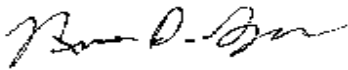


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Gloria Leon, Administrative Services Director
Richard Spitler, City Manager
DATE: July 21, 2015
SUBJECT: Second Reading of Ordinance No. 713

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

1
2 **ISSUE:** Amendment to Chapter 3.12 of the Calistoga Municipal Code as it Relates to
3 Documentary Transfer Tax.
4

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

- 7 1. Adopt Ordinance No. 713 as submitted.
8

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

18 On July 7, 2015 a public hearing to consider amendments to the Calistoga Municipal
19 Code took place. At the conclusion of the public hearing, the City Council introduced and
20 waived the first reading of the ordinance adopting the proposed Code amendments.
21

22 **ATTACHMENTS**

- 23 1. Ordinance No. 713
- 24 2. Chapter 3.12 Ordinance

ORDINANCE NO. 713

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 **21st 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