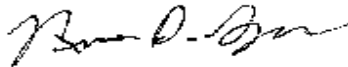


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Gloria Leon, Administrative Services Director
Richard Spitler, City Manager
DATE: July 7, 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

1
2 **ISSUE:** Introduction and First Reading of Ordinance Approving Amendment to Chapter
3 3.12 of the Calistoga Municipal Code as it Relates to Documentary Transfer Tax.
4

5 **RECOMMENDATION:** Staff recommends that the City Council take the following action:
6

7 1. Introduce the attached Ordinance by title only and waive the first reading to amend
8 Section 3.12 of the Calistoga Municipal Code
9

10 The second reading of the ordinance will return to the Council on July 21, 2015.
11

12 **BACKGROUND:** The Board of Supervisors of Napa County recently amended their
13 Documentary Transfer Tax Ordinance in order to achieve equitable treatment of all
14 changes of ownership of real property to reflect the expanded definition of “realty sold”
15 contained in California Constitution Article XIII A as well as the updated provisions of
16 Revenue and Taxation Code Sections 11901 *et seq.* and Section 60 *et seq.* The Napa
17 County Recorder is designated as the official that administers and collects documentary
18 transfer tax on events that occur within Calistoga’s municipal limits and splits the
19 proceeds.
20

21 **DISCUSSION:** On January 20, 2015 this item was brought before City Council for their
22 approval of the First Reading of the Ordinance. Council member Jim Barnes requested
23 clarification on the tax rate of \$.0275 for each \$500.00 or fractional part thereof and the
24 definition of stock transfers.

25
26 The State Revenue and Taxation code allows a County to impose a Documentary
27 Transfer Tax on conveyance of title for values of over \$100 if the County Board of
28 Supervisors adopts an ordinance. The amount of tax allowed is \$.55 for every \$500.00
29 or more commonly calculated as \$1.10 per \$1,000 of assessed valuation. The State
30 Revenue and Taxation code also allows a City to impose a Documentary Transfer Tax if
31 they adopt an ordinance by their legislative body. The amount allowed is half the amount
32 of the County's tax or \$.275 for every \$500.00 or more calculated as \$1.10 per \$1,000 of
33 assessed valuation.

34
35 The amount of the City's tax is a credit against the amount of the County's tax. So the
36 taxpayer is paying the same amount, not a City tax added onto the County tax. If the City
37 does not have an ordinance, the full amount goes to the County. Since the City does
38 have an ordinance in place we are entitled to one half of the \$1.10 per \$1,000 of
39 assessed valuation.

40
41 A stock transfer refers to changes of ownership in which the ownership of the property
42 changes through the acquisition of the stock or other legal entity interests of the entity
43 owning the property. These transactions are not usually done through recorded
44 documents. The County learns of them because the entities have to report the change to
45 the State Board of Equalization.

46
47 John Tuteur, Assessor-Recorder-County Clerk circulated changes and amendments to all
48 jurisdictions within the County requesting that the modifications adopted by the County be
49 considered for adoption by each municipality.

50
51 The ordinance attached incorporates changes as proposed by the County of Napa.
52 These amendments consist of corrections of the numbering to applicable federal statues,
53 deletion of outdated referenced code sections and other recommended changes. In
54 addition, language has been included in the City's Code which incorporates the County's
55 codes which will govern in those situations where the City's Code does not address
56 specifics which are otherwise controlled by the County's codes.

57
58 In action to other defined transaction, with this ordinance, the City will be allowed to
59 continue to impose the \$1.10 per \$1,000.00 assessed value tax, which is split equally
60 with the County, upon stock transfers or transactions which include real property as part
61 of the transfer. The amendments in the proposed ordinance makes minor substantive
62 changes to existing documentary transfer tax collection process and clarifies those
63 transactions which are subject to or exempt from the tax.

64
65 **CEQA:** This ordinance is not a project within the meaning of Section 15378 of the State
66 CEQA (California Environmental Quality Act) Guidelines, because it has no potential for
67 resulting in physical change in the environment, directly or ultimately. In the event that
68 this Ordinance is found to be a project under CEQA, it is subject to the CEQA
69 exemptions contained in CEQA Guidelines section 15061 (b) (3), because it can be seen
70 with certainty to have no possibility of a significant effect on the environment.

71
72 **CONSISTENCY WITH CITY COUNCIL GOALS AND OBJECTS:** Goal 1: Maintain and
73 enhance the economic vitality of the community and the financial stability of the City.
74

75 **FISCAL IMPACT:** Documentary transfer tax fluctuates each year. It is dependent on the
76 transfers of real property which relies on consumer needs and willingness to sell and
77 purchase real property. For Fiscal Year 2013-14 the City collected \$47,188. For Fiscal
78 Year 2014-15 the City is projecting \$75,000.

