

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 18-0221

Introduced by: Councilmember Bullock, President Young, Councilmembers Henry, Dorsey, Burnett, Scott, Sneed, Clarke, Stokes, Middleton, Cohen, Reisinger, Costello, Pinkett, Schleifer

Introduced and read first time: April 16, 2018

Assigned to: Taxation, Finance and Economic Development Committee

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: October 15, 2018

AN ORDINANCE CONCERNING

~~**Recordation and Transfer Taxes – Surtax –
Dedicating Surtax Proceeds to Affordable Housing Trust Fund**~~

**Recordation and Transfer Taxes, Surtaxes, and “Yield” Excise Tax –
Dedicating Proceeds to Affordable Housing Trust Fund**

FOR the purpose of imposing a surtax on recordations subject to the recordation tax and a surtax on property transfers subject to the transfer tax; providing for an exemption from these surtaxes for certain residential properties; imposing an excise tax based on the tax yield from any transaction for which recordation and transfer taxes are due; providing for certain exemptions from this excise tax; providing for the administration of this excise tax; imposing certain penalties for failure to comply with requirements governing this excise tax; dedicating ~~the~~ proceeds from these surtaxes and the excise tax to the Affordable Housing Trust Fund created by City Charter Article 1, § 14; correcting, clarifying, and conforming related language; and generally relating to the City’s recordation and transfer taxes, surtaxes, and yield excise tax.

BY repealing and reordaining, with amendments

Article 28 - Taxes
Sections 16-1, 17-2(a), and 17-3(a)
Baltimore City Code
(Edition 2000)

BY adding

Article 28 - Taxes
Sections 16-3 and 17-15
Baltimore City Code
(Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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1 BY adding

2 Article 28 - Taxes

3 Sections 17.1-1 through 17.1-7, to be under the new subtitle designation,

4 “Subtitle 17.1. Recordation and Transfer Taxes – Yield Excise Tax”

5 Baltimore City Code

6 (Edition 2000)

7 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
8 Laws of Baltimore City read as follows:

9 **Baltimore City Code**

10 **Article 28. Taxes**

11 **Subtitle 16. Recordation Tax**

12 **§ 16-1. Tax imposed.**

13 (A) *IN GENERAL.*

14 Pursuant to State Tax-Property Article § 12-103(b), the rate of tax applicable to
15 instruments recorded with the Clerk of the Circuit Court for Baltimore City is:

16 (1) in the case of instruments conveying title to property[.]:

17 (I) \$5 for each \$500 or fractional part of \$500 of the actual consideration paid
18 or to be paid; PLUS

19 (II) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, AN
20 ADDITIONAL AMOUNT (“SURTAX”) OF \$2 FOR EACH \$500 OR FRACTIONAL
21 PART OF \$500 OF THE ACTUAL CONSIDERATION PAID OR TO BE PAID; and

22 (2) in the case of instruments securing a debt[.]:

23 (I) \$5 for each \$500 or fractional part of \$500 of the principal amount of the
24 debt secured; PLUS

25 (II) EXCEPT AS PROVIDED UNDER SUBSECTION (B) OF THIS SECTION, AN
26 ADDITIONAL AMOUNT (“SURTAX”) OF \$2 FOR EACH \$500 OR FRACTIONAL
27 PART OF \$500 OF THE PRINCIPAL AMOUNT OF THE DEBT SECURED.

28 (B) *EXEMPTION FROM SURTAX.*

29 THE SURTAX IMPOSED BY SUBSECTION (A)(1)(II) AND (A)(2)(II) OF THIS SECTION DOES NOT
30 APPLY TO A CONVEYANCE OF OWNER-OCCUPIED RESIDENTIAL PROPERTY IF THE
31 INSTRUMENT IN WRITING IS ACCOMPANIED BY A STATEMENT, SIGNED UNDER OATH BY THE
32 BUYER, THAT THE BUYER WILL USE THE PROPERTY AS THE BUYER’S PRINCIPAL RESIDENCE
33 BY ACTUALLY OCCUPYING THE PROPERTY FOR AT LEAST 7 MONTHS OF THE 12 MONTH
34 PERIOD IMMEDIATELY FOLLOWING THE CONVEYANCE.

