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Councilmember Dan Kalb

CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2<sup>ND</sup> FLOOR - OAKLAND - CALIFORNIA 94612

## Agenda Memorandum

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To: Rules & Legislation Committee

From: Councilmember Dan Kalb

Date: June 2<sup>nd</sup>, 2016

Subject: Resolution in Support of AB 2818 – Property taxation: community land trust

Colleagues on the City Council and Members of the Public,

With my introduction of a Resolution in Support of AB 2818 (Chiu), I am submitting the attached text of the bill, Assembly Floor Bill Analysis from the Assembly Committees on Revenue & Taxation and Appropriations, and the list of supporters for the bill.

Respectfully submitted,

Dan Kalb, Councilmember

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**REGISTERED SUPPORT FOR AB 2818:**

AMCAL Multi-Housing, Inc.

Bolinas Community Land Trust

California Association of Local Housing Finance Agencies

California Housing Consortium

Enterprise Community Partners

Greenlining Institute

Grounded Solutions Network

Habitat for Humanity of Orange County

Housing Land Trust of Sonoma County

Irvine Community Land Trust

Oakland Community Land Trust

Policy Innovation + Justice Project, Dellums Institute for Social Justice

PolicyLink

San Diego Community Land Trust

San Diego Housing Federation

San Francisco Community Land Trust

Urban Strategies Council

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY MAY 16, 2016

AMENDED IN ASSEMBLY MAY 2, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2818**

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**Introduced by Assembly Member Chiu**

February 19, 2016

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*An act to ~~add Sections 401.21 and 214.17 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy; amend Section 402.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~*

LEGISLATIVE COUNSEL'S DIGEST

AB 2818, as amended, Chiu. Property taxation: community land trust.

Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected, including, but not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.

~~This bill, for lien dates occurring on and after January 1, 2017, in assessing an owner-occupied single-family dwelling or owner-occupied unit in a multifamily dwelling, and the land on which the dwelling or unit is situated required for the convenient occupation and use of that dwelling or unit by persons and families of low or moderate income;~~

would require the value of the dwelling or unit and the land to be presumed to be the purchase price of the dwelling or unit.

~~This bill, for lien dates occurring on and after January 1, 2017, in assessing a dwelling or unit owned by a limited equity housing cooperative or by a member-occupant or resident shareholder of the limited equity housing cooperative, and the land on which the dwelling or unit is situated required for the convenient occupation and use of the dwelling or unit by persons and families of low or moderate income, would also require the value of the dwelling or unit and the land to be presumed to be the purchase price of the share conveying an exclusive right to occupancy and possession of that dwelling or unit.~~

~~Existing property tax law, in accordance with the California Constitution, provides for a “welfare exemption” for property used exclusively for religious, hospital, scientific, or charitable purposes and that is owned or operated by certain types of nonprofit entities, if certain qualifying criteria are met.~~

~~This bill, on and after January 1, 2017, would provide that property is within the welfare exemption if that property is owned and operated by a nonprofit corporation, otherwise qualifying for the welfare exemption, that has as one of its primary purposes the creating and maintaining of permanently affordable single-family or multifamily residences to which specified conditions apply. The bill, in the case of property not previously designated as open space, would prohibit this exemption from being denied on the basis that the subject property does not currently include a single-family or multifamily residence as so described or a single-family or multifamily residence as so described that is in the course of construction. The bill would require the exemption to apply to a property for no more than 5 years from the date any of certain restrictions are recorded against the property.~~

*This bill would require the county assessor to consider, when valuing real property for property taxation purposes, a recorded instrument that subjects a single-family dwelling or unit in a multifamily dwelling, and the land on which the dwelling or unit is situated that is required for the convenient occupation and use of that dwelling or unit by persons and families of low or moderate income, to affordability restrictions, including, among others, a purchase option for the dwelling or unit in favor of a community land trust, as defined, intended to preserve the dwelling or unit as affordable to persons and families of low or moderate income.*

By imposing new duties upon local government officials, changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 401.21 is added to the Revenue and~~
- 2     ~~Taxation Code, to read:~~
- 3     ~~401.21. (a) In assessing an owner-occupied single-family~~
- 4     ~~dwelling or owner-occupied unit in a multifamily dwelling, and~~
- 5     ~~the land on which the dwelling or unit is situated that is required~~
- 6     ~~for the convenient occupation and use of that dwelling or unit by~~
- 7     ~~persons and families of low or moderate income, the value of the~~
- 8     ~~dwelling or unit and the land shall be presumed to be the purchase~~
- 9     ~~price of the dwelling or unit.~~
- 10    ~~(b) In assessing a dwelling or unit owned by a limited equity~~
- 11    ~~housing cooperative or by a member-occupant or resident~~
- 12    ~~shareholder of the limited equity housing cooperative, and the land~~
- 13    ~~on which the dwelling or unit is situated that is required for the~~
- 14    ~~convenient occupation and use of the dwelling or unit by persons~~
- 15    ~~and families of low or moderate income, the value of the dwelling~~

1 or unit and the land shall be presumed to be the purchase price of  
2 the share conveying an exclusive right to occupancy and possession  
3 of that dwelling or unit.

4 ~~(c) For purposes of this section, all of the following definitions~~  
5 ~~shall apply:~~

6 ~~(1) "Affordability restrictions" include, but are not limited to,~~  
7 ~~any of the following:~~

8 ~~(A) The dwelling or unit can only be rented, sold, or resold to~~  
9 ~~persons and families of low or moderate income to be occupied~~  
10 ~~as a principal place of residence.~~

11 ~~(B) The sale or resale price of the dwelling or unit is determined~~  
12 ~~by a formula that ensures the dwelling or unit has a purchase price~~  
13 ~~that is affordable to persons and families of low or moderate~~  
14 ~~income.~~

15 ~~(C) The rent collected from the dwelling or unit does not exceed~~  
16 ~~the maximum rent allowable to be collected from persons and~~  
17 ~~families of low or moderate income.~~

18 ~~(D) There is a purchase option for the dwelling or unit in favor~~  
19 ~~of the community land trust intended to preserve the dwelling or~~  
20 ~~unit as affordable to persons and families of low or moderate~~  
21 ~~income.~~

22 ~~(E) Any restriction that ensures the dwelling or unit is to remain~~  
23 ~~affordable to persons and families of low or moderate income by~~  
24 ~~recorded deed, deed restriction, ground lease, covenant,~~  
25 ~~memorandum, or other recorded instrument.~~

26 ~~(F) Any restriction in a recorded instrument from which one of~~  
27 ~~the following public agencies or officials has made a finding that~~  
28 ~~the restriction serves the public interest to create and preserve the~~  
29 ~~affordability of residential housing for persons and families of low~~  
30 ~~or moderate income:~~

31 ~~(i) The director of the local housing authority or equivalent~~  
32 ~~agency.~~

33 ~~(ii) The county counsel.~~

34 ~~(iii) The director of a county housing department.~~

35 ~~(iv) The city attorney.~~

36 ~~(v) The director of a city housing department.~~

37 ~~(2) "Community land trust" means a nonprofit corporation,~~  
38 ~~otherwise qualifying for exemption under Section 214, that has as~~  
39 ~~one of its primary purposes the creation and maintenance of~~

1 permanently affordable single-family or multifamily residences  
2 to which both of the following conditions apply:

3 (A) All residences on the land are sold to a qualified owner to  
4 be occupied by persons and families of low or moderate income  
5 as their primary residence, and the land on which the dwelling or  
6 unit is situated is leased by the nonprofit corporation to the  
7 qualified owner for the convenient occupation and use of that  
8 dwelling or unit for a renewable term of 99 years.

9 (B) The dwelling or unit is subject to affordability restrictions.

10 (3) "Limited equity housing cooperative" has the same meaning  
11 as that term is defined in Section 817 of the Civil Code.

12 (4) "Persons and families of low or moderate income" has the  
13 same meaning as that term is defined in Section 50093 of the  
14 Health and Safety Code.

15 (5) "Qualified owner" means either of the following:

16 (A) A limited equity housing cooperative.

17 (B) Persons and families of low or moderate income.

18 (6) "Purchase price" means a price that does not exceed the sale  
19 or resale formula that ensures the dwelling or unit has a purchase  
20 price that is affordable to persons and families of low or moderate  
21 income.

22 (d) This section shall apply to lien dates occurring on and after  
23 January 1, 2017.

24 SEC. 2. Section 214.17 is added to the Revenue and Taxation  
25 Code, to read:

26 214.17. (a) Property is within the exemption provided by  
27 Sections 4 and 5 of Article XIII of the California Constitution if  
28 that property is owned and operated by a nonprofit corporation,  
29 otherwise qualifying for exemption under Section 214, that has as  
30 one of its primary purposes the creation and maintenance of  
31 permanently affordable single-family or multifamily residences  
32 in which both of the following conditions apply:

33 (1) All residences on the land are intended for ownership by a  
34 qualified owner to be occupied by persons and families of low or  
35 moderate income as their primary residence, and the land on which  
36 the residence is situated is leased by the nonprofit corporation to  
37 the qualified owner for the convenient occupation and use of that  
38 residence for a renewable term of 99 years.

39 (2) The residence is subject to affordability restrictions.

