

1 [Business and Tax Regulations Code - Transfer Tax Reduction for Union Labor-Built and  
 2 Union Pension Fund-Financed Housing]

3 **Ordinance amending the Business and Tax Regulations Code to reduce the real**  
 4 **property transfer tax rates from 5.5% to 3% when the consideration or value of the**  
 5 **interest or property conveyed is at least \$10,000,000 but less than \$25,000,000; and**  
 6 **from 6% to 3% when the consideration or value of the interest or property conveyed**  
 7 **equals or exceeds \$25,000,000, for transfers of certain properties with at least 12%**  
 8 **rent-restricted affordable units, that were constructed using union labor, and had a**  
 9 **debt or equity investment of at least \$25,000,000 from a union pension fund at the time**  
 10 **of the transfer; and affirming the Planning Department's determination under the**  
 11 **California Environmental Quality Act.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 13 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 15 **Board amendment additions** are in double-underlined Arial font.  
 16 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. The Planning Department has determined that the actions contemplated in  
 21 this ordinance comply with the California Environmental Quality Act (California Public  
 22 Resources Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of the  
 23 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The  
 24 Board affirms this determination.  
 25

1 Section 2. Article 12-C of the Business and Tax Regulations Code is hereby amended  
2 by adding Section 1108.8, to read as follows:

3  
4 **SEC. 1108.8. PARTIAL EXEMPTION FOR TRANSFERS OF RESIDENTIAL RENTAL**  
5 **PROPERTIES BUILT AND FINANCED BY CERTAIN LABOR ORGANIZATIONS.**

6 *(a) Definitions. For purposes of this Section 1108.8:*

7 *“Certificate of Final Completion and Occupancy” means a certificate of final completion and*  
8 *occupancy or an amended certificate of final completion and occupancy as those terms are used in*  
9 *Section 109A of the Building Code, as may be amended from time to time.*

10 *“First Construction Document” means the first building permit, building permit addendum, or*  
11 *other document that authorizes construction of a Newly-Constructed Building, not including permits or*  
12 *addenda for demolition, grading, shoring, pile driving, or site preparation work.*

13 *“Labor Organization” means any organization of any kind, or any agency or employee*  
14 *representation committee or plan, in which employees participate and which exists for the purpose, in*  
15 *whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay,*  
16 *hours of employment, or conditions of work.*

17 *“MOHCD” means the Mayor’s Office of Housing and Community Development, or its*  
18 *successor agency, department, or office.*

19 *“MOHCD Area Median Income” means the median income as published annually by MOHCD*  
20 *for the City and County of San Francisco, derived in part from the income limits and area median*  
21 *income determined by the United States Department of Housing and Urban Development, or its*  
22 *successor agency, for the San Francisco County metro fair market rent area, adjusted solely for*  
23 *household size, but not for high housing cost area.*

24 *“Newly-Constructed Building” means a building that has never before been used or occupied*  
25 *for any purpose.*

1 “OLSE” means the Office of Labor Standards Enforcement, or its successor agency,  
2 department, or office.

3 “Qualified Investment Manager” means any of the following that manages or invests assets on  
4 behalf of one or more Qualified Pension Plans, as defined in this Section 1108.8(a):

5 (1) An investment adviser registered under the U.S. Investment Advisers Act of 1940, as  
6 amended from time to time, or an investment adviser exempt from registration pursuant to  
7 Section 203(l) or Section 203(m) of the U.S. Investment Advisers Act of 1940, as amended from time to  
8 time;

9 (2) An investment company registered under the U.S. Investment Company Act of 1940,  
10 as amended from time to time; or

11 (3) An insurance company pooled separate account of a state or District of Columbia  
12 regulated life insurance company.

13 “Qualified Pension Plan” means either subpart (1) or (2), as stated below:

14 (1) A pension plan that has all of the following elements:

15 (A) Constitutes a qualified trust under Section 401(a) of the Internal Revenue  
16 Code of 1986, as amended from time to time;

17 (B) Is either:

18 (i) A multiemployer plan collectively bargained and maintained by more  
19 than one employer and a Labor Organization; or

20 (ii) A plan collectively bargained and maintained by a Labor  
21 Organization; and

22 (C) Its beneficiaries may not decide individually whether to participate or share  
23 in the profits and losses of such plan’s investments; or

24 (2) An annuity plan that meets the requirements for the deduction of the employer’s  
25 contribution under Section 402(a)(2) of the Internal Revenue Code of 1986, as amended from time to

1 time, and that has beneficiaries who are represented by a Labor Organization and the assets of which  
2 are managed without the direct intervention or control of the plan's beneficiaries.

3 “Qualified Residential Rental Property” means a Residential Rental Property, whether or not  
4 the property is subject to a condominium map recorded with the County Recorder, that meets all of the  
5 requirements in subparts (1) through (4), as stated below:

6 (1) At the time of the transfer for which an exemption is claimed under this  
7 Section 1108.8, no less than 12% of the residential units on the property, which percentage shall be  
8 calculated by excluding any density bonus units permitted through Planning Code Section 206.3,  
9 California Government Code Section 65915, or any other density bonus program, are, or concurrently  
10 with such transfer become, subject to a Recorded Restriction that:

11 (A) limits the maximum household income for each residential rental unit to no  
12 more than 110% of MOHCD Area Median Income; and

13 (B) limits the maximum monthly rent for each residential rental unit to no more  
14 than one-twelfth of 30% of 110% of the MOHCD Area Median Income; and

15 (C) provides for the regulation, monitoring, and enforcement of the restrictions  
16 in this subpart (1) by a governmental agency; and

17 (D) has a remaining term of no less than 55 years from the date of the transfer.

