

BOARD of SUPERVISORS



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## ERRATA

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Date: January 19, 2024  
From: *S* Angela Calvillo, Clerk of the Board  
Subject: Errata Correction to Ordinance (File No. 231007)  
Business and Tax Regulations Code - Transfer Tax Exemption for  
Affordable Housing

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The following correction was made to the above referenced Board of Supervisors Ordinance No. 008-24 (File No. 231007):

- On Page 7, Line 25, by changing 'Section 1108.6(c)(2)(b)' to 'Section 1108.6(c)(2)(B)'

1 [Business and Tax Regulations Code - Transfer Tax Exemption for Affordable Housing]

2  
3 **Ordinance amending the Business and Tax Regulations Code to broaden the**  
4 **exemption from the increased transfer tax rates when the consideration or value of the**  
5 **interest or property conveyed equals or exceeds \$5,000,000 for transfers of certain**  
6 **rent-restricted affordable housing; applying the exemption retroactively to transfers**  
7 **occurring on or after January 1, 2017; extending the exemption through December 31,**  
8 **2030; and affirming the Planning Department's determination under the California**  
9 **Environmental Quality Act.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

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

18 Section 1. Environmental Findings.

19 The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. 231007 and is incorporated herein by reference. The Board affirms  
23 this determination.  
24  
25

1           Section 2. Legislative Findings.

2           To promote the creation and preservation of rent-restricted affordable housing,  
3 Ordinance No. 205-21 exempted transfers of certain rent-restricted affordable housing from  
4 the higher real property transfer tax rates applicable to transfers of real property where the  
5 consideration or value of the interest or property conveyed is \$5,000,000 or more. This  
6 ordinance would broaden that exemption to include additional transfers not covered by the  
7 original exemption, and would extend the existing sunset date of that exemption from  
8 June 30, 2024 to December 31, 2030. This ordinance would also promote the continued  
9 viability of recently transferred rent-restricted affordable housing by applying the expanded  
10 exemption retroactively to transfers of such rent-restricted affordable housing that occurred  
11 between January 1, 2017 and the effective date of this ordinance.

12  
13           Section 3. Article 12-C of the Business and Tax Regulations Code is hereby amended  
14 by revising Section 1108.6, to read as follows:

15       **SEC. 1108.6. PARTIAL EXEMPTION FOR RENT-RESTRICTED AFFORDABLE HOUSING.**

16       (a) **Definitions.** For purposes of this Section 1108.6:

17       ~~*“Area Median Income” means the median income as published annually by MOHCD for the*~~  
18 ~~*City and County of San Francisco, derived in part from the income limits and area median income*~~  
19 ~~*determined by the United States Department of Housing and Urban Development, or its successor*~~  
20 ~~*agency, for the San Francisco County metro fair market rent area, adjusted solely for household size,*~~  
21 ~~*but not for high housing cost area.*~~

22       *“Low Income Threshold” means the greatest of the following:*

23           *(1) 80% of the MOHCD Area Median Income;*

24           *(2) 80% of the area median income for the County of San Francisco, adjusted for*  
25 *household size, as published by the California Tax Credit Allocation Committee or its successor entity;*

1                   (3) “Lower Income” for the County of San Francisco, adjusted for household size, as  
2 published by the California Department of Housing and Community Development, or its successor  
3 agency, under the California Code of Regulations and pursuant to California Health and Safety Code  
4 Section 50079.5, as amended from time to time;

5                   (4) “Low Income” for the County of San Francisco within the “San Francisco, CA  
6 HUD Metro FMR Area,” adjusted for household size, as published by the United States Department of  
7 Housing and Urban Development, or its successor agency; or

8                   (5) The maximum household income for a unit to receive the welfare exemption under  
9 California Revenue and Taxation Code Section 214(g), as amended from time to time.

10                   “MOHCD” means the Mayor’s Office of Housing and Community Development, or its  
11 successor agency, department, or office.

12                   “MOHCD Area Median Income” means the median income as published annually by MOHCD  
13 for the City and County of San Francisco, derived in part from the income limits and area median  
14 income determined by the United States Department of Housing and Urban Development, or its  
15 successor agency, for the San Francisco County metro fair market rent area, adjusted solely for  
16 household size, but not for high housing cost area.

17                   “Recorded Restriction” means a document, agreement, or instrument, recorded with  
18 the County Recorder, that restricts the use of the property against which the document,  
19 agreement, or instrument is recorded.