1 ~~(b) In the case of property not previously designated as open~~  
2 ~~space, the exemption provided by subdivision (a) may not be~~  
3 ~~denied to a property on the basis that the property does not~~  
4 ~~currently include a single-family or multifamily residence, as~~  
5 ~~described in subdivision (a), or a single-family or multifamily~~  
6 ~~residence, as described in subdivision (a), that is in the course of~~  
7 ~~construction.~~

8 ~~(c) The exemption authorized pursuant to this section shall apply~~  
9 ~~to a property for no more than five years from the date any~~  
10 ~~restriction described in subparagraph (E) or (F) of paragraph (1)~~  
11 ~~of subdivision (d) is recorded against the property.~~

12 ~~(d) For purposes of this section, all of the following shall apply:~~

13 ~~(1) "Affordability restrictions" include, but are not limited to,~~  
14 ~~any of the following:~~

15 ~~(A) The residence can only be rented, sold, or resold to persons~~  
16 ~~and families of low or moderate income to be occupied as a~~  
17 ~~principal place of residence.~~

18 ~~(B) The sale or resale price of the residence is determined by a~~  
19 ~~formula that ensures the residence has a purchase price that is~~  
20 ~~affordable to persons and families of low or moderate income.~~

21 ~~(C) The rent collected from the residence does not exceed the~~  
22 ~~maximum rent allowable to be collected from persons and families~~  
23 ~~of low or moderate income.~~

24 ~~(D) There is a purchase option for the residence in favor of the~~  
25 ~~nonprofit organization intended to preserve the residence as~~  
26 ~~affordable to persons and families of low or moderate income.~~

27 ~~(E) Any restriction that ensures the residence is to remain~~  
28 ~~affordable to persons and families of low or moderate income by~~  
29 ~~recorded deed, deed restriction, ground lease, covenant,~~  
30 ~~memorandum, or other recorded instrument.~~

31 ~~(F) Any restriction in a recorded instrument from which one of~~  
32 ~~the following public agencies or officials has made a finding that~~  
33 ~~the restriction serves the public interest to create and preserve the~~  
34 ~~affordability of residential housing for persons and families of low~~  
35 ~~or moderate income:~~

36 ~~(i) The director of the local housing authority or equivalent~~  
37 ~~agency.~~

38 ~~(ii) The county counsel.~~

39 ~~(iii) The director of a county housing department.~~

40 ~~(iv) The city attorney.~~



1 ~~(v) The director of a city housing department.~~

2 ~~(2) "Limited equity housing cooperative" has the same meaning~~  
3 ~~as that term is defined in Section 817 of the Civil Code.~~

4 ~~(3) "Persons and families of low or moderate income" has the~~  
5 ~~same meaning as that term is defined in Section 50093 of the~~  
6 ~~Health and Safety Code.~~

7 ~~(4) "Qualified owner" means either of the following:~~

8 ~~(A) A limited equity housing cooperative.~~

9 ~~(B) Persons and families of low or moderate income.~~

10 ~~(e) This section shall apply to lien dates occurring on and after~~  
11 ~~January 1, 2017.~~

12 *SECTION 1. Section 402.1 of the Revenue and Taxation Code*  
13 *is amended to read:*

14 402.1. (a) In the assessment of land, the assessor shall consider  
15 the effect upon value of any enforceable restrictions to which the  
16 use of the land may be subjected. These restrictions shall include,  
17 but are not limited to, all of the following:

18 (1) Zoning.

19 (2) Recorded contracts with governmental agencies other than  
20 those provided in Sections 422, 422.5, and 422.7.

21 (3) Permit authority of, and permits issued by, governmental  
22 agencies exercising land use powers concurrently with local  
23 governments, including the California Coastal Commission and  
24 regional coastal commissions, the San Francisco Bay Conservation  
25 and Development Commission, and the Tahoe Regional Planning  
26 Agency.

27 (4) Development controls of a local government in accordance  
28 with any local coastal program certified pursuant to Division 20  
29 (commencing with Section 30000) of the Public Resources Code.

30 (5) Development controls of a local government in accordance  
31 with a local protection program, or any component thereof, certified  
32 pursuant to Division 19 (commencing with Section 29000) of the  
33 Public Resources Code.

34 (6) Environmental constraints applied to the use of land pursuant  
35 to provisions of statutes.

36 (7) Hazardous waste land use restriction pursuant to Section  
37 25226 of the Health and Safety Code.

38 (8) (A) A recorded conservation, trail, or scenic easement, as  
39 described in Section 815.1 of the Civil Code, that is granted in  
40 favor of a public agency, or in favor of a nonprofit corporation

1 organized pursuant to Section 501(c)(3) of the Internal Revenue  
2 Code that has as its primary purpose the preservation, protection,  
3 or enhancement of land in its natural, scenic, historical, agricultural,  
4 forested, or open-space condition or use.

