

1 [Initiative Ordinance - Business and Tax Regulations Code - Increase Real Property Transfer
2 Tax on Properties of At Least \$5,000,000]

3 **Motion ordering submitted to the voters, at an election to be held November 8, 2016, an**
4 **ordinance amending the Business and Tax Regulations Code to increase the Real**
5 **Property Transfer Tax rate from 2% to 2.25% on properties with a consideration or**
6 **value of at least \$5,000,000 and less than \$10,000,000; from 2.5% to 2.75% on**
7 **properties with a consideration or value of at least \$10,000,000 and less than**
8 **\$25,000,000; and from 2.5% to 3% on properties with a consideration or value of at least**
9 **\$25,000,000, and to clarify the application of the Real Property Transfer Tax to transfers**
10 **of ownership interests in legal entities; and increasing the City's appropriations limit**
11 **by the amount of the tax increase for four years from November 8, 2016.**

12
13 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
14 voters of the City and County of San Francisco, at an election to be held on November 8,
15 2016.

16
17 **Ordinance amending the Business and Tax Regulations Code to increase the**
18 **Real Property Transfer Tax rate from 2% to 2.25% on properties with a consideration or**
19 **value of at least \$5,000,000 and less than \$10,000,000; from 2.5% to 2.75% on**
20 **properties with a consideration or value of at least \$10,000,000 and less than**
21 **\$25,000,000; and from 2.5% to 3% on properties with a consideration or value of at least**
22 **\$25,000,000, and to clarify the application of the Real Property Transfer Tax to transfers**
23 **of ownership interests in legal entities; and increasing the City's appropriations limit**
24 **by the amount of the tax increase for four years from November 8, 2016.**

1 NOTE: **Unchanged Code text and uncodified text** are in plain font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.
4 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
5 parts of tables.

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

7 Section 1. The Business and Tax Regulations Code is hereby amended by revising
8 Article 12-C, Sections 1102, 1108, and 1114, and adding Section 1109, to read as follows:

9 **SEC. 1102. TAX IMPOSED.**

10 There is hereby imposed on each deed, instrument or writing by which any lands,
11 tenements, or other realty sold within the City and County of San Francisco shall be granted,
12 assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or
13 any other person or persons, by his or her or their direction, when the consideration or value
14 of the interest or property conveyed (not excluding the value of any lien or encumbrances
15 remaining thereon at the time of sale) (~~at~~) exceeds \$100.00 but is less than or equal to
16 \$250,000.00, a tax at the rate of \$2.50 for each \$500.00 or fractional part thereof; or (~~b#~~) more
17 than \$250,000.00 and less than \$1,000,000.00, a tax at the rate of \$3.40 for each \$500.00 or
18 fractional part thereof for the entire value or consideration, including, but not limited to, any
19 portion of such value or consideration that is less than \$250,000.00; or (~~c##~~) at least
20 \$1,000,000.00 and less than \$5,000,000.00, a tax at the rate of \$3.75 for each \$500.00 or
21 fractional part thereof for the entire value or consideration, including, but not limited to, any
22 portion of such value or consideration that is less than \$1,000,000.00; or (~~d##~~) at least
23 \$5,000,000.00 and less than \$10,000,000.00, a tax at the rate of ~~\$10.00~~ \$11.25 for each
24 \$500.00 or fractional part thereof for the entire value or consideration, including, but not limited
25 to, any portion of such value or consideration that is less than \$5,000,000.00; or (~~e#~~) at least
\$10,000,000.00 and ~~above~~ less than \$25,000,000, a tax at the rate of ~~\$12.50~~ \$13.75 for each

1 \$500.00 or fractional part thereof for the entire value or consideration, including but not limited
2 to, any portion of such value or consideration that is less than \$10,000,000.00; or (f) at least
3 \$25,000,000, a tax at the rate of \$15 for each \$500 or fractional part thereof for the entire value or
4 consideration, including but not limited to, any portion of such value or consideration that is less than
5 \$25,000,000. The People of the City and County of San Francisco authorize the Board of
6 Supervisors to enact ordinances, without further voter approval, that will exempt rent-
7 restricted affordable housing, as the Board may define that term, from the increased tax rate
8 in subsections (div), ~~and (e)~~, and (f).

