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OFFICE OF THE CITY CLERK
OAKLAND

18 JUL -5 PM 4:19

AGENDA REPORT

TO: City Council and members of the Public
FROM: Dan Kalb, City Councilmember
SUBJECT: Real Estate Transfer Tax Tiered Rates Ballot Measure
DATE: July 5, 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 report accompanies the amended version of the legislation passed out on the dais at the June 28th Rules & Legislation Committee and forwarded to the full Council by the committee. As noted at committee, the changes that were made based on the original submission in the packet include (1) a revised effective date of January 1, 2019, (2) the provision allowing the Council to raise the \$300,000 threshold between the bottom two rate tiers based on the Consumer Price Index, (3) correction to the definition of Low & Moderate Income First-time Homebuyer, to accord with other homebuyer standards used by the City, and (4) a corresponding change to the definition of Low & Moderate Income Homebuyer.

Organizations publicly supporting placing this measure on the November 2018 ballot include SEIU Local 1021, Centro Legal, APEN, Wellstone Dem Club, Oakland Rising, and Unite Here Local 2850. Ken Lupoff of the Oakland Parks & Rec Foundation also spoke in support.

In addition, this Analysis section of the report addresses City of Berkeley data relevant to the seismic retrofit expenses exemption and questions raised on the dais at the June 28th Rules & Legislation Committee. Furthermore, this report includes a Sustainable Opportunities section.

Item: _____
City Council
July 10, 2018

ANALYSIS

City of Berkeley data relevant to the seismic retrofit expenses exemption

The City of Berkeley's Finance Department provided data on the number of tax exemptions for seismic retrofit expenses that they have issued since 2014, as follows:

Fiscal Year	# of exemptions
FY 14	42
FY 15	57
FY 16	113
FY 17	147
FY 18 (up to February)	69
Total:	428

Given that Berkeley offers the exemption for *any* homebuyer, it is anticipated that Oakland would see less seismic retrofit expenses exemptions due to limiting the exemption to Low and Moderate Income homebuyers, reducing the impact of the new exemption on City revenue.

Questions raised by Councilmember Lynette Gibson McElhaney

At the June 28th Rules & Legislation Committee, Councilmember Lynette Gibson McElhaney passed out a memo on the dais asking various questions related to this legislation, which this report addresses below. In general, the overall suggestion of potentially delaying the measure to 2020 would be a loss for low and moderate income homebuyers and likely result in a loss of prospective revenue to the City of \$15-20 million.

Tiered rates vs. marginal rates. Fewer rate tiers would result in less graduation of the tax, which is inherently less progressive, and less revenue, as eliminating any of the current tiers would depress revenue (other than the bottom tier, elimination of which would eliminate the tax savings to the public for the lowest value transfers). Marginal tax brackets increase the tax rate for only the amounts that exceed the taxable amount thresholds, which would provide savings for buyers of the highest value transfers at the cost of decreased revenue to the City. The other jurisdiction in California that has adopted a progressive real estate transfer tax (RETT) both (1) has *more* tiers than is proposed for this legislation and (2) does not use marginal rates for its RETT.

Discouraging speculators by taxing based on length of ownership. While an increased RETT on short-term ownership flipping to discourage speculation is an intriguing idea, the memo correctly notes that San Francisco voters rejected this proposal in 2014 when it was proposed. By contrast, San Francisco voters repeatedly approved progressive, graduating of the base tax rates. An anti-speculation RETT spike serves a different purpose than making the existing tax progressive.

Level of proposed discount. The existing exemption for Low & Moderate Income First-time Homebuyers helps incentivize more affordable sale and purchase of a home to low and moderate income individuals. Doubling the exemption furthers the existing objective without significant revenue loss and furthers the progressiveness of the legislation.

Cap on maximum value. Should there be a property value cap for the Low & Moderate Income First-time Homebuyer exemption? While it is true that most Low & Moderate Income First-time Homebuyers will be incapable of purchasing homes towards the upper end of the cap, the cap is necessary to ensure that rare cases, such as an individual with limited income but a sizable inheritance, does not end up qualifying for the exemption while purchasing a home in one of the two high value tax brackets. The setting of the cap was obviously done to be consistent with the cut-off for the current 1.5% rate and to prevent the exemption for being applied to transfers in the 1.75% and 2.5% rate categories.

