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# AGENDA REPORT

**TO:** City Council and members of the Public  
**FROM:** Dan Kalb, Councilmember  
**SUBJECT:** Real Estate Transfer Tax Tiered Rates Measure – Supplemental Report  
**DATE:** June 21, 2018

## RECOMMENDATION

ADOPT A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018, A PROPOSED ORDINANCE (1) AMENDING OAKLAND MUNICIPAL CODE SECTION 4.20.020 OF THE REAL PROPERTY TRANSFER TAX TO ESTABLISH TIERED RATES BASED ON VALUE OF CONSIDERATION; (2) AMENDING SECTION 4.20.080 TO REDUCE THE REAL PROPERTY TRANSFER TAX BY .5% FOR "LOW AND MODERATE INCOME FIRST-TIME HOMEBUYERS"; (3) ADDING SECTION 4.20.220 TO REDUCE THE REAL PROPERTY TRANSFER TAX BY UP TO ONE THIRD FOR SEISMIC RETROFIT EXPENSES INCURRED BY "LOW AND MODERATE INCOME HOMEBUYERS"; AND, (4) DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE, AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION

## REASON FOR SUPPLEMENTAL

This supplemental report accompanies a copy of the legislation with necessary updates, reflected in tracked changes. The main update is a change to the bottom two tiers of the tax rate table, specifically, changing "\$250,000 or less" to "\$300 or less" and changing "More than \$250,000 up to \$2,000,000" to "More than \$300,000 up to \$2,000,000." This change would increase the number of transfers that are eligible for reduced tax.

Additional changes to the legislation include an edit to a Whereas clause corresponding with the tax rate table change, cleanup of Section 4.20.220, and correction of a typo in one of the Further Resolved clauses.

## SUMMARY

This legislation would do the following:

Item: 7; 8  
Finance & Management and Rules & Legislation  
Committees  
June 26 & 28, 2017

- (1) Replace Oakland's flat 1.5% Real Estate Transfer Tax with a graduated rate that varies based on the value of consideration for the transfer, as follows:

Amount of transfer	Tax rate
\$300,000 or less	1%
More than \$300,000 up to \$2,000,000	1.5%
More than \$2,000,000 up to \$5,000,000	1.75%
More than \$5,000,000	2.5%

- (2) Double the .25% rate *reduction* for Low and Moderate Income First-Time Homebuyers to .5%, with the clarification that this tax exemption only applies to transfers valued at \$2,000,000 or less.
- (3) Provide a new tax exemption of up to one-third (1/3) of the applicable transfer tax for expenses incurred by Low and Moderate Income Homebuyers for seismic retrofit expenses.

### **FISCAL IMPACT**

Projections for anticipated future RETT revenue are difficult to make, especially given year-to-year variation in the sale of high value commercial properties. However, analysis obtained from the Finance Department, including the Revenue Division, has determined what the fiscal impact would have been had RETT for transfers done from Fiscal Year 12-13 to 17-18 (as of April) been paid at the proposed graduated rates instead of the flat 1.5% rate, as follows:

#### **FY 12-13**

Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
300,000.00 or less	3,187	50.82%	18.21%	\$8,096,385	\$5,397,590	-\$2,698,795
300,000.01 - 2,000,000	3,001	47.86%	62.46%	\$27,773,000	\$27,773,000	\$0
2,000,000.01 - 5,000,000.00	57	0.91%	6.00%	\$2,667,841	\$3,112,481	\$444,640
5,000,000.00<	26	0.41%	13.34%	\$5,931,296	\$9,885,493	\$3,954,197
<b>Totals</b>	<b>6,271</b>	<b>100%</b>	<b>100%</b>	<b>\$44,468,522</b>	<b>\$46,168,564</b>	<b>\$1,700,042</b>

#### **FY 13-14**

Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
300,000.00 or less	2,025	35.83%	9.99%	\$5,740,072	\$3,826,715	-\$1,913,357
300,000.01 - 2,000,000	3,508	62.07%	58.11%	\$33,393,829	\$33,393,829	\$0

