

BOARD of SUPERVISORS



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September 27, 2021

File No. 210937

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On September 7, 2021, Supervisor Dean Preston introduced the following legislation:

File No. 210937

Ordinance amending the Business and Tax Regulations Code to exempt certain transfers of rent-restricted affordable housing occurring on or after January 1, 2021, from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000; and affirming the Planning Department's determination under the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

Linda Wong

By: Linda Wong, Assistant Clerk
Budget and Finance Committee

Attachment

c: Devyani Jain, Environmental Planning
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning
Laura Lynch, Environmental Planning

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

2
3 **Ordinance amending the Business and Tax Regulations Code to exempt certain**
4 **transfers of rent-restricted affordable housing occurring on or after January 1, 2021,**
5 **from the increased transfer tax rates when the consideration or value of the interest or**
6 **property conveyed equals or exceeds \$5,000,000; and affirming the Planning**
7 **Department's determination under the California Environmental Quality Act.**

8
9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

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

17 Section 1. The Planning Department has determined that the actions contemplated in
18 this ordinance comply with the California Environmental Quality Act (California Public
19 Resources Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of the
20 Board of Supervisors in File No. _____ and is incorporated herein by reference. The
21 Board affirms this determination.

22 Section 2. Legislative Findings.

23 The City is facing a crisis of a shortage of affordable rental housing. This ordinance
24 would promote the creation and preservation of rent-restricted affordable housing by
25 exempting transfers of rent-restricted affordable housing from the higher real property transfer

1 tax rates applicable to transfers of real property where the consideration or value of the
2 interest or property conveyed is \$5,000,000 or more. This ordinance would also promote the
3 continued viability of recently transferred rent-restricted affordable housing by including in the
4 exemption from these higher rates transfers of such rent-restricted affordable housing that
5 occurred between January 1, 2021 and the effective date of the ordinance.

6
7 Section 3. Article 12-C of the Business and Tax Regulations Code is hereby amended
8 by revising Section 1108.6, to read as follows:

9 **SEC. 1108.6. PARTIAL EXEMPTION FOR RENT-RESTRICTED AFFORDABLE HOUSING;**
10 **~~COMMUNITY OPPORTUNITY TO PURCHASE ACT.~~**

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

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

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

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

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

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

1 (2) A Residential Rental Property that satisfies both of the following subsections (2)(A)

2 and (2)(B):

3 (A) Meets the requirements of either of the following subsections (2)(A)(i) or

4 (2)(A)(ii):

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

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

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

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

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

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

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

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

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

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

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

18 ~~(a)~~ (b) **Exemption from Increased Tax Rate.** As authorized by the last sentence of
19 Section 1102 of this Article 12-C, the increased tax rate_s imposed by subsections (d), (e),
20 and (f) of Section 1102 shall not apply with respect to any deed, instrument_t or writing that
21 effects a transfer ~~of Rent-Restricted Affordable Housing under Section 41B.6 of the Administrative~~
22 ~~Code, as that Section 41B.6 exists as of the effective date of this Section 1108.6.~~ The lower tax rate
23 imposed by subsection (c) of Section 1102 shall apply to the entire consideration or value of
24 the interest or property conveyed by a deed, instrument_t or writing that is subject to the
25 exemption in this subsection ~~(a)~~ (b).

1 ~~(b)(c)~~ **Requirements for Exemption.**

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

4 ~~(A)~~ Obtain from MOHCD ~~the Mayor's Office of Housing and Community~~
5 ~~Development, or its successor agency, department, or office,~~ a certificate confirming that the deed,
6 instrument, or writing effects a transfer under Section 41B.6 of the Administrative Code of Rent-
7 Restricted Affordable Housing.

8 ~~(B)~~ Submit the certificate described in subsection ~~(b)(c)(1)~~(A) of this
9 Section 1108.6 to the County Recorder at the time such person submits the affidavit
10 described in subsection (c) or (d) of Section 1111.

