

File No. 220756

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules Committee

Date July 11, 2022

Board of Supervisors Meeting

Date _____

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Completed by: Victor Young

Date July 7, 2022

Completed by: _____

Date _____

[Business and Tax Regulations Code - Disclosure of Vacancy Tax Information: Penalties For Failure to Timely File Vacancy Tax Returns]

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Ordinance amending the Business and Tax Regulations Code to permit the Tax Collector to make public certain information regarding the Vacancy Tax, and to waive the penalty for failure to timely file Vacancy Tax returns for tax years 2022 and 2023.

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 ~~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. The Business and Tax Regulations Code is hereby amended by revising Article 6, Sections 6.9-1 and 6.17-3.1, to read as follows:

SEC. 6.9-1. RETURNS AND PAYMENTS.

* * * *

(j) Vacancy Tax.

(1) **Annual Due Date.** Except as otherwise provided in this Business and Tax Regulations Code, returns and payments of the Vacancy Tax (Article 29) shall be filed annually and are due and payable, and shall be delinquent if not submitted and paid to the Tax Collector, on or before the last day of February of the succeeding year.

(2) **Additional Filing Requirements.** In addition to the filing requirements in Section 6.9-1(j)(1), anyone that is an owner, lessee, or sublessee of Taxable Commercial Space, as that term is defined in Article 29 of the Business and Tax Regulations Code, at any

1 time during a calendar year shall file a Vacancy Tax return, in the form and manner prescribed
2 by the Tax Collector, on or before the last day of February of the succeeding year.

3 (3) Notwithstanding Section 6.22-1 of this Article 6, the Tax Collector may make public
4 the following information regarding each Taxable Commercial Space, as that term is defined in
5 Section 2903 of Article 29, whether obtained from the returns filed under Sections 6.9-1(j)(1) or (2) or
6 otherwise:

7 (A) The name of the person or persons required to file a return for any tax year
8 with respect to the Taxable Commercial Space, and whether each such person filed a return;

9 (B) The name of the person or persons required to pay the Vacancy Tax for any
10 tax year with respect to the Taxable Commercial Space;

11 (C) The address and block and lot number of the Taxable Commercial Space;

12 (D) Whether the Taxable Commercial Space was kept Vacant during a tax year
13 for purposes of Article 29 of the Business and Tax Regulations Code; and

14 (E) The rate of the Vacancy Tax applicable to the Taxable Commercial Space
15 for a tax year.

16
17 **SEC. 6.17-3.1. PENALTIES FOR MISSTATEMENTS IN REGISTRATION, FAILURE TO**
18 **TIMELY UPDATE REGISTRATION, FAILURE TO ALLOW INSPECTION OF RECORDS**
19 **UPON REQUEST, AND FAILURE TO FILE A RETURN; SANCTION FOR FAILURE TO**
20 **PRODUCE REQUESTED RECORDS.**

21 * * * *

22 (b) The Tax Collector may impose a penalty upon any person who fails to file a return
23 or returns required under this Article 6 on or before the date prescribed for filing, up to \$500
24 for each such failure. The penalty under this provision shall be in addition to any other liability
25 that may be imposed under the provisions of this Article. Filing a return that the Tax Collector

1 determines to be incomplete in any material aspect may be deemed failure to file a return in
2 violation of this Section 6.17-3.1. Any return required to be filed on a combined basis, and
3 which is not filed on that basis, is an incomplete return. In addition, any return required to
4 report worldwide gross receipts and payroll of a person or combined group under
5 Section 956.2, which does not report gross receipts and payroll on a worldwide basis, is an
6 incomplete return. For the 2022 and 2023 tax years, the penalty in this Section 6.17-3.1(b)
7 shall not apply to the failure to file the Vacancy Tax returns required by Sections 6.9-1(j)(1)
8 and (2) on or before the dates prescribed by those Sections.

9 * * * *

10
11 Section 2. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance.

15
16 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the “Note” that appears under
21 the official title of the ordinance.

22
23 Section 4. Undertaking for the General Welfare. In enacting and implementing this
24 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
25 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it

1 is liable in money damages to any person who claims that such breach proximately caused
2 injury.

3

4 APPROVED AS TO FORM:
5 DAVID CHIU, City Attorney

6 By: /s/ Scott M. Reiber
7 SCOTT M. REIBER
8 Chief Tax Attorney

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LEGISLATIVE DIGEST
(Amended in Committee June 27, 2022)

[Business and Tax Regulations Code - Disclosure of Vacancy Tax Information; Penalties For Failure to Timely File Vacancy Tax Returns]

Ordinance amending the Business and Tax Regulations Code to permit the Tax Collector to make public certain information regarding the Vacancy Tax, and to waive the penalty for failure to timely file Vacancy Tax returns for tax years 2022 and 2023.

Existing Law

At the March 3, 2020 election, the voters passed the Vacancy Tax Ordinance, which imposes a Vacancy Tax on owners, lessees, and sublessees that keep certain ground floor, commercial space vacant. The Board of Supervisors suspended application of the Vacancy Tax through December 31, 2021.

The first Vacancy Tax returns will become due on February 28, 2023, for calendar year 2022. Under current law, any information in those returns would be confidential, and could only be used or shared in specified limited circumstances.

The Tax Collector may impose a penalty of up to \$500, in addition to all other penalties, on taxpayers that do not timely file Vacancy Tax returns as required.

Amendments to Current Law

This ordinance would permit the Tax Collector to make the following information public with respect to each commercial space covered by the Vacancy Tax:

- The name of the person or persons required to file a Vacancy Tax return with respect to that commercial space for that calendar year, and whether each such person filed a return;
- The name of the person or persons required to pay the Vacancy Tax with respect to that commercial space for that calendar year;
- The address and block and lot number of the commercial space;
- Whether the commercial space was kept vacant during the calendar year; and
- The rate of the Vacancy Tax applicable to the commercial space for the calendar year.

FILE NO. 220756

This ordinance would also waive the penalty of up to \$500 for the failure to timely file a Vacancy Tax return for calendar years 2022 and 2023.

Background Information

This legislative digest reflects amendments made in committee on June 27, 2022, waiving the penalty of up to \$500 for the failure to timely file a Vacancy Tax return for calendar years 2022 and 2023.

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BOARD of SUPERVISORS



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MEMORANDUM

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

FROM: Brent Jalipa, Assistant Clerk, Budget and Finance Committee

DATE: May 17, 2022

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Aaron Peskin:

File No. 220540

Ordinance amending the Business and Tax Regulations Code to permit the Tax Collector to make public certain information regarding the Vacancy Tax.

If you have any 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.

c: Amanda Kahn Fried, Office of the Treasurer and Tax Collector