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Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
2,000,000.01 - 5,000,000.00	90	1.59%	6.76%	\$3,882,296	\$4,529,345	\$647,049
5,000,000.00<	29	0.51%	25.15%	\$14,455,077	\$24,091,795	\$9,636,718
<b>Totals</b>	5,652	100%	100%	\$57,471,274	\$65,841,684	\$8,370,410

**FY 14-15**

Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
300,000.00 or less	1,446	26.43%	6.83%	\$4,084,198	\$2,722,799	-\$1,361,399
300,000.01 - 2,000,000	3,884	70.99%	65.32%	\$39,041,538	\$39,041,538	\$0
2,000,000.01 - 5,000,000.00	96	1.75%	6.78%	\$4,052,118	\$4,727,471	\$675,353
5,000,000.00<	45	0.82%	21.06%	\$12,588,116	\$20,980,193	\$8,392,077
<b>Totals</b>	5,471	100%	100%	\$59,765,970	\$67,472,001	\$7,706,031

**FY 15-16**

Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
300,000.00 or less	1,060	19.04%	3.90%	\$3,127,545	\$2,085,030	-\$1,042,515
300,000.01 - 2,000,000	4,307	77.37%	57.30%	\$45,953,569	\$45,953,569	\$0
2,000,000.01 - 5,000,000.00	122	2.19%	6.79%	\$5,443,967	\$6,351,295	\$907,328
5,000,000.00<	78	1.40%	32.01%	\$25,668,300	\$42,780,500	\$17,112,200
<b>Totals</b>	5,567	100%	100%	\$80,193,381	\$97,170,394	\$16,977,013

**FY 16-17**

Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
300,000.00 or less	791	14.88%	2.67%	\$2,094,181	\$1,396,121	-\$698,060
300,000.01 - 2,000,000	4,311	81.09%	60.93%	\$47,799,952	\$47,799,952	\$0
2,000,000.01 - 5,000,000.00	139	2.61%	8.13%	\$6,374,631	\$7,437,070	\$1,062,439
5,000,000.00<	75	1.41%	28.28%	\$22,184,792	\$36,974,653	\$14,789,861
<b>Totals</b>	5,316	100%	100%	\$78,453,556	\$93,607,796	\$15,154,240

**FY 17-18 (April)**

Price	Count	Percent. of Count	Percent. of Field	City Tax	Alt Tax Collected	Gain/Decline
300,000.00 or less	467	12.36%	2.41%	\$1,303,160	\$868,773	-\$434,387
300,000.01 - 2,000,000	3,133	82.95%	71.38%	\$38,606,435	\$38,606,435	\$0
2,000,000.01 - 5,000,000.00	132	3.49%	11.88%	\$6,424,376	\$7,495,105	\$1,070,729
5,000,000.00<	45	1.19%	14.33%	\$7,751,233	\$12,918,721	\$5,167,488
<b>Totals</b>	<b>3,777</b>	<b>100%</b>	<b>100%</b>	<b>\$54,085,204</b>	<b>\$59,889,035</b>	<b>\$5,803,831</b>

The total increased revenue from above is \$55,711,567, over \$9 million per year<sup>1</sup>. Despite the \$2 million to \$5 million category having many more transaction per year than the over \$5 million category, the vast majority of the increased revenue would come from the over \$5 million category.

Similarly, analysis obtained from the City Administrator and Finance Department has determined what the fiscal impact was of the existing Low and Moderate Income First-time Homebuyer exemption, as follows:

Fiscal Year	# of Transactions	RETT Lost
2012/2013	22	\$12,075
2013/2014	47	\$25,539
2014/2015	57	\$39,489
2015/2016	61	\$83,208
2016/2017	11	\$10,045
2017/2018(April)	16	\$21,402
<b>Total</b>	<b>236</b>	<b>\$191,759<sup>2</sup></b>

Had the exemption amount been doubled as being proposed, the total revenue loss to the City from FY 11-12 to 17-18 (as of April) would have totaled \$383,518<sup>3</sup> over the past several years.