5 (B) A recorded greenway easement, as described in Section  
6 816.52 of the Civil Code, that is granted in favor of a public  
7 agency, or in favor of a nonprofit corporation organized pursuant  
8 to Section 501(c)(3) of the Internal Revenue Code that has as its  
9 primary purpose the developing and preserving of greenways.

10 (9) A solar-use easement pursuant to Chapter 6.9 (commencing  
11 with Section 51190) of Part 1 of Division 1 of Title 5 of the  
12 Government Code.

13 (10) A contract where the following apply:

14 (A) The contract is with a nonprofit corporation organized  
15 pursuant to Section 501(c)(3) of the Internal Revenue Code that  
16 has received a welfare exemption under Section 214.15 for  
17 properties intended to be sold to low-income families who  
18 participate in a special no-interest loan program.

19 (B) The contract restricts the use of the land for at least 30 years  
20 to owner-occupied housing available at affordable housing cost in  
21 accordance with Section 50052.5 of the Health and Safety Code.

22 (C) The contract includes a deed of trust on the property in favor  
23 of the nonprofit corporation to ensure compliance with the terms  
24 of the program, which has no value unless the owner fails to  
25 comply with the covenants and restrictions of the terms of the  
26 home sale.

27 (D) The local housing authority or an equivalent agency, or, if  
28 none exists, the city attorney or county counsel, has made a finding  
29 that the long-term deed restrictions in the contract serve a public  
30 purpose.

31 (E) The contract is recorded and provided to the assessor.

32 *(11) A recorded instrument where the following apply:*

33 *(A) The recorded instrument subjects a single-family dwelling*  
34 *or unit in a multifamily dwelling, and the land on which the*  
35 *dwelling or unit is situated that is required for the convenient*  
36 *occupation and use of that dwelling or unit by persons and families*  
37 *of low or moderate income, to affordability restrictions.*

38 *(B) One of the following public agencies or officials has made*  
39 *a finding that the restriction serves the public interest to create*

1 and preserve the affordability of residential housing for persons  
2 and families of low or moderate income:

3 (i) The director of the local housing authority or equivalent  
4 agency.

5 (ii) The county counsel.

6 (iii) The director of a county housing department.

7 (iv) The city attorney.

8 (v) The director of a city housing department.

9 (C) The recorded instrument is provided to the assessor.

10 (D) For purposes of this section, all of the following definitions  
11 shall apply:

12 (i) "Affordability restrictions" include all of the following:

13 (I) The dwelling or unit can only be rented, sold, or resold to  
14 persons and families of low or moderate income to be occupied  
15 as a principal place of residence.

16 (II) The sale or resale price of the dwelling or unit is determined  
17 by a formula that ensures the dwelling or unit has a purchase price  
18 that is affordable to persons and families of low or moderate  
19 income.

20 (III) The rent collected from the dwelling or unit, if applicable,  
21 does not exceed the maximum rent allowable to be collected from  
22 persons and families of low or moderate income.

23 (IV) There is a purchase option for the dwelling or unit in favor  
24 of a community land trust intended to preserve the dwelling or  
25 unit as affordable to persons and families of low or moderate  
26 income.

27 (V) The dwelling or unit is to remain affordable to persons and  
28 families of low or moderate income by recorded deed, deed  
29 restriction, ground lease, covenant, memorandum, or other  
30 recorded instrument.

31 (ii) "Community land trust" means a nonprofit corporation,  
32 otherwise qualifying for exemption under Section 214, that satisfies  
33 both of the following:

34 (I) Has as one of its primary purposes the creation and  
35 maintenance of permanently affordable single-family or multifamily  
36 residences.

37 (II) All residences on the land are sold to a qualified owner to  
38 be occupied by persons and families of low or moderate income  
39 as their primary residence, and the land on which the dwelling or  
40 unit is situated is leased by the nonprofit corporation to the

1 *qualified owner for the convenient occupation and use of that*  
2 *dwelling or unit for a renewable term of 99 years.*

3 (iii) *“Limited equity housing cooperative” has the same meaning*  
4 *as that term is defined in Section 817 of the Civil Code.*

5 (iv) *“Persons and families of low or moderate income” has the*  
6 *same meaning as that term is defined in Section 50093 of the*  
7 *Health and Safety Code.*

8 (v) *“Qualified owner” means either of the following:*

9 (I) *A limited equity housing cooperative.*

10 (II) *Persons and families of low or moderate income.*

11 (b) There is a rebuttable presumption that restrictions will not  
12 be removed or substantially modified in the predictable future and  
13 that they will substantially equate the value of the land to the value  
14 attributable to the legally permissible use or uses.

