

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM: *ll*
ll Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: October 7, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following legislation, introduced by Supervisor Peskin on October 1, 2019:

File No. 191005

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 neighborhood commercial districts or 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.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Budget and Finance Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: William Strawn, Department of Building Inspection
Patty Lee, Department of Building Inspection

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

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

11
12 MOVED, That the Planning Department has determined that the actions contemplated
13 in this ordinance comply with the California Environmental Quality Act (California Public
14 Resources Code Sections 2100 *et seq.*). Said determination is on file with the Clerk of the
15 Board of Supervisors in File No. _____ and is incorporated herein by reference. The
16 Board affirms this determination; and be it further

17
18 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
19 voters of the City and County of San Francisco, at an election to be held on March 3, 2020.

20
21 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
22 **to impose an excise tax on persons keeping ground floor commercial space in**
23 **neighborhood commercial districts or neighborhood commercial transit districts**
24 **vacant, to fund assistance to small businesses; increasing the City’s appropriations**
25 **limit by the amount collected under the tax for four years from March 3, 2020; and**

1 affirming the Planning Department's determination under the California Environmental
2 Quality Act.

3
4 NOTE: **Unchanged Code text and uncodified text** are in plain font.
5 **Additions to Codes** are in *single-underline italics Times New Roman font*.
6 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
7 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
8 parts of tables.

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

10 Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of
11 California, this ordinance shall be submitted to the qualified electors of the City and County of
12 San Francisco at the March 3, 2020, municipal election.

13 Section 2. The Business and Tax Regulations Code is hereby amended by adding
14 Article 29, consisting of Sections 2901 through 2911, to read as follows:

15
16 **ARTICLE 29: VACANCY TAX ORDINANCE**

17
18 **SEC. 2901. SHORT TITLE.**

19 *This Article 29 shall be known as the "Vacancy Tax Ordinance," and the tax it imposes shall be*
20 *known as the "Vacancy Tax."*

21
22 **SEC. 2902. FINDINGS AND PURPOSE.**

23 *(a) San Francisco's neighborhood commercial districts prioritize street-level, customer-facing*
24 *businesses as a means of stimulating a bustling, pedestrian-friendly urban environment. Retail*

1 storefronts are the building blocks of neighborhood vitality, encouraging people to stroll through San
2 Francisco's streets, sidewalks, parks, and other open spaces, and inviting them in.

3 (b) San Francisco residents and visitors have an interest in preserving the vitality of
4 commercial corridors in these districts. Vacant storefronts in otherwise vibrant neighborhood
5 commercial districts degrade the urban environment and reduce the quality of life in those
6 neighborhoods, leading to blight and crime, particularly when storefronts stay empty for extended
7 periods of time. Further, the resulting blight negatively impacts other small businesses in the area by
8 discouraging foot traffic and eroding the character and uniqueness of San Francisco's diverse
9 neighborhoods and communities.

10 (c) Retail vacancies may occur when property owners are performing tenant improvements for
11 prospective tenants, while actively seeking a new commercial tenant, or following a disaster requiring
12 wholesale rehabilitation of a structure. These temporary vacancies reflect a property owner's desire
13 to maintain the active retail storefront environment of San Francisco's neighborhood commercial
14 corridors and to continue contributing to the surrounding community.

15 (d) But in other instances, retail vacancies occur when a property owner or landlord fails to
16 actively market a vacant retail storefront to viable commercial tenants and/or to offer the property at a
17 reasonable rate. Retail vacancies may persist as property owners and landlords hold storefronts off of
18 the market for extended periods of time or refuse to offer the space for a reasonable market rate, while
19 the property itself continues to deteriorate.

20 (e) The purpose of the Vacancy Tax is to stimulate the rehabilitation of blighted, long-term
21 retail vacancies, and, in turn, to reinvigorate commercial corridors and stabilize commercial rents,
22 thereby allowing new small businesses to open and existing small businesses to thrive.