Impact estimates for the new exemption for Low and Moderate Income Homebuyers incurring seismic retrofit expenses are difficult to quantify but are anticipated to result in relatively slight

<sup>1</sup> The June 14<sup>th</sup> staff report stated that the total increased revenue across the last 6 Fiscal Years under the prior tax rate thresholds (\$250,000 or less for the first tier, etc.) would have been approximately \$58 million, averaging over \$8 million per year. Obviously, \$58 million across 6 years actually averages at over \$9.6 million per year. The correct figure under the originally proposed tax rate thresholds is approximately \$59 million, which averages at over \$9.8 million per year.

<sup>2</sup> The June 14<sup>th</sup> staff report contained an incorrect final dollar figure in this table due to typos.

<sup>3</sup> The figure corrects an incorrect total (\$363,428) listed in the June 14<sup>th</sup> staff report due to a missing year in the table.

revenue loss, given the past low revenue loss from the Low and Moderate Income First-time Homebuyers exemption. In addition, enhanced seismic safety for residences is likely to result in long term savings for the City over time, due to avoiding increased costs following a major earthquake, and will also help save homes and lives.

**PUBLIC OUTREACH / INTEREST**

The Councilmember's office conducted outreach about this legislation to numerous Oakland-based organizations.

**COORDINATION**

The City Attorney's office and Finance Department, including the Revenue Division, was extensively consulted on the legislation.

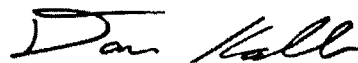
**ACTION REQUESTED BY THE CITY COUNCIL**

Councilmember Kalb recommends the City Council:

Adopt A Resolution On The City Council's Own Motion Submitting To The Voters At The General Municipal Election On November 6, 2018, A Proposed Ordinance (1) Amending Oakland Municipal Code Section 4.20.020 Of The Real Property Transfer Tax To Establish Tiered Rates Based On Value Of Consideration; (2) Amending Section 4.20.080 To Reduce The Real Property Transfer Tax By .5% For "Low And Moderate Income First-Time Homebuyers"; (3) Adding Section 4.20.220 To Reduce The Real Property Transfer Tax By Up To One Third For Seismic Retrofit Expenses Incurred By "Low And Moderate Income Homebuyers"; And, (4) Directing The City Clerk To Fix The Date For Submission Of Arguments, Provide For Notice And Publication In Accordance, And Take Any And All Actions Necessary Under Law To Prepare For And Conduct The November 6, 2018 General Municipal Election.

For questions regarding this report, please contact Oliver Luby, Chief of Staff, at 510-238-7013.

Respectfully submitted,



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Dan Kalb  
Councilmember, District 1

Prepared by:  
Oliver Luby, Chief of Staff  
Office of Councilmember Dan Kalb

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

~~DRAFT~~  
CITY ATTORNEY

## OAKLAND CITY COUNCIL

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

**ADOPT A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018, A PROPOSED ORDINANCE (1) AMENDING OAKLAND MUNICIPAL CODE SECTION 4.20.020 OF THE REAL PROPERTY TRANSFER TAX TO ESTABLISH TIERED RATES BASED ON VALUE OF CONSIDERATION; (2) AMENDING SECTION 4.20.080 TO REDUCE THE REAL PROPERTY TRANSFER TAX BY .5% FOR "LOW AND MODERATE INCOME FIRST-TIME HOMEBUYERS"; (3) ADDING SECTION 4.20.220 TO REDUCE THE REAL PROPERTY TRANSFER TAX BY UP TO ONE THIRD FOR SEISMIC RETROFIT EXPENSES INCURRED BY "LOW AND MODERATE INCOME HOMEBUYERS"; AND, (4) DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE, AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION.**

**WHEREAS**, the City of Oakland has high public service demands relative to its revenues as well as large amounts of unfunded, necessary deferred maintenance projects, problems which are exacerbated by failed state policies such as the commercial roll related to Proposition 13, which have starved municipal governments of vitally necessary revenue to address the changing needs of our times, and Oakland's budget process routinely involves valid, important interests competing for scarce general fund dollars; and

**WHEREAS**, Oakland's current real estate transfer tax (RETT) rate is a flat 1.5%, regardless of the value of the property; and

**WHEREAS**, Oakland's current RETT ordinance provides a reduced rate of 1.25%, .25% less than the standard rate, for low and moderate income first-time homebuyers; and