15 (c) Grounds for rebutting the presumption may include, but are  
16 not necessarily limited to, the past history of like use restrictions  
17 in the jurisdiction in question and the similarity of sales prices for  
18 restricted and unrestricted land. The possible expiration of a  
19 restriction at a time certain shall not be conclusive evidence of the  
20 future removal or modification of the restriction unless there is no  
21 opportunity or likelihood of the continuation or renewal of the  
22 restriction, or unless a necessary party to the restriction has  
23 indicated an intent to permit its expiration at that time.

24 (d) In assessing land with respect to which the presumption is  
25 un rebutted, the assessor shall not consider sales of otherwise  
26 comparable land not similarly restricted as to use as indicative of  
27 value of land under restriction, unless the restrictions have a  
28 demonstrably minimal effect upon value.

29 (e) In assessing land under an enforceable use restriction wherein  
30 the presumption of no predictable removal or substantial  
31 modification of the restriction has been rebutted, but where the  
32 restriction nevertheless retains some future life and has some effect  
33 on present value, the assessor may consider, in addition to all other  
34 legally permissible information, representative sales of comparable  
35 lands that are not under restriction but upon which natural  
36 limitations have substantially the same effect as restrictions.

37 (f) For the purposes of this section the following definitions  
38 apply:

1 (1) "Comparable lands" are lands that are similar to the land  
2 being valued in respect to legally permissible uses and physical  
3 attributes.

4 (2) "Representative sales information" is information from sales  
5 of a sufficient number of comparable lands to give an accurate  
6 indication of the full cash value of the land being valued.

7 (g) It is hereby declared that the purpose and intent of the  
8 Legislature in enacting this section is to provide for a method of  
9 determining whether a sufficient amount of representative sales  
10 information is available for land under use restriction to ensure  
11 the accurate assessment of that land. It is also hereby declared that  
12 the further purpose and intent of the Legislature in enacting this  
13 section and Section 1630 is to avoid an assessment policy which,  
14 in the absence of special circumstances, considers uses for land  
15 that legally are not available to the owner and not contemplated  
16 by government, and that these sections are necessary to implement  
17 the public policy of encouraging and maintaining effective land  
18 use planning. This statute shall not be construed as requiring the  
19 assessment of any land at a value less than as required by Section  
20 401 or as prohibiting the use of representative comparable sales  
21 information on land under similar restrictions when this information  
22 is available.

23 ~~SEC. 3.~~

24 *SEC. 2.* If the Commission on State Mandates determines that  
25 this act contains costs mandated by the state, reimbursement to  
26 local agencies and school districts for those costs shall be made  
27 pursuant to Part 7 (commencing with Section 17500) of Division  
28 4 of Title 2 of the Government Code.

29 ~~SEC. 4.~~

30 *SEC. 3.* Notwithstanding Section 2229 of the Revenue and  
31 Taxation Code, no appropriation is made by this act and the state  
32 shall not reimburse any local agency for any property tax revenues  
33 lost by it pursuant to this act.

34 ~~SEC. 5.~~

35 *SEC. 4.* This act provides for a tax levy within the meaning of  
36 Article IV of the Constitution and shall go into immediate effect.

O

(Without Reference to File)

ASSEMBLY THIRD READING  
AB 2818 (Chiu)  
As Amended , 2016  
Majority vote. Tax levy

| Committee          | Votes | Ayes   | Noes |
|--------------------|-------|--|------|
| Revenue & Taxation | 9-0   | Ridley-Thomas, Brough,<br>Dababneh, Gipson, Mullin,<br>O'Donnell, Patterson, Quirk,<br>Wagner  |      |
| Appropriations     | 14-0  | Gonzalez, Bloom, Bonilla,<br>Bonta, Calderon, Daly,<br>Eggman, Eduardo Garcia,<br>Roger Hernández, Holden,<br>Quirk, Santiago, Weber, Wood |      |

**SUMMARY:** Requires the county assessor to consider, when valuing real property for property taxation purposes, affordability restrictions imposed on housing units and the land on which the units are situated, as specified. Specifically, **this bill:**

