

BOARD of SUPERVISORS




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MEMORANDUM

Date: July 1, 2024
To: Planning Department / Commission
From: Brent Jalipa, Clerk of the Budget and Finance Committee
Subject: Board of Supervisors Legislation Referral - File No. 240728 - Business and Tax Regulations Code - Transfer Tax Reduction for Union Labor-Built and Union Pension Fund-Financed Housing

- California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - Ordinance / Resolution
 - Ballot Measure

CEQA clearance 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.

07/03/2024 
- 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.

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.

8
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.

13
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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LEGISLATIVE DIGEST

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

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

Existing Law

Since 2008, the voters have increased the real property transfer tax on the transfer of properties with a consideration or value of \$5 million or more from 0.75% of consideration or value to between 2.25% and 6%, depending on the consideration or value. (November 2008 Prop. N; November 2010 Prop. N; November 2016 Prop. W; and November 2020 Prop. I). In March 2024, the voters passed Proposition C, which permits the Board of Supervisors to exempt transfers from all or any part of the transfer tax.

Amendments to Current Law

This ordinance would partially exempt transfers of certain residential rental properties that meet each of the following four requirements:

- (1) At the time of the transfer at least 12% of the residential units on the property, calculated by excluding any density bonus units, are, or concurrently with such transfer become, subject to a recorded restriction that:
 - (a) Limits the maximum household income for each residential rental unit to no more than 110% of area median income;
 - (b) Limits the maximum monthly rent for each residential rental unit to no more than one-twelfth of 30% of 110% of the area median income;
 - (c) Provides for the regulation, monitoring, and enforcement of the recorded restriction by a governmental agency; and
 - (d) Has a remaining term of at least 55 years from the date of the transfer.

- (2) On or after June 3, 2014, received a certificate of final completion and occupancy for a newly-constructed building.
- (3) All on-site construction of the newly-constructed building was performed by workers represented by a labor organization and that were paid prevailing wages.
- (4) At least one year before and through the date of the transfer, one or more qualified pension plans (defined in the ordinance as requiring, among other things, that they be bargained and maintained by a labor organization or benefit individuals represented by a labor organization) collectively held a \$25 million debt or equity investment in the single property being transferred, and each such investor maintained and enforced a policy requiring that all construction work be performed by workers represented by a labor organization with respect to that investor's portion of the \$25 million investment.

For properties with a consideration or value of at least \$10 million but less than \$25 million, the ordinance would reduce the transfer tax rate from 5.5% to 3% of the consideration or value of the property transferred. For properties with a consideration or value of \$25 million or more, the ordinance would reduce the transfer tax rate from 6% to 3% of the consideration or value of the property transferred.

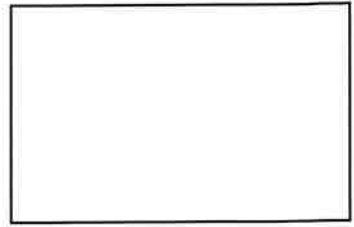
The Office of Labor Standards Enforcement would certify that the conditions of the exemption have been met.

This exemption would apply to transfers that occur on or after the effective date of the ordinance. For transfers of property that received a certificate of final completion and occupancy before the effective date of the ordinance, this exemption would expire on June 30, 2029. For transfers of property that received a certificate of final completion and occupancy on or after the effective date of the ordinance, this exemption would expire on December 31, 2033.

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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):

Safai, Chan

Subject:

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

Long Title or text listed:

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

Signature of Sponsoring Supervisor: