

File No. 231007

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date November 15, 2023

Board of Supervisors Meeting Date _____

Cmte Board

☐	☐	Motion
☐	☐	Resolution
☒	☐	Ordinance
☒	☐	Legislative Digest
☒	☐	Budget and Legislative Analyst Report
☐	☐	Youth Commission Report
☒	☐	Introduction Form
☐	☐	Department/Agency Cover Letter and/or Report
☐	☐	MOU
☐	☐	Grant Information Form
☐	☐	Grant Budget
☐	☐	Subcontract Budget
☐	☐	Contract/Agreement
☐	☐	Form 126 – Ethics Commission
☐	☐	Award Letter
☐	☐	Application
☐	☐	Public Correspondence

OTHER (Use back side if additional space is needed)

☒	☐	<u>PLN CEQA Determination 10/30/2023</u>
☒	☐	<u>FYI Referral 9/29/2023</u>
☒	☐	<u>PLN CEQA Referral 9/29/2023</u>
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
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Completed by: Brent Jalipa Date November 9, 2023

Completed by: Brent Jalipa Date _____

[Business and Tax Regulations Code - Transfer Tax Exemption for Affordable Housing]

Ordinance amending the Business and Tax Regulations Code to broaden the exemption from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000 for transfers of certain rent-restricted affordable housing; applying the exemption retroactively to transfers occurring on or after January 1, 2017; extending the exemption through December 31, 2030; and affirming the Planning Department's determination under the California Environmental Quality Act.

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

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of the Board of Supervisors in File No. 231007 and is incorporated herein by reference. The Board affirms this determination.

1 Section 2. Legislative Findings.

2 To promote the creation and preservation of rent-restricted affordable housing,
3 Ordinance No. 205-21 exempted transfers of certain rent-restricted affordable housing from
4 the higher real property transfer tax rates applicable to transfers of real property where the
5 consideration or value of the interest or property conveyed is \$5,000,000 or more. This
6 ordinance would broaden that exemption to include additional transfers not covered by the
7 original exemption, and would extend the existing sunset date of that exemption from
8 June 30, 2024 to December 31, 2030. This ordinance would also promote the continued
9 viability of recently transferred rent-restricted affordable housing by applying the expanded
10 exemption retroactively to transfers of such rent-restricted affordable housing that occurred
11 between January 1, 2017 and the effective date of this ordinance.
12

13 Section 3. Article 12-C of the Business and Tax Regulations Code is hereby amended
14 by revising Section 1108.6, to read as follows:

15 **SEC. 1108.6. PARTIAL EXEMPTION FOR RENT-RESTRICTED AFFORDABLE HOUSING.**

16 (a) **Definitions.** For purposes of this Section 1108.6:

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

22 “Low Income Threshold” means the greatest of the following:

23 (1) 80% of the MOHCD Area Median Income;

24 (2) 80% of the area median income for the County of San Francisco, adjusted for
25 household size, as published by the California Tax Credit Allocation Committee or its successor entity;

1 (3) “Lower Income” for the County of San Francisco, adjusted for household size, as
2 published by the California Department of Housing and Community Development, or its successor
3 agency, under the California Code of Regulations and pursuant to California Health and Safety Code
4 Section 50079.5, as amended from time to time;

5 (4) “Low Income” for the County of San Francisco within the “San Francisco, CA
6 HUD Metro FMR Area,” adjusted for household size, as published by the United States Department of
7 Housing and Urban Development, or its successor agency; or

8 (5) The maximum household income for a unit to receive the welfare exemption under
9 California Revenue and Taxation Code Section 214(g), as amended from time to time.

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

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

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

20 “Rent-Restricted Affordable Housing” means a property described under either of the
21 following subsections (1) or (2):

22 (1) A property transferred under Section 41B.6 of the Administrative Code, as
23 that Section 41B.6 existed as of June 3, 2019; or

24 (2) A Residential Rental Property that satisfies both of the following
25 subsections (2)(A) and (2)(B):

1 (A) Meets the requirements of ~~either one or more~~ of the following
2 subsections (2)(A)(i), (2)(A)(ii), or (2)(A)~~(ii)~~(iii):

3 (i) Prior to and up to the time of the transfer for which an
4 exemption is claimed under this Section 1108.6, was granted a welfare exemption by the
5 County Assessor under California Revenue and Taxation Code Section 214~~(g)~~ for at least 90%
6 of all residential units in the property;~~or~~

7 (ii) Prior to and up to the time of the transfer for which an
8 exemption is claimed under this Section 1108.6, was unoccupied, uninhabited, or unused for
9 residential or commercial purposes and contained no structures for which such uses were
10 legally permissible; or

11 (iii) Meets the requirements of the following subsection (2)(A)(iii)a. and
12 is the subject of the certification in the following subsection 2(A)(iii)b.

