

BOARD of SUPERVISORS



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MEMORANDUM

TO: Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector
Ben Rosenfield, Controller, Office of the Controller

Victor Young, Assistant Clerk
Rules Committee

A handwritten signature in black ink that reads "Victor Young".

DATE: May 7, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on April 28, 2020:

File No. 200420

Ordinance amending the Business and Tax Regulations Code and Administrative Code to temporarily suspend the imposition of the Vacancy Tax, through December 31, 2021.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc. Todd Rydstrom, Office of the Controller
Peg Stevenson, Office of the Controller
Molly Cohen, Office of the Treasurer and Tax Collector

1 [Business and Tax Regulations, Administrative Codes - Temporary Suspension of Vacancy
2 Tax]

3 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
4 **to temporarily suspend the imposition of the Vacancy Tax, through December 31, 2021.**

5
6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

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

14 Section 1. Background, Purpose, and Findings.

15 (a) At an election on March 3, 2020, San Francisco voters approved the Vacancy Tax,
16 an annual excise tax on persons keeping ground floor commercial space in certain
17 neighborhood commercial districts and certain neighborhood commercial transit districts
18 vacant, to fund assistance to small businesses. The Vacancy Tax is effective January 1,
19 2021.

20 (b) The Mayor issued a proclamation on February 25, 2020 declaring the existence of
21 a local emergency in connection with the imminent spread within the City of a novel
22 coronavirus (“COVID-19”). On March 3, 2020, the Board of Supervisors concurred in that
23 proclamation and in the actions taken by the Mayor to meet the emergency. On March 4,
24 2020, the Governor proclaimed a state of emergency to exist within the State due to the threat
25 posed by COVID-19. Further, on March 6, 2020, the Local Health Officer declared a local

1 health emergency under Section 101080 of the California Health and Safety Code, and the
2 Board of Supervisors concurred in that declaration on March 10, 2020.

3 (c) On March 16, 2020, the Local Health Officer issued a stay safe at home order,
4 requiring most people to remain in their homes subject to certain exceptions including
5 obtaining essential goods such as food and necessary supplies, and requiring the closure of
6 non-essential businesses, through April 7, 2020, as that order may be extended or modified.
7 On March 19, 2020, the Governor issued Executive Order N-33-20 and the California Public
8 Health Officer issued a corresponding order requiring people to stay home except as needed
9 subject to certain exceptions.

10 (d) On March 31, 2020, the Local Health Officer extended the stay safe at home order
11 and tightened the stay safe at home restrictions through May 3, 2020, which date is subject to
12 further change. The order, possibly with some modifications, will be extended through at least
13 the end of May 2020.

14 (e) The COVID-19 outbreak has caused significant negative impact on businesses in
15 the City, including the closure of many of those businesses. While the exact course of the
16 pandemic cannot be predicted, it is expected to continue to pose serious public health
17 concerns in San Francisco for months to come, and will continue to have a serious negative
18 impact on businesses during that time. It is therefore in the City's best interest to suspend
19 temporarily the imposition of the Vacancy Tax, through December 31, 2021.

20
21 Section 2. The Business and Tax Regulations Code is hereby amended by revising
22 Sections 2904 and 2907 of Article 29, to read as follows:
23
24
25

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

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

5 (b) The tax on keeping Taxable Commercial Space Vacant in a tax year shall be as
6 follows:

7 (1) For the ~~2022~~2021 tax year, \$250 per linear foot of Frontage.

8 (2) For the ~~2023~~2022 tax year, \$250 per linear foot of Frontage for Taxable
9 Commercial Space that has not been kept Vacant by any person in the ~~2022~~2021 tax year and
10 \$500 per linear foot of Frontage for Taxable Commercial Space that has been kept Vacant by
11 any person in the ~~2022~~2021 tax year.

12 (3) For the ~~2024~~2023 tax year and subsequent tax years:

13 (A) \$250 per linear foot of Frontage for Taxable Commercial Space that
14 has not been kept Vacant by any person in the immediately preceding tax year;

15 (B) \$500 per linear foot of Frontage for Taxable Commercial Space that
16 has been kept Vacant by any person in the immediately preceding tax year but not kept
17 Vacant by any person in the tax year immediately preceding that tax year; and

18 (C) \$1,000 per linear foot of Frontage for all situations in which neither
19 subsection (b)(3)(A) nor subsection (b)(3)(B) of this Section 2904 applies.

20 (c) The Vacancy Tax shall be payable by: (1) the owner or owners of the Taxable
21 Commercial Space kept Vacant, provided that the Taxable Commercial Space is not leased;
22 (2) the lessee or lessees, and not the owner, of the Taxable Commercial Space kept Vacant,
23 if that Taxable Commercial Space is leased but not subleased; and (3) the sublessee or
24 sublessees, and not the owner or sublessor, of the Taxable Commercial Space kept Vacant, if
25 that Taxable Commercial Space is subleased. Not more than one tax shall be imposed under

1 this Section 2904 by reason of multiple liable owners, lessees, or sublessees. If there are
2 multiple liable owners, lessees, or sublessees, each such person shall be jointly and severally
3 liable for the Vacancy Tax.

4 (d) A person shall be liable for the Vacancy Tax only if that person has kept Taxable
5 Commercial Space Vacant in a tax year. A person shall be deemed to have kept Taxable
6 Commercial Space Vacant in a tax year if that person and all Related Persons and Affiliates of
7 that person, individually or collectively, have kept that Taxable Commercial Space Vacant for
8 more than 182 days in that tax year.

9 (e) The imposition of the Vacancy Tax under this Section 2904 shall be suspended for the 2021
10 tax year.

11
12 **SEC. 2907. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

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

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

- 23 (1) To the Tax Collector and other City Departments, for administration of the
24 Vacancy Tax and administration of the Fund.

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

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

5 (c) Commencing with a report filed no later than February 15, ~~2023~~2024, covering the
6 fiscal year ending on June 30, ~~2022~~2023, the Controller shall file annually with the Board of
7 Supervisors, by February 15 of each year, a report containing the amount of monies collected
8 in and expended from the Small Business Assistance Fund during the prior fiscal year, the
9 status of any project required or authorized to be funded by this Section 2907, and such other
10 information as the Controller, in the Controller's sole discretion, shall deem relevant to the
11 operation of this Article 29.

12
13 Section 3. The Administrative Code is hereby amended by revising Section
14 10.100-334 of Article XIII, to read as follows:

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16 **SEC. 10.100-334. SMALL BUSINESS ASSISTANCE FUND.**

17 (a) Establishment of Fund. The Small Business Assistance Fund ("Fund") is
18 established as a category four fund as defined in Section 10.100-1 of the Administrative Code,
19 and shall receive all taxes, penalties, interest, and fees collected from the Vacancy Tax
20 imposed under Article 29 of the Business and Tax Regulations Code.

21 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies
22 in the Fund shall be used exclusively for the purposes described in Section 2907(b) of Article
23 29 of the Business and Tax Regulations Code.

24 (c) Administration of Fund. As stated in Section 2907(c) of Article 29 of the Business
25 and Tax Regulations Code, commencing with a report filed no later than February 15,

