



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: ORD 12-032, **Version:** 1

- a. Introduce, waive reading, and set December 4, 2012 at 1:30 p.m. to consider adoption of an ordinance of the County of Monterey, State of California, amending Section 5.32 of the Monterey County Code as it relates to the Documentary Transfer Tax to reflect current law regarding the recognition of transfer of ownership rights in realty; and
- b. Direct the Clerk of Board to publish the summary five days prior to set date of December 4, 2012 and within 15 days of adoption in The Salinas Californian.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Introduce, waive reading, and set December 4, 2012 at 1:30 p.m. to consider adoption of an ordinance of the County of Monterey, State of California, amending Section 5.32 of the Monterey County Code as it relates to the Documentary Transfer Tax to reflect current law regarding the recognition of transfer of ownership rights in realty; and
- b. Direct the Clerk of Board to publish the summary five days prior to set date of December 4, 2012 and within 15 days of adoption in The Salinas California.

SUMMARY/DISCUSSION:

The County's current Documentary Transfer Tax ordinance was adopted in 1967 and allows for collecting administrative fees associated with documenting the transfer of real property, whether or not such transfer of property interest is recorded. The proposed amendments reflect and conform with current state and federal law related to the legal recognition (or exemption) of the transfer of realty between persons and entities, and whether such transactions are considered a 'transfer' of property for assessment and taxation purposes. Importantly, the amendment would reflect and recognize the current state law regarding the definition of a change of ownership as set forth in California Revenue and Taxation Code section 60, et seq.. In addition, the amendment removes obsolete provisions, for example the references to the Federal Stamp Act, that has been long repealed and is no longer operative or relevant.

The recommended action does not adjust or change the amount or the method of calculating the existing Documentary Transfer Tax; it will result in a more equitable collection of charges from those entities and individuals who are involved in the transfer of realty. This will result in an increase in revenue to the County by resulting in collection in a more equitable manner against realty transfer transactions so that the unchanged rate of these charges will apply to transactions under the current statutory definition of a 'transfer of realty' as recognized under existing law. It also reflect no more than the reasonable and actual regulatory costs to and burden on the County for the performance of its investigatory, audit, administrative enforcement, and adjudicatory duties. This requested action will ensure that all property is properly appraised and all transfers recognized, and that the payors of these charges will be responsible for their burden on the process, as reflected by their benefit of the services provided. In total, the continued collection of the existing related charges are therefore not the imposition of a new tax and is exempt from voter approval pursuant to the California Constitution, Article XIIC, section 1, paragraph e(1)[charge for specific benefit conferred], (2)[charge for specific service provided], and (3)[regulatory charge for investigatory, audit, and enforcement duties].

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel has reviewed and approved the recommended action and Ordinance as to form and legality.

FINANCING:

The recommended action will result in no change to the existing charges and rates. The charges will continue to be collected by the Recorder on behalf of the County (100% General Fund) for unincorporated property transfers and on behalf of the related City and County (50/50% split) for property transfers within incorporated areas. The recommended action will not impact the County General Fund contribution.

Prepared by: Alicia R. Sotelo, Assistant County Clerk-Recorder, 759-6693

Approved by: Stephen L. Vagnini, Assessor-County Clerk-Recorder, 755-5803

Attachments:

Proposed Ordinance-Clean

Proposed Ordinance-Tracked