13 a. Prior to and up to the time of the transfer for which an
14 exemption is claimed under this Section 1108.6, was wholly-owned, directly or indirectly, by one or
15 more organizations that are exempt from income taxation under Section 501(c)(3) of the Internal
16 Revenue Code of 1986, as amended, which organization(s) transfer a portion of their ownership
17 interest(s) solely to one or more persons or legal entities who intend to hold the ownership interests in
18 compliance with the welfare exemption under California Revenue and Taxation Code Section 214(g)
19 for at least 90% of all residential units in the property.

20 b. The transferor(s) of the ownership interest(s) must certify to
21 MOHCD that an application for the welfare exemption under California Revenue and Taxation Code
22 Section 214(g) for at least 90% of all residential units in the property will be submitted to the County
23 Assessor within the time limits specified in California Revenue and Taxation Code Section 271(a), and
24 that such application will be substantially complete and valid within nine months of the date of the
25 transfer.~~and~~

(B) At the time of the transfer for which an exemption is claimed under this Section 1108.6 is, or concurrently with such transfer becomes, subject to a Recorded Restriction with an original term of at least~~remaining term of no less than~~ 55 years from ~~the later of the date of the transfer or~~ the date the property becomes available for residential rental use under such Recorded Restriction, and a remaining term of at least 35 years from the date of the transfer, provided that such Recorded Restriction, at a minimum:

(i) limits the maximum household income for each residential rental unit at initial occupancy to no more than 120% of MOHCD Area Median Income; and

(ii) sets a maximum household income limit applicable at initial occupancy for each residential rental unit ("Unit Maximum Income") such that the average of all Unit Maximum Incomes in the property does not exceed the Low Income Threshold~~80% of Area Median Income~~; and

(iii) limits the maximum monthly rent for each residential rental unit to no more than either:

a. the tenant-paid portion of the contract rent as determined by the San Francisco Housing Authority for residential tenants holding Section 8 vouchers or certificates; or

b. one-twelfth of 30% of the Unit Maximum Income; or

c. if the household income of the residential tenants in a residential rental unit exceeds the Unit Maximum Income after initial occupancy, one-twelfth of 30% of the household income of the residential tenants; and

(iv) provides for the regulation, monitoring, and enforcement of the restrictions in this subsection (2)(B) by a governmental agency.

For purposes of this subsection (2)(B) only, a "residential rental unit" does not include a unit for an onsite property manager.

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

7 “Section 41B.6 of the Administrative Code, as that Section 41B.6 existed as of
8 June 3, 2019” means the text of Section 41B.6 in Ordinance No. 79-19, on file with the Clerk
9 of the Board of Supervisors in File No. 181212.

10 **(b) Exemption from Increased Tax Rate.** As authorized by the last sentence of
11 Section 1102 of this Article 12-C, the increased tax rates imposed by subsections (d), (e),
12 and (f) of Section 1102 shall not apply with respect to any deed, instrument, or writing that
13 effects a transfer of Rent-Restricted Affordable Housing. The lower tax rate imposed by
14 subsection (c) of Section 1102 shall apply to the entire consideration or value of the interest or
15 property conveyed by a deed, instrument, or writing that is subject to the exemption in this
16 subsection (b).

17 **(c) Requirements for Exemption.**

18 (1) Except as provided in subsection (c)(2), ~~very~~every person claiming the
19 exemption under subsection (b) must:

20 (A) Obtain from MOHCD a certificate confirming that the deed,
21 instrument, or writing effects a transfer of Rent-Restricted Affordable Housing.

22 (B) Submit the certificate described in subsection (c)(1)(A) of this
23 Section 1108.6 to the County Recorder at the time such person submits the affidavit
24 described in subsection (c) or (d) of Section 1111.
25

1 (2) Notwithstanding the requirements in subsection (c)(1), every person
2 claiming the exemption under subsection (b) for a deed, instrument, or writing that effects a
3 transfer of Rent-Restricted Affordable Housing, when that deed, instrument, or writing is
4 delivered on or after January 1, ~~2021~~2017, but prior to July 1, ~~2022~~2024, may do the following in
5 lieu of the procedures described in subsection (c)(1):

6 (A) Obtain from MOHCD a certificate confirming that the deed,
7 instrument, or writing effected a transfer of Rent-Restricted Affordable Housing.

