

PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE NOVEMBER 4, 2014 ELECTION.

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than *45 days prior* to the deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Business and Tax Regulations Code - Surtax on Transfers of Residential Real Property Within Five Years of a Prior Transfer]

Ordinance amending the Business and Tax Regulations Code to impose a surtax on the transfer of certain residential real property within five years of the prior transfer of the property, to exempt certain transfers from the surtax, and to permit the Board of Supervisors to exempt from the surtax and the existing tax imposed under Article 12-C of the Business and Tax Regulations Code transfers of real property subject to certain affordability-based restrictions on the occupancy of the real property.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Pursuant to Article XIIC of the Constitution of the State of California, this ordinance shall be submitted to the qualified electors of the City and County of San Francisco, at the November 4, 2014 consolidated general election.

Section 2. Legislative Findings. The People of the City and County of San Francisco find that:

(a) Home prices and market rents in San Francisco are among the highest in the nation and are now beyond the reach of many San Franciscans.

(b) Real estate speculation and the practice of “flipping” apartment buildings is contributing to the shortage of affordable housing, and imposes a severe social and economic burden on the City and County of San Francisco and its taxpayers.

(c) Encouraging long-term ownership of apartment buildings and providing secure tenancies increases neighborhood stability and the health and well-being of the City.

(d) In addition to generating revenues for the City’s general fund, imposing a surtax on transfers of multi-unit residential buildings within five years of their acquisition is intended to discourage short-term real estate speculation in San Francisco's supply of housing.

Section 3. The San Francisco Business and Tax Regulations Code is hereby amended by revising Sections 1102 and 1105, to read as follows:

SEC. 1102. TAX IMPOSED.

(a) There is hereby imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the City and County of San Francisco shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or her or their direction, when the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale) (i) exceeds \$100.00 but is less than or equal to \$250,000.00, a tax at the rate of \$2.50 for each \$500.00 or fractional part thereof; or (ii) more than \$250,000.00 and less than \$1,000,000.00, a tax at the rate of \$3.40 for each

\$500.00 or fractional part thereof for the entire value or consideration, including, but not limited to, any portion of such value or consideration that is less than \$250,000.00; or (~~##3~~) at least \$1,000,000.00 and less than \$5,000,000.00, a tax at the rate of \$3.75 for each \$500.00 or fractional part thereof for the entire value or consideration, including, but not limited to, any portion of such value or consideration that is less than \$1,000,000.00; or (~~iv4~~) at least \$5,000,000.00 and less than \$10,000,000.00, a tax at the rate of \$10.00 for each \$500.00 or fractional part thereof for the entire value or consideration, including, but not limited to, any portion of such value or consideration that is less than \$5,000,000.00; or (~~v5~~) at least \$10,000,000.00 and above, a tax at the rate of \$12.50 for each \$500.00 or fractional part thereof for the entire value or consideration, including but not limited to, any portion of such value or consideration that is less than \$10,000,000.00. The People of the City and County of San Francisco authorize the Board of Supervisors to enact ordinances, without further voter approval, that will exempt rent-restricted affordable housing, as the Board may define that term, from the increased tax rate in subsections (~~iv4~~) and (~~v5~~).

(b) In addition to the tax imposed by subsection (a) of this Section, there is hereby imposed on each deed, instrument or writing by which any residential lands, tenements, or other realty sold within the City and County of San Francisco shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or her or their direction, when the time since the prior conveyance of the lands, tenements, or other realty sold (1) is less than 1 year, a surtax at a rate of \$120.00 for each \$500.00 or fractional part thereof of the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale); or (2) is greater than or equal to 1 year but less than 2 years, a surtax at a rate of \$110.00 for each \$500.00 or fractional part thereof of the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale); or (3) is greater than or equal to 2 years but less

than 3 years, a surtax at a rate of \$100.00 for each \$500.00 or fractional part thereof of the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale); or (4) is greater than or equal to 3 years but less than 4 years, a surtax at a rate of \$90.00 for each \$500.00 or fractional part thereof of the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale); or (5) is greater than or equal to 4 years but less than 5 years, a surtax at a rate of \$70.00 for each \$500.00 or fractional part thereof of the consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale). This surtax shall apply only to the portion of the lands, tenements, or other realty sold that was part of the prior conveyance of the lands, tenements, or other realty sold. The surtax imposed on any deed, instrument or writing conveying lands, tenements, or other realty sold, only a part of which is subject to the surtax, shall be determined in accordance with subsection (e) of this Section.

