJ Finance has concerns about the financial impact on employees, as their first paycheck in January 2021 would be significantly reduced by the imposition of the deferred taxes. For employees who rely on a stable pay amount for their monthly bills, this would likely be a financial burden that would be difficult for employees to adequately plan for. CBJ Payroll has already received many inquiries about whether or not employees could “opt out” of the deferral. That may be possible, but it presents a substantial administrative burden.

In summary, CBJ will not defer the imposition and remittance of payroll taxes until the US Treasury and Internal Revenue Service provide clear and actionable guidance for implementation.



National Payroll Reporting Consortium

PO Box 850, Henrietta, NY 14467-0850 • www.NPRC-Inc.org

Automatic Data Processing • Ceridian Corporation • CompuPay/Benefit Mall
Empower Software Solutions • Fidelity Employer Services Company LLC • Intuit
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**AMERICAN
PAYROLL
ASSOCIATION**

1601 18th Street NW, Suite 1
Washington, DC 20009
202-248-3901 •
www.americanpayroll.org

August 14, 2020

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Deferral of Employee Social Security Taxes in Light of COVID-19

Dear Assistant Secretary Kautter and Commissioner Rettig:

The National Payroll Reporting Consortium¹ and American Payroll Association² are organizations whose members will be directly responsible for implementing and administering the employee Social Security tax deferral which was the subject of the August 8th Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster.

We understand that the Department of Treasury and IRS are urgently working on guidance for employers. It is our hope that the following priorities will help with this important initial guidance.

1. Perhaps the most critical question is whether employees should be required to opt in or out of the deferral, and in what form. Any requirement that employees opt in or out could result in employers having to manage informational notices and election forms of potentially over 100 million affected employees in the coming weeks. Regardless of whether any election is required, the guidance should permit notices and elections to be electronic.
2. Clarify that employers will not be held liable for employee Social Security taxes deferred. Employees should pay any deferred amounts with their 2020 income tax return, IRS Form 1040.
3. Minimize related reporting requirements. Optimally there should be no new entry boxes on Forms W-2 or 941. Qualifying Social Security wages paid from September 1 –

¹ The National Payroll Reporting Consortium ("NPRC") is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private-sector workforce. Payroll service providers have long served an important role in our nation's tax collection system as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections and reporting through electronic payment and reporting programs and improve employer compliance.

² APA is a nonprofit association serving the interests of about 21,000 payroll and accounts payable professionals nationwide. APA's primary mission is to educate its members and the payroll and accounts payable industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations.

December 31, and/or Social Security tax deferred, could be a coded entry in Box 12 of Form W-2.

4. Clarify that employers should apply only a per-pay period amount (e.g., \$4,000 biweekly) to determine eligibility. Each payment of wages should be evaluated in isolation.
 - a. Conversely employers should not be required to calculate average wages over a time period to determine whether to apply the deferral.
5. There should be no phase-out formula for employees near the \$4,000 biweekly level.
6. If an employer implements the deferral program after September, there should be no adjustments for prior payrolls.

We would appreciate an opportunity to discuss these points and explain the implications and reasoning; i.e., why these principles would make a significant difference in the feasibility and adoption of the program. Please contact Pete Isberg at 909 971-7670 or Pete.Isberg@adp.com, or Alice Jacobsohn, Esq., at 202 669-4001 or ajacobsohn@americanpayroll.org. Thank you for your consideration.

Sincerely,



Pete Isberg
National Payroll Reporting Consortium, Inc.