11 (2) Notwithstanding the requirements in subsection (c)(1), every person claiming the
12 exemption under subsection (b) for a deed, instrument, or writing that effects a transfer of Rent-
13 Restricted Affordable Housing, when that deed, instrument, or writing is delivered on or after January
14 1, 2021, but prior to July 1, 2022, may do the following in lieu of the procedures described in
15 subsection (c)(1):

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

18 (B) By December 31, 2022, submit the certificate described in subsection
19 (c)(2)(A) of this Section 1108.6 to the County Recorder, along with a request for refund of the tax paid
20 on the transfer subject to the certificate that exceeds the rates described in Section 1102(c). The
21 County Recorder may authorize the Controller to refund these amounts, without interest, without the
22 need for a refund claim.

23 This subsection (c)(2) shall not apply where the deed, instrument, or writing effects a
24 transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6 existed as of June 3,
25 2019.

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

3 ~~(e)~~(d) **Operative Dates.**

4 (1) This Section 1108.6 shall apply to all deeds, instruments, or writings that
5 effect a transfer of Rent-Restricted Affordable Housing other than deeds, instruments, or writings that
6 effect a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6 existed as of
7 June 3, 2019, that are or have been delivered on or after January 1, 2021~~the effective date of the~~
8 ~~ordinance in Board File No. 181212,~~ but on or before the sunset date in subsection ~~(d)~~(e).

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

13 ~~(d)~~(e) **Sunset Date.** This Section 1108.6 shall expire by operation of law on
14 June 30, 2024, and shall not apply to any deeds, instruments, or writings that are delivered on
15 or after July 1, 2024.

16
17 Section 4. Effective Date; Retroactivity.

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

22 (b) Retroactivity. Upon its effective date, and consistent with Section 1108.6(d)(1) of
23 the Business and Tax Regulations Code as amended by this ordinance, the ordinance shall
24 be retroactive to January 1, 2021, insofar as it pertains to all deeds, instruments, or writings
25 that effect a transfer of Rent-Restricted Affordable Housing other than deeds, instruments, or

1 writings that effect a transfer under Section 41B.6 of the Administrative Code, as that
2 Section 41B.6 existed as of June 3, 2019, that are or have been delivered on or after
3 January 1, 2021.
4

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

12 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of
13 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
14 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
15 affect the validity of the remaining portions or applications of the ordinance. The Board of
16 Supervisors hereby declares that it would have passed this ordinance and each and every
17 section, subsection, sentence, clause, phrase, and word not declared invalid or
18 unconstitutional without regard to whether any other portion of this ordinance or application
19 thereof would be subsequently declared invalid or unconstitutional.
20

21 Section 7. Undertaking for the General Welfare. In enacting and implementing this
22 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
23 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
24 is liable in money damages to any person who claims that such breach proximately caused
25 injury.

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

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

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LEGISLATIVE DIGEST

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

Ordinance amending the Business and Tax Regulations Code to exempt certain transfers of rent-restricted affordable housing occurring on or after January 1, 2021, from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000; 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.

Amendments to Current Law

This ordinance would extend the partial exemption to transfers of residential rental properties that are legally restricted to be exclusively affordable in a manner that meets the specific requirements of the ordinance, including limits on tenant income and rents paid for each unit. The Mayor’s Office of Housing and Community Development would certify that the restrictions on the property meet these requirements. This exemption would be retroactive to January 1, 2021. This ordinance would not change the exemption for COPA properties. Both exemptions would expire on June 30, 2024.

Under this legislation, transfers of properties that meet the requirements described above would pay transfer tax at a rate of \$3.75 per \$500 of consideration or value (0.75%), and not these higher rates:

Property Consideration or Value	Rate/\$500
\$5 million to less than \$10 million	\$11.25 or 2.25%
\$10 million to less than \$25 million	\$27.50 or 5.50%
\$25 million or more	\$30 or 6.00%

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