



DEAN PRESTON

July 23, 2020

By Email

Peter Stevens and Members of the Ballot Simplification Committee
1 Dr. Carlton B. Goodlett Place
City Hall, Room 48
San Francisco, CA 94102
Via email to: publications@sfgov.org

Re: Ordinance: Real Estate Transfer Tax Request for Reconsideration

Dear Chair Packard and Members of the Ballot Simplification Committee:

Thank you for hearing our proposed Real Property Transfer Tax ballot measure at the Committee meeting of July 22, 2020. We appreciate your time and diligence, both in preparing the draft digest, and for your revisions at the hearing.

I note with gratitude that, regarding my letter dated July 21, which included suggested changes to the first draft of the digest, that two of the requests were considered and incorporated by the Committee.

At the hearing, we observed that on one of the requested changes, to include language describing where the increased tax rate does not apply, the Committee decided not to incorporate any changes to that effect. We believe there was misunderstanding as to what is required under the current code, and as a result, we respectfully request to reconsider including this language.

I would like to first explain the current legal provisions, and then offer language to include in the digest.

First, in the event a property is transferred from private ownership to the City and County of San Francisco, the transfer tax is waived in its entirety (SF Bus. & Tax Regs. Code Section 1105).¹

Second, the Board of Supervisors created in 2018 a law known as the Community Opportunity to Purchase Act (COPA), which provides the right of first offer for certain properties to be sold to qualified affordable housing nonprofits, for the purpose of creating permanently affordable housing.² In order to incentivize use of this program, the Board elected to use a lower transfer tax rate for high-value transactions, essentially applying the tier for transactions between \$1,000,000 and \$5,000,000 (0.75%) for all transactions \$5,000,000 or greater in this program. Put simply, any COPA transaction valued at \$5,000,000 or more will be taxed at a rate of 0.75%.³

At the July 22 Committee hearing, there appeared to be a point of confusion with regard to language in the ballot measure text. It was correctly pointed out that the legal text of the ballot measure includes the following language: “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 (d), (e), and (f).”

This provision of the current ballot measure, however, is simply restating a provision that already exists in the Business and Tax Code, which was added in 2008 by Proposition N. This is the legal foundation of the Board’s power to apply lower transfer tax rates, as it has done with the COPA program created in 2018. To be clear, current law exempts sales to the city and qualified nonprofits from the previous increase in the transfer tax, and we believe that must be reflected in the digest.

The intention of this ballot measure is to incentivize use of the COPA program, by greatly increasing the cost differential in the event a property is sold to a qualified nonprofit or to the city.

For example, if a property valued at \$30,000,000 is transferred, from one private owner to another, the current transfer tax (3.00%) would amount to \$900,000. If the owner were to sell to a nonprofit under the COPA program, the tax (0.75%) would be \$225,000. And if it were sold to the city, there would be no tax applied.

¹ “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 ordinance when the exempt agency is acquiring title.” (SF Bus. & Tax Regs. Code Section 1105)

² *Administrative Code Section 41B.6*

³ *SF Bus. & Tax Regs. Code Section 1108.6.*

Under the proposed transfer tax increase, that same building, valued at \$30,000,000 would see the applied transfer tax (6.00%) amount to \$1,800,000. If the owner were to sell to a nonprofit under the COPA program, the tax (0.75%) would again be \$225,000, and the city exemption would again waive the tax entirely. In other words, there would be a savings of \$1,575,000 under COPA with the ballot measure, as opposed to the \$675,000 savings under current law.

This underscores the importance of making sure the voter understands the implications of current law and the proposed changes. By design, ballot measure's intention is two-fold: first, to raise additional revenue on the highest value real-estate transactions, and second, perhaps more importantly, to create a strong financial incentive for a private property owner to sell to the City or to Qualified Affordable Housing nonprofit.

This is not simply a policy goal that we wish to articulate in the digest; this is, in point of fact, a crucial provision for voters to understand the intent of this measure.

We therefore respectfully request that the following language be included in "**The Way It Is Now**" section:

If property is sold to the City, the transfer tax is waived. If property is sold to a qualified affordable housing nonprofit, the transfer tax is no greater than 0.75%. Nothing in this measure changes these exemptions.

And in "**The Proposal**" section after the table in the current tax:

The increased transfer tax shall not apply if a property is sold to the city or a qualified affordable housing nonprofit.

I thank you for your time and attention to this matter.

Sincerely,



District 5 Supervisor Dean Preston