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§ 16-3. DEDICATION OF SURTAX PROCEEDS.

ALL PROCEEDS FROM THE SURTAX IMPOSED BY §16-1(A)(1)(II) AND (2)(II) OF THIS SUBTITLE SHALL BE DEPOSITED IN THE CONTINUING, NONLAPSING FUND CREATED BY CITY CHARTER ARTICLE I, § 14 {"AFFORDABLE HOUSING TRUST FUND"}, TO BE USED EXCLUSIVELY FOR THE PURPOSES SPECIFIED IN THAT SECTION.

Subtitle 17. Transfer Tax

§ 17-2. Tax imposed – In general.

(a) *In general.*

(1) *IMPOSITION OF TAX.*

A tax is hereby levied and imposed upon the transfer of any estate of inheritance or freehold, of any declaration or limitation of use, or any estate above 7 years, in Baltimore City, [at the rate of] AS FOLLOWS:

(I) AT THE RATE OF [1½%] 1.5% of the TRANSFER'S taxable basis [thereof], as [hereinafter] defined in § 17-5 {"TAXABLE BASIS"} OF THIS SUBTITLE; PLUS

(II) EXCEPT AS PROVIDED UNDER PARAGRAPH (3) OF THIS SUBSECTION, AN ADDITIONAL AMOUNT ("SURTAX") AT THE RATE OF 0.6% OF THAT TAXABLE BASIS.

(2) *INAPPLICABILITY OF TAX TO CERTAIN SHORT-TERM RENEWABLE LEASES.*

[Except that the] THE tax levied and imposed [hereunder shall] UNDER THIS SECTION DOES not apply to any lease or sublease for an initial term of not more than 7 years [which] THAT contains any provisions for renewal for 1 or more succeeding stated terms of not more than 7 years each, if under [such provision] THOSE PROVISIONS for renewal the right to effect or prevent each [such] renewal term [shall be] IS optional with either the landlord or the tenant.

(3) *EXEMPTION FROM SURTAX.*

THE SURTAX IMPOSED BY PARAGRAPH (1)(I) OF THIS SUBSECTION DOES NOT APPLY TO A CONVEYANCE OF OWNER-OCCUPIED RESIDENTIAL PROPERTY IF THE INSTRUMENT IN WRITING IS ACCOMPANIED BY A STATEMENT, SIGNED UNDER OATH BY THE BUYER, THAT THE BUYER WILL USE THE PROPERTY AS THE BUYER'S PRINCIPAL RESIDENCE BY ACTUALLY OCCUPYING THE PROPERTY FOR AT LEAST 7 MONTHS OF THE 12 MONTH PERIOD IMMEDIATELY FOLLOWING THE CONVEYANCE.

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§ 17-3. Tax imposed – Corporate transfers.

(a) In general.

A tax is hereby levied and imposed upon the transfer of real property affected by filing of articles of sale, lease, exchange, or other transfer of all or substantially all the property and assets of a corporation with respect to the property subject to the certificate required under State Corporations and Associations Article § 3-112, AS FOLLOWS:

(1) at the rate of [1½%] 1.5% of the TRANSFER’S taxable basis [thereof], as [hereinafter] defined IN § 17-5 {“TAXABLE BASIS”} OF THIS SUBTITLE; PLUS

(2) AN ADDITIONAL AMOUNT (“SURTAX”) AT THE RATE OF 0.6% OF THAT TAXABLE BASIS.

§ 17-15. DEDICATION OF SURTAX PROCEEDS.

ALL PROCEEDS FROM THE SURTAX IMPOSED BY § 17-2(A)(1)(II) AND § 17-3(A)(2) OF THIS SUBTITLE SHALL BE DEPOSITED IN THE CONTINUING, NONLAPSING FUND CREATED BY CITY CHARTER ARTICLE I, § 14 {“AFFORDABLE HOUSING TRUST FUND”}, TO BE USED EXCLUSIVELY FOR THE PURPOSES SPECIFIED IN THAT SECTION.

SUBTITLE 17.1. RECORDATION AND TRANSFER TAXES – YIELD EXCISE TAX

§ 17.1-1. TAX IMPOSED.

(A) IN GENERAL.

AN EXCISE TAX, TO BE KNOWN AS THE YIELD TAX, SHALL BE LEVIED AND COLLECTED BASED UPON THE TAX YIELD FROM ANY TRANSACTION FOR WHICH RECORDATION TAXES AND TRANSFER TAXES ARE DUE PURSUANT TO SUBTITLES 16 AND 17 OF THIS ARTICLE.

(B) EXEMPTIONS.

(1) THE YIELD TAX DOES NOT APPLY TO:

(i) ANY MORTGAGE OR DEED OF TRUST RECORDED WITHIN 6 MONTHS OF THE EFFECTIVE DATE OF THIS SUBTITLE AND SECURING A LOAN THE PROCEEDS OF WHICH WILL PROVIDE FUNDING FOR THE CONSTRUCTION AND COMPLETION TO THE ISSUANCE OF A CERTIFICATE OF USE AND OCCUPANCY OF A PROJECT AND FOR WHICH A FULL BUT NOT A PARTIAL BUILDING PERMIT HAS BEEN ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS SUBTITLE; OR

(ii) ANY DEED AND ANY PURCHASE MONEY MORTGAGE OR DEED OF TRUST RELATED THERETO FOR THE CONVEYANCE OF A RESIDENTIAL PROPERTY TO BE OCCUPIED BY THE GRANTEE OF SUCH DEED AND WHICH DEED IS DELIVERED PURSUANT TO A BONA FIDE CONTRACT OF SALE THAT HAS BEEN ENTERED INTO BETWEEN THE GRANTOR AND GRANTEE OF SUCH DEED WITHIN 2 YEARS OF THE EFFECTIVE DATE OF THIS SUBTITLE.

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1 (2) THE FACTS TO SUBSTANTIATE THE FOREGOING EXEMPTIONS SHALL BE SET FORTH IN
2 AN AFFIDAVIT MADE ON PERSONAL KNOWLEDGE OF THE AFFIANT AND UNDER
3 PENALTIES OF PERJURY ON FORMS TO BE FURNISHED BY THE DIRECTOR OF FINANCE
4 AND INCLUDING SUPPORTING DOCUMENTS THAT VERIFY COMPLIANCE WITH THE
5 REQUIREMENT FOR THE EXEMPTION.

6 **§ 17.1-2. YIELD TAX.**

7 (A) TRANSACTIONS ASSESSED.

8 THE YIELD TAX SHALL BE ASSESSED ON THOSE TRANSACTIONS WHOSE VALUE EXCEEDS
9 \$1 MILLION, AS DETERMINED BY SUBTITLES 16 AND 17 OF THIS ARTICLE FOR THE
10 PURPOSES OF CALCULATING THE RECORDATION AND TRANSFER TAXES RESPECTIVELY.

11 (B) TAX RATE.

12 THE RATE OF TAX SHALL BE AS FOLLOWS:

13 (1) 0.15% ON THE AMOUNT COLLECTED UNDER SUBTITLE 16 OF THIS ARTICLE; AND

14 (2) 0.6% ON THE AMOUNT COLLECTED UNDER SUBTITLE 17 OF THIS ARTICLE.

15 **§ 17.1-3. DEDICATION OF TAX PROCEEDS.**

16 PROCEEDS FROM THE TAX IMPOSED BY THIS SUBTITLE UP TO \$16 MILLION, AND ONE-HALF OF
17 THE PROCEEDS IN EXCESS OF \$16 MILLION, IF ANY, SHALL BE DEPOSITED IN THE CONTINUING,
18 NONLAPSING FUND CREATED BY CITY CHARTER, ARTICLE I, § 14 {"AFFORDABLE HOUSING
19 TRUST FUND"}, TO BE USED EXCLUSIVELY FOR THE PURPOSES SPECIFIED IN THAT SECTION,
20 SUBJECT TO APPROPRIATION PURSUANT TO THE ANNUAL ORDINANCE OF ESTIMATES.