79
80 **ATTACHMENTS**

- 81
82 1. Draft Ordinance
83 2. Redlined Chapter 3.12 Calistoga Municipal Code

ORDINANCE NO. XXX

1
2
3 **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY**
4 **OF NAPA, STATE OF CALIFORNIA, AMENDING CHAPTER 3.12 OF THE**
5 **CALISTOGA MUNICIPAL CODE AS IT RELATES TO DOCUMENTARY TRANSFER**
6 **TAX**

7
8
9 **WHEREAS**, the Board of Supervisors of Napa County recently amended their
10 Documentary Transfer Tax Ordinance in order to achieve equitable treatment of all changes
11 of ownership of real property to reflect the expanded definition of “realty sold” contained in
12 California Constitution Article XIII A as well as the updated provisions of Revenue and
13 Taxation Code Sections 11901 *et seq.* and Section 60 *et seq.*; and

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

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

22
23 **NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY**
24 **ORDAIN AS FOLLOWS:**

25
26 **SECTION ONE**

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

30
31 **SECTION TWO**

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

35
36 **SECTION THREE**

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

44
45 **SECTION FOUR**

46 Severability. If any section, subsection, subdivision, paragraph, sentence,
47 clause, or phrase in this ordinance or any part thereof is for any reason held to be
48 unconstitutional or invalid or ineffective by any court of competent jurisdiction, such
49 decision shall not affect the validity or effectiveness of the remaining portions of this
50 ordinance or any part thereof. The City Council hereby declares that it would have
51 passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase

52 thereof irrespective of the fact that any one or more subsections, subdivisions,
53 paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or
54 ineffective.

55
56 **SECTION FIVE**

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

61
62 THIS ORDINANCE was introduced with the first reading waived at the City of
63 Calistoga City of Council meeting of the **7th day of July, 2015**, and was passed and
64 adopted at a regular meeting of the Calistoga City Council on the **__ day of ____, 2015**,
65 by the following vote:

66
67 **AYES:**
68 **NOES:**
69 **ABSENT:**
70 **ABSTAIN:**

71

72

73

Chris Canning, Mayor

74

75 **Attest:**

76

77

Kathy Flamson, City Clerk

79

Exhibit A:
Amendments to Chapter 3.12

80
81
82 1. Section 3.12.020 (Documentary stamp tax imposed) is hereby amended to read as
83 follows:

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

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

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

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

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

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

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

115 A. In the case of any realty held by a partnership or other entity treated as a
116 partnership for federal income tax purposes, no levy shall be imposed pursuant

117 to this chapter by reason of any transfer of an interest in the partnership or
118 otherwise, if both of the following occur:

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

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

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

130 C. Not more than one tax shall be imposed pursuant to this chapter by reason of
131 a termination described in subsection (B) of this section, and any transfer
132 pursuant thereto, with respect to the realty held by a partnership or other entity
133 treated as a partnership at the time of the termination. (Ord. 298 § 3, 1973; Ord.
134 263 § 1, 1968).

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

141 END OF ORDINANCE

**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 THE DOCUMENTARY TRANSFER TAX**

3.12.010 Authorization. 

This chapter is adopted pursuant to the authority conferred by State Revenue and Taxation Code Section 11911.

3.12.020 Documentary stamp tax imposed. 

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). (Ord. 360 § 2, 1980; Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.030 Tax paid by person making document. 

Any tax imposed pursuant to CMC [3.12.020](#) shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.040 Instruments given to secure debt. 

Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.050 United States or District of Columbia not liable. 

The United States or any agency or instrumentality thereof, any state or territory or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed pursuant to this chapter with respect to any deed, instrument, or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.060 Conveyances to make effective any plan of reorganization of adjustment – Nonapplicability.



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 corporation, as defined in subdivision (m) of Section 101205 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 subdivision (3) of Section 101506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place or organization is effectedaffected.

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. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.070 Conveyances to make effective any order of the Securities and Exchange Commission – Nonapplicability.



Any tax imposed pursuant to this chapter shall not apply to 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 1954, but only if:

A. 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;

B. Such order specified the property which is ordered to be conveyed; and

C. Such conveyance is made in obedience to such order. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).**(Reserved.)**

3.12.080 Conditions for levying tax in cases of partnership transfer or termination.



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

1. Such partnership (or other partnership entity) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
2. Such continuing partnership continues to hold the realty concerned.

B. If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such the partnership or other entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination.

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

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

3.12.090 County Recorder administrator of chapter.

The County Recorder shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code (Sections 11901 et seq.) and the provisions of any County ordinance adopted pursuant thereto. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.100 Refunds.

Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the State. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.110 Operative date.

This chapter shall become operative upon the operative date of any ordinance adopted by the County, pursuant to Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the State, or upon the effective date of the ordinance codified in this chapter, whichever is the later. (Ord. 298 § 3, 1973; Ord. 263 § 1, 1968).

3.12.120 Copies on file.

Upon its adoption the City Clerk shall file two copies of the ordinance codified in this chapter with the County Recorder of the County. (Ord. 263 § 2, 1968).