

File No. 250001

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date March 5, 2025

Board of Supervisors Meeting Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
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OTHER (Use back side if additional space is needed)

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Completed by: Brent Jalipa Date February 27, 2025

Completed by: Brent Jalipa Date _____

[Business and Tax Regulations Code - Empty Homes Tax Suspension Pending Litigation]

Ordinance amending the Business and Tax Regulations Code to suspend the Empty Homes Tax pending a final decision in *Eric Debbane, et al. v. City & County of San Francisco, et al.*, San Francisco Superior Court Case No. CGC-23-604600, retroactive to January 1, 2024, and to reinstate that tax so that the tax first applies in the tax year immediately following the calendar year of that final decision.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) On November 26, 2024, the San Francisco Superior Court issued an order in *Eric Debbane, et al. v. City & County of San Francisco, et al.*, San Francisco Superior Court Case Number CGC-23-604600 (the “Empty Homes Tax Case”), prohibiting the City from enforcing or administering the Empty Homes Tax – the tax imposed under Article 29A of the Business and Tax Regulations Code – on the grounds that the Empty Homes Tax violates State law and the Federal and State Constitutions.

(b) The Court issued this order despite clear case law precluding the use of California Code of Civil Procedure Section 526a to enjoin the collection of taxes. The City believes that if it appealed the trial court’s order on the grounds that Section 526a cannot be used to enjoin the collection of taxes, the Court of Appeal would overturn the trial court’s decision on that basis and permit the City to continue to enforce and administer the Empty Homes Tax. But

1 due to the unique circumstances of the Empty Homes Tax, the City would prefer that the
2 Court of Appeal rule on the merits of petitioners' substantive statutory and constitutional
3 arguments to give the City and taxpayers certainty as to the constitutionality and legality of the
4 Empty Homes Tax.

5 (c) If the Court of Appeal overturns the trial court's decision on the merits, as the City
6 believes it will, the City may be forced to collect the Empty Homes Taxes the trial court's order
7 prohibited it from collecting during the appeal. These taxes – which may relate to residential
8 vacancies from several years prior – may be administratively difficult and financially
9 burdensome to collect because the owners of the properties may have changed and relevant
10 documents may not be available to ascertain tax liability. Further, imposing taxes going back
11 several years may place an undue burden on property owners, and would lead to significant
12 uncertainty for both the City and property owners throughout the appeal.

13 (d) This ordinance therefore suspends imposition of the Empty Homes Tax, retroactive
14 to calendar year 2024 (the payments for which would generally otherwise be due in April
15 2025), until the calendar year following the year in which the decision in the Empty Homes
16 Tax Case becomes final and all appeals have been exhausted or the time for filing any such
17 appeals has passed. The Empty Homes Tax would be reinstated so that the tax first applies
18 in the tax year immediately following the calendar year of that final decision.

19
20 Section 2. Article 29A of the Business and Tax Regulations Code is hereby amended
21 by revising Sections 2953 and 2957, to read as follows:
22
23
24
25

1 **SEC. 2953. IMPOSITION OF TAX.**

2 (a) Except as otherwise provided in this Article 29A, for the purposes described in
3 Section 2958, the City imposes an annual Empty Homes Tax on each person that owns a
4 Residential Unit for keeping that Residential Unit Vacant.

5 (b) The tax on an owner keeping a Residential Unit Vacant for the ~~2024~~ tax year
6 described in subsection (k) shall be as follows:

7 (1) \$2,500 for each Residential Unit with square footage less than 1,000;

8 (2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000;

9 and

10 (3) \$5,000 for each Residential Unit with square footage greater than 2,000.

11 (c) The tax on an owner keeping a Residential Unit Vacant for the ~~2025~~ tax year
12 immediately following the tax year described in subsection (k), if that owner has not kept that
13 Residential Unit Vacant in the ~~2024~~ tax year described in subsection (k), shall be as follows:

14 (1) \$2,500 for each Residential Unit with square footage less than 1,000;

15 (2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000;

16 and

17 (3) \$5,000 for each Residential Unit with square footage greater than 2,000.