- 1) Requires the county assessor, when valuing real property for property taxation purposes, to consider affordability restrictions provided in a recorded instrument to the county assessor, as specified.
- 2) Provides that the recorded instrument must subject a single-family dwelling or unit in a multifamily dwelling, and the land on which the dwelling or unit is situated that is required for the convenient occupation and use of that dwelling or unit by low or moderate income (LMI) households, to affordability restrictions.
- 3) Provides that a finding must be made, by one of the following public agencies or officials, that the affordability restrictions serve the public interest to create and preserve the affordability of residential housing for LMI households:
  - a) The director of the local housing authority or equivalent agency;
  - b) The county counsel;
  - c) The director of a county housing department;
  - d) The city attorney; or,
  - e) The director of a city housing department.
- 4) Provides that "affordability restrictions" include all of the following:
  - a) The dwelling or unit can only be rented, sold, or resold to LMI households to be occupied as a principal place of residence;

- b) The sale or resale price of the dwelling or unit is determined by a formula that ensures the dwelling or unit has a purchase price affordable to LMI households;
  - c) The rent collected from the dwelling or unit, if applicable, does not exceed the maximum rent allowable to be collected from LMI households;
  - d) There is a purchase option for the dwelling or unit in favor of a community land trust (CLT) intended to preserve the dwelling or unit as affordable to LMI households; and,
  - e) The dwelling or unit is to remain affordable to LMI households by recorded deed, deed restriction, ground lease, covenant, memorandum, or other recorded instrument.
- 5) Defines a "community land trust" as a nonprofit corporation, otherwise qualifying for exemption under Revenue and Taxation Code (R&TC) Section 214, that satisfies both of the following:
- a) Has as one of its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences; and,
  - b) All residences on the land are sold to a qualified owner to be occupied by LMI households as their primary residence, and the land on which the dwelling or unit is situated is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.
- 6) Defines a "qualified owner" as either of the following:
- a) A limited equity housing cooperative (LEHC); or,
  - b) Persons and families of LMI.
- 7) Defines a "limited equity housing cooperative" as having the same meaning as the term in Civil Code Section 817.
- 8) Defines "persons and families of low or moderate income" as having the same meaning as the term in Health and Safety Code (H&SC) Section 50093.
- 9) Imposes a state-mandated local program and provides that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.
- 10) Provides that no appropriation is made and the state will not reimburse local agencies for property tax revenues lost by them pursuant to this bill.
- 11) Takes effect immediately as a tax levy.

**EXISTING LAW:**

- 1) Limits the maximum amount of any *ad valorem* tax on real property at 1% of full cash value.

- 2) Requires property to be reassessed to current fair market value whenever it is purchased, newly constructed, or when ownership changes, with specified exceptions, and provides a rebuttable presumption that the fair market value is the purchase price.
- 3) Defines "purchase price" as the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise.
- 4) Requires county assessors, when determining assessed valuation, to consider the effect on property of the value of any enforceable restrictions against the use of the land, including but not limited to:
  - a) Zoning restrictions;
  - b) Development controls in accordance with local coastal or protection programs;
  - c) Statutory environmental constraints;
  - d) Hazardous waste land-use restrictions;
  - e) Recorded conservation, trail, or scenic easements;
  - f) Solar-use easements; or,
  - g) Recorded contracts with a non-profit corporation granted a welfare exemption for properties intended to be sold to low-income families who participate in a special no-interest loan program. The contract must restrict use of the land for owner-occupied affordable housing for at 30 years, include a deed of trust in favor of the nonprofit corporation to ensure compliance, and be provided to the assessor. The local housing authority or equivalent agency must also make a finding that the long-term deed restrictions serve a public purpose. (R&TC Section 402.1)
- 5) Authorizes the Legislature to exempt from taxation property used exclusively for religious, hospital, or charitable purposes, as specified. (California Constitution Article XIII, Section 4(b)). The Legislature has implemented this "welfare exemption" in R&TC Section 214.
- 6) Grants the welfare exemption to property used exclusively for rental housing and related facilities for lower income households, as defined in H&SC Section 50053, operated by non-profit organizations, as specified.
- 7) Grants the welfare exemption to property acquired by a nonprofit corporation organized and operated for the specific and primary purpose of building and rehabilitating single or multi-family residences. (R&TC Section 214.15.)

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, moderate property tax revenue loss as a result of the reduced assessed value of CLT-provided homes. For example, CLTs are more common in expensive areas in California, such as the San Francisco Bay Area and Los Angeles. If, in a single year, 30 CLT homes were sold to households who had income levels at 80% of the area median income in both Los Angeles and the San Francisco Bay Area, and an additional 30 homes were sold across the rest of the state, estimated property tax losses would be in the range of \$336,000, resulting in General Fund costs of approximately \$168,000. These costs would grow as CLTs continue to become more common.