(c) For purposes of this Article, “the prior conveyance of the lands, tenements, or other realty sold” shall mean the most recent conveyance of the lands, tenements, or other realty sold, whether conveyed on its own or as part of a larger conveyance, that was subject to tax under this Article, except that a conveyance subject to tax under Section 1108.2 of this Article because the consideration for such conveyance exceeded the unpaid debt shall not be considered a prior conveyance of the lands, tenements, or other realty sold for purposes of this Article.

(d) For purposes of this Section only, any lands, tenements, or other realty sold shall be deemed to be “residential” to the extent that the property is used, available for use, designed, and/or intended, both on the date of the prior conveyance of the lands, tenements, or other realty sold, and on the date of the current conveyance of the lands, tenements, or other realty sold, for the primary purpose of dwelling, sleeping, and/or lodging other than as a hotel licensed under Section 302(c) of the Housing Code. The surtax imposed on any deed, instrument or writing conveying lands, tenements, or

other realty sold, only a part of which is residential, shall be determined in accordance with subsection (e) of this Section.

(e) The surtax imposed pursuant to subsection (b) of this Section that is imposed on any deed, instrument or writing conveying lands, tenements, or other realty sold, only a part of which is subject to the surtax, shall be calculated by multiplying the applicable rate by a tax base determined by multiplying the consideration or value of the entire interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale) by a fraction, the numerator of which is the square-footage of the portion of the improvements on the lands, tenements, or other realty sold the conveyance of which is subject to the surtax, and the denominator of which is the total square-footage of the improvements on the lands, tenements, or other realty sold. For purposes of this subsection (e), the square footage of improvements on the lands, tenements, or other realty sold shall not include the square footage of any common areas.

(f) For purposes of this Article and unless specifically stated otherwise, all references to the “tax,” “transfer tax,” or “levy” imposed pursuant to this Article shall include the tax imposed pursuant to subsection (a) of this Section and the surtax imposed pursuant to subsection (b) of this Section. Any requirement in this Article that “not more than one tax shall be imposed pursuant to this Article,” including the reference in Section 1108(c) of this Article, shall permit the imposition of both one tax and one surtax.

SEC. 1105. EXEMPTIONS.

(a) Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this ~~Article ordinance~~ when the exempt agency is acquiring title.

(b) Any deed, instrument or writing shall be exempt from up to one-third (1/3) of any tax imposed pursuant to this ~~Article ordinance~~ if: (1) it transfers an interest in real property used as a residence; and (2) after January 1, 2009, the transferor has installed an active solar system, as that term is defined in Revenue & Taxation Code § 73(b), or has made seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, as those terms are defined in Revenue & Taxation Code § 74.5(b), and the transferor has claimed and the Assessor has approved an exclusion from reassessment for the value of that system or those improvements. This partial exemption shall only apply to the initial transfer by the person who installed the active solar system or made the seismic safety improvements. The amount of this partial exemption shall not exceed the transferor's cost of seismic retrofitting improvements or the active solar system. Multi-family residential properties are eligible for this partial exemption.

(c) Any deed, instrument or writing shall be exempt from the surtax imposed pursuant to subsection (b) of Section 1102 of this Article to the extent that:

(1) The lands, tenements, or other realty sold was conveyed within one year of the death of a record owner of at least 20 percent of the lands, tenements, or other realty sold.