18 (d) The tax on an owner keeping a Residential Unit Vacant for the ~~2025~~ tax year
19 immediately following the tax year described in subsection (k), if that owner has kept that
20 Residential Unit Vacant in the ~~2024~~ tax year described in subsection (k), shall be as follows:

21 (1) \$5,000 for each Residential Unit with square footage less than 1,000;

22 (2) \$7,000 for each Residential Unit with square footage from 1,000 to 2,000;

23 and

24 (3) \$10,000 for each Residential Unit with square footage greater than 2,000.

(e) The tax on an owner keeping a Residential Unit Vacant for the ~~2026~~-tax year two years after the tax year described in subsection (k) and subsequent tax years, if that owner has not kept that Residential Unit Vacant in the immediately preceding tax year, shall be as follows:

(1) \$2,500 for each Residential Unit with square footage less than 1,000;

(2) \$3,500 for each Residential Unit with square footage from 1,000 to 2,000;

and

(3) \$5,000 for each Residential Unit with square footage greater than 2,000.

(f) The tax on an owner keeping a Residential Unit Vacant for the ~~2026~~-tax year two years after the tax year described in subsection (k) and subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year but has not kept that Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as follows:

(1) \$5,000 for each Residential Unit with square footage less than 1,000;

(2) \$7,000 for each Residential Unit with square footage from 1,000 to 2,000;

and

(3) \$10,000 for each Residential Unit with square footage greater than 2,000.

(g) The tax on an owner keeping a Residential Unit Vacant for the ~~2026~~-tax year two years after the tax year described in subsection (k) and subsequent tax years, if that owner has kept that Residential Unit Vacant in the immediately preceding tax year and has kept that Residential Unit Vacant in the tax year immediately preceding that tax year, shall be as follows:

(1) \$10,000 for each Residential Unit with square footage less than 1,000;

(2) \$14,000 for each Residential Unit with square footage from 1,000 to 2,000;

and

(3) \$20,000 for each Residential Unit with square footage greater than 2,000.

1 (h) The rates set forth in subsections (c), (d), (e), (f), and (g) of this Section 2953 shall
2 be adjusted annually in accordance with the increase in the Consumer Price Index: All Urban
3 Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the
4 United States Bureau of Labor Statistics, or any successor to that index, as of December 31st
5 of the preceding year, beginning with the ~~2025~~-tax year immediately following the tax year
6 described in subsection (k).

7 (i) The Empty Homes Tax shall be payable by the owner or owners of the Residential
8 Unit kept Vacant. Not more than one tax per Residential Unit shall be imposed under this
9 Section 2953 for a tax year by reason of multiple liable owners. If there are multiple liable
10 owners, each owner shall be jointly and severally liable for the tax, which shall be the highest
11 amount of tax payable by any owner for that Residential Unit for that tax year.

12 (j) A person shall be liable for the Empty Homes Tax only if that person, while owning
13 a Residential Unit, has kept or is deemed to have kept that Residential Unit unoccupied,
14 uninhabited, or unused, for more than 182 days, whether consecutive or nonconsecutive, in a
15 tax year. In determining whether an owner has kept a Residential Unit Vacant during a tax
16 year, days within any Vacancy Exclusion Period shall be disregarded if that Vacancy
17 Exclusion Period applies to that owner for that Residential Unit, as shall days in which the
18 Residential Unit was not owned by the owner, but the owner shall be deemed to have kept the
19 Residential Unit unoccupied, uninhabited, or unused on all other days that such Residential
20 Unit is unoccupied, uninhabited, or unused during the tax year.

21 (k) The Empty Homes Tax shall take effect on January 1, ~~2024~~ of the tax year
22 immediately following the calendar year in which the decision in Eric Debbane, et al. v. City & County
23 of San Francisco, et al., San Francisco Superior Court Case Number CGC-23-604600, becomes final
24 and all appeals have been exhausted or the time for filing any such appeals passed. The Empty
25 Homes Tax shall expire on December 31, 2053.