As for the concern that inflation will eventually lead to home values for low and moderate income buyers being over \$2 million, the memo notes that such a problem is likely several decades away. Given that amount of time, the City Council will have ample time to react to any future changes that may or may not occur to limit efficacy of the Low & Moderate Income First-time Homebuyer exemption.

Seismic retrofitting exemption. The deadline has been vetted by the Finance and Planning Departments. The exemption rate mimics existing successful program in Berkeley. We understand that the Administration will be reporting that existing staff can absorb the costs of implementing this exemption. The exemption was proposed only for Low and Moderate Income Homebuyers because such individuals, not wealthy purchasers, are the ones who typically face the question of whether to either purchase a home and not retrofit or not purchase a home.

Exploring other exemptions. To ensure that this legislation remain progressive, any tax exemptions should only be low and moderate income individuals, not entities or wealthy individuals. Councilmember Kalb's office is examining the suggestion regarding an exemption for solar improvements and will report to the Council about it on July 10th.

Projected impacts. Councilmember Gibson McElhaney's memo notes that San Francisco has studied the economic impact of their proposed transfer tax reforms before submitting them to the voters. In fact, San Francisco's first major progressive RETT reform passed by the voters in 2008 was submitted without any such analysis in their legislative packet. San Francisco's subsequent reforms passed by the voters in 2010 and 2016 were accompanied by economic analyses, and the conclusions of these analyses and the popularity and success of the reforms in fact informed the development of the present legislation. In 2010, the Office of the Controller reported, "The initial impact of the legislation is positive for jobs and the economy, as the stimulus effect of increased government spending outweighs the contractionary effect of higher office rents." A subsequent more thorough analysis by San Francisco's Office of Economic Analysis in 2016 modulated concerns about reduced City GDP (approximately -.01%) and job loss (20 to 70 private sector jobs over 20 years) due to the larger anticipated growth of public sector jobs outweighing private sector loss (100 to 200 new jobs). In balance, the increased capacity of the City to provide for its residents outweighs conservative projections about the economy in one of the hottest real estate markets in the country.

Pressure on rents. This legislation will have no impact on most rents, including for the largest buildings, because it is a one-time tax only on new purchases. Existing buildings that are not sold will not be taxed.

SUSTAINABLE OPPORTUNITIES

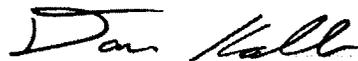
Economic: See above.

Environmental: There are no environmental opportunities associated with this report, other than increasing the City's capacity in general to address environmental issues.

Social Equity: Progressive taxes that shift the tax base away from those of less means and towards wealth are an inherently more equitable means of paying for government services than flat taxes.

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

Respectfully submitted,



Dan Kalb
Councilmember, District 1

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

18 JUL -5 PM 4:19

APPROVED AS TO FORM AND LEGALITY

DRAFT

CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

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 \$30250,000 or less, the same 1.5% rate for properties over \$30250,000 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 \$559 million for City services and functions, averaging over \$98 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.~~

Amount of transfer	Tax
\$30250,000 or less	1%
More than \$30250,000 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 Ddivision of the City of Oakland. Upon completion of such work and certification by the Bbuilding Bbureau 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 on January 1, 2019.

; 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 _____

<p>Measure __. Shall the Measure graduating the 1.5% real property transfer tax based on property value, including reduction to 1% for \$30250,000 or less, no change for over \$30250,000 to \$2,000,000, increase to 1.75% for over \$2,000,000 to \$5,000,000, and increase to 2.5% for over \$5,000,000, with .5% first-time and 1/3 seismic retrofit reductions for low-to-moderate income home buyers, estimated to raise \$__ million annually for unrestricted general revenue purposes unless repealed by the voters, be adopted? (75 words) [FINAL QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]</p>	<p>Yes</p>	
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	No	
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; 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