(2) The lands, tenements, or other realty sold is subject to a regulatory agreement, recorded deed restriction, or other document that contains either of the following conditions:

(A) Restricts occupancy to households with incomes not exceeding 120 percent of the area median income of the HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco; or

(B) Restricts occupancy to households where the average income of all households in the lands, tenements, or other realty sold does not exceed 80 percent of the area median income of the HMFA that contains San Francisco. Such restrictions must have a minimum remaining term of 15 years at the time the lands, tenements, or other realty sold is conveyed, or the taxpayer must demonstrate that the affordability term was extended for a minimum of 20 years as part of the conveyance. At the time that

any taxpayer claims the exemption under this subsection (c)(2), the taxpayer must submit to the Recorder a certification from the Mayor's Office of Housing, or its successor, confirming that the lands, tenements, or other realty sold met the requirements described in this subsection (c)(2) at the time of the conveyance of the lands, tenements, or other realty sold.

(3) The lands, tenements, or other realty sold was a single-family residence both on the date of the prior conveyance of the lands, tenements, or other realty sold, and on the date of the current conveyance of the lands, tenements, or other realty sold. For purposes of this subsection (c), a "single-family residence" includes only lands, tenements, or other realty sold that comprises either a single-family home or a single unit on a separate parcel or separately subdivided or converted parcel, as the terms "unit" and "conversion" are defined in Section 1308 of the Subdivision Code, and shall not include: (A) any lands, tenements, or other realty sold that contains an accessory dwelling unit or in-law unit authorized pursuant to Sections 207.3 or 715.1 of the Planning Code, or similar provisions enacted after the effective date of this ordinance; or (B) any interest in a tenancy-in-common.

(4) The lands, tenements, or other realty sold is new housing. For purposes of this subsection (c)(4), "new housing" includes only a residential unit that did not exist at the time of the prior conveyance of the lands, tenements, or other realty sold, to the extent that the additional unit increases the square-footage of residential living space on the lands, tenements, or other realty sold from the square-footage of residential living space at the time of the prior conveyance of the lands, tenements, or other realty sold. For purposes of this subsection (c)(4), "residential" has the same meaning as defined in Section 1102 of this Article.

(5) A record owner of at least 10 percent of the lands, tenements, or other realty sold has resided in the lands, tenements, or other realty sold as his or her principal place of residence for at least one year immediately preceding the conveyance. For purposes of this subsection (c)(5), a person may have only one "principal place of residence," which shall mean the owner's permanent or primary home that the owner occupies for more than a temporary or transitory purpose. Evidence that the

lands, tenements, or other realty sold is the owner's principal place of residence includes, but is not limited to, the following factors, a compilation of which lends greater credibility to the claim that the lands, tenements, or other realty sold is the owner's "principal place of residence:"

(A) The lands, tenements, or other realty sold is listed as the owner's place of residence on any motor vehicle registration, driver's license, voter registration, or with any public agency, including Federal, State, and local taxing authorities;

(B) Utilities at the lands, tenements, or other realty sold are billed to and paid by the owner;

(C) All of the owner's personal possessions have been moved into the lands, tenements, or other realty sold;

(D) The owner has obtained a homeowner's tax exemption for property tax purposes with respect to the lands, tenements, or other realty sold;

(E) The owner has requested a change of address to the address of the lands, tenements, or other realty sold with the United States Postal Service;

(G) The lands, tenements, or other realty sold is the place to which the owner normally returns as his or her home, exclusive of military service, hospitalization, vacation, travel necessitated by employment or education, or other reasonable temporary periods of absence;

(H) The owner has given notice at his or her prior residence that he or she was moving into the lands, tenements, or other realty sold;

(I) The owner sold or placed on the market for sale the residence that he or she occupied prior to occupying the lands, tenements, or other realty sold; and/or

(J) The owner provides affidavits or testimony from individuals with personal knowledge that the owner occupies the lands, tenements, or other realty sold as his or her principal place of residence.