23 (f) By dedicating proceeds from the Vacancy Tax to the Small Business Assistance Fund, the
24 Vacancy Tax will also assist small businesses and provide relief to those small businesses adversely
25 affected by blight, crime, and other negative impacts caused by vacant storefronts in San Francisco.

1 **SEC. 2903. DEFINITIONS.**

2 Unless otherwise defined in this Article 29, the terms used in this Article shall have the
3 meanings given to them in Article 6 of the Business and Tax Regulations Code, as amended from time
4 to time. For purposes of this Article, the following definitions shall apply:

5 “Frontage” means the number of linear feet of Taxable Commercial Space that is adjacent or
6 tangent to a Public Right of Way, rounded to the nearest foot.

7 “One-Year Construction Period” means the one-year period following the date that the City
8 issues a building permit for repair, rehabilitation, or construction of a building or structure, provided
9 that if the City issues multiple building permits to an owner, tenant, co-owner, or co-tenant for such
10 building or structure, the One-Year Construction Period shall mean only the one-year period following
11 the issuance of the first building permit to that owner, tenant, co-owner, or co-tenant. For purposes of
12 determining whether the City has issued multiple building permits to the same owner, tenant, co-owner,
13 or co-tenant, a person related to or affiliated by common ownership or control with an owner, tenant,
14 co-owner, or co-tenant shall be deemed to be the same owner, tenant, co-owner, or co-tenant.

15 “One-Year Disaster Period” means the one-year period following the date that a building or
16 structure was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or
17 other catastrophic event.

18 “Public Right of Way” means the dedicated public alleys, boulevards, courts, lanes, roads,
19 sidewalks, spaces, streets, and ways within the City, which are under the permitting jurisdiction of the
20 Department of Public Works.

21 “Residential Real Estate” means real property where the primary use of or right to use the
22 property is for the purpose of dwelling, sleeping or lodging other than as part of the business activity of
23 accommodations. For purposes of this Article 29, “accommodations” means the activity of providing
24 lodging or short-term accommodations for travelers, vacationers, or others, including the business
25

1 activity described in code 721 of the North American Industry Classification System as of November 6,
2 2012.

3 “Six-Month Conditional Use Application Period” means the six-month period following the
4 date that a complete application for a conditional use permit is filed with the City, provided that if more
5 than one conditional use permit application is filed by an owner, tenant, co-owner, or co-tenant for the
6 same building or structure, the Six-Month Conditional Use Application Period shall mean only the six-
7 month period following the date the first complete application is filed with the City by that owner,
8 tenant, co-owner, or co-tenant. For purposes of determining whether more than one conditional use
9 permit application has been filed by the same owner, tenant, co-owner, or co-tenant, a person related
10 to or affiliated by common ownership or control with an owner, tenant, co-owner, or co-tenant shall be
11 deemed to be the same owner, tenant, co-owner, or co-tenant.

12 “Taxable Commercial Space” means the ground floor of any building or structure, or the
13 ground floor of any portion of a building or structure, where such ground floor (1) is adjacent or
14 tangent to a Public Right of Way, (2) is located in a “neighborhood commercial district,” within the
15 meaning of Section 702(a)(1) of Article 7 of the Planning Code, or a “neighborhood commercial
16 transit district,” within the meaning of Section 702(a)(2) of that Code, as those neighborhood
17 commercial districts and neighborhood commercial transit districts exist on March 3, 2020, and (3) is
18 not Residential Real Estate.

19 “Vacant” means unoccupied, uninhabited, or unused for more than 182 days, whether
20 consecutive or nonconsecutive, in a tax year. Notwithstanding the prior sentence, a building or
21 structure shall not be considered Vacant during that building’s or that structure’s One-Year
22 Construction Period, One-Year Disaster Period, and/or Six-Month Conditional Use Application
23 Period. In determining whether a building or structure is Vacant, days within the One-Year
24 Construction Period, the One-Year Disaster Period, and the Six-Month Conditional Use Application
25 Period shall be disregarded.