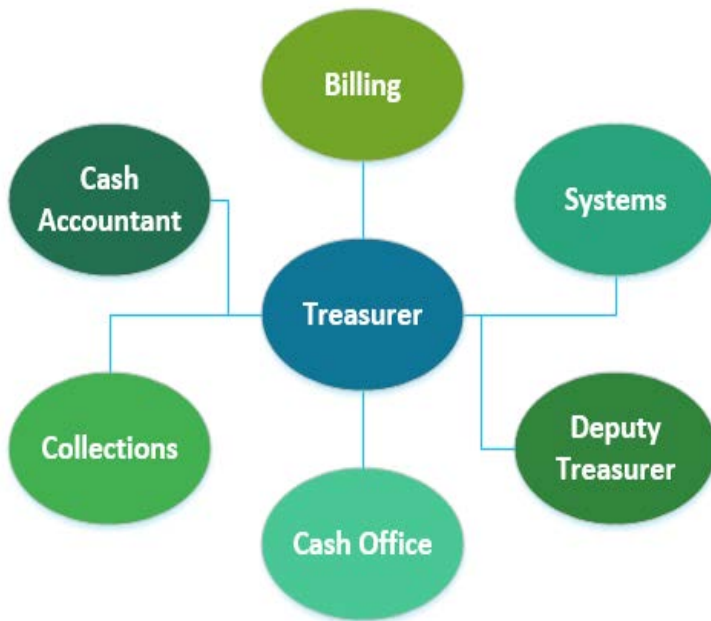


Alice P. Jacobsohn, Esq.
American Payroll Association

FINANCE

TREASURY & SALES TAX REORGANIZATION

Previous Organization Structure

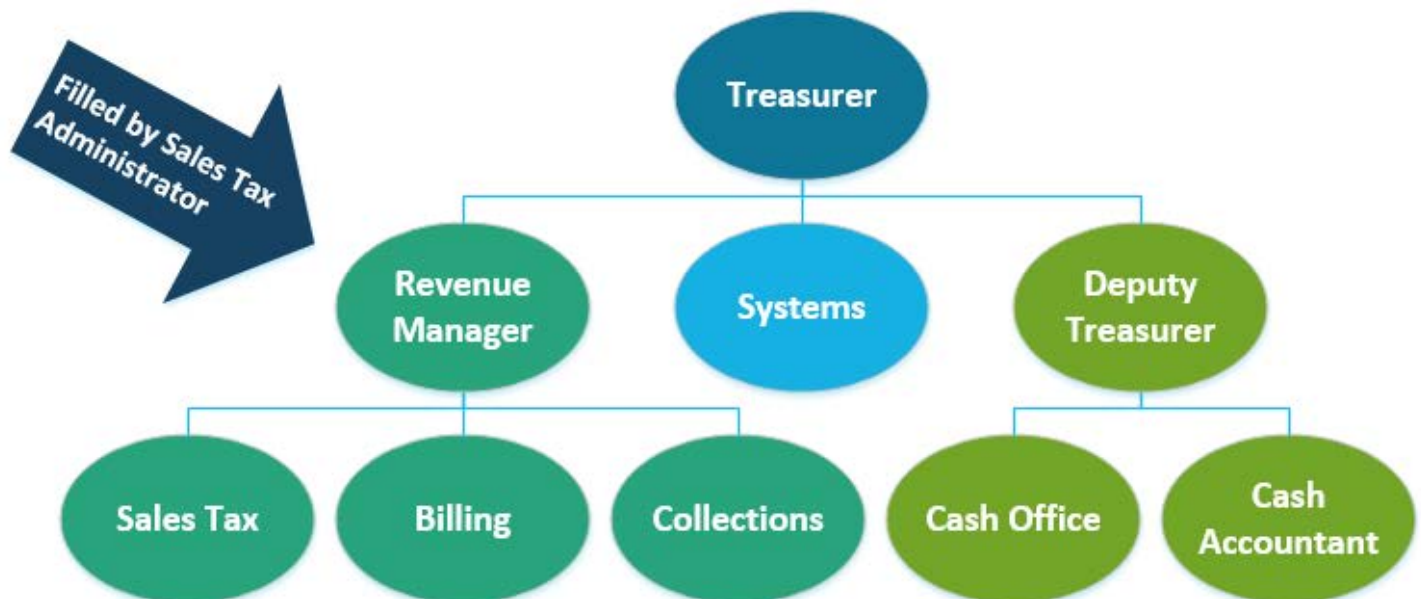


Finance's Treasury and Sales Tax divisions are undergoing a reorganization intended to strengthen system structure and stimulate the following positive outcomes:

- Enhance Collaboration
- Balance Supervisory Workload
- Career Development
- Succession Planning

Currently Treasury and Sales Tax are two separate divisions within Finance, but the restructuring effort will combine these components into one division. New supervisory relationships are being created that will enhance communication, cross-section learning, and leadership development while delineating banking and revenue functions for a more integrated and efficient business environment.

New Organization Structure





August 10, 2020

Mr. Jeff Rogers
Finance Director, City and Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Re: Fiscal year 2020 performance

Dear Jeff,

As requested, outlined below is Insight's performance attribution information for the fiscal year ending June 30, 2020. Attached separately is Insight's performance attribution summary slide. We are available to discuss this summary slide or any information presented below at your convenience.

Best regards,

Jason Celente, CFA
Senior Portfolio Manager

Portfolio summary

As of June 30, 2020, the City's Intermediate-Term portfolio was valued at \$166.7 million versus a beginning of fiscal year value \$158.3 million. This increase of \$8.4 million represents a 5.31% total return for the 2020 fiscal year. The Intermediate-Term portfolio ended the fiscal year compliant with the investment policy dated June 3, 2019.

Insight Investment assumed management of the Intermediate-Term portfolio on October 25, 2019. At this account inception, Insight rebalanced the portfolio to the preferred Treasury and corporate bond exposures. The maturity profile, also known as duration, was similarly rebalanced to the policy's benchmark, the Bloomberg Barclays 1-5 Yr Gov/Credit index. Subsequent rebalancing furthered progress towards Insight's preferred investment strategy for the remainder of October. Once completed, the inception date to measure Insight's performance relative to the benchmark was set at October 31, 2019.

Attribution summary

The portfolio returned 4.57% from the October 31, 2019 inception date through June 30, 2020. The benchmark index returned 4.12% for the same period. This 0.45% excess return difference was net of investment management fees. The portfolio was transitioned from a customized benchmark during the first two months of the 2020 fiscal year and is not considered in this analysis.

From an absolute return perspective, the portfolio benefitted from the significant decline in short-term interest rates and market yields. The COVID-19 pandemic led to a massive and abrupt shutdown of the US economy between February and April of 2020. Approximately 25 million US workers filed for unemployment insurance and the estimated unemployment rate reached 14.7 percent. The Federal Reserve response to this economic catastrophe was equally massive and abrupt. The Federal Funds rate was cut by 1.5% to near-zero and the bond purchase program known as Quantitative Easing restarted to purchase an additional \$3 trillion in financial assets. Table 1 shows the significant decline in the Federal Funds Rate and Treasury yields that resulted in positive absolute returns.

Table 1. Key market yields (in percent)

	<u>Jun-20</u>	<u>Mar-20</u>	<u>Dec-19</u>	<u>Sep-19</u>	<u>Jun-19</u>
Fed Funds Rate	0.25	0.25	1.75	2.00	2.50
2-Year Treasury	0.15	0.25	1.57	1.62	1.76
5-Year Treasury	0.29	0.38	1.69	1.54	1.77
10-Year Treasury	0.66	0.67	1.92	1.67	2.01
US MBS OAS	0.70	0.60	0.39	0.46	0.46
1-10yr Credit OAS	1.09	2.42	0.64	0.79	0.83

From an excess of benchmark return perspective, the portfolio benefitted from actively managing the corporate credit allocation as the market response to the COVID-19 crisis unfolded. The portfolio was conservatively positioned from a corporate credit perspective to begin February 2020. As indicated in Table 1, the yield compensation, or OAS, increased significantly from 0.64% in December to 2.42% in March. The conservative portfolio positioning avoided this OAS repricing higher, but then opportunistically allocated to the credit sector once pricing became more attractive. As Federal Reserve and government fiscal policies calmed the market, this OAS declined again to 1.09% by June to further benefit the portfolio.

