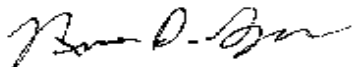


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Gloria Leon, Administrative Services Director
Richard Spitler, City Manager
DATE: January 20, 2015
SUBJECT: Introduction and First Reading of Ordinance Approving Amendment to Chapter 3.12 of the Calistoga Municipal Code as it Relates to Documentary Transfer Tax.

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

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ISSUE:

Introduction and First Reading of Ordinance Approving Amendment to Chapter 3.12 of the Calistoga Municipal Code as it Relates to Documentary Transfer Tax.

RECOMMENDATION:

Staff recommends that the City Council take the following action:

1. Introduce the attached Ordinance by title only and waive the first reading to amend Section 3.12 of the Calistoga Municipal Code

The second reading of the ordinance will return to the Council on February 3, 2015.

BACKGROUND:

The Board of Supervisors of Napa County recently amended their Documentary Transfer Tax Ordinance in order to achieve equitable treatment of all changes of ownership of real property to reflect the expanded definition of “realty sold” contained in California Constitution Article XIII A as well as the updated provisions of Revenue and

22 Taxation Code Sections 11901 *et seq.* and Section 60 *et seq.* The Napa County
23 Recorder is designated as the official that administers and collects documentary transfer
24 tax on events that occur within Calistoga's municipal limits and splits the proceeds.

25
26 **DISCUSSION:**
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28 John Tuteur, Assessor-Recorder-County Clerk circulated changes and amendments to all
29 jurisdictions within the County requesting that the modifications adopted by the County be
30 considered for adoption by each municipality.

31
32 The ordinance attached incorporates changes as proposed by the County of Napa.
33 These amendments consist of corrections of the numbering to applicable federal statues,
34 deletion of outdated referenced code sections and other recommended changes. In
35 addition, language has been included in the City's Code which incorporates the County's
36 codes which will govern in those situations where the City's Code does not address
37 specifics which are otherwise controlled by the County's codes.

38
39 In action to other defined transaction, with this ordinance, the City will be allowed to
40 impose the \$1.10 per \$1,000.00 assessed value tax, which is split equally with the
41 County, upon stock transfers or transactions which include real property as part of the
42 transfer. The amendments in the proposed ordinance makes minor substantive changes
43 to existing documentary transfer tax collection process and clarifies those transactions
44 which are subject to or exempt from the tax.

45
46 **CEQA:** This ordinance is not a project within the meaning of Section 15378 of the State
47 CEQA (California Environmental Quality Act) Guidelines, because it has no potential for
48 resulting in physical change in the environment, directly or ultimately. In the event that
49 this Ordinance is found to be a project under CEQA, it is subject to the CEQA
50 exemptions contained in CEQA Guidelines section 15061 (b) (3), because it can be seen
51 with certainty to have no possibility of a significant effect on the environment.

52
53 **CONSISTENCY WITH CITY COUNCIL GOALS AND OBJECTS:** Goal 1: Maintain and
54 enhance the economic vitality of the community and the financial stability of the City.

55
56 **FISCAL IMPACT:**
57
58 There may be additional real estate documentary transfer tax revenues as a result of
59 these changes.

60
61 **ATTACHMENTS**
62
63 1. Draft Ordinance

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Subject: Chapter 3.12 Calistoga Documentary Transfer Tax
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64 2. Redlined Chapter 3.12 Calistoga Municipal Code

ORDINANCE No. XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING CHAPTER 3.12 OF THE
CALISTOGA MUNICIPAL CODE AS IT RELATES TO DOCUMENTARY TRANSFER
TAX**

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WHEREAS, the Board of Supervisors of Napa County recently amended their Documentary Transfer Tax Ordinance in order to achieve equitable treatment of all changes of ownership of real property to reflect the expanded definition of “realty sold” contained in California Constitution Article XIII A as well as the updated provisions of Revenue and Taxation Code Sections 11901 *et seq.* and Section 60 *et seq.*; and

WHEREAS, the Napa County Recorder is designated as the official that administers and collects documentary transfer tax on events that occur within Calistoga’s municipal limits and splits the proceeds; and

WHEREAS, the City Council, following a duly noticed public meeting held on January 20, 2015, considered amending its own Documentary Transfer Tax Ordinance, which is codified in Calistoga Municipal Code Chapter 3.12, in order to make parallel amendments to that of the County in order to ensure that the City and County’s ordinances are synchronized and up to date.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO

Amendments to Chapter 3.12. Chapter 3.12 of the Calistoga Municipal Code shall be amended and codified in the manner set forth in Exhibit A, which is attached hereto and incorporated herein.