**COMMENTS:**

- 1) *Community Land Trusts*: CLTs provide an affordable housing model to help LMI households that may not otherwise be able to purchase a home. The CLT acquires and develops properties for sale to LMI households, but retains ownership of the underlying land and leases the land to the homeowner for a nominal fee through a long-term ground lease (usually a 99-year term). The home is therefore more affordable because the homeowner is only buying the building and not the land underneath. If the homeowner decides to sell the property, the home must be resold to another LMI household, and the original owner will only be eligible for a smaller share of its appreciated value. Since the CLT is the owner of the land, it will be a party to all future sales and enforce resale restrictions. According to the California CLT Network, it appears that many CLTs in California also have robust rental portfolios restricted for LMI households.

A CLT is generally formed as a membership-based, non-profit organization with a professional staff, led by a member-elected board of directors and funded by land rent fees. Members include CLT homeowners, neighbors, and other local residents, providing community buy-in over local development. Many CLTs also provide homeowners with homebuyer education and financial literacy courses. While a subsidy is often needed to start a CLT, outside funding is no longer necessary once homes are occupied, which provides steady fee revenues, and are resold, which recycles the original subsidy thereby allowing homes to remain permanently affordable.

According to the National CLT Network, virtually all CLT leases pass along the cost of property taxes to the homeowner. The homeowner is either directly assigned to pay property taxes associated with both the home and underlying land, or is directly assigned to pay property taxes associated with the home and then pays any property taxes associated with the underlying land via its lease fee to the CLT.

- 2) *Limited-Equity Housing Cooperatives*: Housing co-ops are democratically controlled corporations in which each household owns a share, entitling the member to occupy a unit of housing. The co-op is usually financed through one mortgage that covers the entire property, with members paying monthly carrying charges to cover mortgage payments and operating expenses, including property taxes. The co-op model can be used for virtually any type of housing construction covering high-end, mid-range, and affordable developments, with LEHCs specifically developed to offer permanently affordable homeownership opportunities for LMI households. Share prices in these co-ops are usually low, member households are limited to owning only one share, and price restrictions are put on the sale of shares to prevent speculative resale and preserve affordability.

Given the similar participatory community-based models of CLTs and LEHCs to provide access to affordable housing for LMI households, it is not uncommon to have LEHC-owned homes situated on CLT-leased land. Although existing law specifies that increases in LEHC share prices cannot exceed 10% annually and any profits from the sale of the co-op as a whole must be dedicated to public or charitable entities, existing law does not specify that ownership is limited to LMI individuals. As such, non-LMI individuals may be able to benefit from reduced property tax assessments if they own a share in a LEHC.

- 3) *Assessment of Restricted Homes*: Existing law requires every assessor to assess property subject to tax at its full value. In the assessment of land, the assessor must consider the effect

of any enforceable restrictions to which the use of land may be subject, such as zoning, easements, environmental restrictions, and recorded contracts with governmental agencies including those outlining affordable housing restrictions. However, "[a]s a general rule, private parties cannot reduce the taxable value of their property by imposing private encumbrances upon it; only enforceable government restrictions under [R&TC] Section 402.1 are recognized as limiting the full fee simple interest." (Assessor's Handbook Section 502, *ADVANCED APPRAISAL* December 1998, Reprinted January 2015, pg. 6). The inability of private parties to reduce the taxable value of their property through self-imposed private encumbrances has long been recognized by the courts. (*Carlson v. Assessment Appeals Board* (1985) 167 Cal. App. 3d 1004).

Last year, AB 668 (Gomez) Chapter 698, Statutes of 2015, provided that specified self-imposed private encumbrances could result in assessments of reduced property taxes if the applicable contract is recorded and provided to the assessor. Authorized contracts are limited to those by a non-profit corporation granted a welfare exemption to sell low-income families participating in a special no-interest loan program affordable housing, similar to the model utilized by Habitat for Humanity. As a result, assessors must now *consider* the non-profit's organization-imposed restrictions when determining a property's assessed valuation.

- 4) *How Are CLTs Assessed?* According to the author, CLTs in California experience an inconsistent methodology for assessing property taxes. In some cases, the units are assessed at "fair market value," which does not take into consideration the underlying land lease and restrictions on home resale price. In other cases, the units are assessed in between the market and restricted value with varying explanations for the inconsistency. For example, the Oakland CLT (OakCLT) states that while it technically owns the land, "there is no value to the land that it can realize apart from the nominal below-market monthly lease fee (\$50/month) collected...the value of the land under an OakCLT home is fully included in the restricted sales price (i.e., \$150,000)." As such, OakCLT believes that the total assessed value (improvements and land) of a CLT property should be based upon the restricted sales price of the home.
- 5) *Purpose of This Bill – Consistent Assessments:* This bill follows the precedent established by AB 668 and requires the county assessor to consider the effect of private party affordability restrictions on a property's use when determining that property's assessed valuation. In order to benefit from such consideration, a recorded instrument must be provided to the county assessor that subjects the property to specified affordability restrictions. The recorded instrument must also contain a finding by a public agency or official that the restrictions serve the public interest to create and preserve the affordability of residential housing for LMI households.

