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OFFICE OF THE CITY CLERK
OAKLAND

DAN KALB, Council Member CITY OF OAKLAND

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

To: City Council and Members of the Public
From: Councilmember Dan Kalb
Date: July 19, 2018
Subject: Real Estate Transfer Tax Tiered Rates Measure

Colleagues and Members of the Public,

This memo accompanies a supplemental version of the measure, the additional proposed changes to which are as follows:

1. Inclusion of a tax exemption for nonprofit affordable housing providers, which keeps their rate no higher than 1.5% – this language was passed out at the July 12th Rules Committee meeting and forwarded by the committee to the full Council;
2. Removal of two unnecessary Resolved clauses, per City Attorney;
3. Expansion of 4.20.020.B., to allow the Council to amend the threshold between the middle two tiers;
4. Expansion of 4.20.220, to allow seismic retrofit, solar energy system installation, or a combo of both to qualify for the 1/3 exemption;
5. A title change to accord with #4 above – this title change was approved at the July 19th Rules Committee meeting;
6. Inclusion of a clerical edit on p. 4 regarding “percent” to “percentage point;”
7. Inclusion of ballot question language.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dan Kalb".

Dan Kalb, Councilmember, District 1

18 JUL 19 PM 4:40
INTRODUCED BY COUNCILMEMBER DAN KALB

APPROVED AS TO FORM AND LEGALITY

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 AND SOLAR ENERGY SYSTEM INSTALLATION 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 \$300,000 or less, the same 1.5% rate for properties over \$300,000 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 million for City services and functions, averaging over \$9 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.

A. 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.

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

B. The People of Oakland authorize that the City Council may increase the \$300,000 threshold between the first and second two tax rate tiers and the \$2,000,000 threshold between the second and third tax rate tiers by an amount no more than the increase to the Consumer Price Index as published by the U.S. Department of Labor, provided that such a threshold increase may not be done more than once per five years since the effective date of this Ordinance and that the thresholds may not be increased beyond \$500,000 for the threshold between the first and second tiers and \$3,500,000 for the threshold between the second and third tiers.

C. Notwithstanding subsection A., a transfer to a nonprofit corporation, or a limited partnership or limited liability company in which a nonprofit corporation is the managing general partner or managing member, accompanied by a binding agreement or covenant recorded on the property and enforceable by the city to provide all residential units on the property (other than units reserved for on-site property managers) at an affordable rent or affordable housing cost to lower income households as defined in California Health and Safety Code Section 50079.5, shall be taxed at a maximum rate of 1.5% regardless of the value of consideration.

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 percentage point (.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. The value of consideration for the transferred property is \$2 million or less; and

~~E. 1. D.~~ Have not owned a home in three years prior to the date of purchasing the property; or

~~2. E.~~ 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 or solar energy system 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" or either "install a solar energy system," or any combination of the two, for any structure which is used exclusively for residential purposes and the transfer of which is triggering the tax, 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., and D.

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. The term "install a solar energy system" in this chapter means the installation of an "active solar energy system," as defined by California Revenue & Taxation Code Section 73(b).

DG. From the date of the recordation of the transfer document, the applicant shall have one year to complete all seismic retrofit and solar energy system work, if not already completed prior to the transfer of the property, and submit a seismic retrofit verification application, solar energy system verification application, or both to the Building Inspections 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.

ED. 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 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 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 \$300,000 or less, no change for over \$300,000 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 tax reductions for low-to-moderate income home buyers, estimated to raise \$9 million annually for city services unless repealed by the voters, be adopted? [FINAL QUESTION SUBJECT TO CITY ATTORNEY APPROVAL]</p>	Yes	
	No	

; 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