SECTION THREE

Environmental Review. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemptions contained in CEQA Guidelines section 15061 (b) (3), because it can be seen with certainty to have no possibility of a significant effect on the environment.

34

35 **SECTION FOUR**

36 Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or
37 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or
38 invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the
39 validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City
40 Council hereby declares that it would have passed each section, subsection, subdivision,
41 paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more
42 subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared
43 unconstitutional, or invalid, or ineffective.

44

45 **SECTION FIVE**

46 Effective Date. This Ordinance shall take effect thirty (30) days after its passage and
47 before the expiration of fifteen (15) days after its passage, shall be published in accordance with
48 law, in a newspaper of general circulation published and circulated in the City of Calistoga.

49

50 THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga
51 City of Council meeting of the **20th day of January, 2015**, and was passed and adopted at a
52 regular meeting of the Calistoga City Council on the **__ day of ____, 2015**, by the following
53 vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Chris Canning, Mayor

Kathy Flamson, City Clerk

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Exhibit A:

Amendments to Chapter 3.12

1. Section 3.12.020 (Documentary stamp tax imposed) is hereby amended to read as follows:

It is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the City shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person(s), by his or her or their direction, when the consideration or value of the interest or property conveyed (in excess of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds \$100.00, a tax at the rate of \$0.275 for each \$500.00 or fractional part thereof. For purposes of this section, realty sold is defined as a change of ownership as set forth in Revenue and Taxation Code Section 60 *et seq.*, with special reference to Sections 64(c) and 64(d).

2. Section 3.12.060 (Conveyances to make effective any plan of reorganization of adjustment – Nonapplicability.) is hereby amended to read as follows:

A. Any tax imposed pursuant to this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization of adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad, as defined in Section 101 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place or organization is effected.

B. Subsection (A) of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change.

3. Section 3.12.070 is hereby deleted in its entirety and this section shall be reserved for future use.

82 4. Section 3.12.080 (Conditions for levying tax in cases of partnership transfer or termination) is
83 hereby amended to read as follows:

84 A. In the case of any realty held by a partnership or other entity treated as a partnership
85 for federal income tax purposes, no levy shall be imposed pursuant to this chapter by
86 reason of any transfer of an interest in the partnership or otherwise, if both of the
87 following occur:

88 1. Such partnership (or other entity) is considered a continuing partnership within
89 the meaning of Section 708 of the Internal Revenue Code of 1986; and

90 2. Such continuing partnership continues to hold the realty concerned.

91 B. If there is a termination of any partnership or other entity treated as a partnership for
92 federal income tax purposes, within the meaning of Section 708 of the Internal Revenue
93 Code of 1986, for purposes of this part, the partnership or other entity shall be treated as
94 having executed an instrument whereby there was conveyed, for fair market value
95 (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by
96 such partnership at the time of such termination.

97 C. Not more than one tax shall be imposed pursuant to this chapter by reason of a
98 termination described in subsection (B) of this section, and any transfer pursuant thereto,
99 with respect to the realty held by a partnership or other entity treated as a partnership at
100 the time of the termination. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

101 D. No levy shall be imposed pursuant to this section by reason of any transfer between
102 an individual or individuals and a legal entity or between legal entities that results solely
103 in a change in method of holding title to the realty and in which proportional ownerships
104 interests in realty, whether represented by stock, membership interest, partnership
105 interest, co-tenancy interest, or otherwise directly or indirectly, remain the same
106 immediately after the transfer.

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END OF ORDINANCE