8 (B) By December 31, ~~2022~~2024, submit the certificate described in
9 subsection (c)(2)(A) of this Section 1108.6 to the County Recorder, along with a request for a
10 refund of the tax paid on, or the cancellation or reduction of any deficiency assessed with respect to,
11 the transfer subject to the certificate that exceeds the rates described in Section 1102(c). The
12 County Recorder may authorize the Controller to refund these amounts, without interest,
13 without the need for a refund claim.

14 This subsection (c)(2) shall not apply where the deed, instrument, or writing
15 effects a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6
16 existed as of June 3, 2019.

17 (3) Failure to timely satisfy the requirements in this subsection (c) renders the
18 transfer ineligible for the exemption.

19 **(d) Revocation of Exemption.**

20 (1) If a transfer of Rent-Restricted Affordable Housing was granted an exemption under
21 Section 1108.6(b) on the basis that the property satisfied subsection (iii) of the definition of
22 Rent-Restricted Affordable Housing in Section 1108.6(a)(2)(A) and the property did not satisfy
23 subsection (i) or (ii) of that definition, the person claiming such exemption must, within the later of
24 25 months of the transfer and the date such person submits any request for refund, cancellation, or
25 reduction under Section 1108.6(c)(2)(b), submit proof to the County Recorder that the property was

1 granted a welfare exemption by the County Assessor under California Revenue and Taxation Code
2 Section 214(g) for at least 90% of all residential units in the property within two years from the date of
3 the transfer. The County Recorder may grant a one-year extension to the 25-month and two-year
4 periods in this subsection (d)(1) if the welfare exemption application submitted to the County Assessor
5 was substantially complete within nine months of the date of the transfer and the person claiming the
6 exemption was diligently pursuing the required welfare exemption but was unable to obtain such
7 welfare exemption within the two-year period.

8 (2) If the County Recorder determines that a transfer of Rent-Restricted Affordable
9 Housing was granted an exemption under Section 1108.6(b) on the basis that that property satisfied
10 subsection (iii) of the definition of Rent-Restricted Affordable Housing in Section 1108.6(a)(2)(A) and
11 the property did not satisfy subsection (i) or (ii) of that definition, and that the property was not granted
12 a welfare exemption by the County Assessor under California Revenue and Taxation Code
13 Section 214(g) for at least 90% of all residential units in the property within two years from the date of
14 the transfer (or the extended date under Section 1108.6(d)(1)), the County Recorder may revoke the
15 exemption and issue a deficiency determination for the amount of tax exempted upon the basis of any
16 information within the County Recorder's possession or that may come into the County Recorder's
17 possession. Such deficiency determination shall bear interest at the rate of 1% per month, or fraction
18 thereof, on the amount of tax exempted, from the date the tax would have become delinquent had the
19 exemption in Section 1108.6 not applied, and shall be subject to a penalty of 35% of the amount of tax
20 exempted. Such deficiency determinations and the amounts paid pursuant to such deficiency
21 determinations shall be subject to the procedures otherwise applicable in Article 12-C of the Business
22 and Tax Regulations Code, except for the provisions in Section 1115.2, and except that, if the County
23 Recorder grants the one-year extension under Section 1108.6(d)(1), the time period in Section 1115(b)
24 of the Business and Tax Regulations Code for the County Recorder to serve notice of the deficiency
25 determination under this Section 1108.6(d)(2) shall also be extended by one year.

1 ~~(de)~~ **Operative Dates.**

2 (1) This Section 1108.6 shall apply to all deeds, instruments, or writings that
3 effect a transfer of Rent-Restricted Affordable Housing other than deeds, instruments, or
4 writings that effect a transfer under Section 41B.6 of the Administrative Code, as that
5 Section 41B.6 existed as of June 3, 2019, that are or have been delivered on or after
6 January 1, ~~2021~~2017, but on or before the sunset date in subsection (ef).

7 (2) This Section 1108.6 shall apply to all deeds, instruments, or writings that
8 effect a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6
9 existed as of June 3, 2019, that are or have been delivered on or after June 3, 2019, but on or
10 before the sunset date in subsection (ef).

11 ~~(ef)~~ **Sunset Date.** This Section 1108.6 shall expire by operation of law on
12 ~~June 30, 2024~~December 31, 2030, and shall not apply to any deeds, instruments, or writings that
13 are delivered on or after ~~July 1, 2024~~January 1, 2031.