1 **SEC. 2957. DEPOSIT OF PROCEEDS.**

2 (a) All monies collected under the Empty Homes Tax Ordinance shall be deposited to
3 the credit of the Housing Activation Fund ("Fund") established in Administrative Code
4 Section 10.100-76. The Fund shall be maintained separate and apart from all other City funds
5 and shall be subject to appropriation. Any balance remaining in the Fund at the close of any
6 fiscal year shall be deemed to have been provided for a special purpose within the meaning of
7 Charter Section 9.113(a) and shall be carried forward and accumulated in the Fund for the
8 purposes described in Section 2958.

9 (b) Commencing with a report filed no later than February 15, ~~2026~~ of the calendar year
10 two years after the tax year described in Section 2953(k), covering the fiscal year ending on
11 June 30, ~~2025~~ of the calendar year immediately following the tax year described in Section 2953(k),
12 the Controller shall file annually with the Board of Supervisors, by February 15 of each year, a
13 report containing the amount of monies collected in and expended from the Fund during the
14 prior fiscal year, the status of any project required or authorized to be funded by Section 2958,
15 and such other information as the Controller, in the Controller's sole discretion, shall deem
16 relevant to the operation of this Article 29A.

17
18 Section 3. Effective Date; Retroactivity.

19 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
20 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
21 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
22 Mayor's veto of the ordinance.

23 (b) Upon its effective date, this ordinance shall be retroactive to January 1, 2024.

1 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

7
8 Section 5. Supermajority Vote Required. In accordance with Section 2961 of
9 Article 29A of the Business and Tax Regulations Code, passage of this ordinance by the
10 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

11
12 APPROVED AS TO FORM:
13 DAVID CHIU, City Attorney

14 By: /s/ Scott M. Reiber
15 SCOTT M. REIBER
16 Chief Tax Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Empty Homes Tax Suspension Pending Litigation]

Ordinance amending the Business and Tax Regulations Code to suspend the Empty Homes Tax pending a final decision in *Eric Debbane, et al. v. City & County of San Francisco, et al.*, San Francisco Superior Court Case No. CGC-23-604600, retroactive to January 1, 2024, and to reinstate that tax so that the tax first applies in the tax year immediately following the calendar year of that final decision.

Background

At the November 2022 election the voters passed Proposition M, which imposes an Empty Homes Tax on keeping certain residential properties vacant. The Empty Homes Tax became effective commencing in calendar year 2024.

On February 9, 2023, several individuals, the San Francisco Apartment Association, the Small Property Owners of San Francisco Institute, and the San Francisco Association of Realtors filed a lawsuit seeking to invalidate the Empty Homes Tax, arguing that it violates State law and Federal and State Constitutions.

On November 26, 2024, the San Francisco Superior Court issued an order prohibiting the City from enforcing or administering the Empty Homes Tax on the grounds that the Empty Homes Tax violates State law and the Federal and State Constitutions. It issued this order despite clear case law precluding the use of California Code of Civil Procedure 526a to enjoin the collection of taxes.

The City believes that if it appealed the trial court's order on the grounds that Section 526a cannot be used to enjoin the collection of taxes, the Court of Appeal would overturn the trial court's decision on that basis and permit the City to continue to enforce and administer the Empty Homes Tax. But due to the unique circumstances of the Empty Homes Tax, the City would prefer that the Court of Appeal rule on the merits of petitioners' substantive statutory and constitutional arguments to give the City and taxpayers certainty as to the constitutionality and legality of the Empty Homes Tax.

Under current law, if the Court of Appeal overturns the trial court's decision on the merits, as the City believes it will, the City may be forced to collect the Empty Homes Taxes the trial court's order prohibited it from collecting during the appeal. These taxes – which may relate to residential vacancies from several years prior – may be administratively difficult and financially burdensome to collect because the owners of the properties may have changed and relevant documents may not be available to ascertain tax liability. And imposing taxes going back several years may place an undue burden on property owners, and would lead to significant uncertainty for both the City and property owners throughout the appeal.

