

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

Approved as to form and legality \_\_\_\_\_

CITY ATTORNEY

**REVISED**

Ordinance No. 12264 C.M.S.

AUTHORIZING THE AMENDMENT OF CERTAIN SECTIONS OF  
ARTICLE 20, CHAPTER 4, OF THE OAKLAND MUNICIPAL CODE  
PROVIDING FOR CERTAIN CLARIFICATIONS AND MODIFICATIONS  
TO THE CITY OF OAKLAND REAL PROPERTY TAX

WHEREAS, the Council of the City of Oakland adopted Article 20, Chapter 4, of the Oakland Municipal Code providing for the taxation of the transfer of real property within the City of Oakland; and

WHEREAS, the existing provisions of Article 20, Chapter 4, of the Oakland Municipal Code require modifications to remove any ambiguities that may exist, to delete any portions thereof that are no longer relevant and to more clearly state those transactions that are subject to the tax;

WHEREAS, the proposed modification of language will neither increase the tax rate nor increase the number of categories of persons subject to the real estate transfer tax;

Now, therefore, the Council of the City of Oakland does ordain as follows:

SECTION 1. Section 4.20.020 is hereby amended to read:

SEC. 4.20.020. IMPOSITION OF TAX. There is imposed a tax on all transfers by deeds, instruments, writings, or any other document 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 at the rate of one and one-half (1.50) percent of the value of consideration.

Said tax shall be administered to conform to the statewide rules governing the documentary transfer tax as stated in California Revenue & Taxation Code §§ 11911 through 11930, as codified on the date of passage of this ordinance, including the exemptions from tax that are itemized therein, except where the exemptions appearing within this Article 20, Chapter 4, provide greater protection to the taxpayer.

SECTION 2. This amendment becomes effective upon passage.

SECTION 3. Section 4.20.030 is hereby amended to read as follows:

SEC.4.20.030 DEFINITIONS. As used in this chapter:  
"Real property" and "realty" mean real property as defined by and under the laws of the state of California.  
"Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrances after said transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer.  
"Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where said special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after said transfer, shall not be included in determining the value of the consideration. If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section. (Prior code § 5-27.03)

Unless a transfer is a "gift", i.e., "free and clear" of liens or encumbrances, it is hereby presumed that the value of consideration of a given property being transferred is the fair market value of that property, unless circumstances supporting a departure therefrom can be furnished to the sole satisfaction of the Director or his/her designee(s).

SECTION 4. This amendment becomes effective upon passage

SECTION 5. Section 4.20.050 A. is hereby amended to read as follows:

SEC. 4.20.050 A. Any transfer made solely to secure a debt. There is an exemption for transfers of partial interests in property to a co-signor or from a co-owner as required pursuant to a verifiable demand by a lender in order to secure the debt for such transfer. Specifically, the subsequent removal or reinstatement of such co-owner or co-signing party(s) must be effected within seven (7) years of the close of escrow pertaining to such loan in order to qualify for the exemption herein. Nothing herein contained shall be deemed to exclude the amount of any such indebtedness from being included in the "value of consideration" pursuant to Section 4.20.030 in connection with transfers which are not made solely to secure a debt;

SECTION 6. This amendment becomes effective upon passage.

SECTION 7. Section 4.20.050 C is hereby amended to read as follows:

SEC. 4.20.050 C. Any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution, legal separation or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Furthermore, any transfer, if made during the term of the marriage or domestic partnership, between husband and wife or duly registered domestic partners, shall be tax-exempt interspousal transfers. However, no transfer of property to a third party shall be exempt from this tax, despite the existence of a valid court order or settlement agreement.

Notwithstanding the foregoing, a transfer to the other former spouse or partner, after dissolution, of the owner-occupied,

single family residential property that was the primary domicile of the parties shall be eligible for this real property transfer tax exemption, despite the absence of a court-ordered settlement agreement.

SECTION 8. This amendment becomes effective upon passage.

SECTION 9. Section 4.20.050 C.1. is hereby amended to read as follows:

SEC. 4.20.50 C 1. The two parties to the transfer must have filed for Domestic Partnership registration as administered by the Office of the City Clerk at least one year prior to the transfer in question, such qualifying declarations being in compliance with current City Council policy requirements. In the event the parties live outside Oakland, both must have been registered as domestic partners with the City Clerk or appropriate municipal agency of that jurisdiction for the one-year period, provided that such other jurisdiction recognizes the domestic partner status and the City Clerk of the City of Oakland concludes that the registration requirements of that jurisdiction are minimally similar to those currently in effect in Oakland. For Finance Agency records, in addition to the affidavit for the City Clerk registration, the parties requesting a real estate transfer tax exemption must affirm and attest to the following requirements:

- a. The parties reside together and share the common necessities of life,
- b. The parties are not married to anyone,
- c. The parties are at least eighteen (18) years of age,
- d. The parties are not related by blood so close as to bar marriage in the state of California and are mentally competent to contract,
- e. The parties are each other's sole domestic partner and intend to remain so indefinitely and are responsible for their common welfare,
- f. The parties agree to file a statement of termination of domestic partnership with the Office of the City Clerk within three months of change of their status if any of the declarations of the affidavit of domestic partnership cease to be true,
- g. The parties understand that the registration of the affidavit of domestic partnership with the Office of the City Clerk creates a domestic partnership of continuous duration until either of the parties files a statement of termination or upon the death of either

of the parties. Prior to the entering into a subsequent domestic partnership or marriage, the surviving partner must file a statement of termination with the Office of the City Clerk in the event of death of one of the parties,

- h. Neither of the parties has filed a statement of termination or dissolution within six months prior to the filing of the current affidavit of domestic partnership,
- i. The parties understand that any person/employer/company who suffers any loss because of false statements contained in the affidavit of domestic partnership or the statement of termination may have cause to bring a civil action against the parties, individually or collectively, to recover their losses.

SECTION 10. This amendment becomes effective upon passage.

SECTION 11. Section 4.20.050 C 3 is hereby amended to read as follows:

SEC. 4.20.050 C 3. The parties must provide that portion of their dissolution and property settlement agreement between the domestic partners pertaining to the division or transfer of property, which shall be filed with the Office of the City Clerk. Such copy of such settlement agreement shall be accompanied by an affidavit with verifiable signatures or proof of identity, that the copy is an accurate and authentic reproduction of the final settlement agreement between the parties;

SECTION 12. This amendment becomes effective upon passage.

SECTION 13. Section 4.20.050D is hereby amended to read as follows:

SEC. 4.20.050.D. Transfer or transfers, conveyance, lease or sublease without consideration that confirm or correct a deed, provided that such correction is recorded no later than ninety (90) days after the recordation of the transfer to be corrected.

SECTION 14 This amendment becomes effective upon passage.

SECTION 15. Section 4.20.050 E is hereby amended to read as follows:

E. Transfer to or between the United States, state of California, any city, county, city and county, district or any other political subdivision of the state of California and transfer executed pursuant to eminent domain proceedings by the United States, State of California, any city, county, city and country, district or other political subdivision of the State of California;

Any deed, instrument, or other writing by which the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, conveys to a nonprofit corporation realty the acquisition, construction, or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a governmental unit, within the meaning of Section 1.103-1 (b) of Title 26 of the Code of Federal Regulations.

SECTION 16 This amendment becomes effective upon passage

SECTION 17. Section 4.20.050 H is hereby amended to read as follows:

SEC. 4.20.050 H. 1. In the case of real property held by a partnership or other entity treated as a partnership for federal income tax purposes, the tax imposed shall not apply by reason of any transfer of any interest in a partnership or other entity or otherwise, if both of the following occur:

- a. Such partnership or other entity treated as a partnership is considered as a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.
- b. Such continuing partnership continues to hold the real property concerned.

2. If there is a termination of any partnership or other entity treated as a partnership within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this chapter, such partnership or other entity shall be treated as having executed an instrument whereby there was transferred, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership or other entity at the time of such termination.

3. Not more than one tax shall be imposed pursuant to this chapter by termination described in subsection (H)(2) of this section, and any transfer pursuant thereto, with respect to the

real property held by such partnership or other entity treated as a partnership at the time of such termination.

a. The making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1986, but only if:

i. The order of the Securities and Exchange Commission, in obedience to which such conveyance is made, recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79K of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935,

ii. Such order specifies the property that is ordered to be conveyed,

iii. Such conveyance is made in obedience to such order. (Ord. 11835 § 1, 1995; Ord. 11664 § 1, 1993; prior code § 5-27.05)

SECTION 18 This amendment becomes effective upon passage.

SECTION 19. Section 4.20.050 I. It is hereby added to read as follows:

SEC. 4.20.050 I. Any real property that is inherited from a deceased transferor, without consideration, upon the death of such individual, or from that deceased's estate or trust. Transfers from a decedent's estate into a trust for the benefit of the transferee shall likewise be exempt. Upon request of the Agency Director, an affidavit of death certificate, trust documents, or other documents deemed necessary, shall be provided.

SECTION 20. This addition becomes effective upon passage.

SECTION 21. Section 4.20.050 J is hereby added to read as follows:

SEC. 4.20.050 J. Any transfer of real property between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, that remains the same for a minimum of one hundred eighty (180) days after the transfer. Transfers from a parent corporation to a wholly owned subsidiary corporation shall likewise be exempt provided the beneficial ownership of the property remains the same.

SECTION 22. This addition becomes effective upon passage.

SECTION 23. Section 4.20.050 K is hereby added to read as follows:

4.20.050 K. Transfers, without consideration, provided the transferee neither conveys an interest therein to a third party nor effects a refinancing for a period of 180 days after the gift transfer; however, refinancings for the purposes of rehabilitation of the gifted property are not subject to this limitation upon submission of documentation required by the Director or his/her designee(s).

Notwithstanding the foregoing paragraph, transfers, without consideration, of commercial real property, including residential rental property, other than the principal residence of the transferor will be subject to this tax to the extent that the fair market value thereof exceeds \$1 million. In such case, only the amount of the fair market value that exceeds \$1 million will be taxed

SECTION 24. This addition becomes effective upon passage.

SECTION 25. Section 4.20.070 is hereby added to read as follows:

4.20.070 Due dates, delinquencies, penalties, interest, administrative charges and lien release recordation fees.

The tax imposed under this chapter is due and payable at the time the deed instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. In cases where a transfer is effected but not recorded with the County Recorder within ninety (90) days of acceptance, all statutes of limitations regarding liability for this tax will be tolled until the City has actual knowledge of the transfer or recordation, at which time the tax on the unrecorded transfer will relate back to the actual transfer date of such unrecorded transfer. Accordingly penalties and interest will accrue back to such date of actual unrecorded transfer and will be the joint and several liability of both the former transferor and current recording transferring party. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of the tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional penalty



of fifteen (15) percent shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one percent a month or fraction thereof, on the amount of tax, inclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty shall become part of the tax. An administrative charge of fifty dollars (\$50.00) on each property and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's Office shall be added to the amount owed for each property approved for a tax lien by the City Council. (Prior code § 5-27.07)

SECTION 26. This addition becomes effective upon passage

SECTION 27. Section 4.20.080 is hereby amended to read as follows:

SEC. 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 in which the buyers are low and moderate income first-time homebuyers shall be levied at the rate of one and one quarter percent time homebuyers shall be levied at the rate of one and one-quarter (1.25) percent of the value of consideration. 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; or
- 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. (Prior code § 5-27.07(a))

SECTION 28. This amendment becomes effective upon passage.

SECTION 29. Section 4.20.090 is hereby amended to read as follows:

SEC. 4.20.090 Declaration may be required. The tax imposed by this chapter shall be paid to the Director by the persons referred to in Section 4.20.040. The Director shall have the authority as part of any rules and regulations promulgated by him or her as provided for herein to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by his agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which a purchaser or transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The Director may require delivery to him or her of a copy of such deed, instrument or writing whenever he or she deems such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The Director may rely on the declaration as to the amount of the tax due provided he or she has no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the director has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, he or she may, by notice served upon any person liable for the tax, require him or her to furnish a true copy of his records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed; instrument or writing which transfers such property. (Prior code § 5-27.08)

SECTION 30. This amendment becomes effective upon passage.

SECTION 31. Section 4.20.100 is hereby amended to read as follows:

SEC. 4.20.100 Determination of deficiency.  
If on the basis of such information as the Director receives pursuant to the last paragraph of Section 4.20.190 and/or on the basis of such other relevant information that comes into his possession, he or she determines that the amount of tax due as

set forth in the declaration, or as paid, is insufficient, he or she may recompute the tax due on the basis of such information. If the declaration required by Section 4.20.090 is not submitted, the Director may make an estimate of the value of the consideration for the property conveyed and determine the amount of tax to be paid on the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due with respect to any transfer. (Prior code § 5-27.09)

SECTION 32. This amendment becomes effective upon passage.

SECTION 33. Section 4.20.160 is hereby amended to read as follows:

4.20.160. Finality of determination

The order or decision of the Director upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner or at the time of the hearing of redetermination. There is no appeal of the Director's decision (or his/her deputies designated for a redetermination) to the City Council; writs challenging the Director's decision conveyed by his/her deputies at an administrative hearing must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California. Code of Civil Procedure § 1094.6.)

SECTION 34. This amendment becomes effective upon passage.

*Introduced - 6/27/00*

A. IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 2000 **JUL 11 2000**

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID,  
RUSSO, AND SPEES. - 8

NOES- *None*

ABSENT- *None*

ABSTENTION- *None*

*Celia Floyd*  
*City Clerk*  
*City of Oakland*

1. Attest:

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California