14 ~~(g)~~ **Penalty Waiver.** The County Recorder shall waive all penalties and interest imposed on
15 transfers qualifying for the exemption in Section 1108.6(b) for deeds, instruments, or writings that
16 effected a transfer of Rent-Restricted Affordable Housing under subsection (2) of the definition of
17 Rent-Restricted Affordable Housing in Section 1108.6(a), when the deed, instrument, or writing was
18 delivered on or after January 1, 2017, but prior to the effective date of the ordinance, in Board File
19 No. 231007, adding this subsection (g). The waiver in this subsection (g) shall include penalties and
20 interest on the portion of the transfer tax not subject to the exemption in Section 1108.6(b). The County
21 Recorder may authorize the Controller to refund any penalties or interest qualifying for waiver under
22 this subsection (g), without interest, to the person that paid such penalties or interest if such person
23 files a request for refund with the County Recorder on or before December 31, 2024.

24 ~~(h)~~ **Severability.** If any section, subsection, sentence, clause, phrase, or word of this
25 Section 1108.6, or any application thereof to any person or circumstance, is held to be invalid or

1 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the
2 validity of the remaining portions or applications of this Section 1108.6. The Board of Supervisors
3 hereby declares that it would have enacted this Section 1108.6 and each and every subsection,
4 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether
5 any other portion of this Section 1108.6 or application thereof would be subsequently declared invalid
6 or unconstitutional.

7 (i) **Undertaking for the General Welfare.** In enacting and implementing this Section 1108.6,
8 the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
9 imposing on its officers and employees, an obligation for breach of which it is liable in money damages
10 to any person who claims that such breach proximately caused injury.

11
12 Section 4. Effective Date; Retroactivity.

13 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
14 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
15 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
16 Supervisors overrides the Mayor's veto of the ordinance.

17 (b) Retroactivity. Upon its effective date, this ordinance shall be retroactive to
18 January 1, 2017, insofar as it pertains to all deeds, instruments, or writings that effect a
19 transfer of Rent-Restricted Affordable Housing other than deeds, instruments, or writings that
20 effect a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6
21 existed as of June 3, 2019, that are or have been delivered on or after January 1, 2017. For
22 purposes of this subsection (b), the term "Section 41B.6 of the Administrative Code, as that
23 Section 41B.6 existed as of June 3, 2019" has the meaning set forth in Section 1108.6(a) of
24 the Business and Tax Regulations Code.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

7
8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /s/ Carole F. Ruwart
11 CAROLE F. RUWART
Deputy City Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Transfer Tax Exemption for Affordable Housing]

Ordinance amending the Business and Tax Regulations Code to broaden the exemption from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000, for transfers of certain rent-restricted affordable housing; applying the exemption retroactively to transfers occurring on or after January 1, 2017; and extending the exemption through December 31, 2030; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Since 2008, the transfer tax on the transfer of properties with a consideration or value of \$5 million or more has increased from 0.75% of consideration or value to between 2.25% and 6% of consideration or value depending on the consideration or value (Prop. N of November 2008, Prop. N of November 2010, Prop. W of November 2016, and Prop. I of November 2020). Existing law provides that the Board of Supervisors (the "Board") can exempt transfers of rent-restricted affordable housing, as defined by the Board, from these transfer tax increases. In 2019, the Board exempted transfers of property under the Community Right to Purchase Act ("COPA") from these increases. And in 2021, the Board exempted from these increases certain transfers of properties with recorded restrictions requiring that they be maintained as rent-restricted affordable housing for at least 55 years from the later of the date of the transfer and the date the property became available for residential use ("Restricted Properties") that were granted the property tax welfare exemption for all residential units on the property or that were vacant at the time of the transfer. These exemptions expire on June 30, 2024.

Amendments to Current Law

This ordinance would extend the partial exemption to certain transfers of Restricted Properties that were granted the property tax welfare exemption for 90% of all residential units in the property at the time of the transfer.

The ordinance would also extend the partial exemption to certain transfers of Restricted Properties that were wholly owned by qualified nonprofit organizations prior to the transfers, where the transfers are to persons or entities that intend to hold at least 90% of the residential units in the property so that they would qualify for the property tax welfare exemption specific to rent-restricted affordable housing. But if the property is not granted the welfare exemption for at least 90% of the units within two years of the transfer (or three years if certain requirements are met), the exemption will be revoked and the tax must be repaid to the City, with penalties and interest.