Amendments to Current Law

To avoid the issues described above if the City's appeal is successful, this ordinance suspends the Empty Homes Tax, retroactive to calendar year 2024 (the payments for which would generally otherwise be due in April 2025), until the calendar year following the year in which the decision in the Empty Homes Tax Case becomes final and all appeals have been exhausted or the time for filing any such appeals has passed. The Empty Homes Tax would be reinstated so that the tax first applies in the tax year immediately following the calendar year of that final decision.

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Item 3 File 25-0001	Department: Office of the Treasurer-Tax Collector (TTX)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> The proposed ordinance would amend the Business and Tax Regulations Code to suspend the Empty Homes Tax pending a final decision in ongoing litigation, retroactive to January 1, 2024, and to reinstate the tax so that the tax first applies in the tax year immediately following the calendar year of that final decision. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> In November 2022, San Francisco voters approved Proposition M, which imposed a tax on housing units in buildings with three or more units if the units had been vacant for more than 182 days in a calendar year (Empty Homes Tax). The Empty Home Tax was due to be assessed beginning in calendar year 2024, with an annual tax ranging from \$2,500 to \$5,000 per vacant unit based on square footage of the unit, with taxes increasing to up to \$20,000 per unit for units that have been vacant for three or more years consecutively. In February 2023, lawsuits were filed against the City, claiming that the Empty Homes Tax violates the United States and California Constitutions. In October 2024, a court ruled in favor of the plaintiffs, striking down the Empty Homes Tax as unconstitutional. In December 2024, the City Attorney’s Office filed an appeal of the ruling. The City is prohibited from collecting the Empty Homes Tax at this time. If the court ruling is overturned, the City may be required to collect Empty Homes Taxes going back to calendar year 2024. To avoid the logistical challenges of collecting past taxes, the Treasurer-Tax Collector’s Office has proposed suspending the Empty Homes Tax until the calendar year after all appeals have been exhausted or the deadline for filing appeals has passed. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> The proposed ordinance would suspend collection of the Empty Homes Tax until after ongoing litigation is resolved. The Controller’s Office estimated that the annual revenue from the Empty Homes Tax would be approximately \$9 million in 2024 and increasing to approximately \$15.4 million in 2026 and beyond. The Treasurer-Tax Collector’s Office reports that the actual amount collected would likely be less than the Controller’s estimates because of the ramp up period for collecting new taxes and educating taxpayers to file. The Empty Homes Tax proceeds would go into a new Housing Activation Fund, which would be used for rental subsidies and the acquisition, rehabilitation, and operation of buildings for affordable housing. The proposed ordinance has no direct impact on the General Fund. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> Because the proposed ordinance would waive revenue collection, we consider approval to be a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

In November 2022, San Francisco voters approved Proposition M, which imposed a tax on housing units in buildings with three or more units if the units had been vacant for more than 182 days in a calendar year (Empty Homes Tax). The Empty Home Tax was due to be assessed beginning in calendar year 2024, with an annual tax ranging from \$2,500 to \$5,000 per vacant unit based on square footage of the unit, with taxes increasing to up to \$20,000 per unit for units that have been vacant for three or more years consecutively. The Empty Home Tax provides certain exemptions (such as for primary residences with homeowner property tax exemptions) and extensions to fill vacant units (such as repair of an existing unit). Exhibit 1 below shows tax rates by unit size for the first year, second consecutive year of vacancy, and third and subsequent consecutive years of vacancy.

Exhibit 1: Empty Home Tax Rates by Unit Size and Vacancy Duration

Unit Size (square feet)	First Year	Second Consecutive Year	Third and Subsequent Consecutive Years
Less than 1,000 sf	\$2,500	\$5,000	\$10,000
1,000 to 2,000 sf	3,500	7,000	14,000
More than 2,000 sf	5,000	10,000	20,000

Source: Proposed Ordinance

In February 2023, the San Francisco Apartment Association, Small Property Owners of San Francisco Institute, San Francisco Association of Realtors, and other plaintiffs (Debbane, et al.) sued the City, claiming that the Empty Homes Tax violates the United States and California Constitutions. In October 2024, San Francisco Superior Court Judge Charles Haines ruled in favor of the plaintiffs, striking down the Empty Homes Tax as unconstitutional. In December 2024, the City Attorney's Office filed an appeal of the ruling. Although the City Attorney's Office believes that the ruling will be overturned on appeal, the City is prohibited from collecting the Empty Homes Tax at this time.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Business and Tax Regulations Code to suspend the Empty Homes Tax pending a final decision in ongoing litigation,¹ retroactive to January 1, 2024, and to reinstate the tax so that the first tax applies in the tax year immediately following the calendar year of the final decision. Passage of the proposed ordinance requires approval by two-thirds of the Board of Supervisors per Article 29A of the Business and Tax Regulations Code.

¹ *Eric Debbane, et al. v. City and County of San Francisco, et al.*, San Francisco Superior Court Case No. CGC-23-604600

According to the proposed ordinance, the City Attorney's Office believes that the ruling striking down the Empty Homes Tax will likely be overturned on appeal. If it is overturned, the City may be required to collect Empty Homes Taxes going back to calendar year 2024. It could take several years for the litigation to be fully resolved, and collection of past taxes may be logistically difficult to collect, as property ownership may change over time and documents to determine tax liability from past years may not be available. To avoid these issues, the Treasurer-Tax Collector's Office has proposed suspending the Empty Homes Tax until the calendar year after all appeals have been exhausted or the deadline for filing appeals has passed.

FISCAL IMPACT

The proposed ordinance would suspend collection of the Empty Homes Tax until after ongoing litigation is resolved. In September 2022, the Controller's Office estimated that the annual revenue from the Empty Homes Tax would be approximately \$9 million in 2024 and increasing to approximately \$15.4 million in 2026 and beyond.² The total fiscal impact of the proposed ordinance depends on the timeframe of the litigation and the number of vacant units that would qualify for the tax during the years that the tax is suspended. According to Amanda Fried, TTX Chief of Policy and Communications, the actual amount collected would likely be less than the Controller's estimates because of the ramp up period for collecting new taxes and educating taxpayers to file. Additionally, the collection of back taxes would be very difficult and taxpayers would likely not have the documentation to respond to audits. Because the proposed ordinance would waive revenue collection, we consider approval to be a policy matter for the Board of Supervisors.

The Empty Homes Tax proceeds would go into a new Housing Activation Fund, which would be used for rental subsidies for low-income households and adults aged 60 or older and the acquisition, rehabilitation, and operation of buildings for affordable housing. The proposed ordinance has no direct impact on the General Fund.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

² The Controller's Office had initially estimated that the Empty Homes Tax revenues would be approximately \$20 million in 2024, \$30 million in 2025, and \$37 million in 2026. These figures were included in the November 2022 ballot information for Proposition M, which create the residential vacancy tax. These revenue estimates were prepared in Summer 2022 and are included in the FY 2024-25 and FY 2025-26 budgets and placed on Controller's reserve. The reduced revenue estimates noted above assume that certain vacant units would not be subject to the tax and that the tax would incentivize property owners to fill vacant units.



Treasurer & Tax Collector

CITY AND COUNTY OF SAN FRANCISCO

José Cisneros
TREASURER

December 16, 2024

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Dear Ms. Calvillo:

Attached please find an electronic copy of a proposed ordinance for Board of Supervisors approval. The legislation suspends the Empty Homes Tax retroactive to January 1, 2024, pending a final decision in *Eric Debbane, et al. v. City & County of San Francisco, et al.*, Superior Court Case.

The following is a list of accompanying documents:

- ORD EHT Suspension FINAL
- DIGEST EHT Suspension

The following person may be contacted regarding this matter:

Eric Manke
Policy and Communications Manager
(415) 554-4509
eric.manke@sfgov.org