18 (2) On or after June 3, 2014, received a Certificate of Final Completion and Occupancy  
19 for a Newly-Constructed Building.

20 (3) All on-site construction of the Newly-Constructed Building, from the date of the  
21 First Construction Document through the date of the Certificate of Final Completion and Occupancy  
22 for the Newly-Constructed Building, was performed by workers represented by a Labor Organization  
23 and paid not less than the Prevailing Rate of Wages as defined in Section 6.1 of the San Francisco  
24 Administrative Code, as amended from time to time, for such on-site construction work.

1                   (4) At least one year before and through the date of the transfer for which an exemption  
2 is claimed under this Section 1108.8, one or more Qualified Pension Plans, either directly or through a  
3 Qualified Investment Manager, collectively held a \$25 million debt or equity investment, directly or  
4 indirectly, in the single property being transferred, and each such investor maintained and enforced a  
5 Responsible Contractor Policy with respect to that investor’s portion of the \$25 million investment.

6                   “Recorded Restriction” means a document, agreement, or instrument, recorded with the County  
7 Recorder, that restricts the use of the property against which the document, agreement, or instrument is  
8 recorded.

9                   “Residential Rental Property” means a property that may only be used to rent to residential  
10 tenants, including an onsite property manager, and excluding travelers, vacationers, or other similarly  
11 transient individuals, except that it may include: (1) up to 30% of the square footage of all floors other  
12 than the ground floor for non-profit space serving residents and/or the community, such as childcare  
13 centers, health clinics, or job training centers; and (2) any amount of square footage of the ground  
14 floor for non-residential space.

15                   “Responsible Contractor Policy” means a policy that requires all on-site construction work be  
16 performed by workers represented by a Labor Organization.

17                   (b) Exemption from Increased Tax Rate. As authorized by Section 1119, the tax rates  
18 imposed by subsections (e) and (f) of Section 1102 shall be reduced with respect to any deed,  
19 instrument, or writing that effects a transfer of an entire building that constitutes a Qualified  
20 Residential Rental Property, or an undivided interest in such entire building that constitutes a Qualified  
21 Residential Rental Property. For such transfers, the tax rate shall be \$15 for each \$500 or fractional  
22 part thereof for the entire value or consideration, including but not limited to, any portion of such value  
23 or consideration that is less than \$10,000,000. If the exemptions in both Sections 1108.6(b) and this  
24 Section 1108.8(b) apply with respect to any deed, instrument, or writing, the lower of the two rates in  
25 those two sections shall apply.

1           (c) Requirements for Exemption. Every person claiming the exemption under subsection (b),  
2 above, must meet all of the following requirements:

3                   (1) Maintain all records necessary to prove that they are entitled to the exemption in this  
4 Section 1108.8;

5                   (2) Obtain from OLSE a certificate confirming that the deed, instrument, or writing  
6 effects a transfer of a Qualified Residential Rental Property; and

7                   (3) Submit the certificate under subsection (c)(2), above, to the County Recorder at the  
8 time such person submits the affidavit described in subsection (c) or (d) of Section 1111.

9           Failure to timely satisfy the requirements in this subsection (c) renders the transfer ineligible  
10 for the exemption.

11           (d) Operative Date. The exemption in Section 1108.8(b) shall apply to all deeds, instruments,  
12 or writings that effect transfers of Qualified Residential Rental Properties that are or have been  
13 delivered on or after the effective date of the ordinance adding this Section 1108.8, but on or before the  
14 sunset date in subsection (e).

15           (e) Sunset Date.

16                   (1) The exemption in Section 1108.8(b) shall expire by operation of law at the end of the  
17 day on December 31, 2033, and shall not apply to any deeds, instruments, or writings that are  
18 delivered on or after January 1, 2034.

19                   (2) Notwithstanding subsection (e)(1), above, with respect to a transfer of property that  
20 received a Certificate of Final Completion and Occupancy before the effective date of the ordinance  
21 adding this Section 1108.8, the exemption in Section 1108.8(b) shall expire by operation of law at the  
22 end of the day on June 30, 2029, and shall not apply to any deeds, instruments, or writings that are  
23 delivered on or after July 1, 2029.

1            (f) **Non-Severability.** If any part or application of this Section 1108.8 is found in a final  
2 decision by a court of competent jurisdiction to be invalid or unconstitutional, this Section in its  
3 entirety shall have no force or effect.

4            (g) **Undertaking for the General Welfare.** In enacting and implementing this Section 1108.8,  
5 the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it  
6 imposing on its officers and employees, an obligation for breach of which it is liable in money damages  
7 to any person who claims that such breach proximately caused injury.

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9            Section 3. Effective Date. This ordinance shall become effective 30 days after  
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
12 of Supervisors overrides the Mayor’s veto of the ordinance.

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14 APPROVED AS TO FORM:  
15 DAVID CHIU, City Attorney

16 By: /s/ Carole F. Ruwart  
17        CAROLE F. RUWART  
18        Deputy City Attorney

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