21 **§ 17.1-4. INTEREST AND CIVIL PENALTIES.**

22 IN THE EVENT THAT THE TAX LEVIED AND IMPOSED UNDER THIS SUBTITLE IS NOT PAID AS
23 REQUIRED BY THIS SUBTITLE, THE PERSON AND/OR OTHER LEGAL ENTITY LIABLE FOR THE
24 PAYMENT OF THAT TAX SHALL BE ASSESSED BY THE DIRECTOR OF FINANCE FOR:

25 (1) THE AMOUNT OF THE TAX DUE;

26 (2) INTEREST AT THE RATE OF ½% FOR EACH MONTH OR FRACTION OF A MONTH,
27 ACCOUNTING FROM THE DATE WHEN SUCH WRITTEN INSTRUMENT WAS RECEIVED FOR
28 RECORDATION; AND

29 (3) A PENALTY OF 10% OF THE TAX DUE.

30 **§ 17.1-5. LIABILITY OF TRANSFERORS AND TRANSFEREES.**

31 THE TAX LEVIED AND IMPOSED BY THIS SUBTITLE, AND ALL INCREASES, INTEREST, AND
32 PENALTIES THEREON, SHALL BE AND BECOME, FROM THE TIME DUE AND PAYABLE, THE DEBT
33 OF THE LEGAL AND EQUITABLE TRANSFERORS AND TRANSFEREES, JOINTLY AND SEVERALLY,

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1 OF THE PROPERTY SUBJECT TO THE RECORDATION AND TRANSFER TAXES UPON WHICH THE
2 YIELD TAX IS CALCULATED.

3 **§ 17.1-6. ADMINISTRATION OF SUBTITLE.**

4 **(A) IN GENERAL.**

5 IN ORDER TO PROPERLY CARRY OUT AND ENFORCE THE PROVISIONS OF THIS SUBTITLE AND
6 TO COLLECT THE TAX LEVIED AND IMPOSED BY THIS SUBTITLE, THE DIRECTOR OF FINANCE
7 IS HEREBY AUTHORIZED AND EMPOWERED:

8 (1) TO MAKE, ADOPT, PROMULGATE, AND AMEND, FROM TIME TO TIME, SUCH RULES
9 AND REGULATIONS AS HE MAY DEEM NECESSARY OR PROPER:

10 (I) TO CARRY OUT AND ENFORCE THE PROVISIONS OF THIS SUBTITLE;

11 (II) TO FULLY COLLECT THE TAX IMPOSED BY THIS SUBTITLE; AND

12 (III) TO DEFINE OR CONSTRUE ANY OF THE TERMS AND PROVISIONS USED IN THIS
13 SUBTITLE IN CONNECTION WITH THE IMPOSITION OR COLLECTION OF THAT
14 TAX;

15 (2) WITH THE APPROVAL OF THE CITY SOLICITOR:

16 (I) TO COMPROMISE DISPUTED CLAIMS IN CONNECTION WITH THE TAX LEVIED
17 AND IMPOSED BY THIS SUBTITLE; AND

18 (II) FOR GOOD AND SUFFICIENT CAUSES SHOWN, TO ABATE OR REMIT INTEREST
19 AND PENALTIES AND TO REBATE AND REFUND ANY TAXES ERRONEOUSLY
20 OR IMPROPERLY PAID; AND

21 (3) TO DELEGATE ANY OF HIS POWERS, DUTIES, AND FUNCTIONS UNDER THE
22 PROVISIONS OF THIS SUBTITLE TO THE CITY COLLECTOR.

23 **(B) RULES AND REGULATIONS TO BE FILED WITH DLR.**

24 COPIES OF ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE SHALL BE FILED
25 WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE.

26 **§ 17.1-7. CRIMINAL PENALTIES.**

27 ANY PERSON WHO PARTICIPATES OR AIDS IN ANY MANNER IN THE EVASION OF THE TAX LEVIED
28 AND IMPOSED BY THIS SUBTITLE OR WHO WILLFULLY VIOLATES ANY PROVISION OF THIS
29 SUBTITLE OR OF THE RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A
30 MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$500 FOR
31 EACH OFFENSE.

32 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
33 are not law and may not be considered to have been enacted as a part of this or any prior
34 Ordinance.

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1 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
2 after the date it is enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City