



CITY AND COUNTY OF SAN FRANCISCO

LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

November 1, 2019

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 191005: Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on Keeping Commercial Property Vacant

Small Business Commission Recommendation to the Board of Supervisors: **Recommendation to support upon the condition Supervisor Peskin works in consultation with the Office of Small Business on OSB recommended timelines, amends the 182 days to consecutive days and expresses its support for the intent to address property owners with long term vacancies.**

Dear Ms. Calvillo,

On October 28, 2019 the Small Business Commission (SBC or Commission) heard BOS File No. 191005: Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on Keeping Commercial Property Vacant. Lee Hepner, Legislative Aide to Supervisor Aaron Peskin provided an overview of the legislation.

The Commission engaged in a practical discussion regarding the genesis of the legislation and its anticipated administration. Mr. Hepner also shared potential amendments expected to be introduced during Committee which include: 1) extending the “one year construction period” to include the period from submission of an application to issuance of the permit; 2) extend the “one year disaster period” to two years from the date that a building or structure was severely damaged or made uninhabitable or unusable due to fire, natural disaster, or other catastrophic event; and, 3) require that all ground floor Conditional Use applications in the City’s Neighborhood Commercial Districts and Neighborhood Commercial Transit Districts be eligible for priority processing under the Community Business Priority Processing Program. Additionally, relative to the Small Business Assistance Fund, a potential amendment discussed

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would enable the use of the fund for small sites acquisitions.

The Commission is wholly supportive of the intent for the Initiative Ordinance, particularly as it relates to long term vacancies. However, some concerns remain regarding the administration of the vacancy tax, how and when it will be determined that a property is indeed vacant, and potential unintended consequences that may result in adverse outcomes for small businesses. Specifically, that there will be small businesses who will incur the vacancy tax through no fault of their own but rather, due to inefficient city processes. Additionally, the Commission noted a desire to see an appeals process included in the Initiative Ordinance which would afford an entity an opportunity to challenge their receipt of the vacancy tax.

Directors Recommendations and Notes:

The Office of Small Business (OSB) is aligned with Supervisor Peskin, in that the City does need new tools to manage long term storefront vacancies that have been kept intentionally off the market for many years. And to create that stick where it solely is leveraged against the property owner. These longer term vacancies do negatively impact the economic vitality of our neighborhood commercial corridors.

The Office of Small Business appreciates Supervisor Peskin's interest of addressing the very real issues of rent increases on existing small business and stabilizing speculative rents for prospective businesses but is not aligned in how the ordinance is attempting to address these issues. OSB expresses concern that, as drafted, the initiative ordinance will likely drive up rents, and unintentionally entrap small businesses - that want to open a business in our City's neighborhoods - with the responsibility of paying the vacancy tax.

Each and every member of the Board of Supervisors has asked OSB what can be done to reduce the cost and bureaucracy for a small businesses opening their business in San Francisco. The first rule of thumb is not to add to the cost, difficulty and length of time to open a business. OSB has very real concerns that as currently written this tax will increase the cost and reduce the feasibility for small business owners looking to open in San Francisco without effectively targeting the property owner. It is under this context that OSB is highlighting its set of recommendations to the initiative ordinance and identifying very real concerns to the definition of a storefront vacancy and implementation procedure to determine a long term vacancy and timing of when to assess the proposed tax.

OSB's Recommendations for Amendments:

1. Amend the Disaster Period to 3 years with a mandatory re-examining by the Board of Supervisors if a FEMA declaration is made covering more than 3% of the city.
2. The Vacancy Tax is applied to long term vacancies only.

3. Assign the definition of a long-term vacancy to Section 103.A of the Building Code that defines and strike Section 2906: *“The Tax Collector is authorized to determine what constitutes a related person and a person affiliated by common ownership or control for purposes of determining the One-Year Construction Period as defined in Section 2903, the Six-Month Conditional Use Application Period as defined in Section 2903, and whether a person has kept Taxable Commercial Space Vacant, as defined in Section 2903, for more than 182 days in a tax year, as defined in Section 2904(d).”*

4. The vacancy tax is applied to a property owner listed on the registry for X amount of time. OSB is recommending a definition of long term vacant storefront as three or more years.

