

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
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
- ☐ 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.

[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. _____ 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~~

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

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

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

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

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

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

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

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

24 For purposes of this subsection (2)(B) only, a "residential rental unit" does
25 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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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:

