

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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