Note: Supervisor Peskin’s Office discussed with SBC that Supervisor Peskin may amend the Initiative Ordinance with a phase in tax of \$250.00 per linear foot in year one, \$500.00 per linear foot in year two and \$1000 per linear foot in year three. For example: For the first year a vacant tax is applied the property owner will have to pay the City either \$711 registration fee (if registering on time) or \$2844 in penalty fees for not registering within 30 day and a \$6250 in vacancy tax.

Any vacancy tax assessment levied against the property owner for any time period under one to two years, the property will likely figure the tax amount into the base rent, passing this cost onto the tenant. Thus having a reverse effect in reducing rents.

5. Amend calculation of vacancy to be consecutive days not cumulative.
6. Remove all responsibility of the lessee for vacancy tax that is actively engaged in the process of opening their business for either the CUA process or the building permit process. This is already accounted for in Section 103.A of the Building Code.
7. If this amendment is not accepted then add a “reset” to the clock at the time of lease signing. A tenant should not be responsible for the time a building owner took in bringing a property to market or previous missteps with a property prior to their involvement.

Note: Supervisor Peskin’s Office discussed with the SBC that Supervisor Peskin may amend definition of the one-year construction period to: Extend the one-year construction period of the permit to include the period from submission of an application to issuance of permit. Section 103A of the building code already accounts for this and therefore is creating a regulatory structure where two agencies are tracking and accounting for the same building permit processing.

Supervisor Peskin’s Office discussed with the SBC establishing a requirement for all ground floor CUA in the City’s NCD and NCTD eligible for priority processing under [CB3P](#). While it is a welcome consideration, this is an administrative procedure

of the Planning Department, authorized by the Planning Commission. Therefore it is still at the digression of the Planning Department staff whether a small business can apply for a CB3P. A CB3P application could be pulled off the consent agenda by a Planning Commissioner or a member of the public which could result in additional delays. OSB also has concerns that the added number of CB3P participants may slow the process for business owners.

Businesses currently not eligible for a CB3P:

<ul style="list-style-type: none"> • Business that seeks to sell any alcoholic beverages other than beer and/or wine sold on or off-site in conjunction with the operation of a Bona Fide Eating Place. • Massage Establishment • Tobacco Paraphernalia Establishment • Cannabis Uses • Bar • Nighttime Entertainment/Place of Entertainment (e.g. nightclubs, music venues) 	<ul style="list-style-type: none"> • Adult Entertainment Establishment • Fringe Financial Service Drive-up Facility • Wireless Telecommunications Site (“WTS”) • Outdoor Activity Area • Off-Street parking in excess of that allowed on an as-of-right basis • Office closed to the public located on the ground story
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8. Include an appeals process for hardship. Recognizing the complexities of many of our vacancies and unique needs of both business owners and property owners, create a method to appeal for an extension to the allotted time. (Ideally the initiative ordinance shall exclude the business owner). This process should require that the applicant demonstrate active progress on the vacancy in addition to outlining the next steps.

9. Apply Washington DC’s Vacant Building Registry ¹ list of exemptions for property owners assessed the vacancy tax. It may need to be a separate tier of exemptions from the existing list of exemptions in Building Code Section 103.A. Section 2909 allows the Board of Supervisors to amend or repeal the tax without having to go return to the voters. The one exception is that the Board of Supervisor may not raise the tax without the approval of the voters.

10. Retain the Section 10.100- 334. Small Business Assistance Fund. The Commission had discussions regarding the small sites program, but did not make a formal recommendation on how the funds are to be allocated.