Additional excess of benchmark returns was achieved by allocating to the agency mortgage-backed sectors. Like the above, this sector exposure was increased as OAS repriced higher from 0.39% in December to 0.60% in June. OAS compensation remains elevated as of June 2020. Detracting from relative performance were the holdings of the highest quality sectors that did not meaningfully reprice, such as agency securities. Portfolio duration position relative to the benchmark created modestly positive results.



City & Borough of Juneau

Performance attribution: October 31, 2019 to June 30, 2020

Factors	Value added (bps)
Duration and Yield Curve	4
Allocation	2
Security Selection	39
Total	45

Key Rates	OAD	6 Mo	1 Yr	2 Yr	5 Yr	7 & Over
Portfolio	2.65	0.02	0.18	1.03	1.27	0.14
Benchmark	2.75	0.01	0.16	1.28	1.30	0.00

Summary

- Majority of excess returns accomplished by adding new issue corporate exposure, which resulted in large contribution from corporate security selection
- The allocation to agency MBS resulted in a positive sector contribution, although it was offset by overweight decisions to other high quality sectors
- Longer duration key rate exposure added to performance as Treasury yields moved lower

Sector	Overweight/ underweight	Contribution (bps)
Positive contributors		
MBS	8.9	10.4
Corporate	11.7	4.0
Sov_Supra	-1.0	0.3
Others	-0.1	0.1
Muni	0.0	0.0
Negative contributors		
CMBS	6.1	-1.8
Cash	0.4	-1.9
Agency	5.1	-2.8
ABS	7.1	-2.9
Treasury	-38.5	-3.2

Issuer	Overweight/ underweight	Contribution (bps)
Positive Contributors		
LOWE'S COMPANIES INC	0.8	4.0
APPLE INC	0.8	3.6
EXXON MOBIL CORPORATION	0.4	3.5
ONCOR ELECTRIC DELIVERY	0.6	2.4
DUKE ENERGY CAROLINAS	1.2	2.2
Negative Contributors		
MONDELEZ INTERNATIONAL	0.2	-1.3
FEDERAL FARM CREDIT BANK	2.9	-1.2
AID-JORDAN	1.3	-1.1
PROCTER & GAMBLE CO/THE	0.2	-0.7
DEERE & COMPANY	0.3	-0.6

COVID-RELATED SUPPLEMENTAL FUNDING

	JSD CARES	CBJ CARES	DEED/DHSS	Donations	Total
Distance Learning & Curriculum Prep	\$ 84,700				\$ 84,700
Staff Support to CBJ-EOC		\$ 306,200			\$ 306,200
Contract Tracing - Nurses			\$ 2,000		\$ 2,000
RALLY/Pre-K			\$ 550,000	\$ 36,600	\$ 586,600
Food Service				\$ 36,200	\$ 36,200
FY20 Total	\$ 84,700	\$ 306,200	\$ 552,000	\$ 72,800	\$ 1,015,700
Distance Learning & Curriculum Prep	\$ 208,000	\$ 300,000			\$ 508,000
Technology	\$ 300,000	\$ 200,000			\$ 500,000
PPE/Facility Modifications	\$ 125,000	\$ 200,000			\$ 325,000
Supplies/Other	\$ 292,000	\$ -			\$ 292,000
RALLY		\$ 560,000			\$ 560,000
FY21 Total	\$ 925,000	\$ 1,260,000	\$ -	\$ -	\$ 2,185,000
FY20/21 Total	\$ 1,009,700	\$ 1,566,200	\$ 552,000	\$ 72,800	\$ 3,200,700