1 **SEC. 2904. IMPOSITION OF TAX.**

2 (a) Except as otherwise provided in this Article 29, for the purposes described in Section 2907,
3 the City imposes an annual Vacancy Tax on keeping Taxable Commercial Space Vacant.

4 (b) The tax on keeping Taxable Commercial Space Vacant shall be \$1,000 per linear foot of
5 Frontage.

6 (c) The Vacancy Tax shall be payable by: (1) the owner of the Taxable Commercial Space kept
7 Vacant, provided that the Taxable Commercial Space is not leased; (2) the lessee, and not the owner, of
8 the Taxable Commercial Space kept Vacant, if that Taxable Commercial Space is leased but not
9 subleased; and (3) the sublessee, and not the owner or sublessor, of the Taxable Commercial Space
10 kept Vacant, if that Taxable Commercial Space is subleased. Not more than one tax shall be imposed
11 under this Section 2904 by reason of multiple liable owners, lessees, or sublessees. If there are
12 multiple liable owners, lessees, or sublessees, each such person shall be jointly and severally liable for
13 the Vacancy Tax.

14 (d) A person shall be liable for the Vacancy Tax only if that person has kept Taxable
15 Commercial Space Vacant in a tax year. A person shall be deemed to have kept Taxable Commercial
16 Space Vacant in a tax year if that person and any other person related to or affiliated by common
17 ownership or control with that person, individually or collectively, has kept that Taxable Commercial
18 Space Vacant for more than 182 days in that tax year.

1 **SEC. 2905. EXEMPTIONS AND EXCLUSIONS.**

2 (a) For only so long as and to the extent that the City is prohibited from imposing the Vacancy
3 Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of
4 California or the Constitution or laws of the United States from imposing the Vacancy Tax shall be
5 exempt from the Vacancy Tax.

6 (b) The City shall not be exempt from the Vacancy Tax.

7
8 **SEC. 2906. ADMINISTRATION.**

9 Except as otherwise provided under this Article 29, the Vacancy Tax shall be administered
10 pursuant to Article 6 of the Business and Tax Regulations Code. The Tax Collector is authorized to
11 determine what constitutes a related person and a person affiliated by common ownership or control
12 for purposes of determining the One-Year Construction Period as defined in Section 2903, the Six-
13 Month Conditional Use Application Period as defined in Section 2903, and whether a person has kept
14 Taxable Commercial Space Vacant, as defined in Section 2903, for more than 182 days in a tax year,
15 as defined in Section 2904(d).

16
17 **SEC. 2907. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

18 (a) All monies collected under the Vacancy Tax Ordinance shall be deposited to the credit of
19 the Small Business Assistance Fund ("Fund"), established in Administrative Code Section 10.100-334.
20 The Fund shall be maintained separate and apart from all other City funds and shall be subject to
21 appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
22 have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be
23 carried forward and accumulated in the Fund for the purposes described in subsection (b).

1 (b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Small Business
2 Assistance Fund shall be appropriated on an annual or supplemental basis and used exclusively for the
3 following purposes:

4 (1) Up to 10% of the proceeds of the Vacancy Tax distributed in any proportion to the
5 Tax Collector and other City Departments, for administration of the Vacancy Tax and administration of
6 the Fund.

7 (2) Refunds of any overpayments of the Vacancy Tax, including any related penalties,
8 interest, and fees.

9 (3) All remaining amounts to provide funding to assist the maintenance and operation
10 of small businesses in the City.

11 (c) Commencing with a report filed no later than February 15, 2023, covering the fiscal year
12 ending on June 30, 2022, the Controller shall file annually with the Board of Supervisors, by
13 February 15 of each year, a report containing the amount of monies collected in and expended from the
14 Small Business Assistance Fund during the prior fiscal year, the status of any project required or
15 authorized to be funded by this Section 2907, and such other information as the Controller, in the
16 Controller's sole discretion, shall deem relevant to the operation of this Article 29.

17
18 **SEC. 2908. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.**

19 The Department of Public Works, the Department of Building Inspection, and the Office of
20 Economic Workforce Development shall provide technical assistance to the Tax Collector, upon the
21 Tax Collector's request, to administer the Vacancy Tax.

