

REVISED LEGISLATIVE DIGEST

(11/18/2019, Amended in Committee)

[Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on Keeping Commercial Property Vacant]

Motion ordering submitted to the voters at an election to be held on March 3, 2020, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an excise tax on persons keeping ground floor commercial space in certain neighborhood commercial districts and certain neighborhood commercial transit districts vacant, to fund assistance to small businesses; increasing the City's appropriations limit by the amount collected under the tax for four years from March 3, 2020; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

The City currently does not tax the keeping of real property vacant.

Amendments to Current Law

This ordinance would impose an annual tax, effective January 1, 2021, on persons that keep ground floor commercial space in named neighborhood commercial or neighborhood commercial transit districts vacant. The tax would be based on the linear footage of street-facing frontage of vacant ground floor commercial space and the number of consecutive years that space was kept vacant, as follows:

- For keeping space vacant in the 2021 tax year, \$250 per linear foot.
- For keeping space vacant in the 2022 tax year:
 - \$500 per linear foot if that space was kept vacant both in 2022 and by any person 2021; or
 - \$250 per linear foot if that space was kept vacant only in 2022.
- For keeping space vacant in 2023 and subsequent tax years:
 - \$1,000 per linear foot if that space was kept vacant in the tax year and by any person in both of the previous two tax years;
 - \$500 per linear foot if the \$1,000 rate does not apply and if that space was kept vacant both in the tax year and by any person in the immediately preceding tax year; or
 - \$250 per linear foot if that space was kept vacant only in the tax year.

Commercial space would be considered vacant if it is unoccupied, uninhabited, or unused for more than 182 days, whether consecutive or nonconsecutive, in a calendar year. Days during the following periods would not count as vacant days: (1) the period following the date that an initial building permit application for repair, rehabilitation, or construction of commercial space

is filed through the date that application is granted or denied, without regard to any appeals, such period not to exceed one year, (2) the one-year period following the date that the City issues an initial building permit for repair, rehabilitation, or construction of commercial space, (3) the two-year period following the date that commercial space was severely damaged and made uninhabitable or unusable due to fire or natural disaster, and/or (4) the 183-day period following the date that an initial complete application for a conditional use permit is filed with the City, but if that application is not granted or denied within 183 days, without regard to any appeals, the period shall be extended to December 31 of the year in which the date 183 days from the filing date of the complete application falls.

A person would be liable for the tax only if that person has kept commercial space vacant for more than 182 days in a year. A person would be deemed to have kept commercial space vacant for more than 182 days in a year if that person and all related persons or affiliates of that person, individually or collectively, keep that space vacant for more than 182 days in that year. A related person means a spouse, domestic partner, child, parent, or sibling. An affiliate means a person under common majority ownership or common control with another person, including persons in a parent-subsidiary relationship. Internal Revenue Code Section 501(c)(3) organizations would be exempted from the tax. The City would not be exempted from the tax.

The tax would be imposed on the owner of the vacant commercial space. If the vacant commercial space is leased, the tax would be imposed on the lessee and not the owner. If the vacant commercial space is subleased, the tax would be imposed on the sublessee and not the owner or sublessor. Not more than one annual tax would be imposed with respect to a particular commercial space. If there are multiple liable owners, lessees, or sublessees, each such person would be jointly and severally liable for the tax.

If a lessee or sublessee has operated a business in commercial space for more than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee shall not be liable for the tax for the remainder of that lease or sublease, regardless of whether that lessee or sublessee keeps that space vacant.

The tax would be dedicated to funding assistance to small businesses in the City.

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from this tax, for four years from March 3, 2020.

Background Information

This legislative digest reflects amendments made in committee on November 13, 2019. The amendments changed the tax rates, clarified that the tax applies only to named neighborhood commercial and neighborhood commercial transit districts, added definitions for related persons and affiliates, modified the exclusion periods during which commercial space would not be considered vacant, added an exemption for Section 501(c)(3) organizations, and made

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other, nonsubstantive changes. The amendments also increased the threshold by which the Board of Supervisors may amend this ordinance consistent with the California Constitution from a majority to two-thirds.

This legislative digest also reflects an amendment made in committee on November 18, 2019, which added an exemption for lessees and sublessees in certain circumstances.

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