The Ordinance would also change the restrictions that must be recorded against Restricted Properties by expanding the metrics that may be used to determine if the housing is affordable, and by requiring only that the restrictions have at least 35 years remaining from the date of the transfer as long as the restrictions applied to the property for 55 years from the date the property first became available for residential use.

This ordinance's expansion of the partial exemption would apply retroactively to transfers occurring on or after January 1, 2017, but would not extend this retroactivity to transactions partially exempt as COPA transactions. The ordinance would waive penalties and interest for transfers qualifying for the partial exemption where the transfer occurred between January 1, 2017 and the effective date of the ordinance, including penalties and interest on the non-exempt portion of the transaction. The ordinance would also extend the partial exemption through December 31, 2030.

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Item 3 File 23-1007	Department: Mayor's Office of Housing & Community Development
EXECUTIVE SUMMARY	
Legislative Objectives - The proposed ordinance would amend the Business and Tax Regulations Code to broaden the exemption from increased transfer tax rates for rent-restricted affordable housing exceeding \$5.0 million in value. The ordinance would also extend the exemption by 6.5 years through December 31, 2030 and apply the exemption retroactively to transfers occurring since January 1, 2017, or four years before the existing exemption start date. Key Points - Since 2008, San Francisco voters have approved increases in transfer tax rates for property transfers exceeding \$5.0 million in value from 0.75 percent to between 2.25 percent and 6.0 percent, depending on the property. The Board of Supervisors has approved two exemptions for affordable housing from these increases in transfer tax rates, including an exemption for properties acquired via the Community Opportunity to Purchase Act and an exemption for rent-restricted affordable housing starting in January 2021. These exemptions expire June 30, 2024 and have resulted in \$14.5 million in reduced transfer tax revenues to date. - The proposed ordinance broadens the definition of affordable housing to include projects with at least 90 percent units rent restricted (rather than 100 percent), to allow affordable housing projects that have site manager units or units for other program use besides rent-restricted affordable housing to qualify. Fiscal Impact - Based on available data, we estimate between \$30 million and \$45 million in reduced General Fund revenues through 2030 due to the proposed ordinance, including: (a) at least \$12 million in reduced revenues for property transactions that occurred between 2017 and 2021 largely based on eligible transactions known by the Office of the Assessor-Recorder; and (b) between \$18 million and \$33 million in reduced revenues for property transactions occurring between July 2024 and December 2030. Policy Consideration - The proposed ordinance would reduce transfer taxes paid by affordable housing operators, which would allow project sponsors to direct these funds to projects' ongoing operating expenses. Because the proposed ordinance would reduce General Fund revenues, we consider approval to be a policy matter for the Board of Supervisors. Recommendation - Approval of the proposed ordinance is a policy matter for the Board of Supervisors.	

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND**Transfer Tax**

Article 12C of the City's Business Tax and Regulations Code imposes a real property transfer tax on property acquisitions or leases of 35 years or more. The tax rate increases by the value of the property. Certain property transfers are exempt from this tax, including transfers of property between married couples, domestic partners, or parents and children, gifts and inheritances, or between individuals and their limited liability companies, limited partnerships, or trusts. The Board of Supervisors is authorized to exempt rent restricted affordable housing from transfer taxes on property values of \$5 million or more.¹ According to the Controller's FY 2023-24 – FY 2024-25 Revenue Letter, real property transfer tax revenues are budgeted at \$222.0 million in FY 2023-24 and \$269.6 million in FY 2024-25, down from \$390.5 million in FY 2022-23.

Administrative Code Section 10.60(c) requires the maintenance of Budget Stabilization Reserve, which is funded, in part, by depositing 75 percent of real property transfer tax collections in excess of a rolling five-year average collection, adjusted for rate increases during that period. According to the Controller's Revenue Letter, no deposits are expected in FY 2023-24 and FY 2024-25 as transfer taxes are expected to be below the prior five-year average.

Transfer Taxes Applied to Affordable Housing Projects

Transfer Taxes may apply to affordable housing projects under the following scenarios:

- a) preservation projects (including small sites projects and properties acquired under the Community Opportunity to Purchase Act) when the property is purchased (for \$5.0 million or more);
- b) existing affordable multifamily projects that received Low-Income Housing Tax Credits, when the limited partner exits the partnership around Year 15 (Year 15 Exits) thus changing the ownership structure;
- c) existing affordable multifamily projects that receive Low-Income Housing Tax Credits when the project is refinanced to allow for capital improvements requiring a new limited partnership (resyndication);
- d) existing affordable multifamily projects that are sold to another non-profit operator when the existing operator can no longer operate the site because they are going out of business or for another reason;

¹ In November 2020, voters approved Proposition I, which increased the transfer tax on property transactions above \$5 million. The tax became effective January 1, 2021.