20                   “Rent-Restricted Affordable Housing” means a property described under either of the  
21 following subsections (1) or (2):

22                   (1) A property transferred under Section 41B.6 of the Administrative Code, as  
23 that Section 41B.6 existed as of June 3, 2019; or

24                   (2) A Residential Rental Property that satisfies both of the following  
25 subsections (2)(A) and (2)(B):

1 (A) Meets the requirements of ~~either one or more~~ of the following  
2 subsections (2)(A)(i), (2)(A)(ii), or (2)(A)~~(#)~~(iii):

3 (i) Prior to and up to the time of the transfer for which an  
4 exemption is claimed under this Section 1108.6, was granted a welfare exemption by the  
5 County Assessor under California Revenue and Taxation Code Section 214~~(g)~~ for at least 90%  
6 of all residential units in the property;~~or~~

7 (ii) Prior to and up to the time of the transfer for which an  
8 exemption is claimed under this Section 1108.6, was unoccupied, uninhabited, or unused for  
9 residential or commercial purposes and contained no structures for which such uses were  
10 legally permissible; or

11 (iii) Meets the requirements of the following subsection (2)(A)(iii)a. and  
12 is the subject of the certification in the following subsection 2(A)(iii)b.

13 a. Prior to and up to the time of the transfer for which an  
14 exemption is claimed under this Section 1108.6, was wholly-owned, directly or indirectly, by one or  
15 more organizations that are exempt from income taxation under Section 501(c)(3) of the Internal  
16 Revenue Code of 1986, as amended, which organization(s) transfer a portion of their ownership  
17 interest(s) solely to one or more persons or legal entities who intend to hold the ownership interests in  
18 compliance with the welfare exemption under California Revenue and Taxation Code Section 214(g)  
19 for at least 90% of all residential units in the property.

20 b. The transferor(s) of the ownership interest(s) must certify to  
21 MOHCD that an application for the welfare exemption under California Revenue and Taxation Code  
22 Section 214(g) for at least 90% of all residential units in the property will be submitted to the County  
23 Assessor within the time limits specified in California Revenue and Taxation Code Section 271(a), and  
24 that such application will be substantially complete and valid within nine months of the date of the  
25 transfer.~~and~~

1 (B) At the time of the transfer for which an exemption is claimed under  
2 this Section 1108.6 is, or concurrently with such transfer becomes, subject to a Recorded  
3 Restriction with an original term of at least~~remaining term of no less than~~ 55 years from ~~the later~~  
4 ~~of the date of the transfer or~~ the date the property becomes available for residential rental use  
5 under such Recorded Restriction, and a remaining term of at least 35 years from the date of the  
6 transfer, provided that such Recorded Restriction, at a minimum:

7 (i) limits the maximum household income for each residential  
8 rental unit at initial occupancy to no more than 120% of MOHCD Area Median Income; and

9 (ii) sets a maximum household income limit applicable at initial  
10 occupancy for each residential rental unit ("Unit Maximum Income") such that the average of  
11 all Unit Maximum Incomes in the property does not exceed the Low Income Threshold~~80% of~~  
12 ~~Area Median Income~~; and

13 (iii) limits the maximum monthly rent for each residential rental unit  
14 to no more than either:

15 a. the tenant-paid portion of the contract rent as determined  
16 by the San Francisco Housing Authority for residential tenants holding Section 8 vouchers or  
17 certificates; or

18 b. one-twelfth of 30% of the Unit Maximum Income; or

19 c. if the household income of the residential tenants in a  
20 residential rental unit exceeds the Unit Maximum Income after initial occupancy, one-twelfth  
21 of 30% of the household income of the residential tenants; and

22 (iv) provides for the regulation, monitoring, and enforcement of the  
23 restrictions in this subsection (2)(B) by a governmental agency.

24 For purposes of this subsection (2)(B) only, a "residential rental unit" does  
25 not include a unit for an onsite property manager.

1           “Residential Rental Property” means a property that may only be used to rent to  
2 residential tenants, including an onsite property manager, and excluding travelers,  
3 vacationers, or other similarly transient individuals, except that it may include: (1) up to 30%  
4 of the square footage of all floors other than the ground floor for non-profit space serving  
5 residents and/or the community, such as childcare centers, health clinics, or job training  
6 centers; and (2) any amount of square footage of the ground floor for non-residential space.

7           “Section 41B.6 of the Administrative Code, as that Section 41B.6 existed as of  
8 June 3, 2019” means the text of Section 41B.6 in Ordinance No. 79-19, on file with the Clerk  
9 of the Board of Supervisors in File No. 181212.

10           **(b) Exemption from Increased Tax Rate.** As authorized by the last sentence of  
11 Section 1102 of this Article 12-C, the increased tax rates imposed by subsections (d), (e),  
12 and (f) of Section 1102 shall not apply with respect to any deed, instrument, or writing that  
13 effects a transfer of Rent-Restricted Affordable Housing. The lower tax rate imposed by  
14 subsection (c) of Section 1102 shall apply to the entire consideration or value of the interest or  
15 property conveyed by a deed, instrument, or writing that is subject to the exemption in this  
16 subsection (b).