**WHEREAS**, a progressive tax is a tax that increases the tax rate as the taxed value increases and progressive taxes directly address wealth disparity and income inequality in society, providing an equitable means to fund government and care for the public good; and

**WHEREAS**, San Francisco has a progressive RETT that increases the tax rate for more expensive properties and, in 2008, 2010, and 2016, voters in San Francisco approved ballot measures that further increased and graduated the tax on the most expensive real estate transfers, subsequently raising millions of dollars more for their municipal government services; and

**WHEREAS**, the transfer tax paid in most California cities is lower compared to what is paid in many cities in other states, with only 14 other states having a lower rate as of last year; and

**WHEREAS**, the state of Delaware has a 3% RETT and there many examples nationally of cities with overall, combined RETTs greater than that of the total city, county, and state transfer taxes currently paid for real estate transfers in Oakland; and

**WHEREAS**, if RETT for transfers done from Fiscal Year 12-13 to 17-18 (as of April) had been paid at a graduated rate instead of the flat 1.5% rate, including 1% for properties valued at \$~~302~~50,000 or less, the same 1.5% rate for properties over \$~~302~~50,000 to \$2 million, 1.75% for properties over \$2 million to \$5 million, and 2.5% for properties over \$5 million, Oakland would have raised an additional \$~~55~~9 million for City services and functions, averaging over \$~~9~~8 million per year; and

**WHEREAS**, the City of Oakland is subject to major earthquake-related hazards including very violent ground shaking, liquefaction, and landslide, and the City endeavors to maintain its housing stock and to enhance its disaster resiliency, reducing potential loss of life and property damage while accelerating economic recovery; now, therefore, be it

**RESOLVED**, that the Oakland City Council finds and determines the forgoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and be it

**FURTHER RESOLVED**, that the Oakland City Council does hereby call for a general municipal election and submit to the voters, at the November 6, 2018, Statewide General Election, an Ordinance that reads as follows:

Be it ordained by the People of the City of Oakland:

Section 1. The Oakland Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed).

Section 2. Code Amendments.

That Chapter 4.20, Sections 4.20.020 and 4.20.080 of the Oakland Municipal Code are amended and Section 4.20.220 is added to read as follows:

**4.20.020 - Imposition of tax.**

There is imposed a tax on all transfers by deeds, instruments, writings, or any other document, or changes in control and ownership of legal entities, by which any lands, tenements or other interests in real property located in the City, are or is granted, assigned, transferred, or otherwise conveyed to or invested in a transferee, or transferees thereof, which shall be levied as a percentage of the value of consideration at the rates set forth below: ~~of one and one-half percent of the value of consideration.~~

<b>Amount of transfer</b>	<b>Tax</b>
<del>\$302</del> 50,000 or less	1%
More than <del>\$302</del> 50,000 up to \$2,000,000	1.5%
More than \$2,000,000 up to \$5,000,000	1.75%
More than \$5,000,000	2.5%

**4.20.080 - Exemption for low and moderate income first-time homebuyers.**

~~Section 4.20.020 notwithstanding,~~ The tax on all transfers of real property located in the city made on or after ~~August 10, 1993~~ January 1, 2019 in which the buyers are low and moderate income first-time homebuyers shall be levied at the rates of one and one-quarter (1.25) percent of the value of consideration set forth in Section 4.20.020 reduced by one-half percent (.5%). For the purpose of this section, "low and moderate income first-time homebuyers" are defined as buyers who:

- A. Earn a maximum of one hundred (100) percent of the median family income for the Oakland Primary Metropolitan Statistical Area, as defined by the U.S. Department of Housing and Urban Development; and
- B. Will occupy the property as their principal residence; and
- C. Are not purchasing the property to be held as tenants in common; and
- D. Have not owned a home in three years prior to the date of purchasing the property; and
- E. The value of consideration for the transferred property is \$2 million or less; or
- ~~EF.~~ Are displaced homemakers. "Displaced homemaker" is defined as an adult individual who has not worked full-time, full-year in the labor force for a number



of years but has, during such years, worked primarily without pay to care for the home and family, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

**4.20.220 - Exemption for low and moderate income homebuyers incurring seismic retrofit expenses.**

Up to one-third of the tax imposed by this chapter shall be reduced, on a dollar for dollar basis, for all expenses incurred by low and moderate income homebuyers on or after July 1, 2018 to "seismically retrofit" either any structure which is used exclusively for residential purposes, subject to the following:

A. For purposes of this section, "low and moderate income homebuyers" are defined as buyers who meet the requirements of Section 4.20.080.A., B., C., and E.

B. The term "seismically retrofit" in this chapter means any of the following:

1. Strengthening in compliance with Appendix Chapter A3 of the latest edition of the California Existing Building Code;
2. Bracing, anchoring, and/or strapping of water heater tanks in compliance with the California Plumbing Code or with standards adopted or approved by the building official;
3. Removal and/or replacement of masonry chimneys in accordance with FEMA P-1024-RA1 or substantially similar standards adopted or approved by the building official;
4. Strengthening or risk reduction in unreinforced masonry bearing wall buildings in substantial compliance with Oakland Municipal Code Chapter 15.28, for buildings not already required to comply with that chapter;
5. Strengthening, stiffening, or other damage reduction measures deemed by the building official to comply with the intent of reduced seismic forces as defined by the California Existing Building Code.

C. From the date of the recordation of the transfer document, the applicant shall have ~~one~~two years to complete all seismic retrofit work, if not already completed prior to the transfer of the property, and submit a seismic retrofit verification application to the Building Inspection ~~codes and inspection~~ Division of the City of Oakland. Upon completion of such work and certification by the Building Bureau as to the amount of the expenses of such work, the City Administrator or his/her designee shall refund such expenses not to exceed one-third of the tax imposed on and paid by the buyer.

D. The People of Oakland authorize that the City Council may establish rules that are necessary and desirable for implementation of Section 4.20.220 and may amend any aspect of this section as long as such amendment does not result in an increase in the authorized tax rate.

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. General Tax; Majority Approval; Effective Date. This Ordinance enacts a general tax for unrestricted general revenue purposes. Tax revenue collected pursuant to the Ordinance may be used by the City for any municipal governmental purpose. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council.

; and be it

**FURTHER RESOLVED**, that the City Council of the City of Oakland does hereby request that the Board of Supervisors of Alameda County order the consolidation of the Oakland Municipal election called for herein with the state general~~primary~~ election of November 6, 2018, consistent with provisions of State Law; and be it

**FURTHER RESOLVED**, that each ballot used at said election shall have printed therein, in addition to any other matter required by law, the following:

MEASURE \_\_\_\_\_

Measure ____.  [FINAL QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]	<b>Yes</b>	
	<b>No</b>	

; and be it

**FURTHER RESOLVED**, that the City Council hereby authorizes and directs the City Clerk of the City of Oakland (the "City Clerk") at least 88 days prior to November 6, 2018, to file with the Alameda County Clerk certified copies of this Resolution; and be it

**FURTHER RESOLVED**, that the City Council does hereby request that the Board of Supervisors of Alameda County include on the ballots and sample ballots the recitals and the measure language to be voted on by the voters of the qualified electors of the City of Oakland; and be it

**FURTHER RESOLVED:** That the City Council does hereby request that the Registrar of Voters of the County of Alameda perform necessary services in connection with said election; and be it

**FURTHER RESOLVED**, that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, Chapter 3 of the Oakland Municipal Code, the Government Code and the Elections Code of the State of California; and be it

**FURTHER RESOLVED**, that in accordance with applicable laws, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

**FURTHER RESOLVED:** That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2018 general municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare and conduct the November 6, 2018 general municipal election in a manner consistent with the laws of the City and the State of California; and be it

**FURTHER RESOLVED**, that certain sections of this Ordinance may be codified into the City of Oakland Municipal Code at the direction of the City Clerk upon approval by the voters; and be it

**FURTHER RESOLVED**, that this resolution shall be effective immediately upon approval by five members of the Council.

IN COUNCIL, OAKLAND, CALIFORNIA \_\_\_\_\_, 2018

PASSED BY THE FOLLOWING VOTE:

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

NOES

ABSENT

ABSTENTION

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California