Requiring county assessors to consider the impact of private party enforceable restrictions when valuing real property for property taxation purposes is intended to result in more consistent assessments of homes on CLT-leased land. However, this bill suggests but does not explicitly provide that the assessment consideration is limited only to CLT homes and land subject to affordability restrictions via a 99-year ground lease, and whether all CLTs serving LMI households in such a manner qualify for the assessment consideration. Any remaining ambiguity may result in continued inconsistency by county assessors when valuing CLT property.

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City Attorney's Office

## OAKLAND CITY COUNCIL

### RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

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**RESOLUTION IN SUPPORT OF AB 2818 (CHIU) THAT, ON AND AFTER JANUARY 1, 2017, WOULD PROVIDE THE WELFARE EXEMPTION FOR NO MORE THAN 5 YEARS TO PROPERTIES THAT ARE OWNED AND OPERATED BY NONPROFIT CORPORATIONS, OTHERWISE QUALIFYING FOR THE WELFARE EXEMPTION, THAT HAVE AS ONE OF THEIR PRIMARY PURPOSES THE CREATING AND MAINTAINING OF PERMANENTLY AFFORDABLE SINGLE-FAMILY OR MULTIFAMILY RESIDENCES TO WHICH SPECIFIED CONDITIONS APPLY.**

**WHEREAS,** There is a severe shortage of rental housing and homeownership opportunities for low or moderate income (LMI) households in Oakland; and

**WHEREAS,** Existing state law requires every assessor to assess property subject to tax at its full value. As a general rule, private parties, including nonprofit organizations, cannot reduce the taxable value of their property by imposing private encumbrances upon it; only enforceable government restrictions under are recognized as limiting the full fee simple interest; and

**WHEREAS,** Community Land Trusts (CLT) and other non-profit organizations such as Limited-Equity Housing Cooperatives (LEHC) provide an affordable housing model to help low or moderate income (LMI) households to own a home that may not otherwise be able to purchase one. Many CLTs in California also have robust rental portfolios restricted for LMI households; and

**WHEREAS,** A CLT is generally formed as a membership-based, non-profit organization with members who include CLT homeowners, neighbors, and other local residents, providing community buy-in over local development. Many CLTs also provide homeowners with homebuyer education and financial literacy courses; and

**WHEREAS,** While a subsidy is often needed to start a CLT, outside funding is no longer necessary once homes are occupied, which provides steady fee revenues, and are resold, which recycles the original subsidy thereby allowing homes to remain permanently affordable; and

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RULES & LEGISLATION CMTTE  
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**WHEREAS**, According to the National CLT Network, virtually all CLT leases pass along the cost of property taxes to the homeowner; and

**WHEREAS**, Limited-Equity Housing Cooperatives (LEHC) are housing co-ops that are specifically developed to offer permanently affordable homeownership opportunities for LMI households. Share prices in these co-ops are usually low, with price restrictions put on the sale of shares to prevent speculative resale and preserve affordability; and

**WHEREAS**, Existing law does not specify that LEHC ownership is limited to LMI individuals. As such, non-LMI individuals may be able to benefit from reduced property tax assessments if they own a share in a LEHC; and

**WHEREAS**, CLTs and LEHCs in California experience an inconsistent methodology for assessing property taxes. In some cases, the units are assessed at "fair market value," which does not take into consideration the underlying land lease and restrictions on home resale price. In other cases, the units are assessed in between the market and restricted value with varying explanations for the inconsistency; and

**WHEREAS**, AB 668 (Gomez) was passed in 2015 in which Chapter 698, provided that specified self-imposed private encumbrances could result in assessments of reduced property taxes if the applicable contract is recorded and provided to the assessor. Authorized contracts are limited to those by a non-profit corporation granted a welfare exemption to sell low-income families participating in a special no-interest loan program affordable housing. As a result, assessors must now consider the non-profit's organization-imposed restrictions when determining a property's assessed valuation; and

**WHEREAS**, The purpose of AB 2818 is to create consistent assessments. AB 2818 follows the precedent established by AB 668 and requires the county assessor to consider the effect of private party affordability restrictions on a property's use when determining that property's assessed valuation. Requiring county assessors to consider the impact of private party enforceable restrictions when valuing real property for property taxation purposes is intended to result in more consistent assessments of homes on CLT-leased land; and now, therefore, be it

**RESOLVED:** That the Oakland City Council hereby endorses AB 2818 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND  
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California

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**RULES & LEGISLATION CMTTE**  
**JUN 16 2016**