¹ [Washington DC: Vacant Building Services for Businesses](#)

Notables for the Initiative Ordinance as written:

1. The initiative ordinance is establishing a vacancy tax. The vacancy tax does not specifically apply to long term vacancies. Taxing a property owner for a long term vacant storefront is what has publically been discussed and has generated agreement. The vacancy tax as drafted can be applied to a vacancy as short as 6 months, which is in the realm of normalcy and not considered a long term vacancy. This legislation as currently written will impact responsible property owners and businesses acting in good faith to fill a storefront vacancy within normal conditions and current permit processing timeframes.
2. Applies to ground floor commercial space in the City's NCD and NCTD, including NC-1, NC-2, NC-3, NCT-1, NCT2 and NCT-3, not just named NCD/NCTD's.^{2 3}
3. The average storefront commercial space is 25 linear feet. Average minimum annual vacancy tax is 25 X \$1000 = \$25,000.
4. The City currently has a [Vacant and Abandoned Commercial Storefront](#) registry program assigned under the Department of Building Inspection (DBI) and was recently updated and new regulations took effect April 22, 2019. As written, this initiative ordinance assigns all aspects for administering the ordinance to the Treasurer and Tax Collector (TTX), including tracking vacant and abandoned storefronts. Thus creating a redundant process and that is confusing for property owners and small businesses to navigate.
5. Additional confusion will come from the creation of a second definition of vacancy not aligned with the definition established in Section 103.A of the Building Code.

Under DBI's vacant and abandoned commercial storefront program its regulatory authority is solely over the property owner and its definition of a vacant or abandoned storefront is:

- (1) is unoccupied and unsecured; or
- (2) is unoccupied and secured by boarding or other similar means; or
- (3) is unoccupied and unsafe as defined in Section 1 02A of this Code; or
- (4) is unoccupied and has multiple code violations; or
- (5) has been unoccupied for over 30 days.

With the proposed initiative ordinance TTX's regulatory authority will be over both the property owner and the small business owner (lessee or sublessee).

- a. Definitions that constitutes a vacancy and applies to the property owner:
 - 182 consecutive/ non-consecutive days

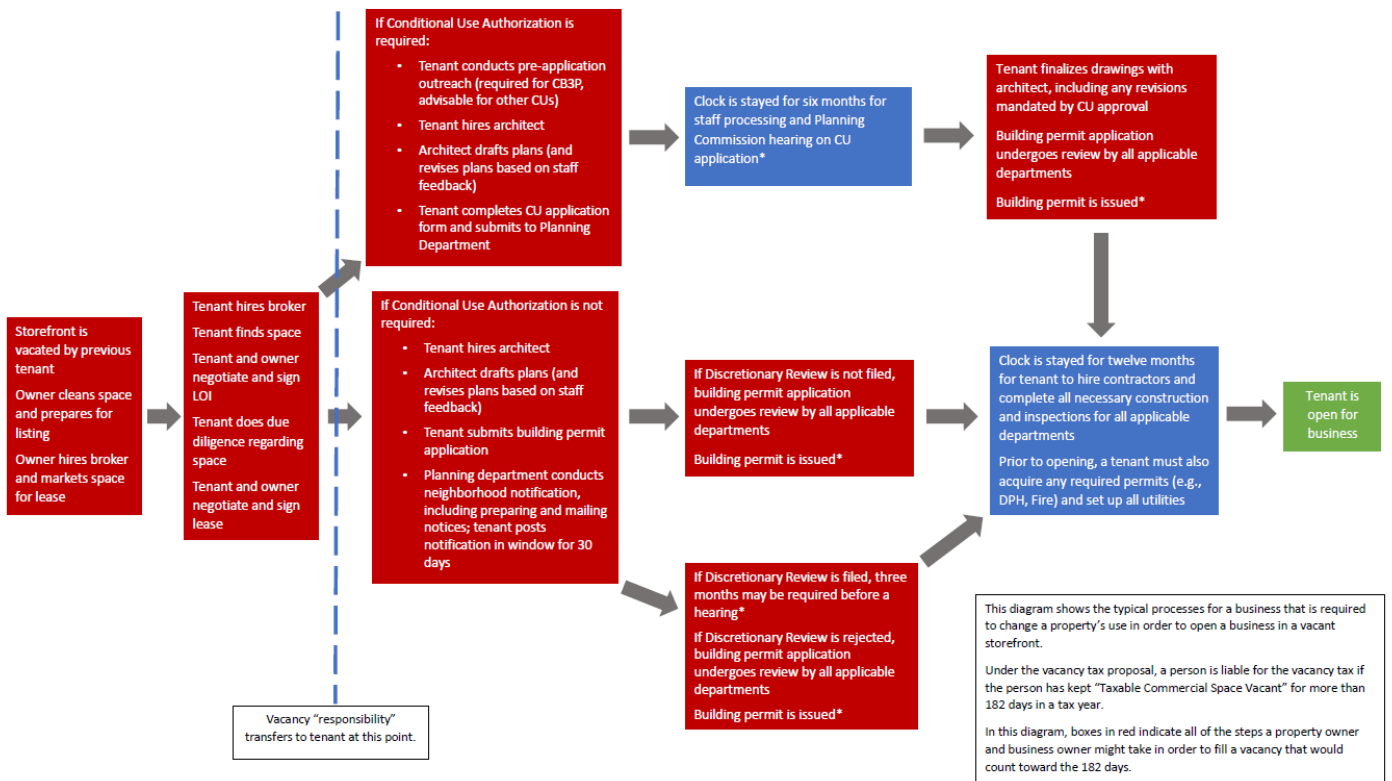
² [SEC. 702. Classes of Neighborhood Commercial Districts](#)

³ [Maps of the Zoning Districts](#)

- One year construction period (i.e. soft story retrofits, repair of code violations while vacant)
- One-year disaster period due to fire, natural disaster or other catastrophic events.

b. Definitions that constitutes a vacancy and applies to the small business:

- 182 consecutive/ non-consecutive days
- 6-month conditional use application period
- One-year construction period (i.e. soft story retrofits, repair of code violations while vacant)



*Steps marked with an asterisk may be appealed to the Board of Appeals or the Board of Supervisors, potentially adding an additional month or more to the permitting process.

6. On March 5, 2019, the Budget and Legislative Analyst issued a report on the Commercial Vacancies in the Upper Market/Castro and City Permitting.⁴ The report identified that it took average number of **332 days to complete the Conditional Use Authorization** and average number of **260 days to complete Building Permits** from approval to final

⁴ [March 05, 2019 - Commercial Vacancies in the Upper Market/Castro and City Permitting](#)

construction sign off.

7. The 6-month conditional use process and the one-year construction period, is tied to the City bureaucratic process that has unforeseen variables that are often not in the business' control and can delay meeting the timeline. (Such as a DR filed against a both 311 neighborhood notification permits and permits that aren't subject to a 311 notice or Board of Permit Appeals process.)
8. Equity concern: When the vacancy tax is assessed due to exceeding the 6-month conditional use application period and/or the one-year construction period, the majority of the instances that obligation will fall to the small business. The small business will need to pay in full the minimum annual vacancy tax of \$25,000 before the business can receive its Certificate of Occupancy and/or License to Operate.
9. Equity concern: There are commercial corridors where vacant properties have long-term ownership by community members many for whom the space is their sole piece of equity and are living on a fixed income. Applying this tax to these property owners could destabilize the owner and potentially necessitate the sale of the property thus moving the property ownership from a long term member of the community to potential outsiders.

Thank you for considering the Commission's and Department's comments. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

cc: Aaron Peskin, Member, Board of Supervisors,
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Lisa Pagan, Office of Economic and Workforce Development
Linda Wong Clerk, Budget and Finance Committee