17           **(c) Requirements for Exemption.**

18           (1) Except as provided in subsection (c)(2), ~~very~~every person claiming the  
19 exemption under subsection (b) must:

20                   (A) Obtain from MOHCD a certificate confirming that the deed,  
21 instrument, or writing effects a transfer of Rent-Restricted Affordable Housing.

22                   (B) Submit the certificate described in subsection (c)(1)(A) of this  
23 Section 1108.6 to the County Recorder at the time such person submits the affidavit  
24 described in subsection (c) or (d) of Section 1111.  
25

1 (2) Notwithstanding the requirements in subsection (c)(1), every person  
2 claiming the exemption under subsection (b) for a deed, instrument, or writing that effects a  
3 transfer of Rent-Restricted Affordable Housing, when that deed, instrument, or writing is  
4 delivered on or after January 1, ~~2021~~2017, but prior to July 1, ~~2022~~2024, may do the following in  
5 lieu of the procedures described in subsection (c)(1):

6 (A) Obtain from MOHCD a certificate confirming that the deed,  
7 instrument, or writing effected a transfer of Rent-Restricted Affordable Housing.

8 (B) By December 31, ~~2022~~2024, submit the certificate described in  
9 subsection (c)(2)(A) of this Section 1108.6 to the County Recorder, along with a request for a  
10 refund of the tax paid on, or the cancellation or reduction of any deficiency assessed with respect to,  
11 the transfer subject to the certificate that exceeds the rates described in Section 1102(c). The  
12 County Recorder may authorize the Controller to refund these amounts, without interest,  
13 without the need for a refund claim.

14 This subsection (c)(2) shall not apply where the deed, instrument, or writing  
15 effects a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6  
16 existed as of June 3, 2019.

17 (3) Failure to timely satisfy the requirements in this subsection (c) renders the  
18 transfer ineligible for the exemption.

19 **(d) Revocation of Exemption.**

20 (1) If a transfer of Rent-Restricted Affordable Housing was granted an exemption under  
21 Section 1108.6(b) on the basis that the property satisfied subsection (iii) of the definition of  
22 Rent-Restricted Affordable Housing in Section 1108.6(a)(2)(A) and the property did not satisfy  
23 subsection (i) or (ii) of that definition, the person claiming such exemption must, within the later of  
24 25 months of the transfer and the date such person submits any request for refund, cancellation, or  
25 reduction under Section 1108.6(c)(2)(B), submit proof to the County Recorder that the property was



1 granted a welfare exemption by the County Assessor under California Revenue and Taxation Code  
2 Section 214(g) for at least 90% of all residential units in the property within two years from the date of  
3 the transfer. The County Recorder may grant a one-year extension to the 25-month and two-year  
4 periods in this subsection (d)(1) if the welfare exemption application submitted to the County Assessor  
5 was substantially complete within nine months of the date of the transfer and the person claiming the  
6 exemption was diligently pursuing the required welfare exemption but was unable to obtain such  
7 welfare exemption within the two-year period.

8 (2) If the County Recorder determines that a transfer of Rent-Restricted Affordable  
9 Housing was granted an exemption under Section 1108.6(b) on the basis that that property satisfied  
10 subsection (iii) of the definition of Rent-Restricted Affordable Housing in Section 1108.6(a)(2)(A) and  
11 the property did not satisfy subsection (i) or (ii) of that definition, and that the property was not granted  
12 a welfare exemption by the County Assessor under California Revenue and Taxation Code  
13 Section 214(g) for at least 90% of all residential units in the property within two years from the date of  
14 the transfer (or the extended date under Section 1108.6(d)(1)), the County Recorder may revoke the  
15 exemption and issue a deficiency determination for the amount of tax exempted upon the basis of any  
16 information within the County Recorder's possession or that may come into the County Recorder's  
17 possession. Such deficiency determination shall bear interest at the rate of 1% per month, or fraction  
18 thereof, on the amount of tax exempted, from the date the tax would have become delinquent had the  
19 exemption in Section 1108.6 not applied, and shall be subject to a penalty of 35% of the amount of tax  
20 exempted. Such deficiency determinations and the amounts paid pursuant to such deficiency  
21 determinations shall be subject to the procedures otherwise applicable in Article 12-C of the Business  
22 and Tax Regulations Code, except for the provisions in Section 1115.2, and except that, if the County  
23 Recorder grants the one-year extension under Section 1108.6(d)(1), the time period in Section 1115(b)  
24 of the Business and Tax Regulations Code for the County Recorder to serve notice of the deficiency  
25 determination under this Section 1108.6(d)(2) shall also be extended by one year.