(6) The lands, tenements, or other realty sold contains more than 30 separate residential units. For purposes of this subsection (c)(6), “residential” has the same meaning as defined in Section 1102 of this Article.

(7) The lands, tenements, or other realty sold contains no more than two dwelling units, and each of the following conditions is met:

(A) on or before July 1, 2014, the owner conveying the lands, tenements, or other realty sold has applied for a first building permit from the Department of Building Inspection, or planning approval from the Planning Department, with respect to the lands, tenements, or other realty sold; and

(B) the total construction cost of the first building permit described in paragraph (7)(A) and any subsequent permits applied for with respect to the lands, tenements, or other realty sold is \$500,000 or more; and

(C) the last permit issued by the Department of Building Inspection as described in paragraphs (7)(A) and (7)(B) was issued within one year preceding the date that the lands, tenements, or other realty sold is conveyed.

(8) The consideration or value of the interest or property conveyed (not excluding the value of any lien or encumbrances remaining thereon at the time of sale) that is otherwise subject to the surtax in subsection (b) of Section 1102 of this Article is less than or equal to the consideration or value of such interest or property conveyed (not excluding the value of any lien or encumbrance remaining thereon at the time of sale) at the time of the prior conveyance of the lands, tenements, or other realty sold. For purposes of this subsection (c)(8), where the lands, tenements, or other realty sold the conveyance of which is otherwise subject to the surtax in subsection (b) of Section 1102 of this Article is only a portion of the lands, tenements, or other realty sold in the prior conveyance of the lands, tenements, or other realty sold, there shall be a rebuttable presumption that “the consideration or value of such interest or property conveyed (not excluding the value of any lien or encumbrance

remaining thereon at the time of sale) at the time of the prior conveyance of the lands, tenements, or other realty sold” equals the total consideration or value of the entire interest or property conveyed (not excluding the value of any lien or encumbrance remaining thereon at the time of sale) at the time of the prior conveyance of the lands, tenements, or other realty sold multiplied by a fraction, the numerator of which is the square footage of the improvements on the lands, tenements, or other realty sold that is currently being conveyed and the conveyance of which is otherwise subject to the surtax in subsection (b) of Section 1102 of this Article, and the denominator of which is the total square footage of the improvements on the entire lands, tenements, or other realty sold in the prior conveyance of the lands, tenements, or other realty sold.

(d) In addition to the exemption in subsection (c)(2) of this Section, the People of the City and County of San Francisco authorize the Board of Supervisors to enact ordinances, without further voter approval, that exempt from the tax imposed pursuant to subsection (a) of Section 1102 of this Article and the surtax imposed pursuant to subsection (b) of Section 1102 of this Article any deed, instrument or writing conveying lands, tenements, or other realty sold that is subject to a regulatory agreement, recorded deed restriction, or other document that imposes affordability-based restrictions on the occupancy of the lands, tenements, or other realty sold that are specifically enumerated by the Board, whether those affordability-based restrictions are in place at the time of the conveyance or are put in place subsequent to the conveyance, as determined by the Board.

(e) The surtax imposed pursuant to subsection (b) of Section 1102 of this Article on any deed, instrument or writing conveying lands, tenements, or other realty sold, only a part of which is exempt under this Section, shall be determined in accordance with subsection (e) of Section 1102 of this Article.

Section 4. Scope of Ordinance. In enacting this ordinance, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs,

subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions or deletions, in accordance with the “Note” that appears under the official title of the ordinance.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The People of the City and County of San Francisco hereby declare that they would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance would be subsequently declared invalid or unconstitutional.

Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 7. Effective and Operative Date. The effective date of this ordinance shall be ten days after the date the official vote count is declared by the Board of Supervisors. This ordinance shall become operative on January 1, 2015.

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SUBMITTED.

_____ Date: _____

Eric Mar
Member, Board of Supervisors

Date:

Member, Board of Supervisors

Date:

Member, Board of Supervisors

Date:

Member, Board of Supervisors

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