22
23 **SEC. 2909. AMENDMENT OF ORDINANCE.**

24 The Board of Supervisors may amend or repeal this Article 29 by ordinance without a vote of
25 the people except as limited by Article XIII C of the California Constitution.

1 **SEC. 2910. SEVERABILITY.**

2 (a) Except as provided in Section 2910(b), if any section, subsection, sentence, clause, phrase,
3 or word of this Article 29, or any application thereof to any person or circumstance, is held to be
4 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
5 affect the validity of the remaining portions or applications of this Article. The People of the City and
6 County of San Francisco hereby declare that, except as provided in Section 2910(b), they would have
7 adopted this Article 29 and each and every section, subsection, sentence, clause, phrase, and word not
8 declared invalid or unconstitutional without regard to whether any other portion of this Article or
9 application thereof would be subsequently declared invalid or unconstitutional.

10 (b) If the imposition of the Vacancy Tax in Section 2904 is held in its entirety to be facially
11 invalid or unconstitutional in a final court determination, the remainder of this Article 29 shall be void
12 and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax
13 Regulations Code.

14
15 **SEC. 2911. SAVINGS CLAUSE.**

16 No section, clause, part, or provision of this Article 29 shall be construed as requiring the
17 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
18 Constitution or laws of the State of California.

19
20 Section 3. Chapter 10 of the Administrative Code is hereby amended by adding
21 Section 10.100-334 to Article XIII, to read as follows:

22
23 **SEC. 10.100-334. SMALL BUSINESS ASSISTANCE FUND.**

24 (a) Establishment of Fund. The Small Business Assistance Fund ("Fund") is established as a
25 category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all

1 taxes, penalties, interest, and fees collected from the Vacancy Tax imposed under Article 29 of the
2 Business and Tax Regulations Code.

3 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the
4 Fund shall be used exclusively for the purposes described in Section 2907(b) of Article 29 of the
5 Business and Tax Regulations Code.

6 (c) Administration of Fund. As stated in Section 2907(c) of Article 29 of the Business and Tax
7 Regulations Code, commencing with a report filed no later than February 15, 2023, covering the fiscal
8 year ending June 30, 2022, the Controller shall file annually with the Board of Supervisors, by
9 February 15 of each year, a report containing the amount of monies collected in and expended from the
10 Fund during the prior fiscal year, the status of any project required or authorized to be funded by
11 Section 2907, and such other information as the Controller, in the Controller's sole discretion, deems
12 relevant to the operation of Article 29.

13
14 Section 4. Appropriations Limit Increase. Pursuant to California Constitution
15 Article XIII B and applicable laws, for four years from March 3, 2020, the appropriations limit
16 for the City shall be increased by the aggregate sum collected by the levy of the tax imposed
17 under this ordinance.

1 Section 5. Effective and Operative Dates. The effective date of this ordinance shall be
2 ten days after the date the official vote count is declared by the Board of Supervisors. This
3 ordinance shall become operative on January 1, 2021.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: 
8 KERNE H. O. MATSUBARA
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[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 neighborhood commercial districts or 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 neighborhood commercial districts or neighborhood commercial transit districts vacant. The tax would be \$1,000 per linear foot of street-facing frontage of vacant ground floor commercial space.

Commercial space would be considered vacant if it is unoccupied, uninhabited, or unused for more than 182 days, whether consecutive or nonconsecutive, in a year. Days during the following periods would not count as vacant days: (1) the one-year period following the date that the City issues an initial building permit for repair, rehabilitation, or construction of a building or structure, (2) the one-year period following the date that a building or structure was severely damaged and made uninhabitable or unusable due to fire or natural disaster, and/or (3) the six-month period following the date that an initial application for a conditional use permit is filed with the City.

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 persons related to or affiliated by common ownership or control with that person, individually or collectively, keeps that space vacant for more than 182 days in that year. The City would not be exempted from the tax.

The tax would be payable by 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.

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.

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