1            ~~(de)~~ **Operative Dates.**

2            (1) This Section 1108.6 shall apply to all deeds, instruments, or writings that  
3 effect a transfer of Rent-Restricted Affordable Housing other than deeds, instruments, or  
4 writings that effect a transfer under Section 41B.6 of the Administrative Code, as that  
5 Section 41B.6 existed as of June 3, 2019, that are or have been delivered on or after  
6 January 1, ~~2021~~2017, but on or before the sunset date in subsection (ef).

7            (2) This Section 1108.6 shall apply to all deeds, instruments, or writings that  
8 effect a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6  
9 existed as of June 3, 2019, that are or have been delivered on or after June 3, 2019, but on or  
10 before the sunset date in subsection (ef).

11            (ef) **Sunset Date.** This Section 1108.6 shall expire by operation of law on  
12 ~~June 30, 2024~~December 31, 2030, and shall not apply to any deeds, instruments, or writings that  
13 are delivered on or after ~~July 1, 2024~~January 1, 2031.

14            (g) **Penalty Waiver.** The County Recorder shall waive all penalties and interest imposed on  
15 transfers qualifying for the exemption in Section 1108.6(b) for deeds, instruments, or writings that  
16 effected a transfer of Rent-Restricted Affordable Housing under subsection (2) of the definition of  
17 Rent-Restricted Affordable Housing in Section 1108.6(a), when the deed, instrument, or writing was  
18 delivered on or after January 1, 2017, but prior to the effective date of the ordinance, in Board File  
19 No. 231007, adding this subsection (g). The waiver in this subsection (g) shall include penalties and  
20 interest on the portion of the transfer tax not subject to the exemption in Section 1108.6(b). The County  
21 Recorder may authorize the Controller to refund any penalties or interest qualifying for waiver under  
22 this subsection (g), without interest, to the person that paid such penalties or interest if such person  
23 files a request for refund with the County Recorder on or before December 31, 2024.

24            (h) **Severability.** If any section, subsection, sentence, clause, phrase, or word of this  
25 Section 1108.6, or any application thereof to any person or circumstance, is held to be invalid or

1 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the  
2 validity of the remaining portions or applications of this Section 1108.6. The Board of Supervisors  
3 hereby declares that it would have enacted this Section 1108.6 and each and every subsection,  
4 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether  
5 any other portion of this Section 1108.6 or application thereof would be subsequently declared invalid  
6 or unconstitutional.

7 (i) **Undertaking for the General Welfare.** In enacting and implementing this Section 1108.6,  
8 the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it  
9 imposing on its officers and employees, an obligation for breach of which it is liable in money damages  
10 to any person who claims that such breach proximately caused injury.

11  
12 Section 4. Effective Date; Retroactivity.

13 (a) Effective Date. This ordinance shall become effective 30 days after enactment.  
14 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance  
15 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of  
16 Supervisors overrides the Mayor's veto of the ordinance.

17 (b) Retroactivity. Upon its effective date, this ordinance shall be retroactive to  
18 January 1, 2017, insofar as it pertains to all deeds, instruments, or writings that effect a  
19 transfer of Rent-Restricted Affordable Housing other than deeds, instruments, or writings that  
20 effect a transfer under Section 41B.6 of the Administrative Code, as that Section 41B.6  
21 existed as of June 3, 2019, that are or have been delivered on or after January 1, 2017. For  
22 purposes of this subsection (b), the term "Section 41B.6 of the Administrative Code, as that  
23 Section 41B.6 existed as of June 3, 2019" has the meaning set forth in Section 1108.6(a) of  
24 the Business and Tax Regulations Code.  
25

1           Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the ordinance.

7  
8 APPROVED AS TO FORM:  
9 DAVID CHIU, City Attorney

10 By: /s/ Carole F. Ruwart  
11 CAROLE F. RUWART  
12 Deputy City Attorney

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City and County of San Francisco  
Tails  
Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 231007

Date Passed: December 05, 2023

Ordinance amending the Business and Tax Regulations Code to broaden the exemption from the increased transfer tax rates when the consideration or value of the interest or property conveyed equals or exceeds \$5,000,000 for transfers of certain rent-restricted affordable housing; applying the exemption retroactively to transfers occurring on or after January 1, 2017; extending the exemption through December 31, 2030; and affirming the Planning Department's determination under the California Environmental Quality Act.

November 15, 2023 Budget and Finance Committee - RECOMMENDED

November 28, 2023 Board of Supervisors - PASSED ON FIRST READING


Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

December 05, 2023 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 231007

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/5/2023 by the Board of Supervisors of the City and County of San Francisco.

  
\_\_\_\_\_  
Angela Calvillo  
Clerk of the Board



London N. Breed  
Mayor

12/15/23

\_\_\_\_\_  
Date Approved