9
10 **SEC. 1108. APPLICATION TO PARTNERSHIPS: ~~TITLE CHANGES NOT AFFECTING~~**
11 **~~OWNERSHIP.~~**

12 (a) In the case of any realty held by a partnership or other entity treated as a
13 partnership for federal income tax purposes, no levy shall be imposed pursuant to this Article
14 by reason of any transfer of an interest in a partnership or other entity treated as a partnership
15 for federal income tax purposes or otherwise, if:

16 (1) Such partnership or other entity treated as a partnership (or another
17 partnership or other entity treated as a partnership) is considered a continuing partnership
18 within the meaning of Section 708 of the Internal Revenue Code of 1986, as amended; and

19 (2) Such continuing partnership or other entity treated as a partnership
20 continues to hold the realty concerned.

21 (b) If there is a termination of any partnership or other entity treated as a partnership
22 for federal income tax purposes within the meaning of Section 708 of the Internal Revenue
23 Code of 1986, as amended, for purposes of this Article, such partnership or other entity shall
24 be treated as having executed an instrument whereby there was conveyed, for fair market
25 value, all realty held by such partnership or other entity at the time of such termination.

1 (c) Not more than one tax shall be imposed pursuant to this Article by reason of a
2 termination described in Subdivision (b), and any transfer pursuant thereto, with respect to the
3 realty held by such partnership or other entity treated as a partnership for federal income tax
4 purposes at the time of such termination.

5 (d) Notwithstanding any other language in this Section 1108, nothing in this Section shall
6 exempt from the tax imposed under this Article 12-C any “realty sold” as described in Section 1114(b).

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8 **SEC. 1109. TITLE CHANGES NOT AFFECTING OWNERSHIP.**

9 ~~(d)~~ The tax imposed under this Article shall not apply where the deed, instrument, or
10 other writing transferring title to real property between an individual or individuals and a legal
11 entity or between legal entities ~~that~~ results solely in a change in the method of holding title and
12 in which the proportional ownership interests in the real property, whether represented by
13 stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or
14 indirectly, remains exactly the same before and after the transfer.

15
16 **SEC. 1114. ADMINISTRATION AND INTERPRETATION.**

17 (a) In the administration of this ordinance the recorder shall interpret its provisions
18 consistently with those Documentary Stamp Tax Regulations adopted by the Internal
19 Revenue Service of the United States Treasury Department which relate to the Tax on
20 Conveyances and are identified as Sections 47.4361-1, 47.4361-2 and 47.4362-1 of Part 47
21 of Title 26 of the Code of Federal Regulations, as the same existed on November 8, 1967,
22 except that for the purposes of this ordinance, the determination of what constitutes “realty”
23 shall be determined by the definition or scope of that term under state law.

24 (b) Notwithstanding subsection (a) ~~the preceding sentence~~, “realty sold” includes any
25 acquisition or transfer of ownership interests in a legal entity that would be a change of

1 ownership of ~~the entity's~~ real property under California Revenue ~~&and~~ Taxation Code ~~§~~Section
2 64. In such cases, there shall be deemed to have been an instrument executed whereby there was
3 conveyed, for fair market value, all real property that experienced a change of ownership under
4 California Revenue and Taxation Code Section 64.

5
6 Section 2. Scope of Ordinance. In enacting this ordinance, the People of the City and
7 County of San Francisco intend to amend only those words, phrases, paragraphs,
8 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
9 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
10 or deletions, in accordance with the "Note" that appears under the official title of the
11 ordinance.

12
13 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
14 of this ordinance, or any application thereof to any person or circumstance, is held to be
15 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
16 shall not affect the validity of the remaining portions or applications of the ordinance. The
17 people of the City and County of San Francisco hereby declare that they would have passed
18 this ordinance and each and every section, subsection, sentence, clause, phrase, and word
19 not declared invalid or unconstitutional without regard to whether any other portion of this
20 ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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22 Section 4. Appropriations Limit Increase. Pursuant to California Constitution Article
23 XIII B and applicable laws, for four years from November 8, 2016, the appropriations limit for
24 //

1 the City shall be increased by the aggregate sum collected by the levy of the Real Property
2 Transfer Tax rate increase imposed by this ordinance.

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 CAROLE F. RUWART
8 Deputy City Attorney

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