- e) HOPE SF accelerated conversion units, when the San Francisco Housing Authority rehabilitated and then sold remaining public housing units at HOPE SF sites (e.g., Sunnydale and Potrero) to a nonprofit affiliate (SFHA Housing Corp).

Exemptions for Affordable Housing

Since 2008, San Francisco voters have approved increases in transfer tax rates for property transfers exceeding \$5.0 million in value from 0.75 percent to between 2.25 percent and 6.0 percent, depending on the property value. The Board of Supervisors has approved two exemptions for affordable housing from these increases in transfer tax rates. These exemptions expire June 30, 2024.

In 2019, the Board of Supervisors exempted properties acquired under the Community Opportunity to Purchase Act, which provides non-profits with the right of first offer and refusal to purchase residential buildings with three or more units, from the increases in transfer tax rates (File 18-1212). This exemption applies to property transactions between May 2019 (when the Ordinance was passed) and June 30, 2024.

In 2021, the Board of Supervisors exempted rent-restricted affordable housing from the increases in transfer tax rates (File 21-0937). To qualify for the reduced transfer tax rates, properties must: (a) have affordability restrictions recorded for at least 55 years, and for a government agency to monitor such restrictions, and (b) either be vacant, used for commercial purposes prior to claiming eligibility, or have qualified for a welfare exemption under Section 214 of the California Revenue and Taxation Code, which reduces property taxes for properties used exclusively as rental housing to low-income households. This exemption applies to property transactions between January 2021 to June 2024.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Business and Tax Regulations Code to broaden the exemption from increased transfer tax rates for rent-restricted affordable housing exceeding \$5.0 million in value. The ordinance would also extend the exemption by 6.5 years through December 31, 2030 and apply the exemption retroactively to transfers occurring since January 1, 2017, or four years before the existing exemption start date.

The proposed ordinance would broaden the exemption to allow affordable housing projects that have site manager units or units for other program use besides rent-restricted affordable housing to qualify for the exemption as long as at least 90 percent of residential units are used for rent-restricted affordable housing. Under the ordinance, rent-restricted housing is defined as either: (1) property transferred under the Community Opportunity to Purchase Act; or residential rental property that (2) either is vacant, has qualified for a welfare exemption under Section 214 of the California Revenue and Taxation Code for at least 90 percent of residential units, or was owned by one or more non-profit organizations prior to the time of transfer and is being transferred to one or more entities who intend to comply with the welfare exemption for at least 90 percent of residential units and certify to MOHCD that an application for the welfare exemption will be submitted to the County Assessor within nine months of the date of transfer. In addition,

qualifying residential rental property must also have affordability restrictions recorded for at least 55 years, with at least 35 years remaining in the term from the date of transfer. Qualifying rent restricted housing must be restricted to households making up to 120 percent of area median income with all units in the building having an average maximum income of up to the “low-income threshold”² and must limit rent to amounts determined by the San Francisco Housing Authority for Section 8 voucher households or to no more than 30 percent of the household income.

Under the proposed ordinance, property transactions that occurred between January 1, 2017 and the effective date of the ordinance would be eligible for a refund pending submittal of a request for a refund by December 31, 2024. In addition, the ordinance would also waive all penalties and interest on transfer taxes imposed on transactions that qualify for the exemption retroactively, including penalties and interest applied to the portion of the tax not subject to the exemption. Eligible affordable housing operators that already paid these amounts would be eligible for a refund.

Exhibit 1 below shows the proposed transfer tax rates for eligible property transactions. Proposed rates for qualifying rent-restricted affordable housing reflect the existing rates under previously approved exemptions for affordable housing.

Exhibit 1: Proposed Transfer Tax Rates for Rent Restricted Affordable Housing

Property Consideration or Value	Rates for Qualifying		Difference
	Rent-Restricted Affordable Housing	Rates for Non-Exempt Properties	
\$100 - <\$250,000	0.50%	0.50%	-
\$250,000 - <\$1,000,000	0.68%	0.68%	-
\$1,000,000 - <\$5,000,000	0.75%	0.75%	-
\$5,000,000 - <\$10,000,000	0.75%	2.25%	-1.50%
\$10,000,000 - <\$25,000,000	0.75%	5.50%	-4.75%
\$25,000,000 or more	0.75%	6.00%	-5.25%

Source: Proposed Ordinance

Value of Transfer Tax Exemptions to Date

According to information provided by the Office of the Assessor-Recorder and MOHCD, the existing exemptions have resulted in \$14.5 million in reduced transfer tax revenues. Projects that claimed the exemption paid a total of \$2.7 million in transfer taxes, which is 84 percent less than what they would have paid without the exemption (\$17.2 million). On average the exemption resulted in \$5.1 million in reduced transfer tax revenues per year over the period. Exhibit 2 below

² The “low income threshold” is defined as the greatest of the following: (a) 80% of MOHCD AMI; (b) 80% of the California Tax Credit Allocation Committee AMI for the County of San Francisco; (c) “lower income” according to the California Department of Housing and Community Development for the County of San Francisco; (d) “low income” according to the U.S. Department of Housing and Urban Development for the County of San Francisco; or (e) the maximum household income for a unit to receive the welfare exemption under the California Revenue and Taxation Code.

shows the reduction in transfer tax revenue by year for projects that claimed the exemption between January 2021 and September 2023.

Exhibit 2: Tax Savings for Projects Claiming Affordable Housing Exemption, January 2021 through September 2023

Property Transaction Year	Regular Tax Tier Transfer Tax Amount for Projects Claiming Exemption	Affordable Housing Qualifying Transfer Tax Amount for Projects Claiming Exemption	Reduction in Transfer Tax Revenues for Projects Claiming Exemption
2021	\$3,263,958	\$467,355	\$2,796,603
2022	11,435,433	1,780,125	9,655,308
2023 (9 months)*	2,509,643	425,423	2,084,220
Total	\$17,209,033	\$2,672,903	\$14,536,130

Source: Office of the Assessor-Recorder

*2023 Transactions through September 2023

FISCAL IMPACT

Projected General Fund Revenue Losses

To project the fiscal impact of the proposed ordinance, we reviewed information provided by MOHCD on preservation projects exceeding \$5.0 million and Year 15 Exits with property transaction dates between January 2017 and October 2023 and Year 15 Exits projected to occur between October 2023 and December 2030. We also reviewed data from the Office of the Assessor-Recorder on affordable housing exemptions claimed to date for transactions that occurred since January 2021 and demands for transfer tax payments from affordable housing operators between January 2017 and December 2020. Based on the available data, we estimate between \$30 million and \$45 million in reduced transfer tax revenues through 2030 from affordable housing property transactions due to the proposed ordinance, as summarized below.

For projects that have already paid the higher transfer tax amount, a portion of transfer taxes will be refunded to the project owner. In the case of projects that were funded by MOHCD and paid the higher transfer tax amount, the portion of refunded transfer taxes may be repaid to the City, as the City's Promissory Notes for its gap loan agreements require that excess proceeds (that is, development funding remaining after payment of actual project costs) originally funded by the City be returned to MOHCD. For MOHCD projects that have yet to close their acquisition or pay any transfer tax, the projects and MOHCD will benefit from reduced transfer tax amounts. Other property transactions not included in the MOHCD pipeline may also qualify for the proposed reduction in transfer taxes, which would result in a General Fund revenue loss.

Fiscal Impact of 2017-2020 Exemptions: At Least \$12 million

We estimate that applying the exemption and broadening it retroactively to January 2017, which is four years before the existing exemption start date, would result in reduced transfer tax revenues of at least \$12 million for property transactions occurring between January 2017 to

December 2020, including up to \$1.2 million in reduced transfer tax revenues from preservation projects and at least \$10.8 million in reduced tax and related penalties and interest revenues for non-preservation projects (or previously existing multifamily affordable housing) based on demands for transfer tax payments from affordable housing operators and additional transactions known to the Office of the Assessor-Recorder staff. However, there may be projects that are exempt from higher transfer taxes under the proposed ordinance but not yet known to the Assessor and therefore excluded from our analysis. Our estimate assumes that these projects will all be eligible for the exemption under the proposed ordinance. It also assumes that the project sponsors will either claim the exemption if they have not yet paid taxes or will request a refund if they have already paid taxes.

Fiscal Impact of Extending Exemptions From June 2024 – December 2030: \$18 - \$33 million

We estimate that extending and broadening the exemption to December 2030, which is 6.5 years after the existing exemption expiration date, would result in reduced transfer tax revenues of between \$18 and \$33 million based on exemptions claimed since 2021.³ Because these figures are based on existing affordable housing exemptions and the proposed ordinance broadens the definition of affordable housing to include projects with at least 90 percent units rent restricted (rather than 100 percent), our \$18 million and \$33 million figures may be underestimates. This assumes a similar level of property transactions or ownership changes for affordable housing projects in the future as what has occurred since 2017.

POLICY CONSIDERATION

The proposed ordinance would reduce transfer taxes paid by affordable housing operators, which would allow project sponsors to direct these funds to projects' ongoing operating expenses. According to MOHCD staff, existing affordable housing projects do not have sufficient cash flow to pay the transfer tax, and payment of transfer tax for Year 15 Exits are not assumed in the permanent finance proformas for tax credit projects. Refunded taxes returned to MOHCD may result in applying these funds to future affordable housing projects. Because the proposed ordinance would reduce General Fund revenues, we consider approval to be a policy matter for the Board of Supervisors.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

³ The lower estimate (\$18 million) assumes annual revenue losses of \$2.7 million over the 6.5-year period which is consistent with 2021 and 2023 annualized revenues. The higher estimate (\$33 million) assumes annual revenue losses of \$5.1 million over the 6.5-year period based on average annualized revenue losses in between 2021 and 2023, which includes 2022, which had the highest revenue losses of any year (\$9.6 million).

BOARD of SUPERVISORS



City Hall
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San Francisco, CA 94102-4689
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Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

Date: September 29, 2023
To: Planning Department
From: Brent Jalipa, Clerk of the Budget and Finance Committee
Subject: Board of Supervisors Legislation Referral - File No. 231007
Business and Tax Regulations Code - Transfer Tax Exemption for Affordable Housing

☒ California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)

☒ Ordinance / Resolution

☐ Ballot Measure

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

10/30/2023

Joy Navarrete

☐ Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)

☐ General Plan ☐ Planning Code, Section 101.1 ☒ Planning Code, Section 302

☐ Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)

☐ General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)

(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

☐ Historic Preservation Commission

☐ Landmark (*Planning Code, Section 1004.3*)

☐ Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)

☐ Mills Act Contract (*Government Code, Section 50280*)

☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Brent Jalipa at Brent.Jalipa@sfgov.org.

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MEMORANDUM

TO: José Cisneros, City Treasurer, Office of the Treasurer and Tax Collector
Eric D. Shaw, Director, Mayor's Office of Housing and Community Development
Joaquín Torres, Assessor Recorder, Office of the Assessor-Recorder
Christina Varner, Acting Executive Director, Rent Board

FROM: Brent Jalipa, Assistant Clerk, Budget and Finance Committee

DATE: September 29, 2023

SUBJECT: PROPOSED ORDINANCE INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed Ordinance, introduced by Supervisor Dean Preston:

File No. 231007

Ordinance amending the Business and Tax Regulations Code to broaden the exemption from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000 for transfers of certain rent-restricted affordable housing; applying the exemption retroactively to transfers occurring on or after January 1, 2017; extending the exemption through December 31, 2030; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Amanda Kahn Fried, Office of the Treasurer and Tax Collector
Lydia Ely, Mayor's Office of Housing and Community Development
Brian Cheu, Mayor's Office of Housing and Community Development
Maria Benjamin, Mayor's Office of Housing and Community Development
Sheila Nickolopoulos, Mayor's Office of Housing and Community Development
Kurt Fuchs, Office of the Assessor-Recorder
Holly Lung, Office of the Assessor-Recorder

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Business and Tax Regulations Code - Transfer Tax Exemption for Affordable Housing

- ☒ California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - ☒ Ordinance / Resolution
 - ☐ Ballot Measure
- ☐ Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
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- ☐ Historic Preservation Commission
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 - ☐ Mills Act Contract (*Government Code, Section 50280*)
 - ☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Brent Jalipa at Brent.Jalipa@sfgov.org.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor _____ inquires..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. _____ from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. _____
- ☐ 9. Reactivate File No. _____
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Supervisor Dean Preston

Subject:

Business and Tax Regulations Code - Transfer Tax Exemption for Affordable Housing

Long Title or text listed:

Ordinance amending the Business and Tax Regulations Code to broaden the exemption from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000, for transfers of certain rent-restricted affordable housing; applying the exemption retroactively to transfers occurring on or after January 1, 2017; and extending the exemption through December 31, 2030; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor:

